



INTERIM TOBACCO RETAIL LICENSE PROGRAM EVALUATION REPORT

Oregon Tobacco Retail License Program

This interim Evaluation Report covers key evaluation question #1: “In what ways did the program meet the statutory requirements?”

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Introduction

In 2021, the Oregon Legislature passed Senate Bill 587 (SB587), which requires any business that sells tobacco and inhalant delivery system (IDS) products in Oregon to get a tobacco retail license from the Department of Revenue (DOR). Violations of any tobacco retail law may result in civil penalties and license suspension or revocation. In addition, local jurisdictions may have their own restrictions on the sale of tobacco or IDS products. It is important to note that the term IDS is the Oregon legislative definition for these products, but they are more commonly known as e-cigarettes or vaping products. For the purposes of this report, IDS products will be referred to as vaping products, except when referring to Oregon statute or administrative rules.

The Tobacco Retail License (TRL) program's values and mission are aligned with the Oregon Health Authority (OHA) mission – to eliminate health inequities by 2030. Though the program considers retailer and industry perspectives in education and policy, it is first and foremost a public health program.

Prior to the passage of SB587, five local jurisdictions had passed a local TRL in all or some of their communities. These counties included Benton, Clatsop, Klamath, Lane and Multnomah counties. To date, Benton, Clatsop, Klamath, and Multnomah have retained local TRL authority. Local public health authorities (LPHAs) that did not have a TRL program in place before the passage of SB 587 were allowed to opt into Program Element 76 (PE76). PE76 provides funding to LPHAs to conduct the required TRL inspections in their county on behalf of OHA. In the last biennium six counties opted into PE76. These counties are Clackamas, Hood River, Coos, Curry, Douglas, and Josephine.

Purpose

With the passage of SB587, the Legislative Assembly included a mandate for the program to be evaluated on an ongoing basis. This interim evaluation report addresses the first key evaluation question (KEQ1) “In what ways did the program meet the statutory requirements?” and will show evaluation progress covering the implementation of the TRL program in July of 2021 to December 2023, which is the end of the second year of program activities and administrations. The interim report focuses on the short-term outcomes expected from the administration of the program.

This interim report of the TRL evaluation focuses on three components:

- Required activities carried out to enforce the laws during those last two years;
- Strategies used for enforcing Oregon tobacco retail laws; and
- Measuring progress achieved in reducing the availability of tobacco products and vaping products to people under 21 years of age.

Annual Inspection Summary

Prior to the implementation of the Oregon TRL program, OHA enforced minimum legal sales age (MLSA) laws, per federal and state requirements. During this time, retailers were selected for inspection by using a simple random sample methodology. If retailers failed their inspection, the person in charge received a criminal penalty of up to \$1000. SB 587 charged the Oregon Health Authority – Public Health Division (OHA-PHD) with enforcing all tobacco sales laws, such as MLSA, as part of the TRL program. After the development of the TRL program with passage of SB587, 2022 was the first year of enforcement activities. During this time, only a sample of retailers were inspected due to foundational program development such as rule making, hiring, developing standard operating procedures, data system development, and establishing civil penalty documentation procedures. Program development extended into the second year of enforcement activities in 2023.

As of January 2024, there were a total of 2,662 tobacco and vaping product retailers under OHA's jurisdiction. Each year, every tobacco retailer will receive two inspections from OHA or a local TRL program: (1) Minimum Legal Sales Age inspections (MLSA) ensuring retailers are not selling to people under 21 years of age and (2) Compliance inspections checking for compliance with all other tobacco retail sales laws. This section describes the enforcement activities and inspection results over the last biennium.

Minimum Legal Sales Age (MLSA) inspections

MLSA inspections are annual unannounced inspections of tobacco and vaping product retailers, including those that are not accessible to people under 21, such as bars. These inspections are to make sure there are no tobacco or vaping product sales to people under 21 years of age. MLSA inspections are conducted by undercover Young Adult Inspectors, supervised by an Adult Inspector. To date 23 Young Adult Inspectors have staffed OHA administered inspections, and nine Young Adult Inspectors staffed PE76 administered inspections.

All retailers receive a letter notifying them if they passed or failed at the time of inspection.

It is important to note that OHA also coordinates all Synar inspections in Oregon. Overseen by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Synar Amendment requires states to have laws prohibiting the sale and distribution of tobacco products to people under 21.¹ The Synar inspections are a sub-sample of statewide MLSA inspections and are selected through a simple random sampling methodology of eligible retailers on the statewide list in Oregon.

In 2022, due to program transitions, planning, and implementation, OHA

¹ "About the Synar Amendment and Program," April 22, 2014.
<https://www.samhsa.gov/synar/about-synar>.

conducted MLSA inspections on a random sample that included 15% of retailers. This 15% was determined by the Synar sampling methodology. In 2023, 99.6% of all retailers within the state TRL program jurisdiction received a MLSA inspection.

Violations

- In 2023, 23% of tobacco and vaping product retailers with a state license illegally sold a tobacco or vaping product to an undercover Young Adult Inspector.²
 - This was the first year that a full census of tobacco retailers was inspected, therefore no comparisons are available at this time.
- In 2023, the Synar sample retailer violation rate, which includes local TRL, was 21%.
- This was a 19% decrease in violations compared to 2022 Synar inspections (26%).

Civil Penalties

When a retailer fails a MLSA inspection, OHA issues a civil penalty to the license holder.

- As of January 2024, OHA has issued a total of 534 civil penalties for MLSA inspection violations.
 - Of the total penalties, OHA received 44 appeals.
 - Six appeals are still in process.
 - One respondent did not show up for hearing.
 - Twenty-six appeals were withdrawn.
 - Eleven appeals went through an administrative hearing.
 - The Administrative Law Judge upheld OHA's penalty in all hearings to date.

Public Complaints

² This estimate excludes local TRL retailer violation rates.

Prior to the implementation of the Oregon TRL program, OHA conducted public complaint inspections regarding sales to people under 21. OHA collected public complaints via telephone and email response and stored them in the prior inspection database. Per statutory requirements of SB587, OHA developed a formal system for receiving public complaints. This process was implemented when OHA's data system went live in June of 2023 and included an online form submission process to collect public responses.

- From June 2023 to January 2024, OHA received a total of 70 public complaints.
 - Twenty public complaints fell under OHA jurisdiction and were actionable.
 - Twenty-five public complaints fell under the authority of a local jurisdiction with TRL and were passed on for local investigation.
 - Twenty-five public complaints were not actionable by OHA. As applicable, the complaints were forwarded on to other organizations for inspection (e.g., Department of Revenue for a retailer operating without a license).
- Of the 20 actionable complaints, with two complaints being combined into one complaint inspection, OHA completed 17 complaint inspections. The two remaining actionable complaints will be inspected early 2024.
 - Of these 17 retailers, five retailers failed their complaint MLSA inspection.

Compliance inspections

Compliance inspections are unannounced inspections of tobacco product and vaping product retailers, including those that are not accessible to people under 21, such as bars. These inspections are to check for compliance with state and federal tobacco sales laws and are conducted by inspectors from OHA or a LPHA. Compliance inspections began in June 2023—since then, 36% of retailers with a state tobacco retail license received a compliance inspection. If a retailer passes their initial compliance inspection, they will only receive a follow-up if OHA receives a public complaint. If a retailer fails their initial

compliance inspection, they will receive a follow-up inspection to ensure violations have been corrected.

Violations

- In 2023, approximately 1% of tobacco and vaping product retailers failed their initial compliance inspection.
- OHA conducted seven follow-up compliance inspections. All seven retailers corrected violations found on site and passed their follow-up inspection.

Penalties

When a retailer fails their follow-up inspection the first time, the retailer receives a remediation plan. When a retailer fails a second time, they receive a penalty.

- As of January 2024, OHA has issued no penalties for compliance inspection violations.

Public Complaints

Per Oregon Revised Statute (ORS) 431A.218 requirements, OHA developed a system for receiving public complaints for tobacco retail sales laws other than MLSA. This process was implemented when the OHA data system went live in June of 2023.

- As of January 2024, OHA has received no public complaints that required a compliance inspection.

Program implementation requirements

When SB587 was passed into law, there were several legislative requirements that the Legislative Body directed the Oregon TRL Program to include in their program administration. These responsibilities are directed to be shared and administered by DOR and OHA, in partnership with LPHAs.³

Public documents were used to identify and aggregate the statutory requirements directed by the Legislative Assembly in Table 1. For each statute, the party responsible for implementing each requirement is identified, as well as whether the requirement was met using Oregon Revised Statutes (ORS) and Oregon Administration Rules (OAR).

In addition to statutory requirements presented in Table 1, equity considerations have been included, as they relate to program implementation. The TRL program recognizes that enforcement activities taken in the name of public health can sometimes harm, discriminate against, or otherwise undermine the health of communities and individuals whom the laws are meant to protect. Enforcement that is carried out inequitably can create, maintain, or exacerbate health inequities. Equitable enforcement, by contrast, can hold wrongdoers accountable while protecting the health and well-being of individuals and the wider community. Equitable enforcement is a process of ensuring compliance with law and policy that considers and minimizes harms to people⁴ affected by health inequities. The Oregon TRL program uses strategies to promote equitable enforcement throughout the program.⁵ The Center for

³ Find more information about the engrossed bill, <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB587> and the Oregon Administrative Rules (OAR), <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=305884>.

⁵ ChangeLab Solutions. [“Equitable Enforcement to Achieve Health Equity,” n.d.](https://www.changelabsolutions.org/sites/default/files/2020-)
<https://www.changelabsolutions.org/sites/default/files/2020->

Black Health and Equity⁶ outlines core values for commercial tobacco control programs and recommendations for how to implement those values in policy and practice. These values include:

1. State and local governments should reform or eliminate enforcement practices that target individuals, especially youth, rather than businesses and industry actors.
2. Enforcement practices and penalties for violations of commercial tobacco control laws should be proportional to the alleged violation and address health, equity, and social justice considerations.
3. State and local governments should adopt legal and policy frameworks that facilitate the effective, equitable enforcement of commercial tobacco control laws by holding businesses and other industry actors accountable for violations.

Table 1. Statutory Requirements for the implementation of the TRL program

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
Submit a report each biennium to the governor and to the right committee of the Legislative assembly to which matters of public health are assigned. Must include: (A) The activities carried out to enforce the laws during the previous biennium;	OHA	Yes	This requirement precedes the TRL program. OHA submits the Synar Report in November every year.	Ensures that program administration and activities are transparent to the Legislative Assembly and the public.

[06/Equitable Enforcement to Achieve Health Equity-GUIDE-ACCESSIBLE FINAL 20200610.pdf](#)

⁶ The Center. "Tobacco Industry Rebuttals | The Center for Black Health & Equity."
<https://www.centerforblackhealth.org/equitableenforcement>.

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
(B) The extent of success achieved in reducing the availability of tobacco products and inhalant delivery systems to persons under 21 years of age; and (C) The strategies to be used for enforcing the laws (ORS 431A.183(5)(a)-(b)).				
Issue licenses to, and annually renew licenses for, a person that makes retail sales of tobacco products or inhalant delivery systems at qualified premises (ORS 431A.198(1)).	DOR	Yes	Ensures all retailers that sell commercial tobacco products, including e-cigarettes, are required to obtain and maintain a valid tobacco retailer license. Ensures all inspections are inspected consistently.	Ensures equitable enforcement of commercial tobacco control laws by holding businesses and other industry actors accountable for violations.
Adopt rules for procedures for applying for and renewing licenses; and Licensure application, issuance, and renewal fees (ORS 431A.198(3)(a)-(b)).	DOR	Yes	Ensures clear and consistent processes for the program. Collaboration between agencies so data collected from retailers meets standards for the program evaluation.	Highlights any potential discriminatory practices, including language access.
Publish a list that includes the name of each person and address of each premises to which a license has been issued. (ORS 431A.198(5))	DOR	Yes	Ensures access to information and program transparency with retailer lists.	Ensures program accountability and equitable treatment of retailer information.

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
Adopt rules that suspend a license issued if found to have violated tobacco retail or tax compliance regulations three or more times. (ORS 431A.202(4))	DOR	Yes	Includes an escalating penalty structure, to hold retailers accountable for violating Oregon retail or tax compliance law multiple times. Employers are held accountable for violations committed by their employees. Holds owners accountable for training their employees about Oregon tobacco sales laws.	Reduces practices that target individuals making minimum wage, such as clerks.
If seized and forfeited, contraband tobacco product or the contraband inhalant delivery system must be destroyed. (ORS 431A.204(2)). DOR also has authority to destroy contraband cigarettes and other tobacco products under ORS 323.248 and ORS 323.612 and has been have exercised.	DOR or a law enforcement agency	NA	The program has not gotten to this point. To date, while some retailers have received suspension, no products have been seized or forfeited to date.	Ensures that business and industry actors are held accountable when violating the law, so that all products be removed from the store and disposed of safely.
Adopt by rule, fees necessary to pay the expenses of administering and enforcing ORS 431A.175, 431A.183 and ORS 431A.218. (ORS 431A.210)	OHA	Yes	SB 587 established that program fees must be sufficient to cover program operations. As such, tobacco retail license fees are entirely dedicated to program administration.	Creates opportunity to collaborate and improve data collection efforts on retailer demographics including race/ethnicity, tobacco profit

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
			The rules adopted by OHA also aimed to eliminate criminal penalties for individuals, including retail clerks, that unlawfully sell, give, barter, distribute, or otherwise exchange tobacco products. Holds business owners accountable for training their employees about Oregon tobacco sales laws and reduces practices that target individuals.	margins, retailer size, and socioeconomic status. Previously, language was written into law that penalized youth purchase, use and possession of tobacco products and IDS. SB587 removed this language.
Enter into agreements to share information necessary for the effective administration of the TRL program (ORS 431A.212).	DOR; OHA; LPHA; city	Yes	Ensures clear and transparent communication between agencies. Creates efficiencies in administration of the program.	Ensures program accountability and equitable treatment of retailers across agencies.
Civil penalty may not be more the \$5,000 per violation. (ORS 431A.178(2))	OHA	Yes	The Authority has the authority to issue penalties with consistency. The Authority adopted an escalating penalty structure that starts at \$1,000.	These fees are consistent no matter the size of retailer and are proportional to the alleged violation. It is important to note that some smaller retailers may be impacted more by these penalties.
State standards established by state law and rule regarding	OHA and LPHAs	No	Program employs Compliance Specialist 3s to enforce tobacco	Onboarding for state and PE76 enforcement staff

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
the regulation of the retail sale of tobacco products and inhalant delivery systems are administered and enforced consistently throughout this state (ORS 431A.218(5)(a)).			retail sales laws in the retail setting only. Civil penalties are delivered via mail. The data system to be used by LPHAs, if they opt-in, and is currently under construction. Counties with local TRL are working through their local processes to align with the state standards or are implementing their own TRL restrictions that are more stringent than the OHA administered TRL restrictions.	consistently includes de-escalation training. All OHA administered TRL inspections are administered and enforced consistently.
Establish and maintain a database for receiving and responding to public complaints, and collecting information from LPHAs and the general public regarding the regulation of the retail sale of tobacco products and IDS for purposes related to public health and safety (ORS 431A.218(5)(b)).	OHA	Yes	Allows the program to conduct systematic, evidence-based research on the implementation and enforcement of commercial tobacco control laws	Ensures that enforcement practices aimed at commercial tobacco retail sales establishments occur in a data-driven, evidence-based, and equitable manner. Focuses on how implementation and enforcement practice affect underserved populations in urban, suburban, and rural communities such as youth, persons of color, persons with low-incomes, persons who

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
				identify as LGBTQ+, and persons with disabilities.
Provide technical assistance to local public health authorities regarding the regulation of the retail sale of tobacco products and inhalant delivery systems (ORS 431A.218(5)(c)).	OHA	Yes	Ensures all retailers that sell commercial tobacco products, including e-cigarettes, are inspected consistently across the state.	Creates opportunity to collaborate and improve equitable enforcement.
Adopt rules for conducting random inspections of establishments that distribute or sell tobacco products or inhalant delivery systems (ORS 431A.183(6)).	OHA	Yes	Ensures all retailers that sell commercial tobacco products, including e-cigarettes, are inspected consistently across the state.	Ensures that there is a clear consistent process that inspections are being administered and enforced consistently with all retailers throughout the state. Rules incorporated feedback from a variety of partners, such as youth, parents of youth, retail business groups, tobacco and IDS business owners, and public health advocacy organizations.
Rules shall provide that inspections may take place: (a) Only in areas open to the public; (b) Only during the	OHA	Yes		Ensures retailers are not receiving targeted enforcement.

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
hours that tobacco products or inhalant delivery systems are distributed or sold; and (c) No more frequently than once a month in any single establishment unless a compliance problem exists or is suspected (ORS 431A.183(6)(a)-(c)).				
A retailer is inspected at least once each year for compliance with ORS 431A.175 and laws to discourage use of tobacco products and IDS by people under 21 (ORS 431A.183(2)(b)).	OHA; LPHA	No	OHA developed policy and procedures for inspections of retailers including compliance inspections. SB 587 requires at least one unannounced compliance inspection annually for retailers. Program rules also require a follow up inspection for businesses after their first compliance violation. Members of the public may also submit complaints for inspections. 99.6% of retailers received a Minimum Legal Sales Age inspection in 2023. (12 retailers were not inspected due to various reasons which included retail operating hours and jurisdictional issues.)	Program collects compliance information for program evaluation and program improvement with a particular focus on equity. Staff onboarding and ongoing training include discussion of bias and how that may show up in individual enforcement interactions.

Statutory Requirement	Responsible Agency	Req Met	Program Status and Rationale	Equity Considerations
			Compliance inspections began in the second half of the calendar year. 36% of retailers received a compliance inspection.	
Penalty amounts collected shall be deposited in the General Fund (ORS 431A.178(3)).	OHA	No	Ensures that the TRL program is not using penalty funds to cover program costs, which the program has not done. The accounting department has determined that OHA is not allowed to deposit penalty funds in the General Fund, even though ORS 431A.178 directs OHA to do so. A solution is under discussion, and the TRL program has not used any penalty funds for program costs.	
Assess the effectiveness of state and local programs for regulating the retail sale of tobacco products and inhalant delivery systems (ORS 431A.178(5)(d)).	OHA	Yes	Includes conducting evaluation to assess program effectiveness. Continuously assesses the effectiveness of the program.	Each step of the evaluation will look at equity considerations and assess equitable enforcement activities.

Additional considerations

With the development of the new TRL program there were some additional

considerations that are addressed in this section.

The program's values and mission are aligned with the Oregon Health Authority's mission – to eliminate health inequities by 2030. Though the program considers retailer and industry perspectives in education and policy, it is first and foremost a public health program. In the initial development of the program, coordination between OHA and DOR was at times difficult. For example, SB 587 gave DOR the authority to revoke, suspend or refuse to issue or renew a license if they meet certain conditions, such as violating regulations a certain number of times. The two agencies worked together to establish clear OARs for issuing license suspensions based on the number of violations that have occurred. In practice, DOR and OHA have found that different suspension lengths may be appropriate for different types of violations, for example, public health violations such as selling to an underage person may merit a longer suspension than technical tax violations. The two agencies continue to collaborate on a consistent approach to suspensions that incorporates the seriousness of underage tobacco sales and other public health concerns.

Another consideration that has affected program effectiveness is the proliferation of oral synthetic nicotine products. Synthetic nicotine is manufactured in a lab and used by the tobacco and vape industry to circumvent tobacco sales laws. Synthetic nicotine has the same chemical structure and health effects as tobacco-derived nicotine.⁷ Many synthetic products are flavored and are rising in popularity among youth. OHA did not anticipate the proliferation of this new product category during SB587 drafting and negotiations, since these products are not included in Oregon's current statutory definition of tobacco products. OHA does not have jurisdiction over these products and cannot ensure retailers follow tobacco retail sales laws for

⁷ Berman, Micah L., Patricia J. Zettler, and Sven-Eric Jordt. "Synthetic Nicotine: Science, Global Legal Landscape, and Regulatory Considerations." World Health Organization Technical Report Series 1047 (2023): 35.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10516533/>.

this product category. OHA, DOR, and the Department of Justice (DOJ) are discussing the best approach to ensure these emerging products are held to the same standards as other nicotine products.

Conclusion

This interim evaluation report focused on the program's first key evaluation question (KEQ1) "In what ways did the program meet the statutory requirements?". The TRL program successfully completed all but 3 statutory requirements. Below you will find key successes that led to the completion of most requirements and barriers that prevented the program from completing the three unmet requirements.

Key successes

- SB 587 removed language around possession, use, and purchase (PUP) laws. The removal of this language increased the program's ability to enforce tobacco sales laws more equitably.
- Developed processes and procedures that focus on the core values of equitable enforcement.
- Developed relationships and protocols for interagency collaboration that has improved program administration.
- Implemented a data system that allows inspections and enforcement of tobacco retail regulations to take place.
- Increased enforcement of tobacco sales laws in Oregon.
- Fees are adequate to fund and sustain the program.
- Six LPHAs successfully opted into local TRL enforcement.
- Saw a 19% decrease in retailer violation rates for MLSA.

Key barriers

- At times, difficulties with different agency strategies, expectations, and priorities.
- Difficulties in program developing a data system in a timely manner that can manage the complex processes that encompass TRL enforcement activities. Efforts continue in improving efficiency and usability of the current TRL data system.

While the Oregon TRL program was not able to meet all statutory requirements during the first two years of implementation, the program was successful in standing up a brand-new program, incorporating equitable enforcement throughout, and solidifying collaborative relationships with both DOR and

LPHAs around the state. The next interim report will focus on KEQ2, “How has working with Local Public Health Authorities on program implementation affected the service provided?”, which will include a review of supplemental documentation, a retailer satisfaction survey, and a survey with key program partners.

You can get this document in other languages, large print, braille or a format you prefer free of charge. Contact the Tobacco Retail License Program at HPCDP-OPS.Team-Tasks@odhsoha.oregon.gov or 971-673-0984. We accept all relay calls.

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