

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. **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 local public health authorities to assist with local activities related to administrating 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](#):

1. Compliance Inspections
2. Minimum Legal Sales Age Inspections
3. 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 access to the statewide inspection database. The inspection database functionality will include sending communication to the public when they submit a complaint.

1. **Compliance Inspections** are 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 the inspections:
 - Check retailer for compliance with retail sales laws
 - Fill out the OHA-provided electronic form with results
 - If needed, create remediation plan and conduct follow-up visit
 - Report results to OHA within 15 days through OHA's online system
 - If a civil penalty is warranted, coordinate with OHA, as needed, to support OHA issuing civil penalty
2. **Minimum Legal Sales Age Inspections (MLSA)** are 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:
 - Adult and youth inspectors (18-20 years old) carry ID
 - Youth inspectors attempt to purchase products, checking retailer for compliance with minimum legal sales age law
 - Fill out the OHA-provided electronic form with results
 - Report results to OHA within 15 days through OHA's online system

- If a civil penalty is warranted, coordinate with OHA, as needed, to support OHA issuing civil penalty
3. **Complaint Inspections** are 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 Retailer Inspection Protocols.
 4. **General Retailer Education and Communication** are activities to inform tobacco product and inhalant delivery system retailers about the state and federal tobacco control sales laws they must follow. When the above inspections are being conducted, educational materials about tobacco retail licensing, the regulations and enforcement activities will be shared with retailers. OHA will provide materials in multiple languages. LPHAs may develop their own materials based on local needs.

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.ⁱ In addition, it costs Oregonians \$2.9 billion every year in lost productivity and medical costs.ⁱⁱ 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 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. This opportunity can be expanded through local action that is more protective.

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.

2. **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.

3. **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	
XXXXX												

- 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 licensure policies

4. **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 [OHA Retailer Inspection Protocols](#), which aligns with requirements in [OAR 333-015-0202 to 333-015-0267](#).

- b. Submit a Local Retailer Inspection Plan and budget, in the templates provided by OHA, for approval.
- c. Attend all retailer inspection and communication trainings and meetings. Participate in evaluation activities related to local administration of statewide tobacco retail licensing inspections.
- d. Use funds for this Program Element in accordance with its Local Retailer Inspection Plan budget, which has been approved by OHA. Modification to the budget may only be made with OHA approval.
- e. Receive \$380 for each retailer with complete annual inspections (one minimum legal sales age and one compliance inspection per retailer) documented in HealthSpace or other statewide database for tobacco retail license inspections. The \$380 includes any additional inspections needed, such as reinspections to follow up on violations or complaint inspections, as documented in the statewide database.
 - i. Each time OHA reviews the statewide tobacco retail license fee to ensure it pays expenses of administration and enforcement, the remittance fee will also be reviewed.
- f. If an LPHA decides to opt out of this Program Element, they must notify OHA in writing by the first of the month three calendar months prior to the effective date of the opt out.

5. General Revenue and Expense Reporting. 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.

6. Reporting Requirements.

- a. All retailer inspection information must be submitted monthly through the online OHA reporting system for the Program Element.

7. 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%).

ⁱ Oregon Vital Statistics. Oregon Vital Statistics Annual Report: Volume 2. Chapter 6: Mortality, 2018. Unpublished data.

ⁱⁱ Campaign for Tobacco-Free Kids. “The Toll of Tobacco in Oregon,” 2019. <https://www.tobaccofreekids.org/problem/toll-us/oregon>.