

## IDAPA 16 – IDAHO DEPARTMENT OF HEALTH AND WELFARE

### Division of Behavioral Health

#### 16.07.25 – Prevention of Minors' Access to Tobacco Or Electronic Smoking Device Products

##### **Who does this rule apply to?**

*All businesses that sell or distribute tobacco products to the public must obtain a permit issued annually by the Department of Health and Welfare.*

##### **What is the purpose of this rule?**

*This rule implements provisions of Section 39-5701 et seq., Idaho Code. The Code defines the following:*

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

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statute passed by the Idaho Legislature:*

Health and Safety -

[Section 39-5704, Idaho Code](#) – PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES

##### **Where can I find information on Administrative Appeals?**

*Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings."*

##### **How do I request public records?**

*Unless exempted, all public records are subject to disclosure by the Department that will comply with Title 74, Chapter 1, Idaho Code, upon requests. Confidential information may be restricted by state or federal law, federal regulation, and IDAPA 16.05.01, "Use and Disclosure of Department Records."*

##### **Who do I contact for more information on this rule?**

Idaho Department of Health and Welfare  
Behavioral Health – Policy and Compliance Program  
P.O. Box 83720, 3rd Floor  
Boise, ID 83720-0036  
450 West State Street  
Boise, ID 83702  
Phone: (208) 334-6997 or 1-800-264-6979  
Fax: (208) 334-5998

Email: [DBHpolicy@dhw.idaho.gov](mailto:DBHpolicy@dhw.idaho.gov)

Webpage: <https://healthandwelfare.idaho.gov/providers/idaho-tobacco-project/tobacco-permits-electronic-smoking-device-information>

IAC Archive 2024

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**16.07.25 – PREVENTION OF MINORS' ACCESS TO TOBACCO  
OR ELECTRONIC SMOKING DEVICE PRODUCTS**

**000. LEGAL AUTHORITY.**

Section 39-5704, Idaho Code, authorizes the Department to promulgate rules regarding permitting of tobacco product or electronic smoking device retailers, inspections, and compliance checks, training program, and employment practices. (7-1-24)

**001. -- 009. (RESERVED)**

**010. DEFINITIONS.**

In addition to the definitions under Section 39-5702, Idaho Code, the following definitions apply: (7-1-24)

**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 or electronic smoking device products. Wholesalers' or manufacturers' representatives in the course of their employment are not included in these rules. (7-1-24)

**02. Delivery Sale.** The distribution of tobacco or electronic smoking device products to a consumer in a state where either: (7-1-24)

**a.** The individual submits the order for a purchase of tobacco or electronic smoking device products by a telephone call or other voice transmission method, data transfer via computer networks, including the internet and other online services or by use of a facsimile machine transmission or use of the mails; or (7-1-24)

**b.** When tobacco or electronic smoking device products are delivered by use of the mails or a delivery service. (7-1-24)

**03. Delivery Service.** Any person who is engaged in the commercial delivery of letters, packages, or other containers. This includes permittees who take an order for tobacco or electronic smoking device products and then deliver the tobacco or electronic smoking device products without using a third-party delivery service. (7-1-24)

**04. Department.** The Idaho Department of Health and Welfare, or its representative. (7-1-24)

**05. Direct Sale.** Any face to face, or in person sale, of a tobacco or electronic smoking device product by a permittee, or their employee, to an individual. (7-1-24)

**06. Location.** The street address and building in which the tobacco or electronic smoking device products are sold, or the uniform resource locator (URL) for retailers who sell tobacco or electronic smoking device products exclusively via the internet. (7-1-24)

**07. Minor.** A person under twenty-one (21) years old. (7-1-24)

**08. Permit Endorsement.** An endorsement identifies a sale or delivery method used by a permittee to sell tobacco or electronic smoking device products. There are three (3) types of endorsements that may be included on a permit. The three (3) endorsement types are: (7-1-24)

**a.** Delivery Sales; (7-1-24)

**b.** Delivery Service; and (7-1-24)

**c.** Direct Sales. (7-1-24)

**09. Photographic Identification.** In all cases, the identification bears 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 twenty-one (21) or older. Types of identification include: (7-1-24)

**a.** State, district, territorial, possession, provincial, national, or other equivalent government driver's license; or (7-1-24)

**b.** State identification card or military identification card; or (7-1-24)

**c.** A valid passport. (7-1-24)

**10. Purchaser.** An individual who seeks to buy or who buys a tobacco product or electronic smoking device. (7-1-24)

**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 with these rules. (7-1-24)

**a.** Random. At any time, without a schedule or frequency. (7-1-24)

**b.** Unannounced. Without previous notification. (7-1-24)

**12. Retail Sales Minor-Exempt Permit.** A permit that is issued to retail locations whose revenues from the sale of alcoholic beverages for on-site consumption are at least fifty-five percent (55%) of total revenues, or whose products and services are primarily obscene, pornographic, profane, or sexually oriented. A permittee issued this type of permit is exempt from minor-assisted inspections where minors are not allowed on the premises and such prohibition is clearly posted at all entrances. (7-1-24)

**13. Tobacco or Electronic Smoking Device Product.** Any substance that contains is made of, or is derived from tobacco or nicotine including devices and device components used to consume these products, as outlined under Section 39-5702(13), Idaho Code. (7-1-24)

**14. 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 physically dispenses the tobacco or electronic smoking device product to the purchaser. (7-1-24)

**15. Violation.** An action contrary to Title 39, Chapter 57, Idaho Code, or IDAPA 16.07.25, “Prevention of Minors’ Access to Tobacco or Electronic Smoking Device Products.” (7-1-24)

**011. -- 019. (RESERVED)**

**020. APPLICATION FOR PERMIT.**

All businesses that sell or distribute tobacco or electronic smoking device products to the public must obtain a permit issued annually by the Department. (7-1-24)

**01. Where to Obtain an Application for Permit.** A hard-copy application can be obtained, at no cost to the applicant, from the Department at PO Box 83720, Boise, Idaho 83720-0036. A permit may also be obtained, at no cost to the applicant, via the internet at <http://www.tobaccopermits.com/Idaho>. (7-1-24)

**02. Permits.** A separate permit must be obtained for each business location. The permit is non-transferable to another person, business, or location. The applicant selects endorsements for each method of sale or delivery it uses. If a place of business sells or distributes tobacco or electronic smoking device by more than one (1) method, it selects an endorsement for each type. (7-1-24)

**a.** Issuance of a Permit. A permit is issued when a new tobacco or electronic smoking device retail outlet has been established, when a currently permitted business is sold to new owners, or when a currently permitted business is moved to a different physical location. Permits are issued to tobacco or electronic smoking device retailers established in a permanent location. Permits may not be issued for a retailer doing business in a temporary location. (7-1-24)

**b.** Closure of a Permit. A permit is closed when the permittee closes the business, no longer sells tobacco or electronic smoking device products, moves to a different physical location, or sells the business. (7-1-24)

**c.** Revocation of a Permit. A permit is revoked by the Department when: (7-1-24)

**i.** It is determined a new permit was fraudulently obtained to avoid penalties accrued on an existing permit; or (7-1-24)

ii. The holder of a permit, suspended under Section 39-5708(5), has failed to provide evidence of a training to the Department that complies with Subsection 021.04 of these rules. (7-1-24)

d. Temporary Permits. Are not allowed. This includes permits for temporary markets, community events, fairs, tasting events, and mobile businesses. (7-1-24)

e. Expiration of a Permit. All permits expire annually at midnight on December 31 of each calendar year. (7-1-24)

**03. Renewal of Permit.** All permits must be renewed annually and are valid only for that calendar year. (7-1-24)

a. The Department will mail notices of renewal for permits no later than ninety (90) days prior to the expiration date on the permit. (7-1-24)

b. Applications for renewal must be submitted annually for each business location through written application or online services, where available. (7-1-24)

c. A business with multiple locations 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 permit numbers, locations, and addresses. (7-1-24)

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, whichever is later. Violation fines under appeal are not considered past due. (7-1-24)

**04. Application for Exemption.** Businesses seeking exemption from vendor assisted sales must submit information to the Department to establish compliance with the following criteria: (7-1-24)

a. Tobacco or electronic smoking device products comprise at least seventy-five percent (75%) of total merchandise as determined by sales reported to the Idaho State Tax Commission; (7-1-24)

b. Minors are not allowed in exempt businesses and there is a sign on all entrances prohibiting minors; and (7-1-24)

c. There is a separate entrance to the outside air or to a common area not under shared ownership by the exempt business. (7-1-24)

**021. PERMITTEE RESPONSIBILITIES.**

The permittee must comply with the following: (7-1-24)

**01. Possession of Permit.** Each business location has a permit. (7-1-24)

**02. Visibility.** The permit is available upon request at each site. (7-1-24)

**03. Display of Sign.** Each business displays, at each business site, a sign that states: "State Law Prohibits the Sale of Tobacco or Electronic Smoking Device Products to Persons Under the Age of twenty-one (21) Years. Proof of Age Required. Anyone Who Sells or Distributes Tobacco or Electronic Smoking Device to a Minor is Subject to Strict Fines and Penalties. Minors are Subject to Fines and Penalties." (7-1-24)

**04. Training Program.** Each permittee is responsible to train employees responsible for the sale or distribution of tobacco or electronic smoking device products under Title 39, Chapter 57, Idaho Code, and these rules. Training must cover the provisions of the law regarding minors' access to tobacco or electronic smoking device products, and, at a minimum, include the following elements: (7-1-24)

a. Understanding that state law prohibits the sale of any tobacco or electronic smoking device products to anyone under twenty-one (21) years old, that photo identification verification of age is required for any persons not personally known to be at least twenty-one (21) years old to the seller, and that anyone who sells to someone under twenty-one (21) years old will be fined one hundred dollars (\$100) per offense. (7-1-24)

b. Understanding of the definitions of “tobacco or electronic smoking device” products as defined under Section 39-5702(13), Idaho Code. (7-1-24)

c. Understanding that random inspections will be conducted to ensure compliance with Section 39-5701 et. seq., Idaho Code. (7-1-24)

d. All sales must be vendor-assisted unless the store is exempt from the vendor-assisted requirement. (7-1-24)

e. Products must be sold in their original sealed packaging from the manufacturer. (7-1-24)

f. Employee is given a copy of, and has reviewed, Section 39-5701 et. seq., Idaho Code, and these rules. (7-1-24)

g. Permittee retains a form signed by that employee on file stating that the employee understands the tobacco product or electronic smoking device laws dealing with minors and the consequences of an unlawful purchase of tobacco products or electronic smoking devices. (7-1-24)

**05. Permit Requirements.** All permittees are required to be familiar with and comply with the requirements of Title 39, Chapter 57, Idaho Code, as that act pertains to the permittee’s sales of tobacco or electronic smoking device products. (7-1-24)

**022. DELIVERY SALE ADDITIONAL REQUIREMENTS.**

In addition to the requirements of Title 39, Chapter 57, Idaho Code, all permittees holding a Delivery Sale Endorsement, who mail or ship tobacco or electronic smoking device products must imprint in clearly legible text the words: “TOBACCO OR ELECTRONIC SMOKING DEVICE PRODUCT, MUST BE 21 YEARS OF AGE TO ACCEPT” on the shipping package. (7-1-24)

**023. -- 050. (RESERVED)**

**051. CIVIL PENALTIES FOR VIOLATION OF PERMIT.**

Civil penalties for violation of a permit are addressed under Section 39-5708, Idaho Code. (7-1-24)

**01. Violations by the Seller.** (7-1-24)

a. The seller will receive a one hundred dollar (\$100) fine for each violation of these rules. (7-1-24)

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. (7-1-24)

**02. Violations by the Permittee.** (7-1-24)

a. The permittee may provide evidence of training to the Department as a mitigating factor of a violation. Such evidence must be submitted to the Department within ten (10) business days from the date of the violation. (7-1-24)

b. When a permit is suspended, the Department will set the beginning date of the suspension. The permittee's training and employment practices will be considered as a mitigating factor in determining the length of the permit suspension. (7-1-24)

**03. All Fine Payments.** Must be received by the Department within ten (10) days of the date of the citation. Fine payments are to be paid online or mailed to the Department address in the citation letter. (7-1-24)

**052. CRIMINAL PENALTIES.**

**01. Selling or Distributing Without a Permit.** Criminal penalties apply to any business or individual(s) who sells or distributes tobacco or electronic smoking device products to the public without a permit. (7-1-24)

**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. (7-1-24)

**053. -- 100. (RESERVED)**

**101. INSPECTIONS.**

**01. Random and Unannounced Inspections.** The total number of random and unannounced inspections under this rule will be determined by: (7-1-24)

**a.** The number of permittees on the last day of each calendar year multiplied by the percentage of violations for the preceding year multiplied by a factor of ten (10). (7-1-24)

**b.** In no instance will the total number of inspections be less than the number of permittees, or exceed twice the number of permittees. (7-1-24)

**c.** The Department and the Idaho State Police will conduct at least one (1) unannounced inspection per year at every known business location identified as a retailer of tobacco or electronic smoking device products to the public. All additional inspections required to meet the total number specified under Section 101 of this rule will be conducted in a random manner. (7-1-24)

**02. Law Enforcement Agency Inspections.** (7-1-24)

**a.** In addition to the inspections under Subsection 101.01 of this rule, 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 or electronic smoking device products are sold or distributed to the public. (7-1-24)

**b.** Law enforcement agencies conducting inspections under Subsection 101.02.a. of this rule will report the results from their inspections to the Department. All citations will become part of the permittee's permanent record. (7-1-24)

**03. Complaint Investigation.** (7-1-24)

**a.** The Department will refer all written complaints concerning the sale of tobacco or electronic smoking device products to minors to the appropriate agency, as determined by the Department, for investigation. (7-1-24)

**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 101.02 of this rule. Citations issued during the investigation of a written complaint will be added to the permittee's permanent record. (7-1-24)

**04. Issuance of Citation or Report.** For inspections conducted under Subsection 101.01 of this rule, a representative of the business will be provided with a report, within two (2) business days, after the inspection. The date the Department provides notification of the citation will be used for determination of timely payment of fines and all other administrative actions including requests for waivers and request for appeals. (7-1-24)

**102. -- 999. (RESERVED)**