

**Prevent
the Sale!**

Training for Idaho
Tobacco Retailers

Department of Health and Welfare Idaho Tobacco Project



Idaho and FDA Tobacco Requirements Resource for Tobacco Retailers



The State of Idaho and the Food and Drug Administration (FDA) have established requirements for the sale of tobacco products and the conduct tobacco compliance inspections. The two organization's requirements and inspections are different. Idaho retailers need to be aware of both sets of requirements in order to comply with all state and FDA rules

The purpose of this guide is to provide information about the Idaho and FDA requirements, fines and penalties for failure to comply. Idaho's law focuses on prevention of sales to minors. The FDA's authority is broader and also includes flavored cigarettes, sales of items with tobacco logos as well as sales to minors.

This is a summary of the requirements. For a complete explanation of FDA rules, please go to their website. The address is <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm232109.htm> For more information about the State of Idaho tobacco seller requirements, please check our retailer education website, www.preventthesale.com. For help with Idaho requirements you may also call 208.334.0642. To apply for an Idaho Tobacco Retailer permit, you may call the help number in the previous sentence or apply



It is illegal to sell tobacco products to individuals under the age of 18. It is the retailer's responsibility to ensure that their staff receive training to comply with Idaho and FDA

The Requirements: The FDA has requirements for selling cigarettes and smokeless tobacco and the State of Idaho has requirements that tobacco sellers must follow in order to legally sell all tobacco products in Idaho. This list includes the requirements of both agencies.

Idaho Requirements

- ☐ All retailers selling tobacco products must have a permit
- ☐ Tobacco sales can only be made by individuals over 18 years of age
- ☐ Use of vending machines to sell tobacco products is illegal
- ☐ Persons under 18 may possess tobacco products for work such as stocking shelves or carrying bags to customers' vehicles or when conducting compliance inspections
- ☐ Stores whose tobacco products comprise at least 75% of total merchandise are exempt from vendor assisted sales, **if** minors are not allowed in the store and there is a sign posted on all entrances
- ☐ Inspections of businesses with onsite alcohol consumption sales totaling at least 55% of total revenues or whose products and services are primarily obscene, pornographic, profane or sexually oriented are conducted by adult inspectors only

Required by Idaho and the FDA

- ☐ No sales to youth under age 18, even if they have a note from parents
- ☐ No self-services displays, except in designated tobacco stores
- ☐ No free samples of tobacco products may be given away
- ☐ Retailers are responsible to educate employees about FDA requirements and Idaho law
- ☐ It is illegal to open tobacco packages to sell smaller amounts such as a single cigarette or chew packet

FDA Requirements

- ☐ Retailer must have a policy that tobacco products can only be sold to persons over 18 years old
- ☐ Everyone who looks younger than 27 must be carded
- ☐ Cigarettes can not be sold in packages of less than 20 cigarettes
- ☐ Staff is notified they may refuse to sell a tobacco product if there is a question that selling would violate the law
- ☐ No items, such as hats, t-shirts or lighters, with cigarette or smokeless tobacco brands or logos may be sold or given away
- ☐ No gifts or other items may be given away for the purchase of cigarettes or smokeless tobacco, or in exchange for tobacco product proofs-of-purchase, coupons, or credits
- ☐ No flavored cigarettes, except menthol may be sold
- ☐ Retailers can not sponsor any athletic, musical, artistic, social or cultural event or entry for a team in an event if they are using a tobacco brand name, logo, symbol, motto, selling message, recognizable color or pattern of colors, etc., identified with a brand of cigarettes or smokeless tobacco
- ☐ Audio cigarette and smokeless tobacco advertisements must not contain music or sound effects
- ☐ Video cigarette and smokeless tobacco advertisements are limited to black text on white background

FDA Recommendations: In addition to requirements, the FDA also has published a number of recommendations. While not required, the FDA strongly encourages retailers to use them when developing tobacco policies.

- ◆ The tobacco retailer's training policy should require that all new employees be trained before starting work.
- ◆ The tobacco retailer's training policy should require a "refresher" training be offered at least annually
- ◆ A tobacco retailer's tobacco policy should include a disciplinary policy for staff who sell

Fines and Penalties: FDA and Idaho Tobacco Project compliance inspections are conducted separately. Idaho will use a random sample method to select the retailers to be inspected. Both an FDA "No Sale Order" or an Idaho permit suspension or revocation require that a tobacco retailer remove all tobacco products from public view and make it illegal for the retailer to sell any tobacco product until the penalty has been lifted.

Idaho

- ◆ Idaho cites and fines both the clerk and the retailer
- ◆ Selling tobacco in Idaho without a permit is a criminal offense
- ◆ Clerks will be fined \$100 every time that they sell a tobacco product to a minor inspector
- ◆ Retailers are not fined for the 1st violation
- ◆ For a second violation in 24 months, the \$200 fine can be waived if the retailer has provided the seller with training that meets Idaho requirements
- ◆ For a third violation in 24 months, a \$200 fine is imposed and the retailer's permit may be suspended for up to 7 days
- ◆ For a fourth violation in 24 months a \$400 fine is imposed and a retailer's permit is revoked for a minimum of 30 days and may not be reinstated until all fines are paid and the retailer has demonstrated an effective plan for training employees

FDA

- ◆ The FDA only cites and fines the retailer
- ◆ The FDA will conduct a follow-up inspection on all retailers cited
- ◆ The first time the FDA finds a violation at a retail outlet, a warning letter explaining the violation may be sent
- ◆ For subsequent citations, fines range from \$250 for the first to \$10,000 for the 6th violation within 48 months
- ◆ The first three fines may be reduced if the retailer has an training policy that meets FDA requirements
- ◆ The FDA can issue a "No Sale Order" for repeated and serious violations. It prohibits a retailer from selling any tobacco product. Past violations are used to set the length of a No-Tobacco-Sale order, the retailer's steps to promote compliance with FDA requirements

FDA/Idaho Training Policy Required Elements: In order to comply with requirements established by the FDA, tobacco retailers need to establish a training policy for their employees. The following information must be included in a training policy to meet FDA requirements and ensure employees understand Idaho laws.

- ☐ Individuals must be 18 or older to legally sell any tobacco product
- ☐ Sellers must check a government-issued photo ID with date of birth for anyone who appears to be under age 27 who attempts to purchase tobacco products (driver's license, state ID card, military ID card, passport or immigration card)
- ☐ It is illegal to sell or give cigarettes, smokeless tobacco or other tobacco products to persons under age 18
- ☐ Individuals under the age of 18 may possess tobacco products at work for stocking shelves, carrying purchases to customers' vehicles or when conducting compliance inspections.
- ☐ Cigarettes and smokeless tobacco and other tobacco products must be sold in a direct, face-to-face exchange unless they are sold in an adult-only tobacco shop where no person under 18 is permitted to enter.
- ☐ Selling tobacco products in vending machines is prohibited
- ☐ Giving away free samples of cigarettes or any other tobacco product is prohibited
- ☐ Opening cigarette or smokeless tobacco packages to sell products individually or in small amounts is prohibited
- ☐ Selling single cigarettes (also called "loosies") or packages containing fewer than 20 cigarettes is prohibited
- ☐ Selling or giving away items, like hats, t-shirts or lighters with tobacco brands or logos is prohibited
- ☐ Giving gifts or items in exchange for the purchase of cigarettes or smokeless tobacco, or in exchange for tobacco product proofs-of-purchase, coupons, or credits is prohibited
- ☐ Selling flavored cigarettes is prohibited
- ☐ Retailer must educate their staff that tobacco products contain nicotine which is an addictive substance
- ☐ FDA regulations only cover cigarettes and smokeless tobacco
- ☐ Idaho laws cover all tobacco products including electronic cigarettes