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**IDAPA 16
TITLE 02
CHAPTER 23**

16.02.23 - RULES GOVERNING INDOOR SMOKING

000. LEGAL AUTHORITY.

The Director of the Idaho Department of Health and Welfare is authorized, under Section 39-5508, Idaho Code, to adopt rules to implement the Idaho Clean Indoor Air Act, Title 39, Chapter 55, Idaho Code. (4-6-05)

001. TITLE AND PURPOSE.

01. Title. The title of this chapter is IDAPA 16.02.23, "Rules Governing Indoor Smoking." (4-6-05)

02. Purpose. The purpose of these rules is to protect the public health, comfort and environment, and the health of employees who work at public places, and the rights of nonsmokers to breathe clean air by prohibiting smoking in public places and at public meetings. (4-6-05)

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretations that apply to rules in this chapter in accordance with Section 67-5201(19)(b)(iv), Idaho Code. (4-6-05)

003. ADMINISTRATIVE APPEALS.

Administrative appeals for decisions made by the Department are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-6-05)

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference in this chapter of rules. (4-6-05)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-6-05)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-6-05)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-6-05)

04. Telephone. (208) 334-6584 or (800) 445-8647. (4-6-05)

05. Internet Websites and E-Mail Address. (4-6-05)

a. Department Internet address is: <http://www.healthandwelfare.idaho.gov>. (4-6-05)

b. Division of Health Internet address is: <http://www.idahohealth.org>. (4-6-05)

c. Bureau of Community and Environmental Health e-mail address is: bceh@idhw.state.id.us. (4-6-05)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-6-05)

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purpose of this chapter, the following terms apply. (4-6-05)

- 01. Act.** The Idaho Clean Indoor Air Act, Title 39, Chapter 55, Idaho Code. (1-1-86)
- 02. Bar Within a Restaurant.** A bar is considered to be “within a restaurant,” and cannot allow smoking if it does not meet all of the following requirements: (4-6-05)

 - a.** It must be physically isolated from all parts of the restaurant by solid floor to ceiling walls; (4-6-05)
 - b.** It must have a separate outside public entrance that is not shared with the restaurant; (4-6-05)
 - c.** It must not have any windows that can be opened, or doorways connecting it to the restaurant, either directly or through any indoor public place including lobbies, hallways or passageways that the public uses. The bar may be connected to the restaurant through kitchens, private offices, hallways or storerooms that are not available for public use; and (4-6-05)
 - d.** It must not be necessary for restaurant patrons to pass through the bar or any indoor public place connected to the bar to access restrooms or other facilities or accommodations of the restaurant. (4-6-05)
- 03. Bowling Alley or Center.** A place of business with at least two (2) bowling lanes on its premises and is operated for public entertainment. (4-6-05)
- 04. Department.** The Idaho Department of Health and Welfare. (4-6-05)
- 05. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (1-1-86)
- 06. Educational Facility.** Any room, hall or building used for instruction, or supportive of instruction including: classrooms, libraries, auditoriums, gymnasiums, lounges, study areas, restrooms, halls, registration areas and bookstores of any private or public preschool, kindergarten, elementary school, junior high or intermediate school, high school, vocational school, college or university. (4-6-05)
- 07. Enclosed.** The space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, windows or similar structures, not including doors, that extend from the floor to the ceiling. (4-6-05)
- 08. Grocery Store.** Any establishment that sells food, at retail, for off-site consumption and is required to be licensed under IDAPA 16.02.19, “Food Safety and Sanitation Standards For Food Establishments.” (4-6-05)
- 09. Hospitals.** Any facility required to be licensed as a hospital under Title 39, Chapter 13, Idaho Code. (4-6-05)
- 10. Incidental Service of Food.** Incidental service of food is only serving food that is low-risk and non-potentially hazardous food as defined in IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments.” (4-6-05)
- 11. Proprietor or Person in Charge.** Any person, or agent of such person, who ultimately controls, governs or directs the activities within the public place. The term does not mean the owner of the property unless he ultimately governs, controls or directs the activities within the public place. (1-1-86)
- 12. Public Means of Mass Transportation.** Any air, land or water vehicle used for the transportation of persons for compensation including airplanes, trains, buses, boats and taxis. The term does not include private, noncommercial vehicles. (4-6-05)
- 13. Retail Stores.** Any store selling goods directly to the public. (1-1-86)

14. Tobacco Products. Any substance that contains tobacco including, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco paper or smokeless tobacco. It will be presumed that a lighted cigarette, cigar or pipe contains tobacco. (4-6-05)

011. -- 199. (RESERVED).

200. POSTING OF SIGNS.

Signs must be appropriately sized, conspicuous, legible, unobscured, and placed at a height and location easily seen and read by persons entering or within the posted area. Signs may contain information such as the international smoking and no smoking symbols and references to the Idaho Clean Indoor Air Act, Title 39, Chapter 55, Idaho Code. The letters on the signs must be at least one (1) inch in height. (4-6-05)

201. -- 299. (RESERVED).

300. VIOLATIONS AND PENALTIES.

Any person who violates any provision of these rules is subject to the penalty provided in Section 39-5507, Idaho Code. (4-6-05)

01. Responsibility of Employer. No employer or other person in charge of a public place or publicly-owned building or office will knowingly or intentionally permit the smoking of tobacco products in violation of this chapter. (4-6-05)

02. Employer Fined for Violation. Any employer or other person in charge of a public place or publicly-owned building or office who knowingly violates the provisions of this chapter of rule is guilty of an infraction and is subject to a fine, not to exceed one hundred dollars (\$100). (4-6-05)

03. Employer Who Discriminates Against an Employee. Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Health and Welfare or the Department of Commerce and Labor under IDAPA 16.02.23, or Section 39-5507, Idaho Code, will be subject to a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation. (4-6-05)

04. Employer Responsible to Request Person to Stop Smoking. An employer, or other person in charge of a public place or publicly-owned building or his employee or agent, who observes a person smoking in apparent violation of the Idaho Clean Indoor Air Act, Title 39, Chapter 55, Idaho Code, must ask the person to extinguish all lighted tobacco products. (4-6-05)

05. Smoker's Refusal to Comply. Any person who refuses to either extinguish the lighted tobacco product or leave the premises is guilty of an infraction and is subject to a fine not to exceed fifty dollars (\$50). (4-6-05)

06. Violations Reported to Law Enforcement. Any violation identified in Subsections 300.02, 300.04, and 300.05 of these rules, may be reported to law enforcement. (4-6-05)

301. -- 999. (RESERVED).

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