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](https://www.oregon.gov/dor/programs/businesses/Pages/Statewide-Tobacco-Retail-License.aspx). 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](https://www.oregon.gov/dor/programs/businesses/Pages/Statewide-Tobacco-Retail-License.aspx).

**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.

Compliance Inspection Protocol

1. **Training**
	1. OHA-PHD creates a training that all inspectors must complete before beginning inspections.
	2. The inspector may practice inspections with a small number of outlets following the completion of each training session.
2. **Preparing for Inspections**
	1. The inspector will carry the following:
		1. Inspection protocols;
		2. Electronic data collection forms with retail outlet physical addresses listed to identify the retail outlets to be inspected;
		3. Tablet or other electronic device for recording inspection results and taking pictures of product if a sale occurs;
		4. Authorization letter; and
		5. Forms for notification of inspection results.
3. **Inspection Protocol**

**Initial Inspection Protocol**

* 1. An inspector conducts the unannounced inspection.
	2. Retail outlets determined by the inspectors as unsafe will not be inspected.
	3. The adult inspector serves as the lead for coordinating, monitoring, and reporting inspection results. As such, the adult inspector:
		1. Determines the dates and times of unannounced inspections;
		2. Secures a vehicle for the inspections; and
		3. Ensures completion and submission of all inspection results.
	4. The inspector enters the store, finds the person in charge, identifies themselves and the purpose for the inspection.
	5. The inspector uses the electronic inspection form to complete the inspection, marking any violations and providing details regarding the violation.
	6. When the inspection is complete, the inspector notifies the clerk of the results and leaves a notification of inspection results with the person in charge.
		1. If a violation is found, the inspector creates a remediation plan to correct the violations and goes over it with the person in charge.
		2. The person in charge and the inspector sign the electronic form/remediation plan.
	7. Before going to the next store, the inspector ensures that the following required data elements are recorded:
		1. Date and time of inspection;
		2. Confirm that the physical address and type of outlet are correct;
		3. Confirm that the physical name of the outlet is correct;
		4. Whether or not the outlet is eligible for inspection, and if not, the reason the outlet is not eligible.
		5. Whether or not the inspection was completed, and if not, the reason why.
		6. Compliance or non-compliance with each regulation listed on the form.
	8. The inspector electronically submits the completed inspection form.

**Follow-up Inspection**

1. The inspector conducts the unannounced follow-up inspection no sooner than 15 calendar days after the initial inspection.
2. The inspector uses the follow-up inspection form to conduct the inspection, following the above protocol.
3. When the inspection is complete, the inspector notifies the clerk of the results and leaves a notification of inspection results with the person in charge.
4. The person in charge and the inspector sign the electronic form.
5. After the inspector follows “g” above, they electronically submit the completed inspection form.

**Post-Remediation Plan Follow-up Inspection Protocol**

1. The inspector conducts the inspection.
2. If additional violations are found during post-remediation plan follow-up inspections, a remediation plan is not created.
3. The inspector completes the inspection form, following the Initial Inspection Protocol.
4. When the inspection is complete, the inspector notifies the clerk of the results and leaves a notification of inspection results with the person in charge.
5. The person in charge and the inspector sign the electronic form.
6. After the inspector follows “g” in the Initial Inspection Protocol, they submit the completed inspection form.

MLSA Inspection Protocol

# General

* 1. 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.
	2. Young adult inspectors attempt to purchase the specified tobacco products or inhalant delivery systems at all stores selected for inspection.
	3. Products purchased during inspections will be as close as possible to the following ratio:
		1. 4/10 purchases will be cigarettes
		2. 3/10 purchases will be electronic cigarettes
		3. 3/10 purchases will be cigarillos
	4. 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.
	5. The official state issued ID for each young adult inspector is kept in their possession during inspections.

# Training

* 1. OHA-PHD creates a training that all adult and young adult inspectors must complete before beginning inspections.
	2. Young adult/adult inspection teams may practice inspections with a small number of outlets following the completion of each training session.

# Preparing the Inspection Teams

* 1. Each inspection team consists of two (one adult and one young adult) inspectors.
	2. Young adult inspectors reflect the demographic and cultural characteristics of the community retail outlets they inspect, where possible.
	3. The young adult inspector will wear their regular clothing.
	4. Prior to each day’s inspections, the adult inspector will validate that the young adult inspector is 18 or 19 years of age by verifying this information from a state-issued ID card or driver license. The identification card or license is to remain in the possession of the young adult inspector during all inspections.
	5. The inspection team will carry the following:
		1. Inspection protocols;
		2. Electronic data collection forms with retail outlet physical addresses listed to identify the retail outlets to be inspected;
		3. Tablet or other electronic device for recording inspection results and taking pictures of product if a sale occurs;
		4. Authorization letter; and
		5. Forms for notification of inspection results.

# Inspection Protocol

* 1. A team of a young adult inspector and an adult inspector in plain clothes conduct the unannounced inspection.
	2. Retail outlets determined by the inspectors as unsafe will not be inspected.
	3. If the clerk asks the young adult inspector for their ID, the young adult will provide their ID.
	4. If the clerk asks the age of the young adult inspector, the young adult will provide their true age.
	5. If the clerk asks the date of birth of the young adult inspector, the young adult will provide their date of birth.
	6. The adult inspector serves as the lead for coordinating, monitoring, and reporting inspection results. As such, the adult inspector:
		1. Determines the dates and times of unannounced inspections;
		2. Determines the composition of the inspection team for inspecting specific retailers;
		3. Secures an unmarked vehicle for the inspection team;
		4. Ensures completion and submission of all inspection results; and
		5. Assigns specific inspection sites to young adult inspectors based on the community’s demographic characteristics, as reasonable.
	7. The team travels in an unmarked vehicle.
	8. The team parks the vehicle out of the sight of store clerks, when possible.
	9. 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
	+ 1. 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.
		2. If tobacco products or inhalant delivery systems are accessible, the young adult picks one up and puts on the counter to pay.
		3. If tobacco products or inhalant delivery systems are not accessible, the young adult asks the clerk for the product they want to purchase.
		4. 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.
	1. The adult inspector is positioned, either inside the store or outside of the store, to observe the young adult inspector at all times.
	2. If the clerk sells tobacco products or inhalant delivery systems to the young adult inspector, the young adult inspector collects the item, and the adult inspector takes a photograph of the young adult inspector holding the product, being sure to clearly capture the type of product in the photograph.
	3. The adult inspector, or young adult inspector, completes the compliance inspection form.
	4. The product is returned to the clerk, the adult inspector notifies them that they are in violation of the law and leaves a notification of inspection results with the person in charge.
	5. Before going to the next store, the adult inspector ensures that the following required data elements are recorded:
		1. Date and time of inspection;
		2. Confirm that the physical address and type of outlet are correct;
		3. Confirm that the physical name of the outlet is correct;
		4. Young adult inspector ID number;
		5. Type of product attempted to purchase (cigarette/e- cigarette/cigarillo)
		6. Whether the clerk asked for young adult inspector age and/or ID
		7. Whether or not the outlet is eligible for inspection, and if not, the reason the outlet is not eligible.
		8. Whether or not the inspection was completed, and if not, the reason why.
		9. Inspection outcome.
		10. If sale is made, photograph taken capturing the violation number, date and location of purchase.
	6. Both inspectors sign the electronic form, confirming accuracy.
	7. The adult inspector electronically submits the completed inspection form.

Complaint Inspection Protocol

# These inspections must occur within 60 days of complaint receipt.

# 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.