

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

### I Policy Index:



**Date Signed:** 10/29/2015  
**Distribution:** Public  
**Replaces Policy:** 1C.13  
**Supersedes Policy Dated:** 05/27/2014  
**Affected Units:** All Units  
**Effective Date:** 10/30/2015  
**Scheduled Revision Date:** June 2016  
**Revision Number:** 13  
**Office of Primary Responsibility:** DOC Administration

### II Policy:

The unauthorized use of tobacco products is prohibited on all real property or portions thereof, owned or leased by the State of South Dakota. Unauthorized possession of tobacco products is also prohibited on specified real property owned by the Department of Corrections (DOC).

### III Definitions:

#### **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).

#### **Electronic Cigarette:**

Any device that allows users to inhale nicotine vapor, or is capable of delivering nicotine in a vapor form. Devices typically consist of a mouthpiece, heating element, and a unit containing a rechargeable battery and various electronic circuits.

#### **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), a juvenile housed at the STAR Academy 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.

## IV Procedures:

### 1. Tobacco and Electronic Cigarette Prohibition:

- A. Pursuant to Executive Order 1992-10, smoking is prohibited in all buildings or offices owned, leased or occupied by the DOC or in vehicles owned by the State.
- B. Pursuant to Executive Order 2006-04, the use of tobacco products is prohibited upon all real property or portions thereof owned by the State of South Dakota under the direction and control of the Governor and all real property owned, leased or occupied by the state where the state is the sole occupant.
- C. Pursuant to DOC policy, the use of electronic cigarettes by DOC staff members or offenders is prohibited in all buildings and offices, owned, leased or occupied by the DOC, on all real property owned, leased or occupied by the DOC and in all vehicles owned by the State of South Dakota.

### 2. Offender Use or Possession of Tobacco Products or Electronic Cigarettes:

- A. Offenders cannot use or possess tobacco products on the grounds or in any building owned or leased by the state except for tobacco used for or during approved religious/cultural ceremonies or activities.
  1. The restrictions of offender use or possession of tobacco products or electronic cigarettes apply to those adult offenders on work release or community service (See DOC policies 1.5.A.5 [Work Release](#) and 1.5.A.6 [Community Service Program](#)).
  2. Adult offenders who are housed in a contractual facility or in another jurisdiction's facility and under the supervision of that facility are subject to the rules and policies of that facility regarding the use or possession of tobacco products and/or electronic cigarettes.
- B. Tobacco products and electronic cigarettes are considered contraband when possessed by any offender in DOC custody, except for those tobacco products used for or during approved religious/cultural ceremonies. Tobacco used for religious purposes found in possession of an offender that exceeds the amount allowed by policy is considered contraband.
  1. Any offender in DOC custody who violates this policy is subject to disciplinary action (See DOC policies 1.3.C.2 [Inmate Discipline System](#) and 1.3.C.3 [Juvenile Discipline System](#)).
  2. Offenders on supervised release, Community Transition Program (CTP), or aftercare will comply with the restrictions on use or possession of tobacco products and/or electronic cigarettes on state/DOC property.
    - a. Juvenile offenders on aftercare will adhere to their aftercare contract. Additionally, state law prohibits the use or possession of tobacco products for youth under the age of eighteen (18). Offenders who violate state law may be subject to court fines and/or other penalties in accordance with SDCL §§ [34-46-2](#) & [26-10-20](#).

### 3. Visitor and Staff Use or Possession of Tobacco Products or Electronic Cigarettes:

- 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.

- B. It is not considered a violation of this policy or Executive Order for staff members or visitors to keep tobacco products or electronic cigarettes secured in personal vehicles located on the grounds (parking lot) of a DOC owned/leased facility, however, staff members and visitors are required to leave the DOC grounds when using such products.
  - 1. Visitors who use tobacco products (except during approved cultural/religious activities) on the grounds of a DOC owned/leased facility, will be asked to leave the grounds by staff.
- C. Staff members are not entitled to a break during the workday to use tobacco products or electronic cigarettes; however, supervisors are authorized to grant staff members' breaks during the workday if it does not interfere with the safety, security or disciplined operation of the facility (See [BHR Employee Handbook](#)).
- D. Violations of this policy by staff members 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 for funding the purchase of botanicals and tobacco from Eastwold Smoke Shop.
- D. Native American inmates may only access pipe mixture containing tobacco in the following ways:
  - 1. The pipe mixture containing tobacco may be brought into the institution by a pink-tag volunteer in a sealed, clear plastic bag, marked as "Pipe Mixture" for identification. The bag and its 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 through the group account (See DOC policy 1.1.A.10 [Inmate Group Accounts](#)) directly from Eastwold Smoke Shop. The product must be shipped directly from the vender to a DOC 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 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 firekeeper may pick up the mixture from authorized staff. If no approved firekeeper is in place at the time of the ceremony, or if an approved firekeeper 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, then only red willow bark or other approved botanicals will be allowed to be smoked during the ceremony.

1. No pipe mixture containing tobacco may be stored inside the secure perimeter of an adult institution. Any pipe mixture containing tobacco that is not used during the pipe ceremony must be returned to the designated 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 or for another inmate.
- B. At no time will any inmate be allowed to leave the site of the ceremony with pipe mixture. Inmates are not allowed to leave the ceremony site with their pipe when the pipe contains unused pipe mixture. Inmates who remove pipe mixture or tobacco from the ceremony site will be subject to disciplinary action.
- C. Due to ventilation concerns, smoking will be allowed inside buildings only in rooms at each facility that are designated by the Cultural Activities Coordinator or other authorized staff.

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

- A. Tie and flag mixture may only consist of red willow bark, other approved botanicals, and tobacco.
- B. The amount of tie/flag mixture distributed for each tie/flag-making ceremony will be 2 cups. The tie/flag mixture shall not contain more than one percent (1%) tobacco (0.01 ounces of tobacco/0.06 teaspoon). The botanicals in the tie/flag mixture, including the tobacco, must be ground.
- C. Inmate Native American groups/inmates are responsible for funding the purchase of botanicals and tobacco from Eastwold Smoke Shop, in accordance with the procedures set forth in DOC policy 1.1.A.10 [Inmate Group Accounts](#).
- D. Native American inmates may only access tie/flag mixture containing tobacco in the following ways:
  1. The mixture containing tobacco may be brought into the institution by a pink-tag volunteer in a sealed, clear plastic bag, marked as "Tie/Flag Mixture" for identification. The bag and its contents are subject to search. The mixture must be mixed in accordance with the provisions of this policy (containing only approved botanicals, not more than one percent tobacco, and ground), or
  2. Native American inmates may purchase Bugler brand tobacco through the group account (See DOC policy 1.1.A.10 [Inmate Group Accounts](#)) directly from Eastwold Smoke Shop. The product must be shipped directly from the vender to a DOC facility. Designated DOC staff will prepare the 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 firekeeper may pick up the mixture from authorized staff. If no approved firekeeper is in place at the time of the ceremony or if an approved firekeeper will not be participating in the ceremony, a group pipe carrier may pick up the mixture.

1. No tie/flag mixture containing tobacco may be stored inside the secure perimeter of an adult institution. Any tie/flag mixture containing tobacco that is 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 all mixtures not brought into the institution pre-mixed by an approved volunteer.
- F. A time will be established at each institution to make tobacco ties. The ties must be made during the designated time allotted for tobacco ties.
- G. Inmates are not allowed to make tobacco ties or tobacco flags in their cells or to keep tie mixture in their cells. Inmates may be allowed to have cloth for ties/flags in their cells so they can prepare the cloth for the ties/flags.

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

- A. The Corrections Programs and Contracts Manager, Cultural Activities Coordinator or designed staff will arrange for and supervise the distribution of the tie/flag mixture.
1. At no time will any inmate be allowed to leave the site of the activity with the tie/flag mixture. Inmates are not allowed to leave the site of the activity with any ties or flags that contain tie/flag mixture. Inmates who remove tie/flag mixture or tobacco from the ceremony site will be subject to disciplinary action.
- B. At the conclusion of the ceremony at which the ties and flags are used, the ties and 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, loss of visit privileges and/or 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:**

Executive Order 92-10  
Executive Order 2006-04  
SDCL §§ [24-2-22](#), [34-46-1](#), [34-46-2](#), [26-10-20](#), [10-50B-4](#),  
DOC policy 1.3.C.2 – [Inmate Discipline System](#)  
DOC policy 1.3.C.3 – [Juvenile Discipline System](#)  
DOC policy 1.5.A.5 – [Work Release](#)  
DOC policy 1.5.A.6 – [Community Service Program](#)  
[BOP Employee Handbook](#)

## 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.

*Denny Kaemingk (original signature on file)*

10/29/2015

Denny Kaemingk, Secretary of Corrections

Date