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IDAPA 16
TITLE 07
CHAPTER 25

16.07.25 - PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS

000. LEGAL AUTHORITY.
Under Section 39-5704, Idaho Code, the Department of Health and Welfare is authorized to promulgate rules in compliance with Title 39, Chapter 57 for the prevention of minors' access to tobacco products. (5-8-09)

001. TITLE AND SCOPE.

01. Title. The title of this chapter of rule is IDAPA 16.07.25, "Prevention of Minors' Access to Tobacco Products." (5-8-09)

02. Scope. This rule implements provisions of Section 39-5701 et seq., Idaho Code. The Code defines the following: (5-8-09)

a. Possession, distribution or use of tobacco products by a minor; (5-8-09)

b. Permit process for tobacco product retailers; (5-8-09)

c. Sale or distribution of tobacco products to a minor; (5-8-09)

d. Vendor assisted sales; (5-8-09)

e. Opened packages and samples; (5-8-09)

f. Civil and criminal penalties for sales violations; and (5-8-09)

g. Conduct of enforcement actions. (5-8-09)

002. WRITTEN INTERPRETATIONS.
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written 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 the location identified under Subsection 005.03 of these rules and in accordance with Section 006 of these rules. (5-8-09)

003. ADMINISTRATIVE APPEALS.
All administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (5-8-09)

004. INCOPORATION BY REFERENCE.
No documents have been incorporated by reference. (5-8-09)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- 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. (5-8-09)

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. (5-8-09)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (5-8-09)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-

5500. (5-8-09)

05. **Internet Website**. The Department's internet website at http://www.healthandwelfare.idaho.gov. (5-8-09)

06. **Tobacco Permit Internet Website**. The Division of Behavioral Health's tobacco permit internet website is found at www.tobaccopermits.com/idaho. (5-8-09)

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." (5-8-09)

007. -- 009. (RESERVED)

010. DEFINITIONS.
The terms used in this rule are defined as follows: (5-8-09)

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. (5-8-09)

02. **Delivery Sale**. The distribution of tobacco products to a consumer in a state where either: (5-8-09)

a. The individual submits the order for a purchase of tobacco 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 (5-8-09)

b. When tobacco products are delivered by use of the mails or a delivery service. (5-8-09)

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 products and then deliver the tobacco products without using a third party delivery service. (5-8-09)

04. **Department**. The Department of Health and Welfare (DHW) or its duly authorized representative. (5-8-09)

05. **Direct Sale**. Any face to face, or in person sale, of a tobacco product by a permittee or his employee to an individual. (5-8-09)

06. **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. (5-8-09)

07. **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. (5-8-09)

08. **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. (5-8-09)

09. **Location**. The street address and building in which the tobacco products are sold. (5-8-09)

10. **Minor**. A person under eighteen (18) years of age. (5-8-09)

11. **Permit**. A permit issued by the Department for the sale or distribution of tobacco products. (5-8-09)

12. **Permit Endorsement**. An endorsement identifies a sale or delivery method used by a permittee to sell tobacco products. There are three (3) types of endorsements that may be included on a permit. The three (3) endorsement types are: (5-8-09)

a. Delivery Sales; (5-8-09)

b. Delivery Service; and (5-8-09)

c. Direct Sales. (5-8-09)

13. **Permittee**. The holder of a valid permit for the sale or distribution of tobacco products. (5-8-09)

14. **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: (5-8-09)

a. State, district, territorial, possession, provincial, national or other equivalent government driver's license; or (5-8-09)

b. State identification card or military identification card; or (5-8-09)

c. A valid passport. (5-8-09)

15. **Purchaser**. An individual who seeks to buy or who buys a tobacco product. (5-8-09)

16. **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. (5-8-09)

a. Random. At any time, without a schedule or frequency. (5-8-09)

b. Unannounced. Without previous notification. (5-8-09)

17. **Retail Sales Minor Exempt Permit**. A permit that is issued to retail locations whose revenues from the sale of alcoholic beverages for onsite 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. (5-8-09)

18. **Seller**. The person who physically sells or distributes tobacco products. (5-8-09)

19. **Tobacco Product**. Any substance that contains tobacco including: (5-8-09)

a. Cigarettes; (5-8-09)

b. Cigars; (5-8-09)

c. Pipes; (5-8-09)

d. Snuff; (5-8-09)

e. Smoking Tobacco; (5-8-09)

f. Tobacco Paper; and (5-8-09)

g. Smokeless Tobacco. (5-8-09)

20. **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. (5-8-09)

21. **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. (5-8-09)

22. **Violation**. An action contrary to Title 39, Chapter 57, Idaho Code, or IDAPA 16.07.25, "Prevention of Minors' Access to Tobacco Products." (5-8-09)

23. **Without a Permit**. A business that has failed to obtain a permit or a business whose permit is suspended or revoked. (5-8-09)

011. -- 019. (RESERVED)

020. APPLICATION FOR PERMIT.
All businesses which sell or distribute tobacco products to the public must obtain a permit issued annually by the Department of Health and Welfare. (5-8-09)

01. **Where to Obtain an Application for Permit**. A hard-copy application can be obtained, at no cost to the applicant, from the Department of Health and Welfare, Division of Behavioral Health, 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. (5-8-09)

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 must request endorsements for each method of sale or delivery it uses. If a place of business sells or distributes tobacco by more than one (1) method, it must have an endorsement for each type. (5-8-09)

a. Issuance of a Permit. A permit may be issued when a new tobacco 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 may be issued to tobacco retailers established in a permanent location. Permits may not be issued for a retailer doing business in a temporary location. (5-8-09)

b. Closure of a Permit. A permit may be closed when the permittee closes the business, no longer sells tobacco products, moves to a different physical location or sells the business to a new owner. (5-8-09)

c. Revocation of a Permit. A permit may be revoked by the Department of Health and Welfare when: (5-8-09)

i. It is determined a new permit was fraudulently obtained to avoid penalties accrued on an existing permit; or (5-8-09)

ii. The holder of a permit, suspended as established in Section 39-5708(5), has failed to provide an effective training plan to the Department. (5-8-09)

d. Temporary Permit. Temporary permits are not allowed under 39-5704, Idaho Code. (5-8-09)

e. Expiration of a Permit. All permits expire annually at midnight on December 31 of each calendar year. (5-8-09)

03. **Renewal of Permit**. All permits must be renewed annually and are valid for twelve (12) calendar months. (5-8-09)

a. The Department will mail notices of renewal for permits no later than ninety (90) days prior to the expiration date on the permit. (5-8-09)

b. An application for renewal must be submitted annually for each business location through written application or online services, where available. (5-8-09)

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. (5-8-09)

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. (5-8-09)

04. Application for Exemption. Businesses seeking exemption from vendor assisted sales must submit information to the Department to establish compliance with the following criteria: (5-8-09)

a. Tobacco products comprise at least seventy-five percent (75%) of total merchandise as determined by sales reported to the Idaho State Tax Commission; (5-8-09)

b. Minors are not allowed in exempt businesses and there is a sign on all entrances prohibiting minors; and (5-8-09)

c. There must be a separate entrance to the outside air or to a common area not under shared ownership by the exempt business. (5-8-09)

021. PERMITTEE RESPONSIBILITIES.
The permittee is responsible for the following: (5-8-09)

01. Possession of Permit. Each business location must have a permit. (5-8-09)

02. Visibility. The permit must be available upon request at each site. (5-8-09)

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." (5-8-09)

04. Effective Training. Each permittee is responsible to train employees as to the requirements of Title 39, Chapter 57, Idaho Code, and these rules. (5-8-09)

a. Unless the permittee has its own training program as described in Subsection 021.04.b. of this rule, the employer must, at a minimum, read to the seller or prospective seller who may be responsible for sale or distribution of tobacco products, or assure the seller or prospective seller 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 and date the form indicating an understanding of the provisions of the law governing minors' access to tobacco products. (5-8-09)

b. Permittee may have his 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. The seller or prospective seller who may be responsible for sale or distribution of tobacco products must affirm in writing his acknowledgment of such training. (5-8-09)

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 products. (5-8-09)

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 products must: (5-8-09)

01. Shipping Package Requirements. Imprint in clearly legible, black ink letters, that are no less than one (1) inch tall, the words "TOBACCO PRODUCT, MUST BE 18 YEARS OF AGE TO ACCEPT" on the exterior top and bottom of the shipping package. (5-8-09)

02. Delivery Requirements. Require that tobacco products only be delivered in a face-to-face delivery to the address on the original shipping label. The individual receiving the delivery must be verified to be at least eighteen (18) years of age and have the same address as on the original shipping label. (5-8-09)

023. -- 050. (RESERVED)

051. CIVIL PENALTIES FOR VIOLATION OF PERMIT.

01. Violations by the Seller. (5-8-09)

a. The seller will receive a one hundred dollar ($100) fine for each violation. (5-8-09)

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. (5-8-09)

02. Violations by the Permittee. (5-8-09)

a. First violation. The permittee will be notified in writing of the violation and penalties to be levied for further violations. No fine will be imposed. (5-8-09)

b. Second violation in a two (2) year period. (5-8-09)

i. The permittee will be fined two hundred dollars ($200). (5-8-09)

ii. If the permittee provides evidence of effective training, provided to the seller prior to the second violation, within ten (10) business days from the date of violation, the Department will waive the fine. (5-8-09)

iii. The permittee will be notified in writing of the penalties to be levied for further violations. (5-8-09)

c. Third violation in a two (2) year period. (5-8-09)

i. The permittee will be fined two hundred dollars ($200). (5-8-09)

ii. The permit will be suspended for up to seven (7) days beginning upon a date set by the Department following the third violation. Evidence of effective employee training will be a mitigating factor in determining the length of the permit suspension. (5-8-09)

iii. The permittee must remove all tobacco products from public sight for the duration of the revocation of the permit. (5-8-09)

iv. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee will be fined four hundred dollars ($400). (5-8-09)

d. Fourth or subsequent violation in a two (2) year period. (5-8-09)

i. The permittee will be fined four hundred dollars ($400). (5-8-09)

ii. The permit will be revoked until such time as the permittee demonstrates an effective training program to the Department, but in no case will the revocation be less than thirty (30) days. (5-8-09)

iii. The permittee must remove all tobacco products from public sight for the duration of the revocation of the permit. (5-8-09)

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, 3rd Floor, Boise, ID 83720-0036. (5-8-09)

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. (5-8-09)

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. (5-8-09)

053. -- 100. (RESERVED)

101. INSPECTIONS.

01. Random and Unannounced Inspections. The total number of random and unannounced inspections under Section 101 of this rule will be determined by: (5-8-09)

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). A calculation checklist is provided under Appendix B; (5-8-09)

b. In no instance will the total number of inspections be less than the number of permittees, or exceed twice the number of permittees. (5-8-09)

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, of this rule, must be conducted in a random manner. (5-8-09)

02. Who Will Inspect. Inspections will be conducted for all minor exempt permit locations by an adult enforcement officer. For all other permit locations, inspections will be conducted by an adult enforcement officer accompanied by a minor. (5-8-09)

03. Law Enforcement Agency Inspections. (5-8-09)

a. In addition to the inspections set forth in 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 products are sold or distributed to the public. (5-8-09)

b. Law enforcement agencies conducting inspections under Subsection 101.03.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. (5-8-09)

04. Complaint Investigation. (5-8-09)

a. The Department must refer all written complaints concerning the sale of tobacco products to minors to the appropriate agency, as determined by the Department, for investigation. (5-8-09)

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 of this rule. Citations issued during the investigation of a written complaint must be added to the permittee's permanent record. (5-8-09)

05. 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 must be used for determination of timely payment of fines and all other administrative actions including requests for waivers and request for appeals. (5-8-09)

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 whom 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 $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 (13), 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 16.07.25, "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

(5-8-09)

APPENDIX B
RANDOM AND UNANNOUNCED INSPECTION CHECKLIST

Inspection Year _____

1. Overall Violation Rate for Prior Year (20__) (Percentage)_____x__._____

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

3. Multiply the Overall Violation Rate for Prior Year by the Number of Permittees: _____

4. Multiply the results of Step 3 by 10: _____

5. The Result of Step 4 is the Total of Random and Unannounced Inspections:_____

(5-8-09)

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