

On the Application of Provisions of the Federal Law on the Protection of Public Health from the Impact of Second-Hand Tobacco Smoke in Public Dining Establishments

June 18, 2014 No. 01/6906-14-25

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To Heads of Departments

of the Federal Oversight Service for Consumers' Rights and Human Welfare (Rosпотребнадзор) for Constituent Entities of the

Russian Federation, for Rail Transport

In order to take administrative measures for violations of the prohibition on tobacco smoking in public dining establishments, specified in paragraph 6 of Part 1 of Article 12 of Federal Law No. 15-FZ of February 23, 2013 "On the Protection of Public Health from the Impact of Second-Hand Tobacco Smoke and the Consequences of Tobacco Consumption" (hereinafter - Federal Law No. 15-FZ) and under paragraph 6.2 of the Federal Oversight Service for Consumers' Rights and Human Welfare, approved by Government Resolution No. 322 of the Russian Federation dated June 30, 2014, the Federal Oversight Service for Consumers' Rights and Human Welfare explains as follows.

Paragraph 6 of Part 1 of Article 12 of Federal Law No. 15-FZ is a ban on smoking in premises designed to provide public dining services.

When applying administrative measures for violations of the prohibition of tobacco smoking in public dining establishments, aimed at preventing violations of this prohibition, it is necessary to proceed from the definition of the term "premises designed to provide public dining services."

According to Part 2 of Article 2 of Federal Law No. 384-FZ dated December 30, 2009 "Technical Regulations on the Safety of Buildings and Structures," premises is part of the volume of a building or structure that has a specific purpose and is bounded by the building structures.

Unofficial Translation

Thus, if public dining services are provided outside the building and at the same time this place (site) designed for provision of such services has an aboveground component constituted of any artificially erected plane (floor, flooring, etc.) and (or) canopy, or any kind of fencing, including decorative, this place for the provision of public dining services is considered to be located on the premises designed to provide public dining services (e.g., porches, pavilions, tents, balconies, etc.), and the bans on smoking established by the laws applies to it.

Concerning the term "mobile commercial site" it should be noted that under Article 2 of Federal Law No. 381-FZ dated December 28, 2009 "On the Bases of State Regulation of Trade in the Russian Federation" this site is a commercial site, which is a temporary building or temporary structure, not firmly affixed to the land regardless of the presence or absence of a connection (grid connection) to engineering and technical support, including a mobile facility. In turn, a commercial site is a building or part of a building, structure or part of a structure, facility or part of a facility, specially equipped, designed and used for display, demonstration of goods, customer service and cash settlements with customers when selling goods.

Given that in the provision of public dining services the goods sold are prepared meals, drinks, etc., mobile public dining establishments will apply to mobile commercial sites, subject to the availability within them of equipment designed and used for display, demonstration of goods, customer service and of cash payments from customers when selling goods (bar counters, showcases, racks, etc.). In this case, the ban established by Paragraph 6 of Part 1 of Article 12 of Federal Law No. 15-FZ will extend to mobile public dining facilities.

In connection with the above, when deciding whether to initiate proceedings in the case of an administrative offense under Part 1 of Article 6.24 of the Administrative Code, this should be based on a literal interpretation of the provisions of Federal Law № 15-FZ and the circumstances established during inspection of the premises and other places where public dining services are provided, from the viewpoint of evaluating them as premises, with consideration of the aforementioned explanations.

Case materials for cases concerning administrative offenses, provided for by Articles 6.24, 6.25, 14.3.1 (Part 1) and 14.53 of the Administrative Code, should be referred to the Legal Department of Rospotrebnadzor immediately after receipt of the decision of the court.

Director A.Yu.Popova