

ARTICLE 64:44

~~CIGARETTES~~NICOTINE PRODUCTS

Chapter

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CHAPTER 64:44:01

~~ADMINISTRATION OF PROGRAM~~CIGARETTE ADMINISTRATION

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CHAPTER 64:44:04

NICOTINE PRODUCT REGULATION

Section

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- 64:44:04:01. Definitions.** Terms defined in SDCL 10-50E-1 have the same meaning in this chapter. Terms used in this chapter mean:
- (1) "Inspector, " an individual employed or contracted by the department to investigate and enforce the provisions of SDCL chapter 10-50E and this chapter;
 - (2) "Premises, " a licensed retail location, including any storage or display areas under the licensee's control, and any nicotine product vending machines; and
 - (3) " Records," all sales invoices, purchase invoices, nicotine product inventory, age-verification documentation or procedures, or other documents kept in the normal course of business, in paper or electronic form, related to the retail sale of nicotine products.

Source:

General Authority: SDCL 10-50E-16.

Law Implemented: SDCL 10-50E-1.

64:44:04:02. Application requirements. An applicant for a license shall provide on the application form, in addition to the requirements set forth in SDCL 10-50E-3:

- (1) The applicant's social security number if the individual is the sole owner, and the applicant's federal identification number if the Internal Revenue Service requires a federal identification number;
- (2) The applicant's primary telephone number;
- (3) The applicant's type of business, with a brief description of the business;
- (4) The type of license requested;
- (5) The beginning date of the business;
- (6) Whether it is a new or existing business;
- (7) An estimated percentage of the business's projected annual gross income from the sale of nicotine products;
- (8) Affirmation that at least three years have passed, as of the date of application, since the applicant's satisfactory completion of a sentence or probation imposed for the conviction of a felony related to a:
 - (a) Financial crime;
 - (b) Crime related to the sale or distribution of a nicotine product or alcohol; or
 - (c) Crime related to a controlled substance;
- (9) The type of ownership of the applicant's business;
- (10) The date of incorporation, if the business is a corporation;
- (11) The date registered with the secretary of state, if the business is not a South Dakota corporation;
- (12) The names, addresses, and social security numbers of:
 - (a) All principal officers if the business is a corporation;
 - (b) All members if the business is a limited liability company; or
 - (c) All principal partners if the business is a partnership; and

(13) Any other information required for the business's sales tax application.

Source:

General Authority: SDCL 10-50E-16(1).

Law Implemented: SDCL 10-50E-3.

64:44:04:03. Disposal of product. A retailer whose license has been revoked and who disposes of nicotine products must do so in accordance with SDCL chapter 34A-11 and in accordance with ARSD article 74:28, as established by the Department of Agriculture and Natural Resources. Verification of proper disposal is shown by submitting an affidavit of proper disposal to the department, on a form prescribed by the secretary of the Department of Revenue.

Source:

General Authority: SDCL 10-50E-16(2).

Law Implemented: SDCL 10-50E-14.

64:44:04:04. Return of product. A retailer whose license has been revoked and who returns nicotine products to the licensed distributor or licensed wholesaler from which the nicotine products were purchased, must provide evidence of the return of nicotine products by submitting to the department:

- (1) A certified copy of the licensed distributor's or licensed wholesaler's credit memo; and
- (2) An affidavit of return, on a form prescribed by the secretary.

Source:

General Authority: SDCL 10-50E-16(2).

Law Implemented: SDCL 10-50E-14.

64:44:04:05. Violation procedures. If a retailer is subject to a fine or penalty, the secretary must send an order imposing the fine or penalty via certified mail. If the retailer fails to claim the certified mail, or if the certified mail is otherwise returned to the department undelivered, the order must be resent via first-class mail.

A retailer may request an administrative hearing pursuant to SDCL chapter 1-26 to contest the imposition of a fine or penalty. A request for hearing must be received by the secretary within thirty days of the date of the order imposing the fine or penalty.

Source:

General Authority: SDCL 10-50E-16(3).

Law Implemented: SDCL 10-50E-4, 10-50E-13, 10-50E-14.

64:44:04:06. Record keeping requirements. A licensee is subject to the inspection of any records and premises of the licensee by an inspector for the purpose of investigating and enforcing the provisions of SDCL chapter 10-50E. Inspectors may make copies, video recordings, audio recordings, electronic images, or photographs of any records, products, or premises.

Obstructing, withholding, deleting, altering, or refusing access to records and premises constitutes presumptive evidence of a violation and the secretary shall impose the appropriate penalty as prescribed by SDCL 10-50E-13.

Source:

General Authority: SDCL 10-50E-10, 10-50E-16(4).

Law Implemented: SDCL 10-50E-10.

64:44:04:07. Inspection procedures. The department, through its inspectors, may conduct announced or unannounced inspections of any licensed premises at any time during normal business hours. Inspections may include:

- (1) Examination of all records and premises relevant to compliance with licensing, youth access restrictions, age verification protocols, and nicotine product sourcing;
- (2) Physical inspection of the premises, vending machines, signage, inventory, and promotional materials; and
- (3) Observation or monitoring of retail practices and compliance with youth access restrictions.

An inspection may include the assistance of a confidential informant under the age of twenty-one years. A person under the age of twenty-one years acting as a confidential informant pursuant to this section is not guilty of a violation under SDCL 34-46-2.

Source:

General Authority: SDCL 10-50E-11, 10-50E-16(5).

Law Implemented: SDCL 10-50E-11, 10-50E-12.