

Dear Senators VANORDEN, Zuiderveld, Wintrow, and
Representatives VANDER WOUDE, Erickson, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Health and Welfare:

IDAPA 16.07.25 - Prevention of Minors' Access to Tobacco or Electronic Smoking Device Products
(ZBR Chapter Rewrite) - Proposed Rule (Docket No. 16-0725-2301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/29/2023. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/27/2023.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Principal Legislative Drafting Attorney - Elizabeth Bowen

DATE: August 4, 2023

SUBJECT: Department of Health and Welfare

IDAPA 16.07.25 - Prevention of Minors' Access to Tobacco or Electronic Smoking Device Products (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 16-0725-2301)

Summary and Stated Reasons for the Rule

This proposed rule revises the chapter of rules relating to the prevention of minors' access to tobacco or electronic smoking device products. The purpose of the rule is to simplify the language pursuant to Executive Order 2020-01.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. There is no anticipated negative fiscal impact on the state general fund.

Statutory Authority

This rulemaking appears to be authorized pursuant to Section 39-5704, Idaho Code.

cc: Department of Health and Welfare
Frank Powell and Trinette Middlebrook

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Norma Clark, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0725-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-5704, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

VIRTUAL Public Hearing via WebEx
Thursday, August 17, 2023 1:00 p.m. to 2:00 p.m. (MT)
Join from the meeting link: https://idhw.webex.com/idhw/j.php?MTID=mdaa511429fd71130a544f088517221da
Join by meeting number: Meeting number (access code): 2763 435 3346 Meeting password: 7pfHxVaNx66 (77349826 from phones and video systems)
Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below. Meeting(s) will conclude after 30 minutes if no participants sign in or wish to comment in the meeting.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01](#): Zero-Based Regulation, the Department is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify this rule language.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees in this chapter of rules.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the State General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 1, 2023, Idaho Administrative Bulletin, [Vol. 23-3, pages 24-25](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no incorporations by reference in this chapter of rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark at 208-334-6611.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2023.

DATED this 6th day of July, 2023.

Trinette Middlebrook and Frank Powell
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5500
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0725-2301
(ZBR Chapter Rewrite)

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

000. LEGAL AUTHORITY.

~~Under~~ Section 39-5704, Idaho Code, ~~authorizes~~ 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 regarding permitting of tobacco product or electronic smoking device retailers, inspections, and compliance checks, training program, and employment practices.~~ ~~(3-17-22)()~~

001. TITLE AND SCOPE.

- 01. Title.** These rules are titled IDAPA 16.07.25, ~~"Prevention of Minors' Access to Tobacco Products."~~ ~~(3-17-22)~~
- 02. Scope.** This rule implements provisions of Section 39-5701 et seq., Idaho Code. The Code defines the following: ~~(3-17-22)~~
- a.** ~~Possession, distribution, or use of tobacco products by a minor;~~ ~~(3-17-22)~~
 - b.** ~~Permit process for tobacco product retailers;~~ ~~(3-17-22)~~
 - c.** ~~Sale or distribution of tobacco products to a minor;~~ ~~(3-17-22)~~
 - d.** ~~Vendor-assisted sales;~~ ~~(3-17-22)~~

- ~~e.~~ Opened packages and samples; (3-17-22)
- ~~f.~~ Civil and criminal penalties for sales violations; and (3-17-22)
- ~~g.~~ Conduct of enforcement actions. (3-17-22)

~~0021.~~ -- 009. (RESERVED)

010. DEFINITIONS.

~~The terms used in this rule are defined as follows:~~ In addition to the definitions under Section 39-5702, Idaho Code, the following definitions apply: (3-17-22)(____)

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 ~~the scope of~~ these rules. (3-17-22)(____)

02. Delivery Sale. The distribution of tobacco or electronic smoking device products to a consumer in a state where either: (3-17-22)(____)

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 (3-17-22)(____)

b. When tobacco or electronic smoking device products are delivered by use of the mails or a delivery service. (3-17-22)(____)

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. (3-17-22)(____)

04. Department. The Idaho Department of Health and Welfare. ~~(DHW)~~ or its duly authorized representative. (3-17-22)(____)

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. (3-17-22)(____)

~~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. (3-17-22)

~~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 that 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. (3-17-22)

~~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. (3-17-22)

096. 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. (3-17-22)(____)

- ~~107.~~ **Minor.** A person under ~~eighteen~~twenty-one (~~18~~21) years ~~of age~~old. (3-17-22)()
- ~~11.~~ **Permit.** A permit issued by the Department for the sale or distribution of tobacco products. (3-17-22)
- ~~1208.~~ **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: (3-17-22)()
- a. Delivery Sales; ()
 - b. Delivery Service; and ()
 - c. Direct Sales. ()
- ~~13.~~ **Permittee.** The holder of a valid permit for the sale or distribution of tobacco products. (3-17-22)
- ~~1409.~~ **Photographic Identification.** In all cases, the identification ~~must~~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 ~~eighteen~~twenty-one (~~18~~21) or older. Types of identification include: (3-17-22)()
- a. State, district, territorial, possession, provincial, national, or other equivalent government driver's license; or ()
 - b. State identification card or military identification card; or ()
 - c. A valid passport. ()
- ~~150.~~ **Purchaser.** An individual who seeks to buy or who buys a tobacco product or electronic smoking device. (3-17-22)()
- ~~161.~~ **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~~with these rules. (3-17-22)()
- a. Random. At any time, without a schedule or frequency. ()
 - b. Unannounced. Without previous notification. ()
- ~~172.~~ **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. ()
- ~~18.~~ **Seller.** The person who physically sells or distributes tobacco products. (3-17-22)
- ~~193.~~ **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. (3-17-22)()
- ~~a.~~ Cigarettes; (3-17-22)
 - ~~b.~~ Cigars; (3-17-22)
 - ~~c.~~ Pipes; (3-17-22)

- ~~d.~~ Snuff; (3-17-22)
- ~~e.~~ Smoking Tobacco; (3-17-22)
- ~~f.~~ Tobacco Paper; and (3-17-22)
- ~~g.~~ Smokeless Tobacco. (3-17-22)
- ~~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. (3-17-22)

21.4. 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 dispenses the tobacco or electronic smoking device product to the purchaser. (3-17-22)()

22.15. 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." (3-17-22)()

~~23.~~ **Without a Permit.** A business that has failed to obtain a permit or a business whose permit is suspended or revoked. (3-17-22)

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 ~~of Health and Welfare~~. (3-17-22)()

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,~~ 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>. (3-17-22)()

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~~ 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 ~~must have~~ selects an endorsement for each type. (3-17-22)()

a. Issuance of a Permit. A permit ~~may be~~ 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 ~~may be~~ 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. (3-17-22)()

b. Closure of a Permit. A permit ~~may be~~ 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 ~~to a new owner~~. (3-17-22)()

c. Revocation of a Permit. A permit ~~may be~~ is revoked by the Department ~~of Health and Welfare~~ when:

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

ii. The holder of a permit, suspended ~~as established in~~ under Section 39-5708(5), has failed to provide ~~an effective~~ evidence of a training plan to the Department that complies with Subsection 021.04 of these rules. (3-17-22)()

d. Temporary Permits. ~~Temporary permits are not allowed under 39-5704, Idaho Code. This includes permits for temporary markets, community events, fairs, tasting events, and mobile businesses.~~ (3-17-22)()

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

03. **Renewal of Permit.** All permits must be renewed annually and are valid only for ~~twelve (12) calendar months~~ that calendar year. (3-17-22)()

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

b. ~~An~~ applications for renewal must be submitted annually for each business location through written application or online services, where available. (3-17-22)()

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. ()

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. ()

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

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; (3-17-22)()

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

c. There ~~must be~~ is a separate entrance to the outside air or to a common area not under shared ownership by the exempt business. (3-17-22)()

021. **PERMITTEE RESPONSIBILITIES.** The permittee ~~is responsible for~~ must comply with the following: (3-17-22)()

01. **Possession of Permit.** Each business location ~~must have~~ has a permit. (3-17-22)()

02. **Visibility.** The permit ~~must be~~ is available upon request at each site. (3-17-22)()

03. **Display of Sign.** Each business ~~may~~ 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 ~~Eighteen~~ 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." (3-17-22)()

04. ~~Effective~~ **Training Program.** Each permittee is responsible to train employees ~~as to the requirements of~~ 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: (3-17-22)()

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 them initial each statement, and sign and date the form indicating an understanding of the provisions of the law governing minors' access to tobacco products.~~
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. (3-17-22)()

~~b. Permittee may have their own training program, but it must contain all 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 their acknowledgment of such training.~~
Understanding of the definitions of "tobacco or electronic smoking device" products as defined under Section 39-5702(13), Idaho Code. (3-17-22)()

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

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

~~e. Products must be sold in their original sealed packaging from the manufacturer.~~ ()

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

~~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.~~ ()

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. (3-17-22)()

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: (3-17-22)

~~01. Shipping Package Requirements.~~ Imprint in clearly legible, black ink letters, that are no less than one (1) inch tall, ~~text~~ the words: "TOBACCO OR ELECTRONIC SMOKING DEVICE PRODUCT, MUST BE 18 21 YEARS OF AGE TO ACCEPT" on the ~~exterior top and bottom of the~~ shipping package. (3-17-22)()

~~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. (3-17-22)

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. ()

01. Violations by the Seller. ()

a. The seller will receive a one hundred dollar (\$100) fine for each violation of these rules. (3-17-22)()

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. ()

02. Violations by the Permittee. ()

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. 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.~~ (3-17-22)()

b. ~~Second violation in a two (2) year period. 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.~~ (3-17-22)()

i. ~~The permittee will be fined two hundred dollars (\$200).~~ (3-17-22)

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.~~ (3-17-22)

iii. ~~The permittee will be notified in writing of the penalties to be levied for further violations.~~ (3-17-22)

e. ~~Third violation in a two (2) year period.~~ (3-17-22)

i. ~~The permittee will be fined two hundred dollars (\$200).~~ (3-17-22)

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.~~ (3-17-22)

iii. ~~The permittee must remove all tobacco products from public sight for the duration of the revocation of the permit.~~ (3-17-22)

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).~~ (3-17-22)

d. ~~Fourth or subsequent violation in a two (2) year period.~~ (3-17-22)

i. ~~The permittee will be fined four hundred dollars (\$400).~~ (3-17-22)

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.~~ (3-17-22)

iii. ~~The permittee must remove all tobacco products from public sight for the duration of the revocation of the permit.~~ (3-17-22)

03. ~~All Fine Payments of Fines. All fine payments must be received by the Department within ten (10) days of the date of the citation. Fine payments should are to be paid online or mailed to, Tobacco Project Office, 450 West State Street, 3rd Floor, Boise, ID 83720-0036 the Department address in the citation letter.~~ (3-17-22)()

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. (3-17-22)()

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. ()

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: (3-17-22)()

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;~~ (3-17-22)()

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

c. The Department and the Idaho State Police must 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 must will be conducted in a random manner. (3-17-22)()

~~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.~~ (3-17-22)

032. **Law Enforcement Agency Inspections.** ()

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 or electronic smoking device products are sold or distributed to the public. (3-17-22)()

b. Law enforcement agencies conducting inspections under Subsection 101.032.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. (3-17-22)()

043. **Complaint Investigation.** ()

a. The Department must 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. (3-17-22)()

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 101.032 of this rule. Citations issued during the investigation of a written complaint must will be added to the permittee's permanent record. (3-17-22)()

054. **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 will be used for determination of timely payment of fines and all other administrative actions including requests for waivers and request for appeals. (3-17-22)()

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

(3-17-22)

**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:~~ _____

(3-17-22)