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**IDAPA 16
TITLE 06
CHAPTER 14**

**16.06.14 - RULES GOVERNING THE PREVENTION OF MINORS'
ACCESS TO TOBACCO PRODUCTS**

000. LEGAL AUTHORITY.

Under authority vested in Title 39, Chapter 57, Idaho Code, the Department of Health and Welfare adopts these rules and minimum standards for prevention of minors' access to tobacco products. (4-5-00)

001. TITLE AND SCOPE.

01. Title. These rules shall be known as Idaho Department of Health and Welfare Rules, IDAPA 16.06.14, "Rules Governing the Prevention of Minors' Access to Tobacco Products". (4-5-00)

02. Scope. The purpose of this rule is to implement provisions of Section 39-5701 et seq., Idaho Code. The Code defines the following: (4-5-00)

- a.** Possession, distribution or use of tobacco products by a minor; (4-5-00)
- b.** Permit process for tobacco product retailers; (4-5-00)
- c.** Sale or distribution of tobacco products to a minor; (4-5-00)
- d.** Vendor assisted sales; (4-5-00)
- e.** Opened packages and samples; (4-5-00)
- f.** Civil and criminal penalties for sales violations; and (4-5-00)
- g.** Conduct enforcement actions. (4-5-00)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may write statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The documents are available for public inspection and copying at cost in the main offices of the Department of Health and Welfare. (4-5-00)

003. ADMINISTRATIVE APPEALS AND ADMINISTRATIVE PROCEEDINGS.

Appeals and proceedings shall be governed by the Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (4-5-00)

004. PUBLIC RECORDS.

The Tobacco Project Office will comply with Sections 9-337 through 9-347, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all public records in the custody of the Tobacco Project Office are subject to disclosure. (4-5-00)

005. -- 006. (RESERVED).

007. DEFINITIONS.

The terms used in this rule are defined as follows: (4-5-00)

01. Business. Any company, partnership, firm, sole proprietorship, association, corporation, organization, or other legal entity, or a representative of the foregoing entities that sells or distributes tobacco products. Wholesalers' or manufacturers' representatives in the course of their employment are not included in the scope of these rules. (4-5-00)

- 02. Department.** The Department of Health and Welfare or its duly authorized representative. (4-5-00)
- 03. DHW.** Department of Health and Welfare. (4-5-00)
- 04. Distribute.** To give, deliver, sell, offer to give, offer to deliver, offer to sell or cause any person to do the same or hire any person to do the same. (4-5-00)
- 05. Effective Training.** Training must include, at a minimum, the provisions of the law regarding minors' access to tobacco products as indicated on the suggested Employee Training form which is included with the permit provided by the Department and found in Appendix A of these rules. Such training will be presumed effective for purposes of civil penalty actions in the first, second, and third violations within a two (2) year period. (3-15-02)
- 06. Evidence Of Effective Training.** Documentation provided by a permittee in response to a violation of this chapter clearly identifying that the permittee had a training program meeting the definition for effective training in place at the time of the violation and had on file a form signed by the employee prior to the violation stating understanding of the tobacco laws dealing with minors and the unlawful purchase of tobacco. (3-15-02)
- 07. Minor.** A person under eighteen (18) years of age. (4-5-00)
- 08. Permit.** A permit issued by the Department for the sale or distribution of tobacco products. (4-5-00)
- 09. Permittee.** The holder of a valid permit for the sale or distribution of tobacco products. (4-5-00)
- 10. Photographic Identification.** In all cases the identification must bear a photograph and a date of birth. Verification is not required by these rules if the buyer is known to the seller to be age eighteen (18) or older. Types of identification include: (4-5-00)
- a.** State, district, territorial, possession, provincial, national or other equivalent government driver's license; or (4-5-00)
 - b.** Identification card or military identification card; or (4-5-00)
 - c.** A valid passport. (4-5-00)
- 11. Random Unannounced Inspection.** An inspection of business by a law enforcement agency or by the Department, with or without the assistance of a minor, to monitor compliance of this chapter. (4-5-00)
- a.** Random. At any time without a schedule or frequency. (4-5-00)
 - b.** Unannounced. Without previous notification. (4-5-00)
- 12. Seller.** The person who physically sells or distributes tobacco products. (4-5-00)
- 13. Tobacco Product.** Any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco paper, or smokeless tobacco. (4-5-00)
- 14. Vending Machine.** Any mechanical, electronic or other similar device which, upon the insertion of tokens, money or any other form of payment, dispenses tobacco products. (4-5-00)
- 15. Vendor Assisted Sales.** Any sale or distribution in which the customer has no access to the product except through the assistance of the seller. The seller must physically dispense the tobacco product to the purchaser. A business is exempt from vendor assisted sales if it meets the following criteria: (4-5-00)
- a.** Tobacco products comprise at least seventy-five percent (75%) of total merchandise as determined

by sales reported to the Idaho State Tax Commission; (4-5-00)

b. Minors are not allowed in exempt businesses and there is a sign on all entrances prohibiting minors; (4-5-00)
and

c. There must be a separate entrance to the outside air or to a common area not under shared ownership by the exempt business. (4-5-00)

16. Violation. An action contrary to Title 39, Chapter 57, Idaho Code, or IDAPA 16.06.14, "Rules Governing the Prevention of Minors' Access to Tobacco Products". (4-5-00)

17. Without A Permit. A business that has failed to obtain a permit or a business whose permit is suspended or revoked. (4-5-00)

008. -- 019. (RESERVED).

020. APPLICATION FOR PERMIT.

All businesses which sell or distribute tobacco products to the public must obtain a permit issued annually for no charge by the Department of Health and Welfare. (4-5-00)

01. Where To Obtain An Application For Permit. An application can be obtained, at no cost to the applicant, from the Department of Health and Welfare, Division of Family and Community Services, PO Box 83720, Boise, Idaho, 83720-0036. Application may be made through online services where available. (10-1-02)T

02. Separate Permits. A separate permit must be obtained for each place of business. The permit is non-transferable to another person, business, or location. (3-15-02)

03. Renewal Of Permit. All permits must be renewed annually and are valid for twelve (12) calendar months. (4-5-00)

a. The Department will mail notices of renewal for permits no later than ninety (90) days prior to the expiration date on the permit. (4-5-00)

b. An application for renewal must be submitted annually by each business through written application or online services where available. (3-15-02)

c. A business with multiple sites may submit a single written application to renew the permit at each site, so long as the application is accompanied by a list of business locations and addresses. (3-15-02)

d. A permit will not be renewed for any location until any past due fines for violations are paid in full. Fines are considered past due when not paid within ten (10) days of the citation date, or within ten (10) days after notification that the fine is upheld upon appeal. Violation fines under appeal are not considered past due. (10-1-02)T

04. Application For Exemption. Businesses seeking exemption from vendor assisted sales must submit information to the Department to establish compliance with criteria set forth in Subsections 007.14.a. through 007.14.c. (10-1-02)T

021. PERMITTEE RESPONSIBILITIES.

The permittee is responsible for the following: (4-5-00)

01. Possession Of Permit. Each business site must have a permit. (4-5-00)

02. Visibility. The permit must be available upon request at each site. (3-15-02)

03. Display Of Sign. Each business may display, at each business site, a sign which states: "State Law Prohibits the Sale of Tobacco Products to Persons Under the Age of Eighteen (18) Years. Proof of Age Required. Anyone Who Sells or Distributes Tobacco to a Minor is Subject to Strict Fines and Penalties. Minors are Subject to

Fines and Penalties.” (4-5-00)

04. Effective Training. Each permittee is responsible to train employees as to the requirements of Title 39, Chapter 57, Idaho Code, and these rules. (4-5-00)

a. Unless the permittee has its own training program as described in Subsection 021.04.b., the employer must, at a minimum, read to the employee or prospective employee who may be responsible for sale or distribution of tobacco products, or assure the employee or prospective employee has read the information contained on the Employee Training form found in Appendix A of these rules and have him initial each statement, and sign the form indicating an understanding of the provisions of the law governing minors' access to tobacco products. (4-5-00)

b. Permittee may have their own training program but it must contain at least each of the elements listed in the Employee Training form found in Appendix A of these rules and the employee or prospective employee who may be responsible for sale or distribution of tobacco products must affirm in writing their acknowledgment of such training. (4-5-00)

022. -- 050. (RESERVED).

051. CIVIL PENALTIES FOR VIOLATION OF PERMIT.

01. Violations By The Seller. (4-5-00)

a. The seller will receive a one hundred dollar (\$100) fine for each violation. (4-5-00)

b. Each violation will be recorded with the Department and may be accessed by potential employers upon the written consent of the seller as a portion of the training permit documentation. (4-5-00)

02. Violations By The Permittee. (4-5-00)

a. First violation. The permittee shall be notified in writing of the violation and penalties to be levied for further violations. No fine will be imposed. (3-15-02)

b. Second violation in a two (2) year period. (4-5-00)

i. The permittee shall be fined two hundred dollars (\$200). (3-15-02)

ii. If the permittee provides evidence of effective training within ten (10) business days from the date of violation, the Department shall waive the fine. (3-15-02)

iii. The permittee shall be notified in writing of the penalties to be levied for further violations. (3-15-02)

c. Third violation in a two (2) year period. (3-15-02)

i. The permittee shall be fined two hundred dollars (\$200). (3-15-02)

ii. The permit shall be revoked for up to seven (7) days beginning upon a date set by the Department following the third violation. Evidence of effective employee training shall be a mitigating factor in determining the length of the permit suspension. (3-15-02)

iii. The permittee must remove all tobacco products from public visibility for the duration of the revocation of the permit. (4-5-00)

iv. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee shall be fined four hundred dollars (\$400). (3-15-02)

d. Fourth or subsequent violation in a two (2) year period. (3-15-02)

- i. The permittee shall be fined four hundred dollars (\$400). (3-15-02)
- ii. The permit shall be revoked until such time as the permittee demonstrates an effective training program to the Department, but in no case shall the revocation be less than thirty (30) days. (3-15-02)

03. Payment Of Fines. All fine payments must be received by the Department within ten (10) days of the date of the citation. Fine payments should be mailed to, Tobacco Project Office, 450 West State Street, 5th Floor, Boise, ID 83711. (4-5-00)

052. CRIMINAL PENALTIES.

01. Selling Or Distributing Without A Permit. Criminal penalties apply to any business or individual(s) which sells or distributes tobacco products to the public without a permit. (4-5-00)

02. Department Notified Of Violation. If the Department is notified of a violation of Section 39-5709 et seq., Idaho Code, the Department will contact the appropriate law enforcement authority. (4-5-00)

053. -- 100. (RESERVED).

101. INSPECTIONS.

01. Random And Unannounced Inspections. The total number of random and unannounced inspections under Section 101 shall be determined by: (3-15-02)

a. The number of permittees on the last day of each year multiplied by the percentage of violations for the preceding year multiplied by a factor of ten (10). A calculation checklist is provided under Appendix B; (10-1-02)T

b. In no instance shall the total number of inspections be less than the number of permittees, or exceed twice the number of permittees. (3-15-02)

c. The Department and the Idaho State Police must conduct at least one (1), unannounced inspection per year at every known business location identified as a retailer of tobacco products to the public. All additional inspections required to meet the total number specified under Section 101 must be conducted in a random manner. (10-1-02)T

02. Who Will Inspect. Inspections will be conducted by an adult enforcement officer accompanied by a minor. (4-5-00)

03. Law Enforcement Agency Inspections. (4-5-00)

a. In addition to the inspections set forth in Subsection 101.01, any law enforcement agency may conduct inspections consistent with agency policy and procedure with or without a minor at any business location, at any time, where tobacco products are sold or distributed to the public. (3-15-02)

b. Law enforcement agencies conducting inspections under Subsection 101.03.a. will report the results from their inspections to the Department. All citations will become part of the permittee's permanent record. (3-15-02)

04. Complaint Investigation. (3-15-02)

a. The Department must refer all written complaints concerning the sale of tobacco products to minors to the appropriate agency for investigation. Investigation activities include, but are not limited to, inspections to determine the compliance with this chapter. (10-1-02)T

b. Inspections conducted as part of the investigation of a written complaint are not included in the

overall number of inspections identified under Subsections 101.01 and 101.03. Citations issued during the investigation of a written complaint must be added to the permittee's permanent record. (10-1-02)T

05. Issuance Of Citation Or Report. (4-5-00)

a. For inspections conducted under Subsection 101.01 a representative of the business will be provided with a report, within two (2) business days, after the inspection was conducted and no violations were found, or a representative of the business will be issued a citation within two (2) business days after the random unannounced inspection. (3-15-02)

b. For inspections conducted under Subsections 101.03 and 101.04, a representative of the business will be provided with a report, within two (2) business days, after the result of the inspection is received by the Department and no violations were found, or a representative of the business will be issued a citation within two (2) business days after the result of the inspection is received by the Department. The date the Department provides notification of the citation must be used for determination of timely payment of fines and all other administrative actions including requests for waivers and request for appeals. (10-1-02)T

102. -- 999. (RESERVED).

APPENDIX A
EMPLOYEE TRAINING FORM

The following may be used for training of employees to assure that they are aware of the current law regarding youth access to tobacco products in the State of Idaho. This would constitute "minimum" training required by the employer as indicated in Section 39-5701 et seq., Idaho Code.

Have the employee initial each section and sign at the bottom.

_____ I understand the State law prohibits the sale of ANY tobacco products to persons under 18 years of age and that verification of age is required for any sale of tobacco products

_____ I understand that I am to ask for photo identification from any persons who I do not personally know to be at least 18 years of age and verify their age before a sale of tobacco products.

_____ I understand that sales to anyone under the age of 18 can result in a personal fine to me of at least \$100 for the first offense.

_____ I understand that "tobacco products" includes any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco papers, or smokeless tobacco. (Section 39-5702 (10), Idaho Code)

_____ I understand that this store may be inspected at any time for compliance with the state law regarding "youth access to tobacco products".

_____ I understand that all sales must be "vendor assisted" unless the store in which I work has 75% of the total merchandise available for sale as tobacco products. This store is _____ is not _____ exempted from the vendor assisted requirement. (check one)

_____ I understand that cigarettes **must** be sold only in their original sealed package from the manufacturer. (Section 39-5707, Idaho Code)

_____ I have been given a copy of Section 39-5701 et seq., Idaho Code, and IDAPA 16.06.14, "Rules Governing the Prevention of Minor's Access to Tobacco Products".

I have read and agree to these statements and have had all my questions answered regarding my responsibilities as a seller of tobacco products in the State of Idaho.

By signing this agreement, I consent to having a current or potential employer contact the Department of Health and Welfare to determine if I have received citations for violation Title 39, Chapter 57, Idaho Code.

Printed Name of Employee

Employee's Signature

Witnessed

Date

(3-15-02)

APPENDIX B

RANDOM AND UNANNOUNCED INSPECTION CHECKLIST

Inspection Year _____

1. Number of Permittees as of December 31, 20____: _____

Multiplied by:

2. Overall Violation Rate for Prior Year (20__) (Percentage) _____ x ____.

3. Multiplied by 10: _____

4. Total of Random and Unannounced Inspections: _____

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