

Oregon Health Authority (OHA) Tobacco Retailer Inspection Protocol Manual

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Overview of Oregon Tobacco Retail License (TRL) Program

As of January 1, 2022, any business that wants to be authorized to sell tobacco, nicotine and vaping products in Oregon is required to get a Tobacco Retail License from the [Department of Revenue](#). The licensing requirement is imposed on all retailers, including but not limited to:

- Convenience stores
- Bars
- Hotels
- Restaurants
- Gas stations
- Music venues

Retailers must be in a fixed and permanent location, and online sales of tobacco are prohibited. Violations of any tobacco retail law may result in civil penalties, license suspension or revocation. In addition, local jurisdictions may have their own restrictions on the sale of tobacco or vaping products.

This license was created to increase retailer knowledge and compliance of federal and state laws regulating the sale of tobacco and inhalant delivery system products. In other states it has helped to reduce youth access to tobacco in our community. Tobacco retail licensing allows OHA to monitor local businesses and make stores healthier places for everyone to shop. This policy can also support other retail policies to address such concerns as youth access to tobacco, youth exposure to marketing, retailer location or density, retailer incompliance with federal or state laws.

- The license does not apply to retailers operating on tribal lands.
- Local jurisdictions that were already operating a license program may keep their local program. For information and links to local tobacco retail license programs, visit the [Oregon Department of Revenue](#).

Overview of inspections

Three types of inspections are conducted by OHA, or the Local Public Health Authority if they enter into the TRL Program Element, as part of the TRL program and are outlined in [OAR 333-015-0202 to 333-015-0267](#):

1. **Compliance Inspections:** annual unannounced inspections of tobacco product and inhalant delivery systems retailers to ensure

compliance with federal laws and regulations and state laws and rules regulating the retail sale of tobacco products or inhalant delivery systems.

2. **Minimum Legal Sales Age (MLSA) Inspections:** annual unannounced inspections of tobacco product and inhalant delivery system retailers, including those that are not accessible to people under 21 such as bars, to ensure compliance with laws prohibiting the sale of tobacco products and inhalant delivery systems to people under 21 years of age.
3. **Complaint Inspections:** inspections of tobacco product and inhalant delivery systems retailers that have a public complaint alleging violation of a tobacco sales law.

Note: When conducting inspections, if an Indoor Clean Air Act (ICAA) violation is observed (such as someone smoking indoors or within 10 feet of the door), inform the retailer of the ICAA but don't report a violation because it is a public complaint driven law.

Compliance Inspection Protocol

1. Training

- a. OHA-PHD will onboard all inspectors before beginning inspections.
- b. The inspector may practice inspections with a small number of outlets following the completion of each training session.

2. Preparing for Inspections

- a. The inspector will carry the following:
 - i. Inspection protocols;
 - ii. Electronic data collection forms with retail outlet physical addresses listed to identify the retail outlets to be inspected;
 - iii. Tablet or other electronic device for recording inspection results and taking pictures of product if a sale occurs; and
 - iv. Educational materials to leave behind, as needed.

3. Inspection Protocol

Initial Inspection Protocol

- a. An adult inspector conducts the unannounced inspection.
- b. Retail outlets determined by the inspectors as unsafe will not be inspected.
- c. The inspector serves as the lead for coordinating, monitoring, and

reporting inspection results. As such, the inspector:

- i. Determines the dates and times of unannounced inspections;
 - ii. Secures a vehicle for the inspections; and
 - iii. Ensures completion and submission of all inspection results.
- d. The inspector enters the store, finds the person in charge, identifies themselves and the purpose for the inspection.
- e. The inspector uses the electronic inspection form to complete the inspection, marking any violations and providing details regarding the violation. Additional information regarding what to look for each regulation is included in the pocket guide. If unable to complete inspection electronically, use paper inspection form.
- f. When the inspection is complete, the inspector notifies the person in charge of the results and leaves a notification of inspection results with the person in charge.
 - i. If a violation is found and it is the first violation for the store, the inspector creates a remediation plan to correct the violations and goes over it with the person in charge.
 - ii. The person in charge and the inspector sign the electronic form/remediation plan.
- g. Before going to the next store, the inspector ensures that the following required data elements are recorded:
 - i. Date and time of inspection;
 - ii. Confirm that the physical address and type of outlet are correct;
 - iii. Confirm that the physical name of the outlet is correct;
 - iv. Whether or not the outlet is eligible for inspection, and if not, the reason the outlet is not eligible;
 - v. Whether or not the inspection was completed, and if not, the reason why; and
 - vi. Compliance or non-compliance with each regulation listed on the form.
 - If a violation is marked, include any additional information deemed necessary in the notes section of the form.
- h. The inspector electronically submits the completed inspection form (the inspection form and accompanying email are automatically sent to the retailer).
- i. Note: If the retailer denies access to the store (all parts of the store), inform the retailer that refusing access for an inspection is a violation of the rules and could result in a penalty. If the retailer still refuses, note this on the inspection form and ask the person in charge to sign

the form. Submit the form electronically, as laid out in the above protocol.

Follow-up Inspection Protocol

- a. The inspector conducts the unannounced follow-up inspection no sooner than 15 calendar days after the initial inspection.
- b. The inspector uses the follow-up inspection form to conduct the inspection, following the above protocol.
- c. When the inspection is complete, the inspector notifies the person in charge of the results and leaves a notification of inspection results with the person in charge. If a violation is observed, no additional remediation plan is created. The inspector informs the person in charge that the retailer may receive a civil penalty for the observed violations.
- d. The person in charge and the inspector sign the electronic form.
- e. After the inspector follows “g” above, they electronically submit the completed inspection form (the inspection form and accompanying email are automatically sent to the retailer).

Post-Remediation Plan Inspection Protocol

- a. The inspector conducts the inspection.
- b. If additional violations are found during post-remediation plan inspections, a remediation plan is not created.
- c. The inspector completes the inspection form, following the Initial Inspection Protocol.
- d. When the inspection is complete, the inspector notifies the person in charge of the results and leaves a notification of inspection results with the person in charge. If a violation is observed, the inspector informs the person in charge that the retailer may receive a civil penalty for the observed violations.
- e. The person in charge and the inspector sign the electronic form.
- f. After the inspector follows “g” in the Initial Inspection Protocol, they submit the completed inspection form (the inspection form and accompanying email are automatically sent to the retailer).

1. General

- a. Young adult inspectors are informed of the purpose of the inspections, the time commitment, training, compensation, the risks involved and that they may have to appear in court, if necessary, as a witness.
- b. Young adult inspectors attempt to purchase the specified tobacco products or inhalant delivery systems at all stores selected for inspection.
- c. Products purchased during inspections will be as close as possible to the following ratio:
 - i. 4/10 purchases will be cigarettes
 - ii. 3/10 purchases will be electronic cigarettes
 - iii. 3/10 purchases will be cigarillos
- d. Adult inspectors must ensure the safety of young adult inspectors. Young adult inspectors are required to leave the retail outlet immediately if they feel unsafe.
- e. The official state issued ID (such as their driver's license) for each young adult inspector is kept in their possession during inspections.

2. Training

- a. OHA-PHD onboards all adult and young adult inspectors before beginning inspections.
- b. Young adult/adult inspection teams may practice inspections with a small number of outlets following the completion of each training session.
- c. Refer to additional training details in "Internal Young Adult Inspector Training Protocol."
- d. The onboarding does the following:
 - i. Describes the purpose of the inspection is to measure merchant compliance or non-compliance with the state law that prohibits selling tobacco products or inhalant delivery systems to persons under 21 years of age;
 - ii. Emphasizes that the objective of the inspection is better achieved with accurate data, which requires observing and documenting events as they happen;
 - iii. Makes sure that all inspectors understand the procedures and protocols for visiting outlets;
 - iv. Informs all inspectors that names of retail outlets and sale results are to remain confidential;
 - v. Informs the inspectors to be in their natural manner, dress as they

- would regularly, and rehearse the procedure of making tobacco or inhalant delivery system purchases;
- vi. Stresses the role of each team member in ensuring the safety of young adult and adult inspectors;
- vii. Reviews with inspectors what to observe in outlets: tobacco and inhalant delivery system product availability; type of questions young adult inspectors may be asked; scripts to strictly follow when attempting to purchase tobacco products or inhalant delivery systems;
- viii. Shares with inspectors the instructions for handling an emergency medical situation in case an inspector is injured.
- ix. Informs: 1) young adult inspectors not to attempt to purchase tobacco or inhalant delivery systems if someone they know is in a store; and 2) the team not to use marked vehicles;
- x. Informs the adult inspector to take a picture of each young adult inspector each day, reflecting the young adult's look when entering the establishment.

3. Preparing the Inspection Teams

- a. Each inspection team consists of two (one adult and one young adult) inspectors.
- b. Young adult inspectors reflect the demographic and cultural characteristics of the community retail outlets they inspect, where possible.
- c. The young adult inspector will wear their regular clothing.
- d. Prior to each day's inspections, the adult inspector will validate that the young adult inspector is 18, 19, or 20 years of age by verifying this information from a state-issued ID card or driver's license. The identification card or license is to remain in the possession of the young adult inspector during all inspections.
- e. The inspection team will carry the following:
 - i. Inspection protocols;
 - ii. Electronic data collection forms with retail outlet physical addresses listed to identify the retail outlets to be inspected;
 - iii. Tablet or other electronic device for recording inspection results and taking pictures of product if a sale occurs;
 - iv. Educational materials to leave behind, as appropriate; and
 - v. Cash for purchasing tobacco products or inhalant delivery systems.

4. Inspection Protocol

- a. A team of a young adult inspector and an adult inspector in plain

- clothes conducts the unannounced inspection.
- b. Retail outlets determined by the inspectors as unsafe will not be inspected.
 - c. If the clerk asks the young adult inspector for their ID, the young adult will provide their ID.
 - d. If the clerk asks the age of the young adult inspector, the young adult will provide their true age.
 - e. If the clerk asks the date of birth of the young adult inspector, the young adult will provide their date of birth.
 - f. The adult inspector serves as the lead for coordinating, monitoring, and reporting inspection results. As such, the adult inspector:
 - i. Determines the dates and times of unannounced inspections;
 - ii. Determines the composition of the inspection team for inspecting specific retailers;
 - iii. Secures an unmarked vehicle for the inspection team;
 - iv. Ensures completion and submission of all inspection results; and
 - v. Assigns specific inspection sites to young adult inspectors based on the community's demographic characteristics, as reasonable.
 - g. The team travels in an unmarked vehicle.
 - h. The team parks the vehicle out of the sight of store employees, when possible.
 - i. The young adult inspector enters the store and attempts to purchase the specified tobacco product or inhalant delivery system, remaining as close as possible to the following ratio:
 - 4/10 purchases are cigarettes
 - 3/10 purchases are electronic cigarettes
 - 3/10 purchases are cigarillos
 - i. If the assigned tobacco product or inhalant delivery system is not available, the young adult inspector will attempt to purchase the next product on the list. The pocket guide includes a sample script and types of products to request.
 - ii. If tobacco products or inhalant delivery systems are accessible, the young adult picks one up and puts it on the counter to pay.
 - iii. If tobacco products or inhalant delivery systems are not accessible, the young adult asks the clerk for the product they want to purchase.
 - iv. If the young adult inspector is asked to leave (for example, an outlet off-limits to people under 21), they exit the outlet and do not complete the inspection.
 - v. If the outlet is off-limits to people under 21 and there is not a clerk, the young adult inspector approaches a staff person (such as the person behind the bar) and attempts to purchase a pack of cigarettes.

If this is marked as a Synar inspection and there is a vending machine, the young adult inspector attempts to purchase from the vending machine. If this is not a Synar inspection, the young adult inspector should leave the premises and return to the vehicle to discuss the purchase with the adult inspector.

- vi. If the outlet is a certified smoke shop that does not sell cigarettes, electronic cigarettes or cigarillos, the inspectors will:
 - 1. Determine when the hours of operation are for each certified smoke shop, as some of these businesses may not be open during regular business hours.
 - 2. The young adult inspector will attempt to purchase a can of hookah tobacco, i.e. shisha.
 - 3. If a can of hookah tobacco is not available, the young adult inspector will attempt to purchase a hookah session, but will not consume the product.
- j. The adult inspector is positioned, either inside the store or outside of the store, to observe the young adult inspector at all times.
- k. If the clerk sells tobacco products or inhalant delivery systems to the young adult inspector, the young adult inspector collects the item and receipt, exits the outlet and walks to the car. If the clerk does not sell, the young adult inspector exits the outlet and walks to the car.
- l. The adult inspector and young adult inspector complete the compliance inspection form after returning to the vehicle.
- m. If a sale is made, the adult inspector writes the inspection identification number on the receipt and takes a photograph of the young adult inspector holding the product and receipt, being sure to clearly capture the type of product and the outlet name or address, if possible.
- n. If a sale is made, the adult inspector enters the outlet, informs the clerk and the person in charge that they illegally sold to an underage person, provides an inspection fail notification letter, and returns the product. If a sale is not made, the young adult inspector provides an inspection pass notification letter before exiting the location, which notifies the employees that an inspection occurred.
- o. Before going to the next store, the adult inspector ensures that the following required data elements are recorded:
 - i. Date and time of inspection;
 - ii. Confirm that the physical address and type of outlet are correct;
 - iii. Confirm that the physical name of the outlet is correct;
 - iv. Young adult inspector name;

- v. Type of product attempted to purchase (cigarette/e-cigarette/cigarillo);
- vi. Whether the clerk asked for young adult inspector age and/or ID;
- vii. Whether or not the outlet is eligible for inspection, and if not, the reason the outlet is not eligible;
- viii. Whether or not the inspection was completed, and if not, the reason why;
- ix. Inspection outcome;
- x. If sale is made, photograph taken capturing the violation number, date, receipt, product, young adult inspector and location of purchase.
- p. Both inspectors sign the electronic form, confirming accuracy.
- q. The adult inspector electronically submits the completed inspection form. (The inspection form and accompanying email are automatically sent to the retailer).

Complaint Inspection Protocol

- a. These inspections must occur within 60 days of complaint receipt.
- b. During the complaint inspections, local inspectors will follow the same protocols laid out in the Compliance and Minimum Legal Sales Age Inspections, depending on the type of violation.