

**Prevent
the Sale!**
Training for Idaho
Tobacco Retailers

**Idaho Department of Health and Welfare
Idaho Tobacco Project**



Idaho and FDA Tobacco Requirements Resource for Tobacco Retailers



Both the State of Idaho and the Food and Drug Administration (FDA) have requirements for tobacco retailers and the conduct of tobacco compliance inspections, however, requirements and compliance inspections for the two organizations are different. Idaho retailers need to be aware of both sets of requirements to ensure compliance with all state and FDA rules. The purpose of this guide is to provide a summary of both the Idaho and FDA laws and tobacco sales limitations as well as fines and penalties for failure to comply. Idaho's law focuses on prevention of sales to minors. The FDA's authority is much broader and also includes flavored cigarettes and sales of items with tobacco logos in addition to preventing sales to minors.

For a complete explanation of FDA rules please visit their website at <https://www.fda.gov/tobacco-products/compliance-enforcement-training/ctp-compliance-enforcement>. 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 online at www.tobaccopermits.com.

**It is illegal to sell tobacco products to individuals who are under the age of 21.
It is the retailer's responsibility to ensure that their staff understand the
Idaho and FDA requirements and comply with all rules to ensure that
youth are prevented from accessing tobacco.**

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

Idaho Requirements

- All retailers selling tobacco products or electronic smoking devices must have an active ITP permit
- Use of vending machines to sell tobacco products or electronic smoking devices is illegal
- Tobacco or electronic smoking device sales can only be made by individuals 18 years of age and older
- Persons under 18 may possess tobacco products or electronic smoking devices for work such as stocking shelves or carrying bags to customers' vehicles or when conducting compliance inspections
- Stores whose tobacco products or electronic smoking devices 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

Required by Idaho and the FDA

- No sales to youth or young adults, 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
- Tobacco Packages cannot be opened to sell a single cigarette or chew packet

FDA Requirements

- Retailer must have a policy that tobacco products can only be sold to persons 21 years of age and older
- Card everyone who looks younger than 27
- Cigarettes cannot be sold in packages of less than 20 cigarettes
- Staff is notified they may to refuse sales if there is a question that selling would violate the law
- No items, such as hats, t-shirts, or lighters with 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
- Tobacco retailers cannot sponsor any athletic, musical, artistic or 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 tobacco products to individuals under age 21
- ◆ Tobacco retailers should become familiar with FDA citation negotiation and appeal processes

If the license is vertical, it's **NOT legal!**

FDA/Idaho Training Policy 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 over the age of 18 to legally sell any tobacco product or electronic smoking device in Idaho. Compliance with FDA requirements requires individuals be over the age of 21 to legally sell tobacco products.
- Sellers must check a government-issued photo ID with date of birth for anyone under age 27 who attempts to purchase tobacco products (driver's license, state ID card, military ID card, passport or immigration card)
- In Idaho and federally it is illegal to sell any tobacco products, including cigarettes, cigars, e-cigarettes, and e-liquids to any persons under the age of 21.
- 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 21 is permitted to enter.
- Selling tobacco or electronic smoking device products in vending machines is prohibited.
- Giving away free samples of cigarettes or any other tobacco or electronic smoking device product is prohibited.
- Opening cigarette or smokeless tobacco packages to sell products in smaller amounts is prohibited.
- Selling single cigarettes (also called "loosies") or packages containing fewer than 20 cigarettes is prohibited.
- Giving away free samples of smokeless tobacco is prohibited.
- Selling or giving away items, like hats, t-shirts or lighters with tobacco brand logos is prohibited.
- Giving gifts or items in exchange for the purchase of tobacco or electronic smoking device products, or in exchange for tobacco or electronic smoking device product proofs-of-purchase, coupons, or credits is prohibited
- Selling flavored cigarettes is prohibited.
- Retailers must educate their staff that tobacco and electronic smoking device products contain nicotine which is an addictive substance.
- FDA regulations and Idaho law covers all tobacco products which include cigarettes, cigars, smokeless tobacco, and electronic nicotine delivery systems/electronic smoking devices.

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 or electronic smoking device products from public view and make it illegal for the retailer to sell any tobacco or electronic smoking device products until the penalty has been lifted.

FDA

- ◆ The FDA conducts inspections verifying retailer compliance with no sales of tobacco products to persons under the age of 21.
- ◆ The FDA only cites and fines the retailer
- ◆ The FDA will conduct a follow-up inspection on all retailers cited
- ◆ The 1st time the FDA finds a violation at a retail outlet, a letter explaining the violation may be sent

- ◆ For subsequent citations, fines range from \$250 up to \$10,000 for the 6th violation within 48 months
 - ◆ The first three (3) 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 are also considered
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Idaho

- ◆ Idaho conducts inspections verifying retailer compliance with no sales of tobacco products or electronic smoking devices to persons under the age of 21.
- ◆ Idaho cites and fines both the clerk and the retailer
- ◆ Selling tobacco or electronic smoking devices in Idaho without a permit is a criminal offense
- ◆ Clerks will be fined \$100 every time that they sell to a minor inspector
- ◆ Retailers are not fined for the 1st violation
- ◆ 2nd violation fines can be waived if the retailer provided training to the seller that meets Idaho requirements
- ◆ Retailer fines will range from \$200 to \$400 for the 2nd, 3rd, and 4th violations within 24 months
- ◆ For a 3rd violation in 24 months, a retailer’s permit may be suspended for up to 7 days
- ◆ For a 4th violation in 24 months a retailer’s permit is revoked for a minimum of 30 days and will not be reinstated until all fines are paid and the retailer has demonstrated an effective training plan for employees

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