INTERAGENCY MEMORANDUM OF AGREEMENT

Section I. SUBJECT

This Memorandum of Agreement is entered into by the Oregon State Health Division and the Oregon State Department of Agriculture.

Under ORS 624.010 to 624.070 the Health Division is responsible for inspection and licensing pursuant to its statutes and rules relating to restaurant facilities and operation. Under ORS 603.025, 619.036, 616.700, 616.706, 625.020, and 625.140, the Department of Agriculture is responsible to license and inspect retail food markets, meat markets, bakeries and other food processing, food storage, and food retailing activities. In some instances, the respective licensing and inspection activities of the Health Division and the Department of Agriculture involve the same physical establishments due to the multiple activities carried out in such establishments.

Chapter III of the 1981 regular legislative session directs the Health Division and the Department of Agriculture to make rules and agreements to insure that only one agency licenses and inspects such facilities.

Section II. DEFINITIONS AS USED IN SECTIONS II THROUGH X

A. "Combination Facility" means any establishment located within a single structure or at a single site, which is engaged in activities which are subject to licensing or inspecting requirements of both the Health Division and the Department of Agriculture, and which regulated activities are common to the same operator.

B. "Division" means the Health Division of the Department of Human Resources.

C. "Department" means the State Department of Agriculture.

D. "Operator" means that person in responsible charge of the day-to-day operation of a combination facility. Normally, this would be the person most responsible for the firm's operations; such as the store (bakery, etc.) owner or manager.

E. "Predominant Activity" means that specific activity, or activities from which the greatest gross annual income is obtained in a combination facility.

Section III. LICENSING AND INSPECTING

The licensing of combination facilities shall be the responsibility of either the Division or the Department in accordance with the following criteria:

A. The establishments subject to this Memorandum of Agreement are those combination facilities as defined in Section II.A. of this Agreement.

A determination shall be made for each firm covered in Section II.A. as to which agency shall inspect and license. The determination shall be based upon which agency has statutory responsibility and authority for the predominant activities of the firm.
In those instances where it is determined that either a full or limited service restaurant and/or other activity for which the Division has authority, is predominant, the Division shall perform the inspectional and licensing responsibilities to the exclusion of the Department.

In those instances where it is determined that the bakery, retail grocery, food processing and/or other activities of which the Department has authority, is predominant, the Department shall perform the inspectional and licensing responsibilities to the exclusion of the Division.

The determination as to the predominant activity at any combination facility subject to this agreement, shall be made first by the field sanitarians, or if agreement is not reached then shall be referred to program supervisors of the Division and delegated counties and the Department. If an agreement is not reached among the Division or delegate counties and the Department or if a licensed facility disagrees with the determination, the matter may be appealed to an arbitration panel composed of the Administrator of the Food and Drug Division (or appointee), the Assistant Director for Health (or appointee), one representative from the Conference of Local Health Officials, and one representative each from a professional association representing the restaurant industry and a professional association representing the retail grocery industry. The decision of this panel shall be final except as provided in Section III.F.

Any licensee wishing to contest the determination of predominance by agencies may produce records of gross annual sales to support the protest and be heard by the Division or delegate county in accordance with ORS Chapter 183.

Section IV. APPLICABILITY OF RULES

A. Any facility licensed and inspected by the Division, pursuant to this agreement, shall be subject to the applicable rules under OAR Chapters 333 of the Division for all activities subject to ORS 624, and statutes administered by the Department.

B. Any facility licensed and inspected by the Department, pursuant to this agreement, shall be subject to the applicable rules under OAR Chapter 603 of the Department, for all activities subject to statutes administered by the Department, and ORS 624.

Section V. LICENSES AND PERMITS

Licenses and permits issued pursuant to this agreement shall be subject to the statutes of the licensing and inspecting agency, including fees and legal remedies, and shall be deemed to satisfy the licensing statutes of the other agency.

Section VI. DELEGATION

A. The authority, responsibilities and functions of the Division under Sections I through IX may be delegated or contracted as a part of the Food Service Program to any Board of County Commissioners pursuant to ORS 624, 624.001.
B. Upon such delegation or contracting, reference to the Division in these rules shall be deemed to be a reference to the delegate or contract county.

C. Unless delegated, counties establish different fees pursuant to ORS 624.510(2), the fees prescribed by ORS Chapter 624 for any facility licensed by the Division shall apply in accordance with the facility type.

Section VII. IMPLEMENTATION

By October 1, 1986 the Health Division, Department of Agriculture and contract and delegate counties shall determine predominant activities and jurisdictions. Licensing and inspection of combination facilities pursuant to this agreement shall follow this determination.

Section VIII. PERIODIC REVIEW

Annual re-evaluations of predominance shall be made by the regulating agencies and changes in jurisdiction shall be made where indicated.

Section IX. EFFECTIVE DATE OF AGREEMENT

This Memorandum of Agreement shall become effective upon signature by the Health Division Administrator and the Director of the Department of Agriculture and remain in effect without renewal, unless terminated by either agency by written notice of at least 30 days. As of the effective date of this agreement, the previous agreement signed in August 1982 is hereby terminated. Amendment to this agreement shall be made by written addendum executed by both agencies.

Dated this 2nd day of July, 1986.
OREGON STATE HEALTH DIVISION

By: Kristine H. Gebbie, Administrator
Health Division

Dated this 30th day of June, 1986.
OREGON DEPARTMENT OF AGRICULTURE

By: Leonard Kunzman, Director
Department of Agriculture

Definition: by new name and then refer to as OHS, call Department ODA.