IDAPA 16 – IDAHO DEPARTMENT OF HEALTH AND WELFARE

Division of Public Health – Bureau of Community & Environmental Health

16.02.23 – Indoor Smoking

Who does this rule apply to?
The public and facility operators of bowling alleys, bars, educational facilities, grocery stores, hospitals, means of transportation, retail stores and any public place where smoking may occur.

What is the purpose of this rule?
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.

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 39-5508, Idaho Code – Clean Indoor Air: Rules and Regulations

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
Division of Public Health
Bureau of Community & Environmental Health
Idaho Indoor Environment Program
450 West State Street, 6th Floor
Boise, ID 83702

P.O. Box 83720
Boise, ID 83720-0036
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Webpage: https://projectfilter.org

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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. These rules are titled IDAPA 16.02.23, "Indoor Smoking." (3-20-20)

02. Purpose. The purpose of these rules is to protect the public health, comfort, and environment, 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. -- 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 their designee. (3-20-20)

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 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. (3-20-20)

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, "Idaho Food Code." (3-20-20)

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, "Idaho Food Code." (3-20-20)

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 they ultimately govern, control, or direct the activities within the public place. (3-20-20)

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 these rules, 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. (3-20-20)

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 their 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. (3-20-20)

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 this rule, may be reported to law enforcement. (3-20-20)

301. -- 999. (RESERVED)

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