

**OREGON ADMINISTRATIVE RULES
CHAPTER 333, DIVISION 12**

333-012-0050

Purpose and Definitions

(1) The purpose of these rules is to establish standards under which Local Public Health Authorities will provide environmental health services to establishments and facilities licensed under ORS 446, 448 and 624.

(2) Definitions:

(a) "Administrative Costs" means those costs that are over the direct costs of providing delegated program services. These include actual departmental, agency or central government charges such as, but not limited to, accounting, purchasing, human resources, data management, legal council and central mail functions;

(b) "Administrator" means the Assistant Director for Health Services of the Department of Human Services or an authorized representative;

(c) "Complete Inspection" means the evaluation of a licensed establishment or facility conducted at the election of the Local Public Health Authority for compliance with all applicable regulations;

(d) "Consultation Services Remittance" means the biennial assessment of the Department for consultation services and maintenance of the Foodborne Illness Prevention, Public Swimming Pool and Tourist Facility Programs;

(e) "Department" means the Oregon Department of Human Services;

(f) "Direct Costs" mean those costs for salaries and benefits of field and support staff and their associated costs including, but not limited to, rent, vehicles and travel, equipment, data management, training, phone, office supplies and the pro-rated portion of direct costs relating to supervision;

(g) "Fiscal Audit" means a comprehensive audit using standard audit procedures of the financial records of the Local Public Health Authority related to licenses and fees;

(h) "Local Public Health Authority" means county governments or health districts established under ORS 431.414 that are responsible for management of local public health services;

(i) "Recheck Inspection" means an inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections. In food service establishments, a recheck inspection also means an inspection to determine whether specific corrections have been maintained for critical violations creating a significantly increased risk for foodborne illness. Recheck inspections may be conducted either on pre-announced dates or unannounced.

333-012-0053

Licensing and Fees

(1) License applications and licenses issued must be on forms provided or approved by the Department.

(2) The Local Public Health Authority must establish a single license fee per establishment or facility type. There may not be added fees based on local determination of unique features of an establishment or facility.

(3) Licensing categories must be based upon those specified in ORS 446.310, 448.035 and 624.020. The Local Public Health Authority may not create additional licensing categories.

(4) (a) Annual work hours available for a dedicated full time equivalent (FTE) for field staff in the food service program based on a 40-hour week is 1640 hours, of which 25% is allocated for office and administrative duties and consultation, and 75% is for field inspection activities;

(b) Standards for complete inspection functions, on average, including travel time, relative to facility size are as follows:

(A) 0-15 seats, one and one half hours;

(B) 16-50 seats, one and three quarter hours;

(C) 51-150 seats, two hours;

(D) Over 150 seats, two and one half hours.

(c) An average recheck inspection rate of 40% with an average critical item recheck inspection taking 45 minutes including travel.

(5) The following standards are established to reflect the levels of effort and resources needed to carry out the delegated functions and provisions of ORS 624:

(a) Workload indicators established in section (4) of this rule must be used to determine staffing levels budgeted for field inspection activities;

(b) Administrative costs must be limited to 15% of direct costs;

(c) A ratio of up to .35 FTE for clerical support and up to .25 FTE for supervision to field staff FTE respectively, must be observed;

(d) Charges for services and supplies may not exceed a ratio of .25 of personnel salary for direct program costs;

(e) In lieu of the administrative standards outlined in this rule, the Local Public Health Authority may determine staffing standards and actual costs of providing program services. The Local Public Health Authority must document and report to the Department actual time spent and expenses incurred and may be subject to a fiscal audit as specified in OAR 333-012-0070 (3).

(6) The Local Public Health Authority may adopt a fee schedule for facilities that require more than two recheck inspections per year.

(7) The Local Public Health Authority may set a fee for costs associated with plan review conducted under guidelines established by the Department.

(8) The Local Public Health Authority may set a reinstatement fee for late license reinstatement.

(9) The Local Public Health Authority may recover the cost of the extra inspections required under OAR 333-157-0027, Increased Inspection Schedule, by charging a fee of up to one-half of the annual licensing fee otherwise assessable to the restaurant for each additional inspection.

(10) A license may be issued only after the Local Public Health Authority has received the fee and determined that the facility meets the requirements of the statutes and rules.

(11) The Local Public Health Authority may pro-rate fees for partial year operation as follows: From January 1 through September 30, a full license fee is required. From October 1 through December 31, half the annual fee must be assessed.

(12) If license fees assessed by the Local Public Health Authority are more than 20% above or below the fees established in ORS 624.020, the Local Public Health Authority must document and report to the Department actual time spent and expenses incurred on program services and may be subject to a fiscal audit as specified in OAR 333-012-0070 (3).

(13) All license fees collected by the Local Public Health Authority pursuant to ORS 446.425, 448.100 and 624.510 must be paid into the county treasury and placed in a special revenue fund or the general fund of the county treasury and placed to the credit of the Local Public Health Authority. Such monies must be used only for program services pursuant to ORS 446.425, 448.100 and 624.510. The Local Public Health Authority must assure on an annual basis that all fees collected are used solely for the purposes of administering the programs as described in this section.

(14) If the Local Public Health Authority requests a fiscal audit required in OAR 333-012-0070 (3) be conducted by a private auditing agency, the Local Public Health Authority must pay the costs and a copy of audit report must be provided to the Department.

333-012-0055

Inspection Standards

(1) All licensed establishments and facilities, except Bed and Breakfast Facilities, Travelers' Accommodations, Hostels and Temporary Restaurants, must receive a minimum of one complete inspection for every six months of operation or fraction thereof. For Vending Machines, the Local Public Health Authority shall evaluate at least 10% of each licensee's machines during each inspection:

(a) Bed and Breakfast Facilities must be inspected once per year;

(b) Travelers' Accommodations and Hostels must be inspected on a schedule in accordance with local public health priorities and with consideration of the following criteria:

- (A) Complaints received from a guest at a particular facility;
- (B) A history of rule violations;
- (C) A request for inspection or consultation from a licensee;
- (D) Reports of illness or accidents associated with the facility;
- (E) Change of owner or operator;
- (F) The facility's method of sewage disposal, source of water and availability of local fire protection services;
- (G) Length of time since the last inspection of the facility;
- (H) A minimum of one inspection every two years is recommended.

- (c) (A) Temporary Restaurants must receive a minimum of one inspection during operation for each license issued;
- (B) Benevolent Temporary Restaurants must receive an inspection or a consultation in lieu of an inspection.

(2) The Local Public Health Authority may substitute an alternative inspection procedure or intervention once per year in place of an inspection using alternative criteria approved by the Department.

(3) The Local Public Health Authority must implement an increased inspection schedule for Restaurants as described in OAR 333-157-0027. Up to two of the quarterly inspections may be based upon a menu review consultation, an announced inspection, a risk control plan or other method approved by the Department.

(4) A pre-operational or construction inspection must be conducted after plan review and prior to operation of a new, remodeled, converted, renovated or altered

establishment or facility. The pre-operational inspection is in addition to the requirement for a complete inspection in section (1) of this rule.

(5) A complete inspection to assign a public notice of sanitation must be conducted within 45 days after opening for a Restaurant or Bed and Breakfast facility. This inspection counts toward one of the inspections required in section (1) of this rule.

(6) Inspection reports must be filled out completely and must include at least the following information:

(a) Specific problem and correction statements for all violations, including Oregon Administrative Rule references;

(b) Except in the food service programs, time limits must be specified for all corrections stated;

(c) Food Service - Inspections must be documented as specified in OAR 333 Division 157 Inspection and Licensing Procedures. In addition, the Local Public Health Authority must indicate on the inspection report how a critical violation has been corrected during complete and recheck inspections;

(d) Public Swimming Pools - Document pH, free residual chlorine, total chlorine, total alkalinity, total hardness, cyanuric acid (if used), water clarity (recorded as acceptable or unacceptable), water temperature, pressure and/or vacuum gauge readings and flow rate as measured by flow meter.

(7) The Local Public Health Authority must conduct recheck inspections of establishments and facilities to determine if timely corrective action has been taken on noted critical violations or public health hazards.

(8) The Local Public Health Authority must, at a minimum, furnish each Environmental Health Specialist with the following equipment or materials to conduct inspections:

(a) Temperature measuring devices, flashlight, inspection forms and/or computer inspection equipment, identification and business cards, rules, stickers and forms;

(b) Food Service - Sanitizing swabs, test strips for chlorine and quaternary ammonium;

(c) Public Swimming Pools - Current state-approved pool test kit and a 25-foot tape measure or equivalent device with the ability to accurately measure distance and depth;

(d) The Local Public Health Authority must provide food and waterborne illness investigation materials, specified in guidelines provided by the Department, and a light meter for staff to share. The Food Program Policy Manual must be maintained and updated as well as other information required by the Department.

(9) The Local Public Health Authority must, upon request, provide technical information and consultation to the public and those holding permits and licenses.

333-012-0057

Consultation Services Remittance

(1) Food Service - On behalf of the Department, the Local Public Health Authority must collect fees from food service establishments and remit to the Department the monies necessary to maintain the Foodborne Illness Prevention Program. The Local Public Health Authority must keep the remainder to cover administration and enforcement costs.

(a) The Department must consult with representatives of local health officials in determining the amount to be remitted by each Local Public Health Authority to support the state Foodborne Illness Prevention Program;

(b) The consultation must occur no later than April of each legislative year in order to determine the amount required to be remitted to the Department in the following biennium;

(c) The consultation must consider program expenditures, the program workplan and other activities, and current food service establishment inventories to determine the amount of the remittance;

(d) For the purposes of this rule, food service establishments are considered to be Full and Limited Service Restaurants, Bed and Breakfast Facilities, Mobile Food Units, Commissaries and Warehouses;

(e) The remittance amount must be determined by first projecting statewide food service license revenue for the biennium using state marker fees. Then, the biennial budget of the Foodborne Illness Prevention Program is divided by the revenue projection to yield a percentage factor. Each Local Public Health Authority's revenue projection for food service facilities, using state marker fees, is then multiplied by that factor to yield the remittance amount;

(f) The Foodborne Illness Prevention Program budget must be developed after consultation with groups representing local health officials pursuant to ORS 624.510. The cost to the Local Public Health Authority of the Foodborne Illness Prevention Program will be represented in the annual Intergovernmental Agreement.

(g) The Local Public Health Authority must provide to the Department a quarterly remittance based on the total biennial assessment. Fifty percent of the assessment is payable each year unless otherwise negotiated with the Department. The annual amount remitted by the Local Public Health Authority in the first year of the biennium may not be less than 35% of the total biennial amount. Each Local Public Health Authority must provide a statement identifying the proposed timetable and schedule for remittance;

(h) In April of even-numbered years, the Department must recalculate the assigned assessment for the second year of the biennium, based on updated facility counts and program expenditures and provide the Local Public Health Authority with a revised assessment for the second year of the biennium;

(i) All assessments may not be represented as a surcharge or added charge.

(2) Public Swimming Pools - The Department must consult with representatives of local health officials and industry in determining the amount to be remitted by each Local Public Health Authority that has accepted delegation for the Public Swimming, Spa and Wading Pool Programs for the purposes of supporting the statewide consultation and program services costs:

(a) The consultation must occur no later than April of each legislative year in order to determine the amount required to be remitted to the Department in the following biennium;

(b) The consultation must consider program expenditures and current Public Swimming Pool, Public Spa Pool and Public Wading Pool facility inventories while determining the amount of the remittance;

(c) The county shall remit, on a quarterly basis, a portion of the fee for each license issued in that quarter;

(d) All assessments may not be represented as a surcharge or added charge.

(3) Tourist Facilities - Each quarter, the Local Public Health Authority must remit 15% of the state licensing fee or 15% of the Local Public Health Authority license fee, whichever is less, to the Department for consultation services and maintenance of the statewide program for facilities licensed under ORS 446.425. All assessments may not be represented as a surcharge or added charge.

333-012-0060

Staffing and Training

(1) The Local Public Health Authority must provide the staff, facilities, materials and equipment necessary to comply with these rules.

(2) Inspections must be conducted by staff that are registered as required by ORS Chapter 700.

(3) Each Local Public Health Authority must require at least one Environmental Health Specialist engaged in the food, tourist facility and public swimming pool programs to attend annual Department sponsored or approved training in all three program areas.

(4) Within one year of hiring, the Local Public Health Authority must send all Environmental Health Specialists to an orientation provided by the Department. This requirement does not apply to staff that have previously attended the training while employed in another jurisdiction.

(5) (a) The Local Public Health Authority must maintain at least one Environmental Health Specialist on staff or through contract that has a current certification from the Department as a Food Service Standardization Officer. New employees must be certified within 18 months of employment or within 18 months after becoming registered as an Environmental Health Specialist as required in section (2) of this rule;

(b) Notwithstanding the time limits specified in subsection (a) of this section, the Local Public Health Authority may develop a training plan approved by the Department that allows for a longer time limit to comply with the certification requirement in subsection (a) of this section.

(6) The Local Public Health Authority must maintain at least one Environmental Health Specialist on staff or through contract that has successfully completed a NSPF Certified Pool Operator course or equivalent approved by the Department within 24 months of employment. The Department may waive this requirement upon request.

333-012-0061

Food Handler Training

The Local Public Health Authority must establish an approved food handler training program using minimum criteria developed by the Department. The Local Public Health Authority must document the training methods used for food handler training.

333-012-0063

Record Keeping and Reporting

(1) Records as outlined in ORS 183.415(7) and (8) must be kept by the Local Public Health Authority of all administrative matters delegated under ORS 446.425, 448.100 or 624.510, including a record of the hearing, the time, date, place and copies of the complaint, all intended actions, orders, and final disposition of the proceedings and retained for at least three years.

(2) The Local Public Health Authority must, at a minimum, maintain records according to the Archive Division rules of the following: Inspection reports; complaints and their disposition; communicable disease or suspected food-borne illness investigations; public swimming pool accidents; license applications and licenses issued; food service inspection scores; changes in public notice placards; food handler training materials; plan review records; records of all license denials, revocations, suspensions or other temporary closures; and Failed to Comply notices posted or any other enforcement actions taken.

(3) The Local Public Health Authority must provide to the Department program information such as inspections conducted, workload indicators, fee schedules and

violation summaries on request. The Local Public Health Authority must also respond to surveys conducted by the Department. Program information and surveys must be submitted on forms or in a format as required by the Department.

333-012-0065

Epidemiology and Accident Investigation and Reporting

(1) The Local Public Health Authority must investigate all suspected illnesses connected with food service facilities, public swimming pools and tourist facilities. The reports of all investigations of confirmed illnesses must be submitted to the Department as required by OAR 333-018. The Local Public Health Authority must also notify the Department of investigations expected to result in confirmed foodborne illness.

(2) The Local Public Health Authority must investigate all reportable accidents. Results of investigations, including copies of accident reports, must be provided in writing to the Department.

333-012-0067

Enforcement Procedures

(1) The Local Public Health Authority must adopt and comply with rules for conducting administrative hearings for permit and license denial, suspension or revocation in accordance with the requirements of ORS Chapter 183.

(2) The Local Public Health Authority must utilize all administrative and legal means necessary to enforce the applicable statutes and rules and implement policies relating to the programs and to eliminate conditions endangering public health or safety. Failure to do so is considered unacceptable surveillance and enforcement.

333-012-0070

Minimum Standards, Program Review and Penalties

(1) (a) The Local Public Health Authority may request approval to implement alternative inspection or enforcement procedures. The Local Public Health Authority must submit a plan that includes expected performance measures and outcomes and the procedure must be included in the annual Intergovernmental Agreement.

(b) The Local Public Health Authority may adopt ordinances on applicable matters provided they are not less stringent than the Oregon Administrative Rules adopted pursuant to ORS Chapters 183, 446, 448 and 624. Any ordinance proposed for adoption on matters applicable to food service operators more stringent than those set forth in ORS 624 and rules adopted thereunder must be approved by the Department and the cost of implementing any ordinance so adopted may not be charged to license fees adopted pursuant to ORS 624.510(2). Notwithstanding the provisions of this subsection, when an emergency exists and delay will result in an immediate danger to public health, Local Public Health Authorities may adopt ordinances without prior Department approval. This subsection does not affect ordinances that are required to be adopted as specified in these rules.

(2) The Local Public Health Authority must be subject to a performance review of both office and field activities to determine compliance with these rules. A review of each Local Public Health Authority will be conducted at least once every three years. The Department will submit the results of the review to the Local Public Health Authority.

(3) The Local Public Health Authority will be subject to a triennial fiscal audit conducted by the Department. The Local Public Health Authority may also be subject to additional fiscal audits if deemed necessary by the Department.

(4) The Local Public Health Authority will be surveyed at least annually to determine accomplishments and needs. This knowledge will guide the Department in providing assistance, guidance, training, consultation and support as needed.

(5) If a review reveals that the Local Public Health Authority is not complying with the provisions of these rules or the Intergovernmental Agreement, the Local Public Health Authority will be notified. The Local Public Health Authority must correct the deficiencies within the time frames required and report the corrections to the Department.

(a) If the Department determines that the deficiencies result in a serious human health hazard, compliance will be required immediately. If the Department determines that the deficiencies do not result in a serious human health hazard, a longer period of time may be allowed for compliance. However, the maximum time allowed for compliance, after notice is issued by the Department, is as follows:

(A) Up to 90 days to correct administrative deficiencies such as, but not limited to, accounting reports and records;

(B) Up to 180 days to correct program deficiencies such as, but not limited to, inadequate frequency of inspections, scoring, staffing and lack of enforcement action.

(b) Notwithstanding subsection (a) of this section, the Department may allow a longer time frame for compliance if deemed necessary;

(c) If the Department determines that the Local Public Health Authority did not use the proper cost elements in determining the fee or that the amount of the fee is not justified, the Department may order the Local Public Health Authority to adjust any fee, as soon as is possible, to a level supported by the Department's analysis of the fee.

(6) When a Local Public Health Authority has been notified of an emergency health hazard and is either unwilling or unable to administer or enforce delegated standards, the Department may, pursuant to ORS 431.170, immediately take responsibility of the functions and collect the monies necessary to protect public health. When the health hazard has been resolved or is no longer an emergency, the Department may return authority to the Local Public Health Authority and may initiate a review to determine if delegation is to be continued.

(7) The Department may deny or revoke the delegation of a program if the Local Public Health Authority:

(a) Does not have sufficient qualified personnel to conduct the program;

(b) Has failed to perform its delegated duties satisfactorily;

(c) Has engaged in deceit or fraud in the conduct of the program or maintenance of its associated records.

(8) Suspension or rescission of a delegation must be in accordance with ORS Chapter 183 relating to contested cases.

(9) The Department will immediately respond to a request by the Local Public Health Authority for personnel or equipment during an emergency. If the

Department is unable to assist as requested, the Department will immediately notify the Local Public Health Authority and provide any possible assistance.