

**Tobacco Product Regulation Act and
Adolescent Tobacco Use Prevention Act (ATUPA)
Annual Report Grant Year IX (10/1/05-9/30/06)**

This report is respectfully being submitted pursuant to Administrative Code § 17-625 of the Tobacco Product Regulation Act, which requires an annual report to the City Council and the Mayor of New York regarding the administration and enforcement of this Act.

Introduction

The Tobacco Product Regulation Act (New York City Administrative Code §§17-616 – 626) originally became effective in April 1993, and was last amended effective August 2000. Provisions of this law forbid the sale of tobacco products to minors. It also forbids sales 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. The retailer must post specifically worded signs indicating that sales to minors are prohibited, and must also request to see a photo ID from the prospective buyer, unless the purchaser reasonably appears to be at least 25 years of age. Also forbidden is the use of any tobacco product on school premises.

Enforcement of this chapter lies with the Department of Health & Mental Hygiene (“DOHMH”) and the Department of Consumer Affairs (“DCA”). The State Adolescent Tobacco Use Prevention Act (“ATUPA”), New York State Public Health Law §§1399-aa et seq., provides authority for the State Department of Health (“SDOH”) to fund work done, pursuant to New York State Public Health Law §1399-hh. DCA handles this enforcement via a Memorandum of Understanding with DOHMH, and receives funding through DOHMH to carry out these duties.

DCA enforcement officers conduct compliance checks using underage youth to attempt over-the-counter purchases of cigarettes. The compliance checks are performed Monday through Sunday during the summer, and, during the school year, after school, on Saturdays and/or Sundays, and on school holidays. DCA contracts to perform at least 14,000 compliance checks of retail tobacco dealers per year. For initial checks, DCA randomly selects about 10,000 retailers from the current roster of licensed NYC vendors, typically about 11,000 to 12,000 vendors. In addition, ATUPA, as amended in March 2002, requires at least two reinspections of retail dealers who have received points for sustained violations (see below for more information about points), and has some requirements in addition to those in the Administrative Code concerning the placement of cigarettes in stores, the location of cigarette vending machines and voluntary training of retail cigarette dealers in State-certified training programs.

Violations and penalties for Administrative Code violations are specified in §17-624 (a). First and subsequent violations on the same day result in a fine of not more than \$1,000. Subsequent violations after the first day and for a two-year period result in a fine of not more than \$2,000. A subsequent violation after the first day within a two-year period also results in mandatory revocation of the retail dealer’s cigarette license. DCA’s Administrative Law Court adjudicates these violations.

In 2002, the State legislature enacted Chapter 162/2002, amending ATUPA to change the structure of the penalty system in the State law. The amended Act requires enforcement officers to warn retail dealers that their State retail cigarette dealer registrations¹ will be suspended upon the accumulation of three or more points. It also changes the previous system -- from one that allowed suspension of State registration after two violations and revocation for one year after three violations -- to one that assigns a point value to violations involving cigarette sales to minors and establishes a voluntary State-certified tobacco sales training program: two points are charged for a violation if the person selling to a minor did not attend the State training program, but only one point if the person did attend. If a dealer accumulates three or more points within a thirty-six month period, State registration is suspended for six months; if the dealer receives four (sustained) violations of any part of ATUPA (not just those pertaining to cigarette sales to minors) within three years, the registration is revoked for one year. If a dealer is found to have sold cigarettes while under suspension or one-year revocation, the penalty is permanent revocation of its State registration.

Until July 1, 2004 (the 4th Quarter of Grant Year VII), DCA inspected for violations of the Administrative Code only; this was due to an anomaly in State Public Health Law that assigned enforcement responsibilities solely to the municipal department of health. However, as part of the new State Clean Indoor Air Act of 2003, DCA was given enforcement authority for ATUPA, and it is now authorized to enforce both city and State law regarding underage tobacco sales to minors. This newly enhanced enforcement authority, with its strengthened penalty and suspension/revocation provisions, will have the effect of greatly reducing the number of licensed/registered retail tobacco dealers who sell to underage youth, and, it is hoped, thus reduce incidence of smoking among youth. State violations also result in the assessment of separate penalties pursuant to ATUPA in addition to city penalties.

As of July 15, 2004 DCA began using the eHIPS (Environmental Health Inspection and Permit System). This State-established database tracking system allows for the tracking of ATUPA inspections and violations. eHIPS streamlines the data entry and reporting processes among DOHMH, DCA and State DOH, which has provided initial training to both DOHMH and DCA personnel.

Results

The following charts reflect activity during the 3rd and 4th Quarters of Grant Year VIII and the 1st and 2nd Quarters of Grant Year IX. As the fiscal year for this program does not coincide with the State's fiscal calendar, there are two more quarters to be reported on in Grant Year IX.

¹ State registrations are issued by the NYS Department of Taxation and Finance ("SDTF").

Quarter	Compliance Checks by adults	Compliance checks with minors	Tobacco sales made to minors	Compliance rate	Total Fines Assessed*	Total fines collected*	2 time (or more) Violators **
3 rd Quarter Grant VIII April 1- June 30, 2005	125	3,727	673	82%	\$ 822,580.00	\$ 612,284.94	128
4 th Quarter Grant VIII July 1- Sept. 30, 2005	112	6,574	1,141	83%	\$ 1,181,470.00	\$ 896,196.63	145
1 st Quarter Grant IX Oct. 1- Dec. 31, 2005	164	3,640	460	87%	\$ 946,270.00	\$ 743,445.81	163
2 nd Quarter Grant IX Jan. 1- March 31, 2006 ***	113	2,834	432	85%	\$ 949,184.09	\$ 630,918.46	124

Completed Checks with Minors	Tobacco Sales Made to Minors	Compliance Rate
10,301 in 3 rd and 4 th Quarters Grant Year VIII	1,814	82%
6,474 in 1 st & 2 nd Quarters Grant Year IX***	892	86%

*City violations only

** DCA began assessing points for State violations in July 2004, resulting in an increase in the number of reported 2 time (or more) violators as compared to the number reported in previous years

*** Based on preliminary data dated April 19, 2006

Discussion

DOHMH and DCA are working together to ensure that the City's compliance rate remains high and improves further. The two agencies are working toward this goal by analyzing violation data to determine shifts in compliance trends by neighborhood, ZIP code and store type. This year, DOHMH also engaged the Bodega Association and others who offer NYS certified training in a discussion to identify and develop needed educational materials, to encourage retailers to attend training, and to offer trainings in languages other than English and Spanish. DOHMH also reviewed innovative strategies and best practices from other States implementing youth enforcement programs, and assessed their applicability to New York City's program.