

## **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 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](#):

- 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](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	Population Health Direct services	Access to clinical preventive services	Leadership and organizational competencies	Health equity and cultural responsiveness	Community Partnership Development	Assessment and Epidemiology	Policy & Planning	Communications
<i>Asterisk (*) = Primary foundational program that aligns with each component</i>					<i>X = Foundational capabilities that align with each component</i>						
<i>X = Other applicable foundational programs</i>											
<b>Retailer Inspections</b>		*	*			X	X		X	X	
<b>General Retailer Communication</b>		*	*			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 and inspection timeline 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%).

**Attachment A**  
**Local Administration of Statewide Tobacco Retail Licensing Inspections**  
**Local Retailer Inspection Plan**

**Overview of Inspections**

OHA conducts three types of Tobacco Retail License (TRL) inspections. LPHA must complete these inspections if they enter into the TRL Program Element. The three inspection types are outlined in [OAR 333-015-0202 to 333-015-0267](#):

- a. 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.
- b. Minimum Legal Sales Age (MLSA) Inspections:** annual unannounced inspections of tobacco product and inhalant delivery system Retailers, including Retailers 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.
- c. Complaint Inspections:** inspections of tobacco product and inhalant delivery systems Retailers that have a public complaint alleging violation of a tobacco sales law.

**Inspection Plan**

Populate each section with narrative that describes how LPHA will carry out each portion of the Plan in accordance with Attachment C, OHA Tobacco Retailer Inspection Protocol Manual.

**Staffing**

Describe the LPHA’s plan to staff all inspections. Include where staff will work within the organization and how much time they will spend on local inspections. If staff will be seasonal, describe how the LPHA will maintain support for complaint inspections and attend trainings, as needed. Attachments, such as an organizational chart, are suggested but not required.

**Compliance Inspections: Initial and Follow-up**

Unannounced inspections of tobacco and vaping product Retailers. OHA provides a Retailer list to each county for inspections. Include the proposed time frame for completing inspections if they will not be ongoing throughout the year.

**Minimum Legal Sales Age (MLSA) Inspections**

Unannounced inspections of tobacco and vaping product Retailers. OHA provides a Retailer list to each county for inspections and will provide access to a state-maintained database and forms to complete all inspections.

Include the proposed time frame for completing inspections if they will not be ongoing throughout the year. Include plans for recruiting and compensating youth inspectors participating in MLSA inspections.

**Complaint Inspections**

Unannounced inspections of tobacco and vaping product Retailers. Inspections are targeted and based on complaints received by OHA or the LPHA. Include how the LPHA will ensure complaint inspections follow the required inspection timeframe in accordance with Attachment C, OHA Tobacco Retailer Inspection Protocol Manual if staff are seasonal.

**Local Characteristics and Needs (Optional)**

Describe any characteristics of the local retail environment that may affect LPHA training and technical assistance needs from OHA.



**Attachment C**

**Oregon Health Authority (OHA) Tobacco Retailer Inspection  
Protocol Manual**

Oregon Health Authority Public Health Division  
800 NE Oregon Street, Suite 730  
Portland, Oregon 97232

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For any questions regarding this manual, please contact: Tara Weston  
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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, or the Local Public Health Authority, 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 noncompliance 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](#):

- 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.
- 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.
- 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

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### 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.** Copies of Oregon Administrative Rules;
  - iii.** Official badge
  - iv.** Electronic data collection forms with retail outlet physical addresses listed to identify the retail outlets to be inspected;
  - v.** Tablet or other electronic device for recording inspection results and taking pictures of product if a sale occurs; and
  - vi.** 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 the remediation plan with the person in charge.
  - ii.** The person in charge and the inspector sign the electronic form/remediation plan and a paper copy of the remediation plan is left with the person in charge.
- g.** Before going to the next store, the inspector ensures the following required data elements are recorded:
  - i.** Date and time of inspection;
  - ii.** Confirm the physical address and type of outlet are correct;
  - iii.** Confirm 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 Initial Inspection Protocol.

#### **4. 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 Initial Inspection 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).

#### **5. Post-Remediation Plan Inspection Protocol** (This type of inspection protocol is used for all inspections in which the retailer has had a remediation plan created, within 60 months from the date the inspection occurred that resulted in a civil penalty (including both MLSA and compliance inspections). If no civil penalties have been issued but a remediation plan has been created, you still use the post remediation plan inspection protocol for 60 months from the date that the follow-up inspection occurred).

- 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).

#### **MLSA Inspection Protocol**

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##### **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/small cigars
- 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 inspectors before beginning inspections. If an LPHA has opted into the TRL Program Element, they onboard the young adult inspectors, consulting OHA-PHD as needed.
- 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 of the adult and young adult inspectors does the following:
  - i. Describes the purpose of the inspection which 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 the objective of the inspection is better achieved with accurate data, which requires observing and documenting events as they happen;
  - iii. Makes sure 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.

## **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, if possible.
- c. The young adult inspector will wear their regular clothing.
- d. Prior to each day's inspections, the adult inspector will validate 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. Copy of Oregon Administrative Rules;
- iii. Official Badge;
- iv. Electronic data collection forms with retail outlet physical addresses listed to identify the retail outlets to be inspected;
- v. Tablet or other electronic device for recording inspection results and taking pictures of the tobacco product if a sale occurs;
- vi. Educational materials to leave behind, as appropriate;
- vii. Inspection pass/fail letters to leave behind with retailers;
- viii. OHA tobacco product sales receipt; and
- ix. Cash for purchasing tobacco products or inhalant delivery systems.

#### **4. Inspection Protocol**

- a. A team of an adult and young adult inspectors 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 for the date of birth of the young adult inspector, the young adult will provide their true 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.
- 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, observing the young adult inspector whenever possible.
  - i. If a sale is made, the young adult inspector, collects the item and receipt, exits the outlet and walks to the car. The adult inspector and young adult inspector complete the compliance inspection form after returning to the vehicle. The adult inspector:
    1. Writes the inspection identification number on the receipt;
    2. Takes a photograph of the young adult inspector holding the tobacco product and receipt, being sure to clearly capture the type of product and the outlet name or address, if possible;
    3. Takes a photograph of the receipt.
    4. Enters the outlet and informs the clerk and the person in charge they illegally sold to an underage person;
    5. Provides an inspection fail notification letter;
    6. Takes a picture of the posted tobacco retail license to save as evidence;
    7. Takes a picture that captures the name of the Premises;
    8. Returns the product;
    9. Identify which tobacco products are sold at the location and mark on the inspection form;
    10. Identifies the exact tobacco product sold to the young adult inspector (e.g., Marlboro Filtered Cigarettes, Natural American Spirit Cigarettes) and marks this on the inspection form
- k. If a sale is **not** made,
  - i. The young adult inspector:
    1. Provides an inspection pass notification letter, which notifies the employees an inspection occurred; and
    2. Exits the outlet and walks to the car.

Note: If the retail owner or staff become activated, a verbal altercation ensues, and/or other incident occurs when discussing the results of the inspection, remain calm and use de-escalation skills, ensure the retailer feels heard, and use re-direction to the compliance issue. Ensure the young adult inspector's safety as well as personal safety. Submit an incident report in HealthSpace with a notification being sent to your direct supervisor and to OHA TRL Program manager as soon as possible. This report should include specific information including the date, time, location, and specific incident that occurred.

- l. Before going to the next store, the adult inspector ensures the following required data elements are

recorded:

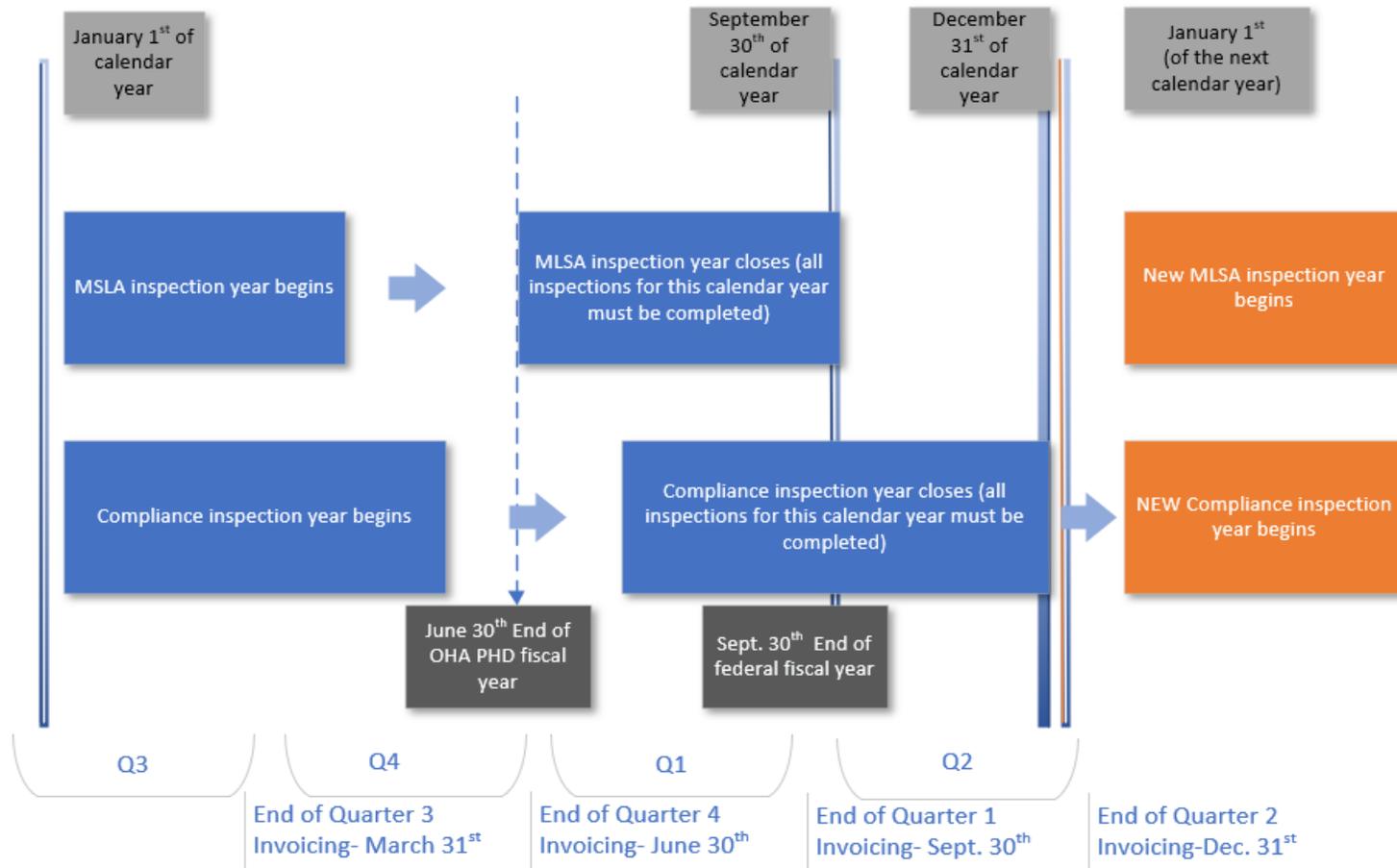
- i.** Date and time of inspection;
- ii.** Confirm the physical address and type of outlet are correct;
- iii.** Confirm the physical name of the outlet is correct;
- iv.** Young adult inspector name;
- v.** Type of product attempted to purchase (cigarette/e- cigarette/cigarillo);
- vi.** Categories of products sold at the retail location marking all that apply (e-cigarettes, tobacco, both.);
- vii.** Whether the clerk asked for young adult inspector age and/or ID;
- viii.** Whether or not the outlet is eligible for inspection, and if not, the reason the outlet is not eligible (adding additional notes for explanation);
- ix.** Whether or not the inspection was completed, and if not, the reason why (adding additional notes for explanation);
- x.** The specific tobacco product purchased by the young adult (e.g., Marlboro Reds, Vuse, Swisher Sweets);
- xi.** Inspection outcome;
- xii.** If sale is made, photograph taken:
  - 1.** Capturing the violation number, date, receipt, product, and young adult inspector;
  - 2.** Posted tobacco retail license at the location;
  - 3.** Name of the Premises (e.g., store sign).
- m.** Both inspectors sign the electronic form, confirming accuracy.
- n.** The adult inspector electronically submits the completed inspection form. (The inspection form and accompanying email are automatically sent to the retailer).

### **Complaint Inspection Protocol**

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- 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.

## Local Administration of Statewide Tobacco Retail Licensing Inspections Local Retailer Program Element (PE) 76 Inspection Cycle Timeline



1. All inspections must be completed annually on a calendar year (January- December).
  - a. LPHAs must complete Minimum Legal Sales Age (MLSA) between January 1<sup>st</sup> and September 30<sup>th</sup>.
  - b. LPHAs must complete compliance inspections, including follow-up compliance inspections, between January 1<sup>st</sup> and December 31<sup>st</sup>.
  - c. LPHAs must complete both MLSA and Compliance inspections for a retailer within the calendar year (between January 1<sup>st</sup> and December 31<sup>st</sup>) before invoicing. Failure to complete both inspections within the calendar year will result in non-payment. OHA may in its sole discretion waive the requirement to complete the inspections within the calendar year on a case-by-case basis if unique circumstances arise that prevent an inspection from being completed.
2. During the first year of opting into this Program Element, LPHA must complete MLSA inspections by September 30<sup>th</sup> and shall also complete Compliance inspections by December 31<sup>st</sup> to keep inspections on the calendar year.
3. During the second and subsequent years, LPHAs may begin inspections on January 1<sup>st</sup>, and LPHA may invoice OHA as soon as both inspections are complete for the retailer in the calendar year.