

Program Element # 76: Local Administration of Statewide Tobacco Retail Licensing Inspections

OHA Program Responsible for Program Element:

Public Health Division/Center for Prevention & Health Promotion Health Promotion and Chronic Disease Prevention Section/Tobacco Retail License Program

1. **Background.** Tobacco use remains the number one cause of preventable death in Oregon and nationally. It is a major risk factor in developing asthma, arthritis, diabetes, stroke, tuberculosis and ectopic pregnancy – as well as liver, colorectal and other forms of cancer. It also worsens symptoms for people already living with chronic diseases.

Despite declines in tobacco use, tobacco remains the No. 1 preventable cause of death and disease in Oregon. Tobacco is responsible for killing nearly 8,000 Oregonians each year, see:

<https://www.tobaccofreekids.org/problem/toll-us/oregon> . In addition, it costs Oregonians \$2.9 billion every year in lost productivity and medical costs See Campaign for Tobacco-Free Kids. “The Toll of Tobacco in Oregon,” 2019. <https://www.tobaccofreekids.org/problem/toll-us/oregon> . In recent years, the public health and medical communities have been alarmed by the dramatic increase in inhalant delivery system use among youth and young adults. These products are setting up a new generation for a lifetime of nicotine and cigarette addiction.

Tobacco Retail Licensure is a system to enforce laws banning tobacco sales to underage persons and a platform for prevention policies that will have a meaningful impact on youth use of tobacco. A strong licensing system supports enforcement of current tobacco laws, provides a mechanism to educate Retailers about how to comply with tobacco regulations, and supports Oregon’s communities in protecting kids from nicotine addiction. A Tobacco Retail License provides an expectation of Retailers statewide that illegal sales to youth will not be tolerated and is an effective tool for reducing the number of Oregon children and young adults that become addicted to nicotine.

2. **General Program Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below, to deliver local administration of statewide Tobacco Retail Licensing inspections.

This Program Element provides funding to LPHA to assist with local activities related to administering and enforcing standards established by federal laws and regulations and state laws and rules regulating the retail sale of tobacco products and inhalant delivery systems. Three types of inspections comprise this Program Element and are outlined in [OAR 333-015-0202 to 333-015-0267](#):

- a. Compliance Inspections
- b. Minimum Legal Sales Age Inspections
- c. Complaint Inspections

General Retailer education and communication should happen throughout the three types of inspections listed above. Additionally, OHA will train local inspectors, provide inspection forms and educational materials for distributing to Retailers, and provide access to the statewide inspection database. The statewide inspection database functionality will include sending communication to the public when they submit a complaint.

All changes to this Program Element are effective the first day of the month noted in Issue Date of Exhibit C Financial Assistance Award unless otherwise noted in Exhibit C of the Financial Assistance Award.

3. **Definitions Specific to Local administration of statewide tobacco retail licensing inspections.**

- a. **“Premises”** means the real property, as designated by a unique address, on which a business that makes retail sales of tobacco products or inhalant delivery systems is located.

- b. **“Retailer”** means a person or entity, as that term is defined in ORS 60.001, that sells for consideration, offers for retail sale, holds for sale, or exchanges or offers to exchange tobacco products of inhalant delivery systems or that distributes free or low-cost samples of tobacco products of inhalant delivery systems from a Premises.
- c. **“Tobacco Retail License”** means a license issued by the Department of Revenue to a Retailer for the sale of tobacco products or inhalant delivery systems.

4. **Alignment with Modernization Foundational Programs and Foundational Capabilities.** The activities and services that the LPHA has agreed to deliver under this Program Element align with Foundational Programs and Foundational Capabilities and the public health accountability metrics (if applicable), as follows (see [Oregon’s Public Health Modernization Manual](http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf), (http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf):

- a. **Foundational Programs and Capabilities** (As specified in Public Health Modernization Manual)

Program Components	Foundational Program					Foundational Capabilities						
	CD Control	Prevention and health promotion	Environmental health	Access to clinical preventive services	Population Health Direct services	Leadership and organizational competencies	Health equity and cultural responsiveness	Community Partnership Development	Assessment and Epidemiology	Policy & Planning	Communications	Emergency Preparedness and Response
Asterisk (*) = Primary foundational program that aligns with each component X = Other applicable foundational programs						X = Foundational capabilities that align with each component						
Retailer Inspections		*	*				X	X		X	X	
General Retailer Communication		*	*				X	X		X	X	

- b. **The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Accountability Metric, Health Outcome Measure:**
- Adults who smoke cigarettes
- c. **The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Accountability Metric, Local Public Health Process Measure:**

Percentage of population reached by Tobacco Retail License policies

5. **Procedural and Operational Requirements.** By accepting and using the Financial Assistance awarded under this Agreement and for this Program Element, LPHA agrees to conduct activities in accordance with the following requirements:

LPHA must:

- a. Comply with all protocol activities as described in the Attachment C, OHA Tobacco Retailer Inspection Protocol Manual, which aligns with requirements in [OAR 333-015-0202 to 333-015-0267](#). Activities shall include the three types of inspections and the requirements associated with each of them:
- (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. They may also include local ordinance inspections depending on the jurisdiction's local standards. During inspections, inspectors will:
 - (a) Check Retailer for compliance with retail sales laws
 - (b) Fill out the OHA-provided electronic form with inspection results
 - (c) If needed, create remediation plan and conduct follow-up visit with Retailer
 - (d) Report Compliance Inspection results to OHA within 15 days through OHA's online system
 - (e) If a Retailer civil penalty is warranted, coordinate with OHA, as needed, to support OHA issuing civil penalty
 - (2) **Minimum Legal Sales Age Inspections (MLSA):** 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. During inspections, inspectors will:
 - (a) Ensure adult and youth inspectors (18-20 years old) carry ID
 - (b) Have youth inspectors attempt to purchase products, checking Retailer for compliance with minimum legal sales age law
 - (c) Fill out the OHA-provided electronic form with inspection results
 - (d) Report MLSA Inspection results to OHA within 15 days through OHA's online system
 - (e) If a Retailer civil penalty is warranted, coordinate with OHA, as needed, to support OHA issuing civil penalty
 - (3) **Complaint Inspections:** inspections of tobacco product and inhalant delivery systems Retailers that have a public complaint alleging violation of a tobacco sales law. These inspections must occur within 60 days of complaint receipt. During the complaint inspections, local inspectors will follow protocols outlined in the OHA Tobacco Retailer Inspection Protocol Manual, found in Attachment C and as it may be updated from time to time, and incorporated herein with this reference. If the OHA Tobacco Retailer Inspection Protocol Manual is updated, OHA will provide the new version to the LPHA point of contact, which must be put into effect on receipt.
 - (4) When any of the three types of inspections described in this section are conducted, educational materials about Tobacco Retail License requirements and state, federal and local tobacco control sales laws, regulations and enforcement activities will be shared by the LPHA with Retailers. OHA will provide LPHA materials in multiple languages. LPHAs may develop their own materials based on local needs, subject to OHA approval.
- b. Submit Local Retailer Inspection Plan to OHA no later than March 31 of every year. Use the template provided in Attachment A of this Program Element for the Local Retail Inspection Plan, which is incorporated herein with this reference. LPHA must engage in activities as described in

its Local Retailer Inspection Plan, which has been approved by OHA.

- c. Attend all Retailer inspection and communication trainings and meetings held by OHA.
- d. Participate in OHA evaluation activities related to local administration of statewide Tobacco Retail License inspections as needed.
- e. Submit a Local Retailer Estimated Budget by March 31 of every year. Use the template provided in **Attachment B** of this Program Element for the Local Retailer Estimated Budget, which is incorporated herein with this reference. LPHA must use funds for this Program Element in accordance with its Local Retailer Estimated Budget, which has been approved by OHA. Modification to the Local Retailer Estimated Budget may only be made with OHA approval.
- f. Track all inspections and report all inspection results using OHA's statewide inspection database.
- g. Notify OHA in writing by the first of the month three calendar months prior to the effective date of the opt out, if LPHA decides to opt out of this Program Element.

6. Fee For Service Payments and Invoicing.

- a. In lieu of the LPHA completing an "Oregon Health Authority Public Health Division Expenditure and Revenue Report", OHA-PHD will send a pre-populated invoice to the LPHA for review and signature on or before the 5th business day of the month following the end of the first, second, third and fourth fiscal year quarters. The LPHA must submit the signed invoice no later than 30 calendar days after receipt of the invoice from OHA-PHD. The invoice will document the number of Retailers for which the LPHA completed both MLSA and compliance inspections in the previous quarter. Pending approval of the invoice, OHA-PHD will remit Fee For Service payment to LPHA. Funds under this Program Element will not be paid in advance or on a 1/12th schedule.
- b. LPHA will receive \$380 for each Retailer that LPHA completes annual inspections for (one minimum legal sales age and one compliance inspection per Retailer) and documents the inspections in HealthSpace or another statewide database for Tobacco Retail License inspections. The \$380 Fee For Service payment includes payment for any additional inspections needed, such as reinspections to follow up on violations or complaint inspections, as documented in the statewide database.
 - Each time OHA reviews the statewide Tobacco Retail License fee to ensure it pays expenses of administration and enforcement, the Fee For Service amount will also be reviewed.

7. Reporting Requirements.

LPHA must track all inspections and report all inspection results, submitting all Retailer inspection information on a monthly basis through the statewide inspection database.

8. Performance Measures.

- a. Percent of Retailers in the jurisdiction that receive compliance inspections per year (target: 100%).
- b. Percent of Retailers in the jurisdiction that receive MLSA inspections per year (target: 100%).