

1.3.C.7 Tobacco Products and Electronic Cigarettes-Use and Possession

I Policy Index:



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II Policy:

The unauthorized use of tobacco products and e-cigarettes is prohibited on all real property, or portions thereof, owned or leased by the State of South Dakota. Unauthorized possession of tobacco products and possession of electronic cigarettes by offenders on real property owned by the Department of Corrections (DOC) or leased by the DOC where the DOC is the sole occupant, is prohibited.

III Definitions:

Electronic Cigarette:

Any device that turns vaping material into vapor. Vapor is produced from a material such as an e-liquid, concentrate or dry herb. Electric devices typically consist of a mouthpiece, cartridges, atomizer, heating element and a unit containing a rechargeable battery and various electronic circuits which turn a substance (liquid or solid) into a gaseous form.

Offender:

For the purposes of this policy, an offender is an inmate (in the custody of the Department of Corrections institutional system), a parolee (under parole or suspended supervision by South Dakota Parole Services), or a juvenile on DOC supervised aftercare.

Staff Member:

For the purposes of this policy, a staff member is any person employed by the DOC, full or part time, including an individual under contract assigned to the DOC, an employee of another State agency assigned to the DOC, authorized volunteers and student interns.

Tobacco Product:

The term "tobacco product" means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. Commonly, this includes but is not limited to, cigarettes, cigars, pipe tobacco and smokeless tobacco (See SDCL § 34-46-1 & 10-50B-4).

IV Procedures:

1. Tobacco and Electronic Cigarette Prohibition:

- A. Use of e-cigarettes and tobacco products is prohibited on all real property, or portions thereof, owned by Executive Branch of state government and under the direction and control of the governor, including all real property leased by the state where the state is the sole occupant. This includes all state vehicles, parking lots and walkways leading to state buildings.
- B. The DOC Secretary or his/her designee may grant certain exceptions for use of tobacco products for special circumstances, events or ceremonies.
- C. Pursuant to DOC policy, the use or possession of unauthorized tobacco products and all electronic cigarettes by offenders is prohibited on all DOC property.

2. Offender Use or Possession:

- A. Offenders shall not use or possess tobacco products on DOC property except for tobacco products used for approved religious or cultural ceremonies or activities, or as otherwise approved by the Secretary of Corrections or designee.
 1. The restrictions of offender use or possession of tobacco products or electronic cigarettes applies to inmates with approved access to the community, such as while on job search, work release, community service or furlough (See DOC policies 1.5.A.5 [Work Release](#) and 1.5.A.6 [Community Service Program](#)).
 2. Offenders housed in a contract facility or another jurisdiction's facility (not owned or leased by the DOC) are under the supervision of that facility are subject to the rules and policies of the supervising authority.
- B. Tobacco products and electronic cigarettes are considered contraband when possessed by any offender in DOC custody, except for those tobacco products used for approved religious/cultural ceremonies. Tobacco approved for use in religious/cultural activities found in possession of an offender that exceeds the amount allowed by policy, is considered contraband.
 1. Any inmate that violates provisions set forth by this policy is subject to disciplinary action (See DOC policy 1.3.C.2 [Inmate Discipline System](#)).
- C. Juvenile offenders on aftercare will adhere to their aftercare contract. Additionally, state law prohibits the use or possession of tobacco products by youth under the age of eighteen (18). Offenders that violate state law may be subject to court fines and/or other penalties or responses, in accordance with SDCL §§ [34-46-2](#) & [26-10-20](#).

3. Visitor and Staff Use or Possession:

- A. It is not a violation of DOC policy or the Executive Order for staff members or visitors to possess tobacco products or electronic cigarettes on DOC property, provided such items are properly secured; however, staff members and visitors are required to leave state property when using tobacco products.
 1. Violators may be directed by DOC staff to leave DOC property to use such products.

- B. Staff are not entitled to a break during the workday to use tobacco products or electronic cigarettes; however, supervisors are authorized to grant staff breaks, provided this does not interfere with the safety, security or disciplined operation of the facility (See [BHR Employee Handbook](#)).
- C. Violations of this policy by staff may result in disciplinary action (See [BHR Employee Handbook](#)).

4. Native American Ceremonies- Pipe Mixture:

- A. Pipe mixture may only consist of red willow bark, other approved botanicals, and tobacco.
- B. The amount of pipe mixture distributed for Native American Church services and pipe ceremonies not part of a Pow Wow will be one (1) cup of pipe mixture, per ceremony. During pipe ceremonies that are part of a Pow Wow, two (2) cups of pipe mixture will be distributed. The pipe mixture shall not contain more than one percent (1%) tobacco (0.01 ounces of tobacco/0.06 teaspoon).
- C. Inmate Native American groups are responsible requesting funds from an approved account or source and making arrangements with the Cultural Coordinator or designated staff to purchase the approved ingredients.
- D. Native American inmates may only access pipe mixture containing tobacco in the following ways:
 - 1. Flag or tie mixtures containing tobacco may be brought into the institution in a sealed, clear plastic bag, marked "Pipe Mixture" by pink-tag volunteers. The bag and contents are subject to search. The pipe mixture must be mixed in accordance with the provisions of this policy (containing only approved botanicals and not more than one percent tobacco); or
 - 2. Native American inmates may purchase Bugler brand tobacco with funds contained within an inmate group account from an approved vendor (See DOC policy 1.1.A.10 [Inmate Group Accounts](#)). The product must be shipped directly from a vendor to the institution or purchased locally by staff or other approved individual and brought to the facility. Designated DOC staff or volunteers will prepare the mixture. An approved volunteer or outside spiritual leader may make advance arrangements to observe staff mixing the pipe mixture. The mixture will be prepared during normal working hours during the regular workweek.
- E. The pipe mixture will be stored in a designated and secure location. If the mixture is not brought into the facility by a pink-tag volunteer, an approved fire keeper may pick up the mixture from authorized staff. If no approved fire keeper is in place at the time of the ceremony, or if an approved fire keeper will not be participating in the ceremony, a group pipe carrier may pick up the mixture.
- F. If pipe mixture containing tobacco is not available at the time of the ceremony, inmates will be allowed to smoke red willow bark or other approved botanicals during the ceremony. Uncut/not mixed tobacco may not be used.
 - 1. No pipe mixture containing tobacco may be stored inside the secure perimeter of a DOC institution. Any pipe mixture containing tobacco that is not used during the pipe

ceremony must be returned to the designated and secure storage area outside the secure perimeter by the inmate who picked it up, a pink-tag volunteer or staff member.

5. Native American Ceremonies- Procedure for Distribution of Pipe Mixture:

- A. No inmate will be allowed to prepare his/her own mixture containing tobacco, or the mixture for another inmate.
- B. At no time will an inmate be allowed to leave the site of the ceremony with pipe mixture containing tobacco. Inmates are not allowed to leave the ceremony site with their pipe when the pipe contains unused pipe mixture containing tobacco. Inmates who remove pipe mixture or tobacco from the ceremony site without authorization are subject to disciplinary action.
- C. Due to ventilation concerns, cultural religious activities that involve burning, smudging or smoking will only be permitted inside designated buildings or rooms, as approved by the Cultural Coordinator or designated staff.

6. Native American Ceremonies- Tobacco Ties and Tobacco Flags Mixture:

- A. Tobacco ties and flag mixtures may only consist of red willow bark, tobacco and other approved botanicals.
- B. The amount of tie or flag mixture distributed for each tie or flag-making ceremony will be 2 cups. The mixture shall not contain more than one percent (1%) tobacco (0.01 ounces of tobacco/0.06 teaspoon). The botanicals and tobacco in the tie or flag mixture must be ground.
- C. Inmate Native American groups are responsible requesting funds from an approved account and making arrangements with the Cultural Coordinator or designated staff to purchase the botanicals and tobacco.
- D. Native American inmates may only access tie or flag mixtures containing tobacco in the following ways:
 - 1. Pipe mixtures containing tobacco may be brought into the institution in a sealed, clear plastic bag, marked "Flag or ties mixture" by pink-tag volunteers. The bag and contents are subject to search. The pipe mixture must be mixed in accordance with the provisions of this policy (containing only approved botanicals and not more than one percent tobacco); or
 - 2. Native American inmates may purchase Bugler brand tobacco with funds contained within the respective inmate group account from a vender (See DOC policy 1.1.A.10 [Inmate Group Accounts](#)). The product must be shipped directly from a vender to the institution or purchased locally by staff or other approved individual and brought to the facility. Designated DOC staff will prepare the pipe mixture. An approved volunteer or outside spiritual leader may make advance arrangements to observe staff mixing the mixture. The mixture will be prepared during normal working hours during the regular workweek.
- E. The mixture will be securely stored in an approved location. If the mixture is not brought into the facility by a pink-tag volunteer, an approved fire keeper may pick up the mixture from authorized staff. If no approved fire keeper is in place at the time of the ceremony or if an

approved fire keeper will not be participating in the ceremony, a group pipe carrier may pick up the mixture.

1. No tie or flag mixture containing tobacco may be stored inside the secure perimeter of an institution. Any tie or flag mixture containing tobacco not used during the activity must be returned the designated storage area outside the secure perimeter by the inmate who picked it up, a pink-tag volunteer or staff member.
 2. Designated DOC staff will prepare tie or flag mixtures if no mixture is available prior to the ceremony. All pre-mixed mixtures brought into the institution must be mixed by a pre-approved individual.
- F. A day and time will be scheduled at each institution for inmates to make tobacco ties. The ties must be made during the designated time.
- G. Inmates are not allowed to make ties or flags in their cells or keep tie or flag mixture in their cells. Inmates may be permitted to have cloth for ties or flags in their cells so they can prepare the cloth for the ties or flags.

7. Native American Ceremonies- Procedure for Distribution of Tie/Flag Mixture:

- A. The Cultural Activities Coordinator or designed staff will arrange for and supervise the distribution of the tie or flag mixture.
1. At no time will any inmate be allowed to leave the site of the activity with the tie or flag mixture. Inmates are not allowed to leave the site of the activity with any ties or flags that contain the mixture. Inmates who remove tie or flag mixture from the site are subject to disciplinary action.
- B. At the conclusion of the ceremony at which the ties and flags are used, the ties or flags must be burned. The only place ties and flags are allowed to be burned is in the sweat lodge fire.

8. Violation of State law:

- A. Staff, visitors or others who violate SDCL § [24-2-22](#) are subject to termination from employment, denied access to the facility, loss of visit privileges, and criminal prosecution:

“Any employee or other person who delivers or procures to be delivered, or possesses with the intention to deliver, to any inmate in the state penitentiary, or deposits or conceals in or around any facility or place used to house inmates, or in any mode of transport entering upon the grounds of any facility or place and its ancillary facilities used to house inmates, any article which is unlawful for an inmate to possess pursuant to state law or the rules of the Department of Corrections with the intent that any inmate obtain or receive such article, is guilty of a Class 6 felony.”

V Related Directives:

SDCL §§ [24-2-22](#), [34-46-1](#), [34-46-2](#), [26-10-20](#) and [10-50B-4](#).

DOC policy 1.3.C.2 – [Inmate Discipline System](#)

DOC policy 1.5.A.5 – [Work Release](#)

DOC policy 1.5.A.6 – [Community Service Program](#)

BOP Employee Handbook

Executive Order 92-10

Executive Order 2006-04
Subject to Inmate Settlement

VI Revision Log:

October 2002: **Added** Inmates and Offenders to Definitions. **Revised** A.1. under section on Inmate Use or Possession of Tobacco. **Revised** section on Staff Use of Tobacco to clarify tobacco products cannot come in to the secured perimeter. **Added** Related Directives.

October 2003: **Changed** CYCC to STAR Academy for Youth. **Revised** the policy statement. **Added** a reference to DOC policy 1.3.C.2.

June 2004: **Deleted** the definition for "inmate". **Revised** the definition of offender. **Changed** "inmate" to "offender" throughout the policy. **Added** the restriction that staff cannot bring tobacco products on to the grounds of the STAR Academy except as allowed in the staff housing lease. **Added** references to DOC policies 1.3.C.3, 1.5.A.5 and 1.5.A.6, and the BOP *Employee Handbook*.

June 2006: **Major revisions** done to comply with Executive Order 2006-04. **Changed** the applicability to include all units. **Revised** the definition of tobacco product. **Deleted** the definition of security perimeter. **Added** reference to SDCL § 22-26-2 and 34-46-1.

June 2008: **Revised** formatting of policy in accordance with DOC policy 1.1.A.2 Policy and Operational Memorandum Management. **Replaced** "Department of Corrections" with "DOC as appropriate throughout policy. **Added** "/her" when referencing Warden or his designee in subsection (B4 of Staff Use or Possession of Tobacco section). **Deleted** former subsection (3 of Staff Use or Possession of Tobacco section) referencing that staff will not keep tobacco products in a state vehicle unless on official DOC business and reformatted following bullets. **Added** DOC policy in front of policies referenced within the Related Directives section.

June 2009: **Deleted** SDCL 22-26-2 throughout policy. **Added** reference to CTP in ss (B4 of Offender Use or Possession of Tobacco). **Deleted** reference of the State Development Center throughout policy. **Added** hyperlinks throughout policy. **Revised** wording and sentence structure throughout policy.

June 2010: **Revised** formatting of Section 1. **Replaced** reference to tobacco products used for approved religious/cultural activities with Executive Order, 2006-04 in ss (A) and **added** new ss (A3) both within ss (Offender Use or Possession of Tobacco).

March 2011: **Replaced** definition of "Tobacco Product". **Added** Electronic Cigarette" to "Definitions" section. **Added** C. to SS 1. (Renumbered this section) **Added** hyperlinks for BOP Handbook, SDCL 10-50B-4, 34-46-2, 34-46-5. **Added** term "electronic cigarette" throughout the policy.

July 2011: **Reviewed with no changes.**

July 2012: **Deleted** "except for those tobacco products currently used for/during approved religious/cultural activities" in Section 2. B. **Deleted** 1. and 2. within Section 2 B. **Added** "Personal vehicles containing tobacco products or electronic cigarettes should be locked" in Section 3 A. **Added** a. to Section 3 B. 1. **Deleted** 3. from Section 3. B. **Deleted** "cannot use or possess any tobacco products or electronic cigarettes on the grounds of any DOC facility or on the grounds of the Human Services Center, except those tobacco products used for/during approved religious/cultural activities." and **Replaced** with "may not use tobacco products or electronic cigarettes on the grounds of any DOC facility or on the grounds of the Human Services Center. Visitors may keep tobacco products or electronic cigarettes in their personal vehicle located on the grounds (parking lot) of a DOC owned/leased facility; however, they are required to leave the DOC/state property when using such products. **Deleted** B. "Tobacco products and electronic cigarettes are considered "unauthorized articles for the purposes of interpreting SDCL 24-2-22" and **Replaced** with new Section 5. "Violation of State Law"

July 2013: **Changed** title of policy from "Use and Possession of Tobacco Products to "Tobacco products and Electronic Cigarettes-Use and Possession" **Added** "unauthorized" to policy statement. **Deleted** E. "Violations of this policy by staff members or offenders may result in disciplinary action" in Section 1. **Deleted** "The entrances and exits of DOC owned, leased or occupied property will be

posted with signs stating that the property is tobacco free” in Section 1 D. **Deleted** “any DOC facility or on the grounds of the Human Services Center pursuant to Executive Order 2006-04” and **Replaced** with “of any building owned or leased by the state except for tobacco products used for or during approved religious/cultural ceremonies or activities” in Section 2 A. **Deleted** 3. “Offenders cannot use or possess any tobacco products or electronic cigarettes on the grounds of any building owned or leased by the State” in Section 2 A. **Added** “except for those tobacco products used for or during approved religious/cultural ceremonies or activities” in Section 2 B. **Added** “Visitor and” to title of Section 3 and moved contents of Section 4 “Visitor Use or Possession of Tobacco or Electronic Cigarettes” to Section 3. **Deleted** “2. If the visitor refuses to leave the grounds or does not discontinue use of the tobacco product, local law enforcement will be summoned to remove the visitor” in Section 3 B. **Added** Sections 4-6 and **Renumbered** Section 4 to 6.

April 2014: **Added** “or when the amount or mixture exceeds the amount of tobacco allowed by policy in Section 2 D. **Added** “(except during approved cultural/religious activities)” in Section 3 B. 1. **Deleted** existing Section 4-5 and **Replaced** with Sections 4-7. **Deleted** “providing the pipe mixture” and **Replaced** with “funding the purchase of botanicals making up the mixture in accordance with the procedures set forth in DOC policy” in Section 4 C. and Section 6 C.

October 2015: **Changes** to the policy to conform with the amended order.

June 2016: **Added** “or as otherwise approved by the Secretary of Corrections or designee” in Section 2 A. **Deleted** A. “Staff members may not use tobacco products or electronic cigarettes on the grounds of the STAR Academy, except where permitted in staff housing as outlined in the lease agreement” in Section 3. **Deleted** “will” and **Replaced** with “at the discretion of the Warden or designee, may” and **Added** “The Warden or designee will consider whether the person’s actions pose a risk to the health, safety or general welfare of staff, offender and/or the public” in Section 3 A. 1.

Deleted references to STAR and juvenile discipline system.

June 2017: **Reviewed** with no changes.

June 2018: **Deleted** “from Eastwold Smoke Shop” and **Replaced** with “The product must be shipped directly from a vender to the institution or purchased locally by staff or other approved individual and brought to the facility” in Section 4 C and Section 5.

June 2019: **Reviewed** with no changes.

October 2019: **Revised** policy statement. **Revised** definition of “Electronic Cigarette”. **Revisions** to Section 1 of the policy, consistent with BHR Employee Handbook.

July 2020: **Reviewed** with no changes.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

07/13/2020

Date