

Tobacco Product Regulation Act 2013 Annual Report

This report is respectfully submitted pursuant to section 17-711 of the New York City Administrative Code which requires an annual report to the City Council and the Mayor of New York regarding the administration and enforcement of the Tobacco Product and Regulation Act.

Introduction

The Tobacco Product Regulation Act (TPRA), New York City Administrative Code §17-701 *et seq.*, became effective in April 1993, and was last amended November 2013. Provisions of this law forbid the sale of tobacco products to minors, the sale of unpackaged cigarettes (“loosies”), and the sale of tobacco products by anyone under the age of 18, unless that person is under the direct supervision of another employee who is of age and on the premises. Beginning in 2014, retailers must post specifically worded signs indicating that tobacco sales to those under the age of 21 are prohibited, and must also request and review photo identification from the prospective buyer, unless the purchaser reasonably appears to be at least 30 years of age. This Act also prohibits the use of any tobacco product on school premises. Education about TPRA and the enforcement of TPRA lies with the Department of Health & Mental Hygiene (DOHMH) and the Department of Consumer Affairs (DCA).

The Adolescent Tobacco Use Prevention Act (ATUPA), New York State Public Health Law §1399-aa *et seq.*, similarly prohibits the sale of tobacco products to minors, though on a statewide basis. ATUPA provides authority for the State Department of Health (SDOH) to fund local government entities to enforce ATUPA in their jurisdictions. Pursuant to this authority, SDOH funds DCA to perform ATUPA compliance checks and funds DOHMH to educate tobacco retailers about the provisions of ATUPA, TPRA and the consequences of noncompliance.

To enforce the provisions of both the TPRA and ATUPA, DCA enforcement officers conduct compliance checks using underage youth who attempt over-the-counter purchases of cigarettes. DCA compliance checks include annual inspections of all retailers and follow-up inspections with retailers that have received “points” for past violations. (See below for more information about points). According to the most recent available data, there are currently 9,477 licensed cigarette retail dealers in New York City. DCA’s license renewal period commenced approximately three months ago. Given the time of year, the total number of licensees will increase over the coming weeks as renewal applications are processed.

Penalties for violation of the TPRA are specified in New York City Administrative Code §17-710, and they were increased by the 2013 amendment. First violations and each additional violation on the same day result in a fine of not more than \$5,000 each. Any subsequent violations occurring on a different day at the same place of business within a two-year period will result in a fine of not more than \$10,000 each. Repeated violations within a two-year period also can trigger revocation of the vendor’s City cigarette license. DCA’s administrative tribunal adjudicates these violations.

Penalties for violations of ATUPA are specified by state law. Fines range from \$300 to \$1,500. In addition, the statute sets forth a process by which sale-to-minor violations result in “points” on a retailer’s record. The accumulation of three or more points can result in suspension or revocation of a retailer’s state tobacco registration and state lottery license.

Results

The following table reflects activity during 2013, which corresponds to Quarter 4 of ATUPA Grant Year XV and Quarters 1, 2 and 3 of Grant Year XVI.

Quarter	Compliance checks by adults	Compliance checks with minors ¹	Tobacco sales made to minors	Compliance rate	Total fines assessed ²	Total fines collected ²
4 th Quarter Grant XV Jan. 1- March 31, 2013	190	2,405	212	91%	\$1,223,305	\$922,724
1 st Quarter Grant XVI April 1- June 30, 2013	179	2,375	188	92%	\$1,134,775	\$881,664
2 nd Quarter Grant XVI July 1- Sept. 30, 2013	278	3,090	230	93%	\$958,945	\$789,647
3 rd Quarter Grant XVI Oct. 1- Dec. 31, 2013	222	2,344	195	92%	\$1,020,531	\$979,499
Total	869	10,214	825	92%	\$4,337,556	\$3,573,535

Discussion

DCA met its contractually obligated 9,500 inspections for the Grant Year 15 and has presently exceeded the required 9,500 inspections for Grant Year 16, which runs from April 1, 2013 until March 31, 2014. The number of ATUPA compliance checks and the compliance rate has remained roughly the same between the grant years. Fines assessed during quarters 1, 2, and 3 of GY16 have slightly decreased from quarter 4 of GY15 due to the enforcement of new signage laws which had a larger effect during GY15. The numbers in the above chart do not include Field Visits with Minors (FVM), which are included in the ATUPA reports to the State Department of Health. FVMs are inspections where a minor would have attempted a tobacco purchase, but the business was either closed, no longer sells tobacco, or was deemed by DCA enforcement to be unsafe for the minor to attempt a purchase.

In 2013, DOHMH provided education to retailers that were newly licensed during the period from April 1, 2012 to March 1, 2013. A total of 719 unique cigarette retailers received

¹ For purposes of this report, the number of compliance checks with minors does not include “field visits” in which inspectors and youth do not enter the tobacco outlet because the store is either closed or unsafe for minors. There were an additional 2,003 “field visits.”

² These data reflect fines assessed and collected for both TPRA and ATUPA violations.

one face-to-face visit during which they were provided with educational materials and advice on the NYC and NYS laws governing the sale of tobacco. Health Department representatives provided extensive information on TPRA and ATUPA provisions, training on how to check IDs and refuse sales to minors, tips to prevent violations, and information regarding new legal signage requirements to include electronic cigarettes, tobacco retailer certification programs, and flavored tobacco. Detailers made contact with 846 employees, owners, and managers of these retail locations during the course of the educational campaign, spending an average of 14 minutes with each person. Materials were made available to retailers in English and Spanish, and additional educational kits were mailed to 2,000 tobacco retailers with one or more violations throughout the city. Additional materials were also made available to retailers through 311.