TITLE 44

DEPARTMENT OF HEALTH

Article	
44:02	Lodging and food service.
44:03	Radiation safety.
44:04	Medical facilities.
44:05	Ambulance operation.
44:06	Children's special health services.
44:09	Public health statistics.
44:12	Tattooing, saline tattoo removal, and body piercing.
44:18	Health maintenance organizations.
44:19	Newborn screening.
44:20	Communicable disease control.
44:22	Cancer data collection.
44:23	Residential living centers.
44:58	Drug control.
44:59	Health laboratory.
44:62	Declaratory rulings.
44:63	J-1 visa waiver program.
44:65	Fetal alcohol syndrome.
44:66	Hospital charge reporting.
44:67	Abortion facilities.
44:68	State trauma care system.

Revised Rules

44:69 Birth centers.

44:70 Assisted living centers.

44:71 Rural healthcare facility recruitment assistance program.

44:72 Redistribution of nursing facility beds.

44:73 Nursing facilities.

44:74 Nurse aide.

44:75 Hospital, specialized hospital, and critical access hospital facilities.

44:76 Ambulatory surgery center facilities.

44:77 Adult foster care.

44:78 Inpatient chemical dependency treatment facility.

44:79 Inpatient hospice facilities.

44:80 Residential hospice facilities.

44:81 Immunization requirements for school entry.

44:82 Community living home.

44:90 Medical cannabis.

Revised Rules

ARTICLE 44:90

MEDICAL CANNABIS

Chapter

44:90:01 Definitions.

44:90:02 Registry identification cards.

44:90:03 Registration certificates.

44:90:04 Establishments.

44:90:05 Cannabis cultivation facilities.

44:90:06 Cannabis testing facilities.

44:90:07 Cannabis product manufacturing facilities.

44:90:08 Cannabis dispensaries.

44:90:09 Sampling and testing.

44:90:10 Packaging, labeling, and advertising.

44:90:11 Recordkeeping.

44:90:12 Enforcement.

44:90:13 Petitions to recognize debilitating medical conditions.

CHAPTER 44:90:01

DEFINITIONS

Section

44:90:01:01 Definitions.

44:90:01:01. Definitions. Terms defined in SDCL 34-20G-1 have the same meaning when used in this article. As used in this article:

(1) "Action level" means the level of a contaminate that triggers action to prohibit a cannabis product from being sold;

(2) "Age-restricted cardholder" means a cardholder or nonresident cardholder who is under 18 years of age or who is enrolled in an elementary, middle, or high school;

(3) "Agent identification badge" means a credential provided by an establishment for use

Revised Rules

by an agent while performing work-related duties;

(4) "Allowable quantity of cannabis products" means an amount of cannabis products that may be possessed by a cardholder or nonresident cardholder pursuant to SDCL 34-20G-1(1)(b);

(5) "Analyte" means a chemical, compound, element, bacteria, yeast, fungus, or toxin that is identified or measured by testing;

(6) "Analytical test" means the use of a single technology to detect the presence or concentration of a single analyte on one or more matrices;

(7) "Batch identifier" means a unique number or code assigned by an establishment to a quantity of cannabis, cannabis extract, or cannabis products for testing;

(8) "Cannabis beverage" means a liquid edible cannabis product with a concentration of less than one milligram of delta-9 tetrahydrocannabinol (THC) per ounce of liquid;

(9) "Cannabis extract" means the resin extracted from any part of a cannabis plant using a liquid or gaseous solvent other than water;

(10) "Cannabis oil" means an edible cannabis product using a food-safe oil as the primary noncannabis ingredient and with no added flavors, colors, or scents;

(11) "Cannabis waste" means cannabis flower or trim, cannabis seeds, cannabis products, byproducts containing cannabis, or cannabis plants, excluding stalks without trichomes and root balls, that have been designated for destruction;

(12) "Certificate of analysis" means a written report of the results of analytical testing, indicating whether the results comply with this article;

(13) "Chain of custody" means documentation of the handling of cannabis and cannabis products;

Revised Rules

(14) "Collective" means two or more cardholders who physically assist each other in the act of cultivating or processing cannabis for medical use, except that the sharing of an enclosed, locked facility for cultivation by two or more cardholders in their own dwelling is not a collective;

(15) "Competitive application" means a medical cannabis establishment application that is scored numerically by the department, in cases where more applicants apply than are allowed by the local government;

(16) "Concentrated cannabis" or "cannabis concentrate" means cannabis extract or a preparation made by using heat, temperature, or mechanical means to separate cannabinoids from cannabis, including hashish;

(17) "Confirmation testing" means testing performed by, or at the direction of, the department to determine consistency and accuracy of tests offered by cannabis testing facilities;

(18) "Equivalent cannabis weight" means the weight, in ounces, that a given quantity of cannabis product counts against the total allowable amount of cannabis under SDCL 34-20G-1(1);

(19) "Exit packaging" means a bag, box, or other container for use in transporting cannabis, cannabis extract, or cannabis products after purchase at a dispensary;

(20) "Extended plant count" means the authorized cultivation of more than three plants simultaneously for a single patient's use;

(21) "Flower" means the pistillate reproductive organs of a mature cannabis plant, whether processed or unprocessed, including the flowers and buds of the plant;

(22) "Immature plant" means a nonflowering cannabis plant that measures 12 inches or more from the base of the main plant stalk to the most distant point of the plant's leaf stems or

Revised Rules

branches;

(23) "Index factor" means the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor, for the year immediately preceding the year of adjustment;

(24) "Inhalable cannabis product" means a cannabis product that is intended to be consumed by inhalation;

(25) "Inherently hazardous substance" means any solvent or chemical, other than ethanol, with a flash point at or lower than 100 degrees Fahrenheit;

(26) "Inventory record" means a daily electronic record of all cannabis;

(27) "Inventory tracking system" means an electronic system specified by the department for the purposes of identifying and preventing diversion and protecting patients from unsafe cannabis, cannabis extracts, or cannabis products;

(28) "ISO/IEC 17025 accreditation" means accreditation by the International Accreditation Service, the American Association for Laboratory Accreditation, the American National Standards Institute's National Accreditation Board, or another laboratory accreditation board that the testing facility meets *General Requirements for the Competence of Testing and Calibration Laboratories* developed by the International Organization for Standardization and the International Electrotechnical Commission for a particular analyte and technology;

(29) "Low-income" means having a gross monthly household income that is 130 percent or less of the federal poverty level as defined by § 67:11:01:03;

(30) "Marketing layer" means the outermost layer of a retail sale container predominantly apparent and visible;

(31) "Matrix" means a component or substrate that contains an analyte being tested for;

Revised Rules

(32) "Mature plant" means a cannabis plant that has flowered;

(33) "Nationally recognized testing laboratory" means an independent laboratory recognized by the Occupational Health and Safety Administration pursuant to 29 C.F.R. § 1910.7 (February 18, 2020);

(34) "Nonusable" means unfit for sale or, except for the purposes of remediation, transfer;

(35) "Remediation" means the further processing of a batch of cannabis or cannabis products that has failed testing, using a process approved by the department to address the reasons for the failure;

(36) "Sample identifier" means a unique number or code assigned to a sample to be tested by a testing facility, either by the establishment submitting the sample or an agent of the testing facility;

(37) "Seedling" means a nonflowering cannabis plant or rooted cutting that measures less than 12 inches from the base of the main plant stalk to the most distant point of the plant's leaf stems or branches;

(38) "Smokable form" means in a form of cannabis or cannabis product marketed to be heated in the presence of oxygen and inhaled through smoking;

(39) "Synthetic" means formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources;

(40) "Testing sample record" means a daily electronic record maintained by an establishment of batch identifiers, sample identifiers, and associated information;

(41) "Tincture" means a liquid edible cannabis product with a concentration of greater

Revised Rules

than one milligram of THC per ounce of liquid in the form of ethanol, propylene glycol, glycerin, or food safe oil;

(42) "Topical cannabis product" means a nonedible cannabis product that is intended to be applied externally to the skin;

(43) "Transaction record" means a daily electronic record created and maintained by a dispensary to track transactions with patients;

(44) "Transfer record" means a daily electronic record of any acquisition of seeds, seedlings, plants, cannabis, or cannabis products and any transfer of cannabis or cannabis products to another medical cannabis establishment;

(45) "Trim" means trichome-containing leaves of the cannabis plant that have been intentionally removed during cultivation; and

(46) "Vaporizer product" means an inhalable cannabis product containing concentrated cannabis that is heated below the point of combustion.

Source:

General Authority: SDCL 34-20G-72.

Law Implemented: SDCL 34-20G-72.

Reference: International Organization for Standardization & International Electrotechnical Commission. (2018). *ISO/IEC 17025:2017: General Requirements for the Competence of Testing and Calibration Laboratories.* https://www.iso.org/standard/66912.html. Cost: $138.

Cross-Reference: Federal poverty level, 67:11:01:03.

Revised Rules

CHAPTER 44:90:02

REGISTRY IDENTIFICATION CARDS

Section

44:90:02:01 Practitioner's written certification of debilitating medical condition and therapeutic or palliative benefit.

44:90:02:02 Practitioner's written certification – Determination of caregivers.

44:90:02:03 Practitioner certification – Recommendation for cultivation of cannabis – Extended plant count.

44:90:02:04 Practitioner not required to provide certification.

44:90:02:05 Patient registry identification card application requirements – Initial application.

44:90:02:06 Patient designation of designated caregivers – Age-restricted cardholders – Person responsible for making medical decisions – Residents of health care facility or residential care facility.

44:90:02:07 Designated caregivers – State-only background check – Prohibition of remuneration.

44:90:02:08 Application to cultivate cannabis – Patient designation of designated caregivers to cultivate cannabis.

44:90:02:09 Requirements for designated caregivers designated to cultivate cannabis.

44:90:02:10 Registry identification card – Renewal.

44:90:02:11 Change of designation of designated caregivers.

44:90:02:12 Change of designation to cultivate.

44:90:02:13 Notice to no longer act as designated caregiver.

44:90:02:14 Death of a qualifying patient.

Revised Rules

44:90:02:15 Nonresident registration – Required documentation.

44:90:02:16 Nonresident registration – Registry identification number.

44:90:02:17 Allowable quantity of cannabis products.

44:90:02:18 Limits on medical cannabis products.

44:90:02:19 Fees for registry identification cards.

44:90:02:01. Practitioner's written certification of debilitating medical condition and therapeutic or palliative benefit. Only a practitioner as defined by SDCL 34-20G-1(20) may issue a written certification pursuant to SDCL 34-20G-1(23) to a resident of South Dakota. A practitioner's written certification shall be submitted to the department and must be on a form supplied by the department. The certification must include:

(1) The practitioner's name and address;

(2) The practitioner's medical license and National Practitioner Identification numbers;

(3) Certification that the practitioner has assessed the patient's medical history and current medical condition, including an in-person physical examination;

(4) The date on which the physical examination was conducted;

(5) Certification that the patient has a debilitating medical condition, as defined by SDCL 34-20G-1(8), specifying the International Classification of Diseases, Tenth Revision code;

(6) Certification that the practitioner and patient, or the patient's parents or legal guardian, have discussed treatment options for the patient's debilitating medical condition, including the therapeutic or palliative benefits and risks associated with the medical use of cannabis;

(7) Certification that the practitioner is available for further consultation with the patient

Revised Rules

or the patient's parents or legal guardian as required;

(8) The date, if applicable, on which the patient's need for the medical use of cannabis is expected to end; and

(9) The number of designated caregivers, if more than one, that the patient's age or medical condition necessitates.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-29, 34-20G-1(2), 34-20G-1(23).

Reference: National Center for Health Statistics. (2021). *International Classification of Diseases, 10th Revision, Clinical Modification*. https://icd10cmtool.cdc.gov/.

44:90:02:02. Practitioner's written certification – Determination of caregivers. For patients under the age of 18, a practitioner as defined by SDCL 34-20G-1(20) shall consult with the patient's parents or legal guardians to determine how many designated caregivers are needed to manage the acquisition, dosage, frequency of use, and, if applicable, cultivation of cannabis. The practitioner shall include the number of designated caregivers on the written certification.

For patients 18 years of age or older, if the practitioner believes the patient's age or medical condition necessitates the appointment of more than one designated caregiver, the practitioner shall include the number of designated caregivers on the written certification.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-29.

Revised Rules

44:90:02:03. Practitioner certification – Recommendation for cultivation of cannabis – Extended plant count. The department shall reject a recommendation for the cultivation of cannabis by a South Dakota resident not issued by a practitioner as defined by SDCL 34-20G-1(20). Unless the practitioner specifies a greater number, a practitioner's recommendation that the patient be allowed to cultivate cannabis allows a patient to cultivate three plants. The practitioner's recommendation that the patient be allowed to cultivate cannabis expires on the same date as the patient's registry identification card.

If the practitioner recommends that the patient be allowed to cultivate more than three plants, the practitioner's recommendation must specify the following reasons for the extended plant count:

(1) The research on which the practitioner relied in calculating the amount of cannabis required by the patient and that the risks associated with using that amount of cannabis are outweighed by the benefits;

(2) The difficulty the patient would experience in obtaining an adequate supply of cannabis from dispensaries due to the patient's place of residence or level of disability;

(3) The practitioner's reasoning as to why the extended plant count does not create an undue risk of diversion or abuse; and

(4) Any other factors justifying the recommendation.

A recommendation for the cultivation of more than three plants expires 200 days after the date of the recommendation.

Source:

General Authority: SDCL 34-20G-72(4).

Revised Rules

Law Implemented: SDCL 34-20G-29, 34-20G-72(5).

44:90:02:04. Practitioner not required to provide certification. Nothing in this chapter requires a practitioner as defined by SDCL 34-20G-1(2)20 to certify a patient for medical cannabis use if they do not believe there is any therapeutic or palliative benefit to the patient by using medical cannabis or to recommend that a patient be allowed to cultivate cannabis.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-29.

44:90:02:05. Patient registry identification card application requirements – Initial application. To apply for a patient registry identification card, a South Dakota resident with a debilitating medical condition, or the person responsible for making medical decisions for that person, shall submit to the department:

(1) A completed application on a form supplied by the department must contain all information required by SDCL 34-20G-29 and 34-20G-33;

(2) A photocopy of an unexpired form of identification acceptable for voter identification pursuant to SDCL 12-18-6.1;

(3) A photograph meeting all the following requirements:

(a) A high resolution color photo that is not blurry, grainy, pixelated, or digitally altered;

(b) Uses a clear image of the individual's face without filters;

(c) Uses a plain white or off-white background;

Revised Rules

(d) Is two by two inches in size;

(e) Is printed on matte or glossy photo quality paper; and

(f) Is not damaged with holes, creases, or smudges;

(4) If a low-income resident, documentation of household income, including:

(a) If employed, the resident's wage stubs or earning statements for the past 30 days;

(b) If self-employed, the resident's most recent federal income tax return and self-employment ledgers;

(c) Proof of all other income of the resident, including Social Security, Supplemental Security Income, workers' compensation, unemployment benefits, Bureau of Indian Affairs general assistance, child support, rental income, veterans' benefits, pensions, and interest income, for the previous 12 months; and

(d) The most recent financial statement from any of the resident's checking accounts, savings accounts, certificates of deposit, credit union account, retirement account, stock, bond, or dividend; and

(6) The required fee, pursuant to § 44:90:02:19.

Source:

General Authority: SDCL 34-20G-72(4)(10)(c).

Law Implemented: SDCL 34-20G-29, 34-20G-72(4)(10)(c).

44:90:02:06. Patient designation of designated caregivers – Age-restricted cardholders – Person responsible for making medical decisions – Residents of health care facility or residential care facility. A qualifying patient may designate an eligible individual as

Revised Rules

a designated caregiver by submitting to the department:

(1) A completed designation on a form supplied by the department;

(2) The designated caregiver's sworn statement that the designated caregiver has not been convicted of a disqualifying felony offense; and

(3) Any additional fees pursuant to § 44:90:02:19.

An age-restricted cardholder shall designate at least one designated caregiver. If a practitioner has recommended that a patient younger than 18 years of age have multiple designated caregivers, the parents or legal guardians may designate other designated caregivers as advised by the practitioner.

The person responsible for making medical decisions for a qualifying patient 18 years of age or older, if qualified pursuant to SDCL 34-20G-1(10), shall be designated caregiver to the qualifying patient. If the practitioner has recommended that the patient have multiple designated caregivers, the person responsible for making medical decisions may designate other designated caregivers as advised by the practitioner.

The designation of an employee of a health care facility or residential care facility to act as a designated caregiver on the premises of the facility requires the signature of the facility director or designee.

The designation of a designated caregiver expires on the same date as the qualifying patient's registry identification card.

Source:

General Authority: SDCL 34-20G-72(4), 34-20G-72(5).

Law Implemented: SDCL 34-20G-1(10), 34-20G-2(2), 34-20G-29, 34-20G-30, 34-20G-32, 34-20G-33, 34-20G-35, 34-20G-39, 34-20G-95.

Revised Rules

44:90:02:07. Designated caregivers – State-only background check – Prohibition of remuneration. Each person designated as a designated caregiver to one or more qualifying patients shall submit to the Division of Criminal Investigation once every two years:

(1) A photocopy of an unexpired form of identification acceptable for voter identification pursuant to SDCL 12-18-6.1;

(2) A Division of Criminal Investigation fingerprint card processed by a local law enforcement agency; and

(3) An authorization and release form releasing the results of a state-only background check to the department, and payment of any fee charged by the Division of Criminal Investigation.

A designated caregiver shall submit to the department a photograph meeting the requirements of § 44:90:02:05(3) once every five years. A designated caregiver shall acknowledge in writing to the department the prohibition of remuneration other than direct costs incurred for assisting with the registered qualifying patient's medical use of cannabis, pursuant to SDCL 34-20G-2(2).

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-1(10), 34-20G-2(2), 34-20G-29, 34-20G-30, 34-20G-32, 34-20G-33, 34-20G-39.

44:90:02:08. Application to cultivate cannabis – Patient designation of designated caregivers to cultivate cannabis. A patient, or the patient's designated caregiver, who has been

Revised Rules

recommended for cultivation of cannabis by a practitioner as defined by SDCL 34-20G-1(20) shall submit to the department:

(1) A diagram and photographs of the enclosed, locked facility in which the cannabis will be cultivated; and

(2) The fee required by § 44:90:02:19.

An age-restricted cardholder may not cultivate cannabis but may, unless a nonresident, designate a designated caregiver to cultivate cannabis on the patient's behalf.

Upon approval of the application, the department shall issue a two-part registry identification card to the patient or designated caregiver designated to cultivate cannabis. One part of the registry identification card must be posted on the door of the enclosed, locked facility in which the cannabis is cultivated the other part of the registry identification card must be carried by the patient or designated caregiver. If more than one person is authorized to cultivate cannabis on behalf of a qualifying patient, each person shall receive a two-part identification card and shall post and carry the appropriate parts.

Source:

General Authority: SDCL 34-20G-72(4), 34-20G-72(5).

Law Implemented: SDCL 34-20G-1(13), 34-20G-29, 34-20G-95.

44:90:02:09. Requirements for designated caregivers designated to cultivate cannabis. Only one person may cultivate cannabis on behalf of a patient, except that:

(1) A qualifying patient may share the designation with a designated caregiver who resides in the same dwelling; and

(2) Two parents or legal guardians of an age-restricted cardholder who reside in the same

Revised Rules

dwelling may share the designation.

The entirety of a patient's cannabis must be cultivated in a single enclosed, locked facility. No designated caregiver may simultaneously cultivate an extended plant count for more than one qualifying patient.

Two or more designated caregivers may not form a collective. Two or more designated caregivers may not cultivate cannabis in a single-unit building or in a unit of a multi-unit building, unless expressly permitted by SDCL chapter 34-20G.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL, 34-20G-1(13), 34-20G-29.

44:90:02:10. Registry identification card – Renewal. A qualifying patient, or the qualifying patient's parents or legal guardian, shall submit a renewal application, with the required fee pursuant to § 44:90:02:19, up to 45 days prior to the expiration of the patient's registry identification card on a form supplied by the department. A qualifying patient may remove, add, or substitute designated caregivers at the time of renewal on a form supplied by the department.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-29.

44:90:02:11. Change of designation of designated caregivers. A qualifying patient or the qualifying patient's parent or legal guardian may remove, add, or substitute designated

Revised Rules

caregivers at any time.

If the change results in the addition or substitution of a designated caregiver, the qualifying patient shall submit a form pursuant to § 44:90:02:06.

If the change results in the removal of one or more designated caregivers, the patient shall notify each removed designated caregiver in writing and shall certify to the department that notice has been given. The removed designated caregiver shall have 15 days to return the registry identification card associated with that patient.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-46.

44:90:02:12. Change of designation to cultivate. A qualifying patient or the qualifying patient's parent or legal guardian may remove, add, or substitute a designation to cultivate at any time.

If the change results in the addition or substitution of an individual to cultivate medical cannabis for the patient, the qualifying patient, or the qualifying patient's parent or legal guardian, shall submit an application pursuant to § 44:90:02:08.

If the change results in the removal of a designated caregiver to cultivate cannabis on the patient's behalf, the patient, or the patient's parent or legal guardian, shall notify the current designated caregiver in writing and shall certify to the department that notice has been given. The designated caregiver shall, within 15 days, return the registry identification care and destroy any cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-46.

44:90:02:13. Notice to no longer act as designated caregiver. A designated caregiver shall provide written notice to the patient or the patient's parents or legal guardians and shall notify the department on a form supplied by the department if the designated caregiver no longer wishes to act as the patient's designated caregiver. The designated caregiver shall return the registry identification card associated with the patient immediately upon submitting such notice and, if applicable, shall destroy any cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-46.

44:90:02:14. Death of qualifying patient. Upon giving notice of a patient's death pursuant to SDCL 34-20G-46(2), a designated caregiver shall, within 15 days, return the registry identification card associated with the patient to the department and, if applicable, shall destroy any cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

Source:

General Authority: SDCL 34-20G-72(4).

Law Implemented: SDCL 34-20G-46.

Revised Rules

44:90:02:15. Nonresident registration – Required documentation. The department shall accept any of the following as sufficient documentation of a nonresident's debilitating medical condition:

(1) Practitioner certification issued in the person's jurisdiction of residence and listing a debilitating medical condition consistent with SDCL 34-20G-1 or rules promulgated by the department;

(2) Practitioner certification issued in the person's jurisdiction of residence, along with additional medical records indicating a debilitating medical condition recognized by the department pursuant to SDCL 34-20G-1 or rules promulgated by the department; or

(3) Practitioner certification on a form supplied by the department.

Prior to issuing a nonresident registration, the department shall determine whether the applicant's registry identification card or its equivalent allows the use of cannabis, as defined in SDCL 34-20G-1(1) and 34-20G-1(14), in the jurisdiction of issuance.

Source:

General Authority: SDCL 34-20G-72(8).

Law Implemented: SDCL 34-20G-1(19), 34-20G-72(8).

44:90:02:16. Nonresident registration – Registry identification number. The department shall issue to a nonresident cardholder who has met all registration requirements a nonrenewable ten-digit registry identification number, which expires on the earliest of:

(1) One year from the date of issuance of the registry identification number;

(2) The expiration date of the nonresident's proof of authorization issued by the

Revised Rules

jurisdiction where the nonresident cardholder resides; or

(3) Any earlier expiration date specified by the practitioner's statement.

The registry identification number is valid at no more than two dispensaries, which must be designated by the nonresident cardholder at the time of registration.

Source:

General Authority: SDCL 34-20G-72(8).

Law Implemented: SDCL 34-20G-1(19), 34-20G-72(8).

44:90:02:17. Allowable quantity of cannabis products. Subject to the limits in § 44:90:02:18, under SDCL 34-20G-1(1)(b), cardholders and nonresident cardholders may possess cannabis products if the equivalent cannabis weight of the products plus the amount of cannabis flower and trim possessed does not exceed three ounces pursuant to SDCL 34-20G-1(1)(a). The equivalent cannabis weight of cannabis products shall be:

Type of cannabis	**Amount equivalent to one ounce of cannabis**
Concentrated cannabis in smokable form	8 grams (net weight)
Vaporizer pens or cartridges	8 grams (net weight)
Oils in oral dosage syringe or capsule form	5 grams (net weight)
Edibles (excluding oils)	800 milligrams THC
Topical (ointment, cream, or lotion)	12 fluid ounces
Topical (dried plant material or powder)	1 ounce
Transdermal patches	800 milligrams THC

Revised Rules

Source:

General Authority: SDCL 34-20G-72(9).

Law Implemented: SDCL 34-20G-1(1)(b), 34-20G-2, 34-20G-3.

44:90:02:18. Limits on medical cannabis products. Except as permitted by SDCL 34-20G-1(1)(d):

(1) No cardholder under 21 years of age may possess inhalable cannabis products; and

(2) No cardholder may possess more than four grams of concentrated cannabis with a THC content of greater than 60 percent and in smokable form. Vaporizer products are excluded from this limit.

Source:

General Authority: SDCL 34-20G-72(9).

Law Implemented: SDCL 34-20G-1(1)(b), 34-20G-2, 34-20G-3.

44:90:02:19. Fees for registry identification cards.

(1) The base fee for initial application and yearly renewal of a patient registry identification card for a resident of South Dakota is:

(a) For a low-income qualifying patient, $20; and

(b) For all other applicants, $75.

(2) Qualifying patients shall submit an additional $20 fee for the issuance of any designated caregiver registry identification card, except for the designation of a designated caregiver at the time of the initial or renewal application.

(3) An additional $20 fee is required for the printing of a two-part registry identification

Revised Rules

card for patients designated to cultivate cannabis or designate a designated caregiver to cultivate cannabis.

(4) Nonresidents shall submit a $75 fee with a registration application.

All fees imposed under this section shall be nonrefundable.

Source:

General Authority: SDCL 34-20G-72(10).

Law Implemented: SDCL 34-20G-29, 34-20G-72(10).

CHAPTER 44:90:03

REGISTRATION CERTIFICATES

Section

44:90:03:01 Initial application for registration certificate.

44:90:03:02 Certificate renewal – Application.

44:90:03:03 Certificate location transfer – Application.

44:90:03:04 Transfer of ownership.

44:90:03:05 Operating procedures – Required contents – All medical cannabis establishments.

44:90:03:06 Cannabis cultivation facility operating procedures – Additional requirements.

44:90:03:07 Cannabis testing facility operating procedures – Additional requirements.

44:90:03:08 Cannabis product manufacturing facility operating procedures – Additional requirements.

44:90:03:09 Cannabis dispensary operating procedures – Additional requirements.

44:90:03:10 Compliance with local zoning requirements – Form of certification.

Revised Rules

44:90:03:11 Local registration, license, or permit – Department verification.

44:90:03:12 Deadline to submit initial applications for establishments.

44:90:03:13 No registration certificate revocation – Department verification.

44:90:03:14 No disqualifying felonies – Form of certification.

44:90:03:15 Department review of competitive applications – Scoring criteria.

44:90:03:16 Department awarding of certification – Tiebreaking procedures – Notice to unsuccessful applicants.

44:90:03:17 Fees for registration certificate – Application and renewal.

44:90:03:01. Initial application for registration certificate. An initial application for a registration certificate for any type of medical cannabis establishment must include:

(1) A completed application form;

(2) Operating procedures consistent with this article;

(3) Proof of the property owner's consent to use the property for cultivation, manufacturing, dispensing, or testing cannabis, as applicable;

(4) Certification of compliance from the local municipality or county, as applicable, ensuring applicant's proposed plans and location meet all local zoning and ordinance requirements;

(5) Copies of all required registrations, licenses, or permits;

(6) Photocopies of a valid form of identification issued in South Dakota, or its equivalent issued in another United States jurisdiction, for all principal officers and board members;

(7) Photocopies of organizing documents, operating agreements, management agreements, bylaws, and other legal documents relating to the applicant's business structure;

Revised Rules

(8) Certification that background checks have been completed for all medical cannabis establishment agents; and

(9) The applicable fee pursuant to § 44:90:03:17.

Source:

General Authority: SDCL 34-20G-72(2).

Law Implemented: SDCL 34-20G-55(1), 34-20G-57, 34-20G-61.

44:90:03:02. Certificate renewal – Application. A renewal application for a registration certificate:

(1) Is required every 12 months from date of issuance; and

(2) Must include all components of an initial application, except that a detailed description of any changes to operating procedures, or a certification that no such changes exist, may be substituted for a complete set of operating procedures.

Source:

General Authority: SDCL 34-20G-72(2).

Law Implemented: SDCL 34-20G-55(1), 34-20G-57, 34-20G-61.

44:90:03:03. Certificate location transfer – Application. An application for the transfer of a registration certificate to a different physical location must include:

(1) A completed change of location form;

(2) Documentation that establishment is operating in substantial compliance with its department-approved operating procedures or that circumstances beyond its control prevented

Revised Rules

such operation;

(3) Diagrams of all locations in which cannabis will be cultivated, harvested, dried, stored, manufactured, or destroyed;

(4) A detailed description of any changes to operating procedures, or a certification that no such changes exist;

(5) Certification of compliance with all applicable local zoning requirements; and

(6) Copies of all required registration, licenses, or permits reflecting the establishment's new address.

Nothing in this section shall be interpreted to require a city or county to issue a registration, license or permit to operate at the new address.

Source:

General Authority: SDCL 34-20G-72(2).

Law Implemented: SDCL 34-20G-55(1), 34-20G-57, 34-20G-61.

44:90:03:04. Transfer of ownership. The transfer of any ownership interest in a medical cannabis establishment of 50 percent or more to a party not already approved by the department as an owner of the establishment requires the submission of an initial application pursuant to § 44:90:03:01.

The department may permit the transfer of an ownership interest in a medical cannabis establishment of less than 50 percent to a party not already approved by the department as an owner of the establishment if:

(1) The establishment is operating in substantial compliance with its department-approved operating procedures or can demonstrate that circumstances beyond its control

Revised Rules

prevented such operation;

(2) The establishment provides advance written notification to the department;

(3) The new owners meet all requirements of this article; and

(4) The city or county issues any required registration, license or permit to the establishment's new owners.

Nothing in this section shall be interpreted to require a city or county to approve a transfer of ownership.

Source:

General Authority: SDCL 34-20G-72(2).

Law Implemented: SDCL 34-20G-55(1), 34-20G-57, 34-20G-61.

44:90:03:05. Operating procedures – Required contents – All medical cannabis establishments. The operating procedures of any medical cannabis establishment must include:

(1) A management plan identifying the individuals who will be in charge of day-to-day operations of the establishment and their specific management roles;

(2) A site plan that must:

(a) Identify any areas in which cannabis will be cultivated, harvested, dried, stored, manufactured, tested, or destroyed;

(b) Indicate the types of activities that will take place in those areas;

(c) Identify a means of legal ingress onto property from the closest maintained public right of way;

(d) Demonstrate compliance with § 44:90:04:05;

(3) Operating days and hours;

Revised Rules

(4) A workplace safety plan consistent with 29 C.F.R. § 1910.23 (November 18, 2016), 29 C.F.R. § 1910.123 (November 18, 2016) and 29 C.F.R. § 1200 (February 8, 2013), covering personal protective equipment, hazard assessment, safe equipment operation, proper application of agricultural chemicals, ladder use, and hazard communication;

(5) Plans for compliance with all applicable safety standards contained in local ordinance, SDCL chapter 11-10, article 61:15, and chapter 20:44:22;

(6) A security plan indicating all doors, windows, gates, exterior lights, alarm sensors, and cameras and describing how alarms and cameras will be monitored;

(7) Any additional steps to ensure the safety of patrons and the community;

(8) Plans for preventing the diversion of cannabis to noncardholders;

(9) A waste management plan for disposal of cannabis waste, including:

(a) A description of how the cannabis waste will be rendered unrecognizable and unfit for use by grinding and mixing the waste with at least 50 percent other waste, including soil, sawdust, grease, food waste, yard waste, or shredded paper;

(b) A description of how the waste will be composted, if applicable; and

(c) A description of how the waste will be hauled from the premises;

(10) A wastewater plan, including:

(a) For establishments connecting to a public wastewater system, a pretreatment industrial use permit or a determination by the Department of Agriculture and Natural Resources that no such permit is necessary; or

(b) For establishments using an onsite wastewater system, the applicant's certification of compliance with chapter 74:53:01;

(11) Pre-employment screening procedures, including criminal background check; and

Revised Rules

(12) Processes for limiting access by unauthorized persons, including verification of identity for all vendors and contractors, issuance of a visitor badge, and closely monitoring all visitors.

Source:

General Authority: SDCL 34-20G-72(2)(5).

Law Implemented: SDCL 34-20G-55(1), 34-20G-72(5).

44:90:03:06. Cannabis cultivation facility operating procedures – Additional requirements. The operating procedures for a cultivation facility must provide the department with sufficient detail to determine the establishment's compliance with this article and SDCL chapter 34-20G, including:

(1) The number of mature cannabis plants, or size of plant canopy, to be cultivated;

(2) The number of seedlings to be cultivated;

(3) The lights, irrigation, greenhouses and other equipment to be used and the approval listing issued by a nationally recognize testing laboratory;

(4) Plans for providing electricity, water and other utilities necessary for the normal operation of the cultivation facility;

(5) Plans for ventilation and filtration systems that reduce the potential for mold;

(6) Detailed plans for remediating cannabis, specifying the steps to be taken by type of test failed; and

(7) A list of all pesticides, fungicides, insecticides, and fertilizers that will be present or used.

Source:

Revised Rules

General Authority: SDCL 34-20G-72(2)(5).

Law Implemented: SDCL 34-20G-55(1), 34-20G-72(5).

44:90:03:07. Cannabis testing facility operating procedures – Additional requirements. The written operating procedures for a testing facility must provide the department with sufficient detail to determine the establishment's compliance with this article and SDCL chapter 34-20G, including:

(1) A policy signed by each owner that ensures management and personnel are free from any undue internal and external commercial, financial, or other influences that may adversely affect the quality of their work or diminish confidence in its competence, impartiality, judgment, or operational integrity;

(2) A signed disclosure by each owner stating that there is no financial conflict with, interest in, investment in, landlord-tenant relationship with, or loan to a cannabis cultivation facility, cannabis product manufacturing facility, or cannabis dispensary;

(3) A list of analytical tests, specifying the analyte and technology for each, the applicant intends to offer and:

(a) Certification that the applicant will, within six months of licensing, begin working with an accreditation body to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation including all proposed analytical tests within its scope of accreditation; or

(b) If an initial application or a renewal application for a cannabis testing facility that has been licensed for less than 18 months, an agreement to:

(i) Submit quarterly reports to the department on its progress toward

Revised Rules

ISO/IEC accreditation; and

(ii) Comply with any department requests for confirmation testing at the cannabis testing facility's expense;

(4) Standard operating procedures for all preanalytical, analytical, and post-analytical processes performed by the laboratory;

(5) Protocols for performing validation studies of all analytical tests to be performed;

(6) Protocols for proficiency testing at an interval determined by the accrediting body and documenting successful completion or corrective action, as defined by the accrediting body;

(7) A program to assess and document, at least annually, the competency of all technical and scientific staff that perform preanalytical, analytical, and postanalytical processes;

(8) Policies and procedures that ensure the protection of its clients' confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results;

(9) Policies and procedures for collection and receipt of samples for mandatory or other testing, including:

(a) Step-by-step procedures for collecting samples from each matrix type that are representative of the batch to be tested;

(b) Method for collection, preparation, packaging, labeling, documentation, and transport of samples from each matrix type;

(c) Size of sample to be collected for each analytical test to be performed;

(d) Safeguards against contamination, including protective garb, sanitizing of instruments, and care of sample collection containers;

(e) Labeling of sample containers; and

Revised Rules

(f) Transport and storage conditions, including exposure to light, temperature, and humidity;

(10) Chain of custody protocols and a sample chain of custody form; and

(11) Equipment to be used and its listing by a nationally recognized testing laboratory.

Source:

General Authority: SDCL 34-20G-72(2)(5).

Law Implemented: SDCL 34-20G-55(1), 34-20G-72(5).

Reference: International Organization for Standardization & International Electrotechnical Commission. (2018). *ISO/IEC 17025:2017: General Requirements for the Competence of Testing and Calibration Laboratories.* https://www.iso.org/standard/66912.html. Cost: $138.

44:90:03:08. Cannabis product manufacturing facility operating procedures – Additional requirements. The operating procedures for a cannabis product manufacturing facility must provide the department with sufficient detail to determine the establishment's compliance with this article and SDCL chapter 34-20G, including:

(1) A description of the classes of products that will be manufactured by the establishment;

(2) A detailed description of the manufacturing processes that will occur on the premises, including:

(a) Mechanical extraction using potable water, ice, dry screening or sieving, cryonic extraction, pressure, or temperature;

Revised Rules

(b) Infusion into propylene glycol, glycerin, or food-grade fats;

(c) Extraction using food-grade ethanol; and

(d) Extraction using an inherently hazardous substance;

(3) Detailed plans for remediating cannabis on behalf of a cannabis cultivation facility, specifying the steps to be taken by type of test failed;

(4) Detailed plans for remediating cannabis products, specifying the steps to be taken by product type and by type of test failed;

(5) A diagram illustrating in which areas of the premises each manufacturing activity will occur;

(6) A diagram illustrating the areas of the premises where any solvent, chemical, or potentially hazardous substance will be stored, excluding water;

(7) Plans for ventilation and filtration systems that reduce the risk of fire or respiratory harm within the facility;

(8) Documentation from an engineer licensed pursuant to SDCL chapter 36-18A or a state or local official authorized to certify compliance that the equipment used for cannabis extraction and the location of the equipment comply with all applicable safety standards contained in local ordinance, SDCL chapter 11-10, article 61:15, and chapter 20:44:22; and

(9) Documentation from the manufacturer of the cannabis extraction system or an engineer licensed pursuant to SCDL chapter 36-18A showing that a professional grade, closed-loop extraction system that recovers the solvents used to produce cannabis extract is used by the establishment.

Source:

General Authority: SDCL 34-20G-72(2)(5).

Revised Rules

Law Implemented: SDCL 34-20G-55(1), 34-20G-72(5).

44:90:03:09. Cannabis dispensary operating procedures – Additional requirements. The operating procedures for a dispensary must provide the department with sufficient detail to determine the establishment's compliance with this article and SDCL chapter 34-20G, including:

(1) Plans to obtain an adequate supply of cannabis, cannabis extracts, and cannabis products;

(2) Types of products offered;

(3) Verification of identification card and purchase limits;

(4) Advertising plan, including onsite signs;

(5) Training plan;

(6) Point-of-sale software to be used, including documentation of its interoperability with the inventory tracking system;

(7) Parking;

(8) Accessibility to individuals with disabilities; and

(9) Suitability of location for maximizing access by cardholders.

Source:

General Authority: SDCL 34-20G-72(2)(5).

Law Implemented: SDCL 34-20G-55(1), 34-20G-72(5).

44:90:03:10. Compliance with local zoning requirements – Form of certification. Each initial or renewal application must include a certification, on a form supplied by the department, of compliance with all applicable city and county zoning requirements.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(2).

Law Implemented: SDCL 34-20G-55(1)(d).

44:90:03:11. Local registration, license, or permit – Department verification. Each initial or renewal application must include either:

(1) A certification, on a form supplied by the department, that the applicant is not required to obtain any city or county registration, license, or permit; or

(2) Copies of all required registrations, licenses, or permits.

The department may contact the city or county to verify the absence of registration, licensing, or permitting requirements or to verify the form and content of such documents.

Source:

General Authority: SDCL 34-20G-72(2).

Law Implemented: SDCL 34-20G-55(1).

44:90:03:12. Deadline to submit initial applications for establishments. The department shall accept applications on a rolling basis, except that applications to locate an establishment in a city or county that has limited the number of medical cannabis establishments must be submitted:

(1) By November 1, 2021, if the limit was enacted prior to October 1, 2021; or

(2) Within 90 days of the effective date of a limit enacted on or after October 1, 2021.

Source:

General Authority: SDCL 34-20G-72(2).

Revised Rules

Law Implemented: SDCL 34-20G-55(1).

44:90:03:13. No registration certificate revocation – Department verification. Each initial or renewal application must include a certification, on a form supplied by the department, that none of the principal officers or board members have served as a principal officer or board member for a medical cannabis establishment that has had its registration certificate revoked.

Source:

General Authority: SDCL 34-20G-72(2).

Law Implemented: SDCL 34-20G-55(2).

44:90:03:14. No disqualifying felonies – Form of certification. With each initial or renewal application:

(1) Each principal officer or board member shall affirm that the individual has not been convicted of any disqualifying felony offense, whether in South Dakota or another jurisdiction.

(2) The signatory who has authority to bind the applicant to the representations in the application shall affirm that the applicant has conducted background checks on all principal officers and board members within 90 days of the initial application or within two years of a renewal application.

Source:

General Authority: SDCL 34-20G-72(2), (3)(c).

Law Implemented: SDCL 34-20G-61, 34-20G-62, 34-20G-72(3).

44:90:03:15. Department review of competitive applications – Scoring criteria. In a

Revised Rules

case in which more medical cannabis establishments apply than are allowed by a local government, the department shall numerically score competitive applications according to the following criteria:

(1) The local government, in response to the department's inquiry, has endorsed the application as beneficial to the community (1 points);

(2) The local government has not informed the department that the location specified in the application is unsuitable for the proposed use due to zoning regulations or inaccessibility to the public (1 point);

(3) All principal officers and board members have certified that they have not, in the previous ten years, in any United States jurisdiction:

(a) Been convicted of a criminal offense involving fraud or false statements to a unit of government (1 point); or

(b) Served as a principal officer or board member of any business that has had a license or permit suspended or revoked for violations of laws or regulations relating to cannabis, alcohol, tobacco, or gaming (1 point);

(4) The applicant has submitted a floorplan with sufficient detail to enable the department to determine where all activities listed in the operating procedures will take place (1 point); and

(5) The applicant has submitted a business plan outlining the details contained in SDCL 34-20G-72(3)(d) (1 point).

Source:

General Authority: SDCL 34-20G-72(3).

Law Implemented: SDCL 34-20G-56, 34-20G-72(3).

Revised Rules

44:90:03:16. Department awarding of certification – Tiebreaking procedures – Notice to unsuccessful applicants. The department shall award certification as follows:

(1) If more establishments apply than are allowed by a local government, the department shall award the establishment with the highest score pursuant to § 44:90:03:15 a registration certificate;

(2) If the local government has enacted an overall limit on the number of establishments, the department shall award registration certificates, in order of final score beginning with the highest score attained pursuant to § 44:90:03:15, until the limit is reached;

(3) If the local government has enacted a limit on establishments by establishment type, the department shall award registration certificates, in order of final score beginning with the highest score attained pursuant to § 44:90:03:15, until the limit is reached for each establishment type;

(4) If applicants are tied for one or more openings in a locality, the affected applicants and interested members of the public shall have the opportunity to view, in person or via videoconference, a random drawing to determine the successful applicants. All applicants will be ranked via the lottery system to establish the order and establish a waiting list.

Any establishment granted a certificate pursuant to this section must become operational within one year of date of award or the certificate is deemed void and will be awarded to the next applicant on the waiting list.

The notification of any unsuccessful applicants must identify the department's decision as a final department action subject to the contested case procedures pursuant to SDCL chapter 1-26.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(3).

Law Implemented: SDCL 34-20G-56, 34-20G-72(3).

44:90:03:17. Fees for registration certificates – Application and renewal. The department shall charge and collect a non-refundable fee for an initial or renewal application for an establishment registration certificate of $5,000. The fees imposed under this section shall increase annually based on the index factor.

Source:

General Authority: SDCL 34-20G-72(10).

Law Implemented: SDCL 34-20G-55, 34-20G-72(10).

CHAPTER 44:90:04

ESTABLISHMENTS

Section

44:90:04:01 Change in management – Duty to report.

44:90:04:02 Corrective and preventive action – Written procedures.

44:90:04:03 Duty to report criminal activity to department and law enforcement.

44:90:04:04 Co-location of medical cannabis establishments.

44:90:04:05 Lighting.

44:90:04:06 Doors and windows.

44:90:04:07 Placement of security cameras.

Revised Rules

44:90:04:08 Recording by security cameras – Access by department.

44:90:04:09 Storage of camera footage.

44:90:04:10 Alarm system.

44:90:04:11 Agent identification badges to be provided by establishments.

44:90:04:12 Agent identification badges to be displayed.

44:90:04:13 Controlled access – Verification of identity.

44:90:04:14 Visitor badges to be worn by contractors performing work at a medical cannabis establishment.

44:90:04:15 Operation of agricultural, industrial, or other heavy equipment – Training requirements.

44:90:04:16 Record-keeping – Use of inventory tracking system– Training requirements.

44:90:04:17 Security protocols– Training requirements.

44:90:04:18 Vehicle requirements – Establishments.

44:90:04:19 Transport manifests – Form and content.

44:90:04:20 Separate transport manifest required.

44:90:04:21 Storage during transport.

44:90:04:22 Conduct during transport.

44:90:04:23 Transport incident notification.

44:90:04:24 Health and safety standards for storage.

44:90:04:01. Change in management – Duty to report. An establishment shall remain under the direction of the individuals identified in its management plan pursuant to § 44:90:03:05(1). An establishment shall provide the department an updated management plan

Revised Rules

within seven days after any change in management personnel occurs.

Source:

General Authority: SDCL 34-20G-72(5)(a).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:04:02. Corrective and preventive action – Written procedures. An establishment shall maintain and follow written procedures for implementing corrective action and preventive action, including:

(1) Analysis of processes, work operations, reports, records, service records, complaints, returned product, and other sources of data to identify existing and potential root causes of nonconformance or other quality problems;

(2) Identifying any actions needed to correct and prevent recurrence of nonconformance and other quality problems;

(3) Verifying the corrective action or preventive action to ensure that such action is effective and does not adversely affect finished products or processes;

(4) Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

(5) Ensuring the information related to quality problems or nonconformance is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems;

(6) Submitting relevant information on identified quality problems and corrective action and preventive action documentation and confirming the result of the evaluation for management review; and

Revised Rules

(7) Ensuring that cannabis or cannabis products that are nonusable or otherwise do not meet safety standards established by this article are quickly identified and destroyed or remediated to prevent harm to patients

Source:

General Authority: SDCL 34-20G-72(5)(a).

Law Implemented: SDCL 34-20G-63, 34-20G-71, 34-20G-72(5).

44:90:04:03. Duty to report criminal activity to department and law enforcement. In addition to notice required by SDCL 34-20G-50, an establishment shall provide notice to the department and local law enforcement agency within one business day upon its discovery of any unauthorized entry or theft of cannabis, cannabis plants, or cannabis product or any plan or other action of any person to:

(1) Steal cannabis plants, cannabis, cannabis products, cannabis paraphernalia, equipment, or money that is the property of the establishment;

(2) Sell or otherwise provide cannabis plants, cannabis, cannabis products, or cannabis paraphernalia that is the property of the establishment to unauthorized persons;

(3) Purchase or otherwise obtain cannabis plants, cannabis, cannabis products, or cannabis paraphernalia from unauthorized persons;

(4) Falsify inventory records or transport manifests; or

(5) Commit any other crime relating to the operation of the establishment.

Source:

General Authority: SDCL 34-20G-72(5)(a).

Law Implemented: SDCL 34-20G-50, 34-20G-63, 34-20G-64, 34-20G-72(5).

Revised Rules

44:90:04:04. Co-location of medical cannabis establishments. A medical cannabis establishment shall have separate means of ingress and egress from any other medical cannabis establishment, except that multiple medical cannabis establishments with common ownership may be co-located if:

(1) The establishments have lockable, alarmed doors separating activities performed under different licenses;

(2) The door separating a dispensary from cultivation or product manufacturing activities remains locked when cardholders are present, and signs clearly state that entry is limited to employees and other authorized persons;

(3) The unit of local government allows the types of medical cannabis establishments requesting co-locations; and

(4) None of the following occurs:

(a) A testing facility located in the same structure as any other cannabis establishment;

(b) Extraction using ethanol, inherently hazardous substances, or compressed gas in the same structure in which a cannabis dispensary is located; or

(c) Pesticides applied in the same structure in which a dispensary is located.

This section shall not be interpreted to prohibit shared access from a parking lot, walkway, concourse, or other area generally open to the public as part of a shopping center or business park, if allowed by the unit of local government.

Source:

General Authority: SDCL 34-20G-72(5)(c)(d)(h).

Revised Rules

Law Implemented: SDCL 34-20G-72(5).

44:90:04:05. Lighting. Any gate or perimeter entry point of a medical cannabis establishment must have lighting sufficient for observers to see and cameras to record, any activity within ten feet of the gate or entry. A motion detection lighting system may be employed to light required areas in low-light conditions.

Source:

General Authority: SDCL 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:06. Doors and windows. Commercial grade locks intended for facilities requiring high levels of physical security, are required on all perimeter entry doors. All windows must be in good condition and lockable.

Source:

General Authority: SDCL 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:07. Placement of security cameras. All medical cannabis establishments shall permanently fix security cameras:

(1) At each exterior door and gate to allow identification of persons entering or exiting the premises;

(2) At each door separating non-public areas of a dispensary from areas in which sales to patients and designated caregivers are made, to allow identification of persons entering or exiting

Revised Rules

non-public areas; and

(3) In sufficient number to allow the viewing, in its entirety, of any area where cannabis, cannabis plants, cannabis products, or cannabis waste are cultivated, manufactured, stored, destroyed, or prepared for transfer, sale, or testing.

Source:

General Authority: SDCL 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:08. Recording by security cameras – Access by department. The video surveillance system must meet the following minimum requirements:

(1) Minimum resolution of 720 pixels;

(2) Internet protocol (IP) compatibility supporting live viewing by the department over a secure internet connection;

(3) Minimum of 15 frames per second;

(4) Clear and accurate display of time and date;

(5) Cameras set to record 24 hours a day at all establishments, except cameras placed at exterior doors used by patients to enter or exit the dispensary that must be set to record only outside of the dispensary's operating hours to ensure patient privacy; and

(6) A backup power source allowing for recording and transmitting video for a minimum of two hours during a power failure.

Source:

General Authority: SDCL 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

Revised Rules

44:90:04:09. Storage of camera footage. An establishment shall maintain surveillance recordings for a minimum of 90 days, either:

(1) On a surveillance system storage device secured on the premises in a lockbox, cabinet, or closet and alarmed with motion and seismic sensors to protect from employee tampering or criminal theft; or

(2) Stored on a secure third-party server.

All video recordings are subject to inspection by any department employee or law enforcement officer and must be copied and provided to the department or law enforcement officer upon request.

An establishment shall maintain a list of all persons with access to video surveillance recordings and maintain written procedures for controlling access to recordings.

Source:

General Authority: SDCL 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:10. Alarm system. A medical cannabis establishment shall maintain an alarm system:

(1) With monitored sensors on all exterior doors, windows, and gates;

(2) Monitored by a security company capable of contacting the establishment and, if necessary, law enforcement;

(3) That has an audible alarm capable of being disabled remotely by the security company; and

Revised Rules

(4) That alerts the security company during a power failure and operates for a minimum of four hours on backup power.

Source:

General Authority: SDCL 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:11. Agent identification badges to be provided by establishments. A medical cannabis establishment shall provide an agent identification badge to each agent. The establishment shall include on the badge:

(1) The agent's photograph that meets the requirements of § 44:90:02:05(3); and

(2) In a plain black font not less than 24-point:

(a) The first and last name of the agent; and

(b) The name of the establishments.

Each agent shall display this badge whenever on the premises of the establishment or transporting cannabis, or cannabis products.

Source:

General Authority: SDCL 34-20G-72(5)(g).

Law Implemented: SDCL 34-20G-72(5).

44:90:04:12. Agent identification badges to be displayed. A medical cannabis establishment shall provide an agent identification badge to each agent, who shall display this badge whenever on the premises of the establishment or transporting cannabis, cannabis extract, or cannabis products.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(5).

Law Implemented: SDCL 34-20G-72(5).

44:90:04:13. Controlled access – Verification of identity. No medical cannabis establishment may share premises with or permit access directly from any residence or business unless permitted by § 44:90:04:04. This section shall not be interpreted to prohibit access from a shared parking lot, walkway, concourse, or other area generally open to the public as part of a shopping center or business park.

A medical cannabis establishment shall verify the age and identity of anyone entering the premises. Unless permitted by SDCL 34-20G-65 or § 44:90:08:01, no person may enter the premises other than agents of the establishment, contractors 21 years of age or older hired by the establishment, employees or agents of the department, law enforcement officers, or employees or agents of other local or state agencies with regulatory authority, including fire marshals, electrical inspectors, pesticide control staff, and environmental inspectors, for the purpose of exercising such regulatory authority.

Source:

General Authority: SDCL 34-20G-72(5)(g).

Law Implemented: SDCL 34-20G-65, 34-20G-69, 34-20G-72(5).

44:90:04:14. Visitor badges to be worn by contractors performing work at a medical cannabis establishment. A medical cannabis establishment shall issue a visitor badge to any temporary contractor of the establishment whose scope of work will not involve the handling of

Revised Rules

cannabis, cannabis plants, cannabis extracts, or cannabis products, including a carpenter, electrician, plumber, engineer, or alarm technician. Such contractors shall work under the direct supervision of a medical cannabis establishment agent whenever working in an area in which cannabis, cannabis plants, cannabis extracts, or cannabis products are present.

Source:

General Authority: SDCL 34-20G-72(5)(g).

Law Implemented: SDCL 34-20G-65, 34-20G-72(5).

44:90:04:15. Operation of agricultural, industrial, or other heavy equipment – Training requirements. Establishment agents shall:

(1) Receive thorough training in the safe operation of any heavy agricultural equipment, industrial equipment such as extraction and packaging equipment, and other heavy equipment such as forklifts, before operating that equipment; and

(2) Complete OSHA-approved certification courses prior to using any equipment.

Source:

General Authority: SDCL 34-20G-72(5)(g).

Law Implemented: SDCL 34-20G-72(5).

44:90:04:16. Record-keeping – Use of inventory tracking system – Training requirements. Prior to performing duties onsite or transporting cannabis, an establishment agent shall receive at minimum two hours of training in record-keeping. The agent's training must be documented in the establishment's records.

Any establishment agent who will enter data into the inventory tracking system required

Revised Rules

by the department shall additionally receive at minimum two hours of hands-on training. At least one establishment agent for each establishment shall receive at minimum four hours of training to act as an administrator of the inventory tracking system.

Source:

General Authority: SDCL 34-20G-72(5)(g).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:04:17. Security protocols – Training requirements. Each establishment agent shall receive training in all aspects of the establishment's security protocol. The training must focus on the agent's role in deterring and preventing theft and preventing unauthorized access to the premises.

Source:

General Authority: SDCL 34-20G-72(5)(g).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:18. Vehicle requirements – Establishments. Establishments shall provide the following information to the department for each vehicle that will be used to transport cannabis or cannabis products, including samples for testing:

(1) Make, model, and license plate number;

(2) Proof of a valid automobile insurance policy;

(3) A description or photos of a secure, opaque, locking compartment to be used to secure cannabis and cannabis products;

(4) Verification that the vehicle has a functioning alarm system; and

Revised Rules

(5) Verification, with photographs as necessary, that the vehicle cannot be identified as transporting cannabis or cannabis products.

Source:

General Authority: SDCL 34-20G-72(5)(f).

Law Implemented: SDCL 34-20G-72(5).

44:90:04:19. Transport manifests – Form and content. A transport manifest is required for all authorized transfers of any amount of cannabis, cannabis extracts, or cannabis products, except retail sales at a dispensary. The transport manifest must contain:

(1) The name, address, phone number, and license number of the establishment transporting the cannabis, cannabis extracts, or cannabis products;

(2) The name, address, phone number, and license number of the establishment receiving the items;

(3) The phone number and web address of the department's secure verification system;

(4) Description and quantities, either by weight or unit, of all items, including samples, contained in each transport;

(5) Date of transport and approximate time of departure and arrival;

(6) Vehicle make, model and license plate number;

(7) The name and signature of driver and any other agent accompanying the transport; and

(8) The name and signature of the person accepting the transport, upon delivery.

Source:

General Authority: SDCL 34-20G-72(5)(f).

Revised Rules

Law Implemented: SDCL 34-20G-63.

44:90:04:20. Separate transport manifest required. A separate transport manifest shall be prepared for each medical cannabis establishment that will receive cannabis, cannabis extracts, or cannabis products. The vehicle must carry three copies of each transport manifest:

(1) One for the recipient;

(2) One to be returned to the originating establishment for the purposes of record keeping; and

(3) One to be provided at the request of law enforcement or an agent of the department, if the vehicle is involved in a traffic stop or collision.

Any cannabis, cannabis products, or cannabis extracts, including samples, that are refused by the intended recipient must be noted on the transport manifest and noted in the originating establishment's inventory records after the items are returned.

A transport manifest may not be altered from the originating establishment except as provided for in this section.

The transport manifest does not take the place of a chain-of-custody form that may be required of the establishment.

Source:

General Authority: SDCL 34-20G-72(5)(f).

Law Implemented: SDCL 34-20G-72(5).

44:90:04:21. Storage during transport. All cannabis or cannabis products being transported must be contained within an enclosed, locked area in the transport vehicle and out of

Revised Rules

public view. Samples of cannabis, cannabis extracts, and cannabis products for testing must be transported in appropriately labeled sample collection containers with tamper-evident seals affixed that provide clear, lasting evidence that the package has previously been opened. All cannabis, cannabis extracts, or cannabis products being transported to another establishment, other than samples for testing, must be transported within sealed containers identifying the recipient.

A cannabis product manufacturing facility or dispensary transporting any edible product requiring refrigeration to another establishment shall provide refrigerated transport. An establishment shall use temperature-controlled transport vehicles when necessary to prevent spoilage of the transported cannabis or cannabis products.

Source:

General Authority: SDCL 34-20G-72(5)(f).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:22. Conduct during transport. Only agents of the establishment who are listed on each transport manifest may be in the vehicle. Each agent shall wear an agent identification badge while in the vehicle. Any vehicle transporting cannabis, cannabis extract, or cannabis products shall travel directly to the destinations listed on transport manifest, making stops only:

(1) For meals, when the transport lasts more than three hours round trip;

(2) For rest periods required by law;

(3) To refuel; or

(4) Under exigent circumstances, including collisions, traffic stops, mechanical

Revised Rules

breakdowns, weather emergencies, or medical emergencies.

An agent may not remove the cannabis, cannabis extracts, or cannabis products from the vehicle until arrival at the destination listed on the transport manifest, except under exigent circumstances in consultation with the department pursuant to §44:90:04:23.

An establishment agent shall make a vehicle used for the transport of cannabis, cannabis extract, or cannabis products immediately available for inspection upon request of the department.

Upon law enforcement contact, agents shall provide their agent identification badges and all transport manifests.

Source:

General Authority: SDCL 34-20G-72(5)(f).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:23. Transport incident notification. Any traffic stop, breakdown, collision, or unscheduled stop lasting more than two hours involving a vehicle being used by an establishment to transport cannabis, cannabis extract, or cannabis products, must be reported to the department within one business day. Any theft or break-in involving a vehicle being used by an establishment to transport cannabis, cannabis extract, or cannabis products must be reported to local law enforcement and to the department within one business day.

If exigent circumstances require removal of cannabis from the vehicle prior to arrival at the destination listed on the transport manifest, the establishment agents shall make a good faith effort to contact the department for direction. If unable to contact the department, the establishment agents shall make a good faith effort to protect the shipment from diversion.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(5)(f).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:04:24. Health and safety standards for storage. A medical cannabis establishment shall store cannabis and cannabis products, unless on display for sale:

(1) In secure, sealed containers that protect against damage from light, water, insects, or rodents; and

(2) Under environmental conditions, including refrigeration of any perishable edible product, that will protect against physical, chemical, or microbial contamination and damage from temperature or humidity.

Source:

General Authority: SDCL 34-20G-72(5)(f).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

CHAPTER 44:90:05

CANNABIS CULTIVATION FACILITIES

Section

44:90:05:01 Cultivation activities – Compliance with operating procedures.

44:90:05:02 Packaging and labeling cannabis for retail sale.

44:90:05:03 Cultivation equipment – Safety.

44:90:05:04 Cultivation area.

Revised Rules

44:90:05:05 Hours of operation – Exigent circumstances.

44:90:05:06 Fences and gates.

44:90:05:07 Safe application of pesticides and other chemicals used in cultivation – Training requirements.

44:90:05:08 Application of pesticides.

44:90:05:09 List of approved active ingredients in pesticides.

44:90:05:10 Safety of cannabis – Use or presence of prohibited pesticides – Contaminants.

44:90:05:01. Cultivation activities – Compliance with operating procedures. A cultivation facility shall have a principal officer or other manager onsite whenever establishment agents are present. The principal officer or other manager shall ensure that all activities comply with the establishment's operating procedures for:

(1) Propagating and cultivating cannabis plants;

(2) Trimming, drying, curing, and storing cannabis;

(3) Packaging cannabis, including testing samples;

(4) Transporting cannabis to another establishment, including testing samples; and

(5) Maintaining all required records.

Source:

General Authority: SDCL 34-20G-72(5)(e).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:05:02. Packaging and labeling cannabis for retail sale. A cultivation facility may package and label for retail sale in packages of three ounces or less:

Revised Rules

(1) Cannabis flower and trim; and

(2) Pre-rolled cannabis cigarettes, containing only cannabis flower or trim, an unflavored paper wrapper, and, if desired an unflavored filter.

Source:

General Authority: SDCL 34-20G-72(5)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:05:03. Cultivation equipment – Safety. All electrical equipment in a cultivation facility must be listed by a nationally recognized testing laboratory.

Source:

General Authority: SDCL 34-20G-72(5)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:05:04. Cultivation area. Any cultivation of seedlings, immature plants, or mature plants shall take place in:

(1) An indoor facility meeting all security requirements of this article;

(2) One or more greenhouses meeting all security requirements of §§ 44:90:04:05 through 44:90:04:10, inclusive; or

(3) Within a secured, fenced-in area meeting the requirements of §§ 44:90:04:05 through 44:90:05:10, inclusive.

Source:

General Authority: SDCL 34-20G-72(5)(e).

Law Implemented: SDCL 34-20G-64, 34-20G-65, 34-20G-72(5).

Revised Rules

44:90:05:05. Hours of operation – Exigent circumstances. Agents of a cultivation facility may not, outside of the hours of operation stated in the facility's approved operating procedures, plant, feed, water, treat, move, harvest, dry, cure, package, or destroy cannabis, except:

(1) Under exigent circumstances in which prompt action is necessary to protect inventory from destruction; and

(2) With notice to the department within one business day regarding the character of the exigent circumstances, the activities conducted, and the date and time of the activities.

Source:

General Authority: SDCL 34-20G-72(5)(e).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5).

44:90:05:06. Fences and gates. Any cultivation facility cultivating, processing, or storing cannabis outdoors or in greenhouses or other structures that do not meet all security requirements for buildings must secure such cultivation areas with fencing and gates that:

(1) Are secure and undamages;

(2) Are at least six feet high; and

(3) Obscure, or have a cover that obscures, regulated activities from being readily viewed from outside of the fenced-in area.

Source:

General Authority: SDCL 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-65, 34-20G-72(5).

Revised Rules

44:90:05:07. Safe application of pesticides and other chemicals used in cultivation – Training requirements. Any establishment agent who applies a department-approved pesticide shall hold a current pesticide applicator certification issued by the South Dakota Department of Agriculture and Natural Resources pursuant to chapter 12:56:05. Any establishment agent who applies or uses other agricultural chemicals shall have training in their safe use, including mitigating any risks to humans, animals, or waterways.

Source:

General Authority: SDCL 34-20G-72(5)(d).

Law Implemented: SDCL 34-20G-72(5).

44:90:05:08. Application of pesticides. The use of a pesticide in the cultivation of cannabis is prohibited unless it:

(1) Is listed in the cultivation facility's operating procedures filed with the department; and

(2) Contains only those active ingredients approved by the department pursuant to § 44:90:05:09.

An approved pesticide may be applied only by an establishment agent with a current pesticide applicator license and only in a manner consistent with the product label.

Source:

General Authority: SDCL 34-20G-72(5)(d).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:05:09. List of approved active ingredients in pesticides. The department approves the following substances as active ingredients in pesticides when used in a manner consistent with the product label:

(1) Synthetic chemical agents:

(a) Auxin;

(b) Azadirachtin;

(c) Capric acid;

(d) Caprylic acid;

(e) Citric acid;

(f) Copper octoanoate;

(g) Cytokinins;

(h) Diatomaceous earth;

(i) Gibberellic acid;

(j) Horticultural oils;

(k) Hydrogen peroxide;

(l) Indole-3-butyric acid;

(m) Insecticidal soaps;

(n) Iron phosphate;

(o) Methoprene;

(p) Peroxyacetic acid;

(q) Petroleum oils;

(r) Phosphorous acid, including salts thereof;

(s) Potassium bicarbonate;

Revised Rules

(t) Potassium silicate;

(u) Potassium sorbate;

(v) Sodium bicarbonate;

(w) Sodium ferric EDTA;

(x) Sodium laurel sulfate; and

(y) Sulfur.

(2) Bacterial or fungal agents:

(a) Bacillus amyloliquefaciens strain D747;

(b) Bacillus subtilis QST;

(c) Bacillus thuringiensis;

(d) Beauveria bassianaa;

(e) Burkholderia spp. Strain A396;

(f) Gliocladium virens;

(g) Harpin alpha beta;

(h) Isaria fumosorosea;

(i) Myrothecium verrucaria;

(j) Reynoutria sachalinensis;

(k) Trichoderma asperellum strain T34; and

(l) Trichoderma harzianum.

(3) Plant extracts:

(a) Capsaicin;

(b) Castor oil;

(c) Cinnamon oil;

Revised Rules

(d) Clove oil;

(e) Corn oil;

(f) Cottonseed oil;

(g) Garlic oil;

(h) Geraniol;

(i) Geranium oil;

(j) Lemongrass oil;

(k) Linseed oil;

(l) Neem oil;

(m) Olive oil;

(n) Peppermint oil;

(o) Pyrethrins;

(p) Rosemary oil;

(q) Sesame oil;

(r) Soybean oil; and

(s) Thyme oil.

Substances identified as posing minimal risk in 40 C.F.R. § 180.950(e) (May 24, 2002) are approved as active or inert ingredients in pesticides when used in a manner consistent with the product label.

Source:

General Authority: SDCL 34-20G-72(5)(d).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:05:10. Safety of cannabis – Use or presence of prohibited pesticides – Contaminants. The use or presence at a medical cannabis establishment of any pesticide with an active ingredient not on the approved list is a violation of this article and SDCL chapter 34-20G, and any cannabis to which the pesticide was applied is nonusable.

The knowing use or presence at a medical cannabis establishment of any pesticide containing, as an active ingredient, a synthetic chemical agent not on the approved list is a serious and knowing violation of this article and SDCL chapter 34-20G, and any cannabis to which the pesticide was applied is nonusable.

The knowing use or presence at a medical cannabis establishment of any pesticide listing a nonsynthetic substance prohibited in organic crop production under 7 C.F.R. § 205.602 (December 27, 2018) is a serious and knowing violation of this article and SDCL chapter 34-20G, and any cannabis to which the pesticide was applied is nonusable.

Cannabis is nonusable if it contains a level of any of the following contaminants at or in excess of the action level:

(1) Residual pesticides unless approved by the department:

Analyte	**Action Level ug/g (ppm)**
Abamectin	0.5
Azoxystrobin	0.2
Bifenazate	0.2
Etoxazole	0.2
Imazalil	0.2
Imidacloprid	0.4
Malathion	0.2

Revised Rules

Myclobutanil	0.2
Permethrins	0.2
Spinosad	0.2
Spiromesifen	0.2
Spirotetramat	0.2
Tebuconazole	0.4
Any other prohibited synthetic pesticide	0.5

(2) Mycotoxin:

Mycotoxin	**Action Level ug/kg (parts per billion)**
Aflatoxins (B1, B2, G1, G2)	20
Ochratoxin A	20

(3) Microbials:

Microbials	**Action Level cfu/g**
Total Aerobic Bacteria	10^5
E. coli (Shiga toxin-producing E. coli - STEC)	<1
Salmonella	<1
Aspergillus fungi (fumigatus, flavus, terreus, and niger)	<1
Total Yeast and Mold	10^4

Revised Rules

Bile-tolerant Gram Negative Bacteria	10^3

(4) Heavy metals:

Metals	**Action Level ug/g (parts per million)**
Arsenic	0.2
Cadmium	0.2
Lead	0.5
Mercury	0.1

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

CHAPTER 44:90:06

CANNABIS TESTING FACILITIES

Section

44:90:06:01 Required accreditation and registration – Drug Enforcement Agency.

44:90:06:02 Adherence to standard operating procedures – Quality control and quality assurance.

44:90:06:03 Sample collection.

44:90:06:04 Field audits.

44:90:06:05 Chain of custody protocols.

Revised Rules

44:90:06:06 Chain of custody – Forms.

44:90:06:07 Reporting of test results.

44:90:06:08 Analytical testing result verification.

44:90:06:09 Results of confirmation testing.

44:90:06:01. Required accreditation and registration – Drug Enforcement Agency. Upon successful licensure and prior to accepting cannabis or cannabis products for testing, all cannabis testing facilities shall:

(1) Begin working with an accreditation body of licensing to ensure compliance with applicable rules and ensure progress towards achieving ISO/IEC 17025 accreditation, with a scope of accreditation that includes all analytical tests performed by the facility; and

(2) Successfully complete accreditation within 18 months of licensing.

Failure to successfully complete accreditation will result in licensure being revoked.

A cannabis testing facility shall register with the Drug Enforcement Agency pursuant to 21 C.F.R. part 1301.13 (June 28, 2021).

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-72(5).

Reference: International Organization for Standardization & International Electrotechnical Commission. (2018). *ISO/IEC 17025:2017: General Requirements for the Competence of Testing and Calibration Laboratories.* https://www.iso.org/standard/66912.html. Cost: $138.

Revised Rules

44:90:06:02. Adherence to standard operating procedures – Quality control and quality assurance. A cannabis testing facility shall adhere to:

(1) Written procedures for all preanalytical, analytical, and post-analytical processes;

(2) Quality control and quality assurance manual;

(3) Completion of validation studies of all analytical tests to be performed;

(4) Proficiency testing at an interval determined by the accrediting body;

(5) Achieving passing scores on each proficiency test or completion of corrective action, as defined by the accrediting body; and

(6) A program to assess and document, at least annually, the competency of all technical and scientific staff that perform preanalytical, analytical, and postanalytical processes.

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-72(5).

44:90:06:03. Sample collection. Each cannabis testing facility shall adopt standard operating procedures for the collection of samples for testing that must address:

(1) Minimum and maximum batch size for cannabis and cannabis products;

(2) Standards for the assignment of batch identifiers and sample identifiers;

(3) Minimum quantity of cannabis and cannabis products needed for each analytical test;

(4) Methodology for collecting material that is representative of the entire batch being tested;

(5) Cleaning, sanitizing, and other methods for preventing sample contamination;

Revised Rules

(6) Containers to be used for sample collection, including methods for sealing; and

(7) Prevention of damage or degradation during storage and transport.

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-72(5).

44:90:06:04. Field audits. Field audits must be conducted at least quarterly by the cannabis testing facility's quality assurance staff to verify that samples are being collected in accordance with the cannabis testing facility's standard operating procedures as follows:

(1) Reviewing sampling records from the previous quarter and previous year for signs of irregularities;

(2) Observing the collection of samples by each person authorized to collect samples;

(3) Collecting verification samples for comparison of results to samples collected by each person authorized to collect samples;

(4) Recording any deficiencies identified;

(5) Informing any affected cannabis cultivation facility or cannabis product manufacturing facility that past results may have been affected by any deficiencies uncovered; and

(6) Instituting corrective action.

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:06:05. Chain of custody protocols. The chain of custody protocols developed by a cannabis testing facility must be approved by the department and must address:

(1) Recording the possession of samples from the time of sampling through destruction;

(2) Retaining for not less than 90 days any residual samples in the container in which the sample was submitted;

(3) Handling procedures during collection, transport, and testing to avoid loss, damage, diversion, contamination, or misidentification of samples; and

(4) The use of a chain of custody form that documents the collection, transport, receipt, testing, and destruction of samples.

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:06:06. Chain of custody – Form. The chain of custody form must include:

(1) The sample location;

(2) The number and types of containers;

(3) The mode of collection;

(4) The authorized individual who collected the sample;

(5) The date and time of collection; and

(6) The requested analyses.

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

Revised Rules

44:90:06:07. Reporting of test results. The results of any analytical test of cannabis or cannabis products shall be provided to the cannabis cultivation facility or cannabis product manufacturing facility in the form of a certificate of analysis.

The cannabis testing facility shall update, each day by midnight, the inventory tracking system with:

(1) All samples collected; and

(2) The results of all voluntary and mandatory tests performed, including as applicable a quantitative value and whether the sample has passed or failed the test.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e)(h)(k).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:06:08. Analytical testing result verification. Prior to January 1, 2024, all medical cannabis and cannabis products tested by cannabis testing facilities are subject to routine confirmation testing by the department or department designee. The department shall conduct confirmation testing at regular intervals as needed to ensure consistent, reliable test results. Upon request, the cannabis testing facility must submit residual material from samples with complete testing results to the department or department designee. The department or department designee shall perform testing using an acceptable method to verify initial results.

On or after January 1, 2024, the department may reduce the frequency of routine confirmation testing for analytical tests within the scope of accreditation for an ISO/IEC 17025 accredited cannabis testing facility, if the cannabis testing facility:

Revised Rules

(1) Participates in a proficiency testing program as defined by the ISO/IEC17025 accrediting body;

(2) Performs proficiency testing at an interval defined by the accrediting body; and

(3) Achieves a passing score on each proficiency test, or completes corrective action, as defined by the accrediting body.

The department may require all cannabis testing facilities to participate in confirmation testing to ensure the integrity of testing and consistency among cannabis testing facilities.

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-69, 34-20G-72(5).

44:90:06:09. Results of confirmation testing. Results of confirmation testing conducted pursuant to § 44:90:06:08 must be made available to the originating cannabis testing facility. If initial testing results are found to be conforming, no additional action will be taken. If discordant results are encountered, the sample must be subjected to a third and final round of testing. If a third round of testing reveals discordant results, the cannabis testing facility must stop all testing of cannabis and cannabis products pending completion of a corrective action plan approved by the department.

Source:

General Authority: SDCL 34-20G-72(5)(k).

Law Implemented: SDCL 34-20G-69, 34-20G-72(5).

Revised Rules

CHAPTER 44:90:07

CANNABIS PRODUCT MANUFACTURING FACILITIES

Section

44:90:07:01 Manufacturing practices.

44:90:07:02 Work environment.

44:90:07:03 Cannabis product nonusable.

44:90:07:04 Prohibited manufacturing activities.

44:90:07:05 Extraction – Approved operating procedures.

44:90:07:06 Generally safe concentration methods.

44:90:07:07 Potentially hazardous extraction methods.

44:90:07:08 Extraction using inherently hazardous substances.

44:90:07:09 Edible cannabis products.

44:90:07:01. Manufacturing practices. A cannabis product manufacturing facility shall follow standard operating procedures to ensure workplace, environmental, and product safety:

(1) Ensuring that all equipment and surfaces that come into contact with cannabis or other ingredients are food grade and nonreactive;

(2) Maintaining all counters and surface areas in a manner that reduces the potential for development of microbials, molds, mildew, fungi, and other contaminants;

(3) Providing adequate refrigeration for ingredients and products during manufacture, storage, or transport;

(4) Ensuring that all electrical equipment is listed by a nationally recognized testing

Revised Rules

laboratory or inspected annually by an engineer licensed pursuant to SDCL chapter 36-18A; and

(5) Storing all chemicals in a safe manner.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

44:90:07:02. Work environment. As applicable, all agents of a cannabis product manufacturing facility shall:

(1) Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present;

(2) Use proper eye protection, respiratory protection, and gloves;

(3) Use only water that is potable and ice that is made from potable water; and

(4) Undergo safety training on fire prevention and safe operation of equipment used for manufacturing.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

44:90:07:03. Cannabis product nonusable. A cannabis product is nonusable if it contains:

(1) For an inhalable cannabis product:

(a) A level of any contaminant listed in § 44:90:05:10 at or in excess of the corresponding action level specified in that section; or

Revised Rules

(b) Residual solvents other than glycerin, propylene glycol, or cooking fats at or in excess of the following action level:

Residual Solvents	**Action Level ug/g (parts per million)**
Acetone	750
Butanes	800
Heptanes	500
Pentanes	750
Propane	2100
Ethanol	1000
Benzene	1
Toluene	150
Hexane	50
Total Xylenes	150
Isopropyl alcohol	500
Methanol	250
Ethyl acetate	400
Any other prohibited solvent	50

(2) For any other cannabis product:

(a) A level of residual pesticides, mycotoxins, or microbials listed in § 44:90:05:10 at or in excess of the corresponding action level specified in that section; or

(b) Residual solvents other than ethanol, glycerin, propylene glycol, or cooking

Revised Rules

fats at or in excess of the action level:

Residual Solvents	**Action Level ug/g (parts per million)**
Acetone	5000
Butanes	5000
Heptanes	5000
Pentanes	5000
Propane	5000
Benzene	2
Toluene	890
Hexane	290
Total Xylenes	2170
Isopropyl alcohol	5000
Methanol	3000
Ethyl acetate	5000
Any other prohibited solvent	290

(c) Heavy metals at or in excess of the action level:

Metal	**Action Level ug/g (parts per million)**
Arsenic	0.4
Cadmium	0.4

Revised Rules

Lead	1.0
Mercury	0.2

Source:

General Authority: SDCL 34-20G-72(5)(d)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

44:90:07:04. Prohibited manufacturing activities. A cannabis product manufacturing facility may not:

(1) Manufacture a product in the distinct shape of human, animal, creature, vehicle, fruit, cartoon character, toy, emoji, or other artwork likely or intended to appeal to anyone under 21 years of age;

(2) Manufacture a cannabis product by adding or infusing cannabis into a commercially available, noncannabis end product;

(3) Manufacture any edible cannabis product, except a tincture, oil, or capsule that has more than ten milligrams of THC per serving;

(4) Package in a marketing layer an edible cannabis product, except a tincture or oil, or capsule containing oil with more than 100 milligrams of total THC;

(5) Manufacture any cannabis product except:

(a) Vaporizer pens or cartridges;

(b) Concentrated cannabis;

(c) Cannabis tinctures, oils, and capsules containing oil;

(d) Cannabis beverages;

Revised Rules

(e) Other edible cannabis products; and

(f) Topical cannabis products for external use;

(6) Manufacture any product intended for ophthalmic, otic, rectal, or vaginal administration;

(7) Manufacture any cannabis product intended for inhalation using or containing polyethylene glycol, vitamin E acetate, or medium chain triglyceride oil;

(8) Manufacture a product using cannabis or concentrated cannabis that has not passed any test required by the department;

(9) Manufacture cannabis products intended for non-human consumption;

(10) Manufacture products that do not contain cannabis on the same premises as cannabis products; or

(11) Extract cannabis using pressurized canned flammable fuel, handheld torch devices, refillable cigarette lighters, or similar consumer products.

Source:

General Authority: SDCL 34-20G-72(5)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

44:90:07:05. Extraction – Approved operating procedures. A cannabis product manufacturing facility shall conform with the standard operating procedures for extraction methods described in its operating procedures and may not extract cannabis using any other methods without prior written approval by the department.

A cannabis product manufacturing facility performing extraction may be subject to inspection by the state fire marshal, local fire department, building inspector, or code

Revised Rules

enforcement officer to confirm that no health or safety concerns are present, and that the facility complies with all applicable safety standards contained in local ordinance, SDCL chapter 11-10, article 61:15, and chapter 20:44:22.

Source:

General Authority: SDCL 34-20G-72(5)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

44:90:07:06. Generally safe concentration methods. The following methods of preparing concentrated cannabis are permissible if listed in the establishment's operating procedures on file with the department:

(1) Mechanical concentration using:

(a) Potable water and ice made from potable water;

(b) Dry screening or sieving;

(c) Cryogenic or subzero processing not involving a solvent; and

(d) Pressure and temperature.

(2) Infusion of cannabis in food grade fats or synthetic food additives using:

(a) Propylene glycol;

(b) Glycerin; or

(c) Butter, olive oil, or other typical cooking fats.

Source:

General Authority: SDCL 34-20G-72(5)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:07:07. Potentially hazardous extraction methods. The department shall permit extraction using the following substances, if 99 percent or greater in purity and if the department deems storage, preparation, electrical, gas monitoring, fire suppression, and exhaust systems methods to be adequate:

(1) Carbon dioxide;

(2) Another liquid chemical, compressed gas, or commercial product that has a flashpoint above 100 degrees Fahrenheit; or

(3) Ethanol or solutions of ethanol and water.

Source:

General Authority: SDCL 34-20G-72(5)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

44:90:07:08. Extraction using inherently hazardous substances. Before performing extraction using an inherently hazardous substance, the establishment must have prior physical inspection and written approval by an engineer licensed pursuant to SDCL chapter 36-18A that the establishment's storage, preparation, electrical, gas monitoring, fire suppression, and exhaust systems are adequate for the extraction methods and substances used.

Any extraction method using inherently hazardous substances must be listed in the operating procedures on file with the department and use a substance of 99 percent or greater purity. The resulting extract must not exceed residual limits for the substance established by the department as part of testing requirements.

The following solvents may be used in approved inherently hazardous extraction:

(1) Butane;

Revised Rules

(2) Propane;

(3) Acetone;

(4) Heptane; or

(5) Pentane.

The use of any inherently hazardous substance other than butane, propane, acetone, heptane, or pentane requires written approval of the department, upon documentation of the safety and efficacy of the selected method. All flammable gas must be odorized.

Source:

General Authority: SDCL 34-20G-72(5)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

44:90:07:09. Edible cannabis products. A cannabis product manufacturing facility that has declared edible cannabis products as part of its approved operating procedures shall:

(1) Obtain a South Dakota food service establishment license, pursuant to SDCL chapter 34-18, covering ongoing activities at the location identified in the operating procedures;

(2) Employ a Certified Food Service Manager meeting the requirements of § 44:02:07:03;

(3) Comply with all applicable standards of chapter 44:02:07, and the city or county in which the establishment is located.

Source:

General Authority: SDCL 34-20G-72(5)(e)(h).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

Cross-Reference: Person in charge, 44:02:07:03.

CHAPTER 44:90:08

CANNABIS DISPENSARIES

Section

44:90:08:01 Preventing unauthorized access – Age verification.

44:90:08:02 Preventing unauthorized access – Age verification – Website or mobile application.

44:90:08:03 Preventing unauthorized sales – Training requirements.

44:90:08:01. Preventing unauthorized access – Age verification. No dispensary may allow entry into areas containing cannabis without first identifying an individual as a cardholder or other person authorized pursuant to § 44:90:04:14. No dispensary may allow entry to an age-restricted cardholder. Acceptable methods of controlling access include:

(1) Verification at an external cashier window or ticket window, followed by unlocking an exterior door to admit the individual into the building;

(2) Verification at a cashier window or ticket window located in an entryway with a locked interior door that prevents access to any area containing cannabis, followed by unlocking the interior door; and

(3) Verification by an agent outside a locked exterior or interior door, followed by unlocking the door.

Verification may not take place in any area in which a person may access cannabis

Revised Rules

without passing through a lockable door.

Source:

General Authority: SDCL 34-20G-75, 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5), 34-20G-95.

44:90:08:02. Preventing unauthorized access – Age verification – Website or mobile application. Any website or mobile application developed or hosted by an establishment must:

(1) Include verification that the visitor is a cardholder or nonresident cardholder, except an age-restricted cardholder, or is 21 years of age or older;

(2) Require the cardholder's or nonresident cardholder's registry identification number for verification of any online purchases; and

(3) Limit online sales to cardholders and nonresident cardholders who previously have made a purchase of cannabis or cannabis products at the establishment.

Source:

General Authority: SDCL 34-20G-72(5), 34-20G-72(5)(c).

Law Implemented: SDCL 34-20G-64, 34-20G-72(5), 34-20G-95.

44:90:08:03. Preventing unauthorized sales – Training requirements. Before interacting with any cardholder, any employee of a dispensary shall be trained to:

(1) Determine the authenticity of registry identification cards;

(2) Ensure that the person presenting a registry identification card is the authorized cardholder;

(3) Use the verification system by phone, point-of-sale software, and mobile application;

Revised Rules

(4) Track the amount of cannabis dispensed for a patient's use and consolidate the amounts in sales to the patient and the patient's designated caregiver; and

(5) Verify that the dispensary has been designated to make sales to the patient or the patient's designated caregiver.

Source:

General Authority: SDCL 34-20G-72(5)(g).

Law Implemented: SDCL 34-20G-70, 34-20G-71, 34-20G-72(5).

CHAPTER 44:90:09

SAMPLING AND TESTING

44:90:09:01 Mandatory testing prior to transfer.

44:90:09:02 Absence of mandatory testing.

44:90:09:03 Prohibited transfer of cannabis or cannabis product – Exceptions.

44:90:09:04 Retention of certificate of analysis.

44:90:09:05 Payment of fees associated with testing.

44:90:09:06 Creation of batches.

44:90:09:07 Collection of samples.

44:90:09:08 Packaging of samples for testing.

44:90:09:09 Storage while awaiting test results.

44:90:09:10 Receipt of results – Remediation.

44:90:09:11 Remediation of nonusable batches.

44:90:09:12 Destruction of nonusable batches

Revised Rules

44:90:09:01. Mandatory testing prior to transfer. A cultivation facility or product manufacturing facility must submit cannabis and cannabis products for the following tests prior to transfer to another establishment:

(1) Beginning July 1, 2022:

(a) Potency testing for THC content and, if so labeled, CBD content; and

(b) Microbials listed in §44:90:05:10(3);

(2) Beginning July 1, 2023:

(a) Mycotoxins listed in §44:90:05:10(2);

(b) Metals listed in §44:90:05:10(4) and 44:90:07:03;

(c) Pesticides listed in §44:90:05:10(1); and

(d) Solvents listed in §44:90:07:03.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:02. Absence of mandatory testing. The absence of mandatory testing may not be interpreted to allow:

(1) The use of prohibited solvents or pesticides;

(2) Agricultural or manufacturing practices that promote the growth of mold, yeast, or bacteria; or

(3) Soil or growing media containing unsafe levels of lead, arsenic, cadmium, or mercury.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:03. Prohibited transfer of cannabis or cannabis product – Exceptions. Except as allowed by § 44:90:09:11, no cannabis or cannabis products may be transferred by a cannabis cultivation facility or cannabis product manufacturing facility to a cannabis product manufacturing facility or cannabis dispensary unless:

(1) A cannabis testing facility has performed all mandatory tests on the cannabis or cannabis products and determined it complies with this article; and

(2) The cannabis or cannabis products are accompanied by a certificate of analysis issued by the cannabis testing facility that covers all mandatory tests.

Except samples for testing, any cannabis or cannabis products transferred from a cannabis cultivation facility or a cannabis product manufacturing facility without a certificate of analysis is nonusable and may not be remediated.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:04. Retention of certificate of analysis. A cannabis product manufacturing facility or cannabis dispensary shall maintain the certificate of analysis for any cannabis or cannabis products for 180 days or until all of the cannabis or cannabis products have been transferred or destroyed, whichever is later.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:05. Payment of fees associated with testing. The establishment submitting the cannabis or cannabis products for testing shall pay all fees associated with testing.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:06 Creation of batches. A cannabis cultivation facility or cannabis product manufacturing facility shall:

(1) Divide cannabis or cannabis products into batches as directed by a registered cannabis testing facility;

(2) Assign a unique batch identifier to the cannabis or cannabis products; and

(3) When cannabis is harvested or trimmed:

(a) Cannabis flower shall be assigned to a batch containing a single strain from a single harvest date; and

(b) Cannabis trim may be assigned to a batch containing multiple strains and from multiple trimming dates.

Source:

General Authority: SDCL 34-20G-72(5)(d)(k).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:09:07. Collection of samples. A cannabis cultivation facility or cannabis product manufacturing facility shall submit for laboratory testing at minimum one sample from of each batch of cannabis or cannabis products created pursuant to § 44:90:09:06 or as directed by the cannabis testing facility based on batch size.

Before January 1, 2024, samples for testing shall be collected by an agent of either the testing facility or the establishment submitting the sample, if:

(1) No agent collects samples prior to receiving full training on the cannabis testing facility's sample collection procedures;

(2) The collection of samples takes place in full view of security cameras; and

(3) The collection of samples by agents of the establishment submitting the samples is done with the permission of the cannabis testing facility. The cannabis testing facility may revoke the permission at any time without stating a reason.

On or after January 1, 2024, samples for testing must be collected by an agent of the testing facility.

The collection of samples must comply in all manner with the testing facility's standard operating procedures and requirements for ISO/IEC 17025 accreditation.

Source:

General Authority: SDCL 34-20G-72(5)(d)(k).

Law Implemented: SDCL 34-20G-72(5).

Reference: International Organization for Standardization & International Electrotechnical Commission. (2018). *ISO/IEC 17025:2017: General Requirements for the*

Revised Rules

Competence of Testing and Calibration Laboratories. https://www.iso.org/standard/66912.html. Cost: $138.

44:90:09:08. Packaging of samples for testing. All samples of cannabis, cannabis extracts, or cannabis products must be transferred to a testing facility in sealed, child-resistant, and tamper-evident containers that are supplied by a testing facility or that meet criteria specified by a testing facility.

Source:

General Authority: SDCL 34-20G-72(5)(f)(k).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:09. Storage while awaiting test results. A cultivation facility or cannabis product manufacturing facility awaiting testing results shall:

(1) Enter the identification number of the batch and the identification number of the samples associated with the batch into the establishment's inventory records;

(2) Store the batch in one or more sealed containers enclosed on all sides; and

(3) Affix to the container a label including the following information:

(a) The establishment's identification number;

(b) The batch number entered into inventory records;

(c) Name and identification number of the testing facility that will perform the tests;

(d) The sample's unique identification number

(e) The date the samples were taken; and

Revised Rules

(f) In bold, capital letters, no smaller than 12-point font, PRODUCT NOT TESTED.

Source:

General Authority: SDCL 34-20G-72(5)(f).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:10. Receipt of results – Remediation. Upon receipt of a certificate of analysis indicating that cannabis or cannabis products comply with SDCL chapter 34-20G and this article and after the cannabis testing facility updates the inventory tracking system, the cannabis cultivation facility or cannabis product manufacturing facility may transfer the cannabis or cannabis products to another establishment, subject to the inventory tracking requirements of this article.

Upon receipt of a certificate of analysis indicating that cannabis or cannabis products are nonusable, the cannabis or cannabis products shall remain, until remediated or destroyed in accordance with this article, in the same storage container with a new label depicting:

(1) The establishment's identification number;

(2) The batch number entered into inventory records;

(3) Name and identification number of the testing facility that will perform the tests;

(4) The sample's unique identification number

(5) The date the samples were taken;

(6) The reason for failed analytical testing; and

(7) In bold, capital letters, no smaller than 12-point font, PRODUCT FAILED TESTING.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(5)(d)(e)(f).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:11. Remediation of nonusable batches. A cannabis cultivation facility or cannabis product manufacturing facility may elect to remediate a batch of cannabis or cannabis products that failed testing, provided that:

(1) Cannabis and cannabis products that fail tests for metals or pesticides may not be remediated;

(2) Cannabis and cannabis products that fail tests for prohibited solvents may not be remediated;

(3) An establishment shall outline its processes for remediating cannabis and cannabis products in its operating procedures;

(4) An establishment shall obtain department permission before remediating a batch of cannabis or cannabis products; and

(5) Any cannabis or cannabis products must be retested and must pass all required tests after remediation.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

44:90:09:12. Destruction of nonusable batches. If a cultivation facility or product manufacturing facility is unable or unwilling to remediate a nonusable batch of cannabis or

Revised Rules

cannabis products, the establishment shall:

(1) Note in the inventory tracking system, or if unavailable, provide notice within one business day in writing to the department, that the establishment will destroy the cannabis or cannabis products;

(2) Follow the procedures for destroying cannabis waste in the establishment's approved operating procedures; and

(3) Ensure that destruction of the nonusable batch is captured by functioning security cameras and stored according to this article.

Source:

General Authority: SDCL 34-20G-72(5)(d)(e).

Law Implemented: SDCL 34-20G-72(5).

CHAPTER 44:90:10

PACKAGING, LABELING, AND ADVERTISING

Section

44:90:10:01 Packaging for transfer or sale – General requirements.

44:90:10:02 Packaging for retail sale – General requirements.

44:90:10:03 Packaging of cannabis flower or trim or inhalable cannabis products for retail sale.

44:90:10:04 Packaging of edible cannabis products for retail sale – Tinctures, oils, and beverages excluded.

44:90:10:05 Packaging of cannabis tinctures and oils for retail sale.

Revised Rules

44:90:10:06 Packaging of cannabis beverages for retail sale.

44:90:10:07 Packaging of topical cannabis products for retail sale.

44:90:10:08 Labeling required.

44:90:10:09 Format of labeling – Font size – Multiple labels.

44:90:10:10 Labeling claims – Results of testing.

44:90:10:11 Expected effects – Time to take effect – Duration of effect.

44:90:10:12 Ingredients – Allergen warnings.

44:90:10:13 Contents – Net weight or volume – Nutritional information.

44:90:10:14 Required warnings – Indication that edible product contains cannabis – Side effects – Legal status of cannabis.

44:90:10:15 Identifying information – Establishment identification number – Batch – Dates.

44:90:10:16 Labeling prohibitions.

44:90:10:17 Prohibited forms of advertising.

44:90:10:18 Target audience – Establishments and adult cardholders only – Prohibition on advertising to practitioners.

44:90:10:19 Advertising on websites, social media and mobile applications.

44:90:10:20 Prohibited content – Advertisements.

44:90:10:21 Required information – Advertisements.

44:90:10:22 Nonconforming advertising.

44:90:10:01. Packaging for transfer or sale – General requirements. All cannabis or cannabis products shall be packaged for transfer or sale in containers that:

(1) Are fully enclosable;

Revised Rules

(2) Are resealable;

(3) Protect the packaged item from contamination; and

(4) Do not impart any toxic or deleterious substance to the packaged item.

A cultivation facility shall package all flower, trim, or pre-rolled cigarettes for retail sale before transfer to a dispensary.

A cannabis product manufacturing facility shall package all cannabis products for retail sale before transfer to a dispensary.

Source:

General Authority: SDCL 34-20G-72(5)(j).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:02. Packaging for retail sale – General requirements. A dispensary shall transfer any cannabis or cannabis products to the patient or designated caregiver in packaging that is:

(1) Child-resistant in compliance with 16 C.F.R. part 1700.15 (July 21, 1995);

(2) Tamper-evident, using a sealing method that provides clear, lasting evidence that the package has previously been opened;

(3) Resealable, except for single-serving cannabis products; and

(4) Opaque.

Unless otherwise specified by this article, each packaging requirement may be met by the container provided by either the cultivation facility or cannabis product manufacturing facility or by exit packaging supplied by the dispensary at the time of sale.

Source:

Revised Rules

General Authority: SDCL 34-20G-72(5)(j).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:03. Packaging of cannabis flower or trim or inhalable cannabis products for retail sale. Cannabis flower or trim or an inhalable cannabis product shall be transferred by a dispensary in a container that is fully enclosed on all sides, as follows:

(1) If the container is soft-sided, it must be four mil or greater in thickness; or

(2) If the container has rigid sides, it must have a lid or enclosure that can be placed tightly and securely on the container.

Source:

General Authority: SDCL 34-20G-72(5)(j).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:04. Packaging of edible cannabis products for retail sale – Tinctures, oils, and beverages excluded. Edible cannabis products shall be packaged as follows:

1. Single-serving edible cannabis products, other than tinctures, oils, and beverages:

(a) Shall be placed into a child-resistant container that may or may not be resealable; and

(b) May be bundled into a larger marketing layer so long as the total amount of active THC per marketing layer does not exceed 100 milligrams.

(2) Multiple-serving edible cannabis products, other than tinctures, oils, and beverages:

(a) Shall be packaged either in a resealable container or with individual servings heat-sealed into packaging made of plastic four mil or greater in thickness with no easy-open tab,

Revised Rules

dimple, corner, or flap;

(b) Shall contain 100 milligrams or less of total THC per multiple-serving container; and

(c) Shall clearly indicate the size of a serving if the edible product is not in a form that indicates a serving.

Source:

General Authority: SDCL 34-20G-72(5)(j).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:05. Packaging of cannabis tinctures and oils for retail sale. Cannabis tinctures or oils shall be packaged:

(1) In a glass or plastic vial or dosage syringe, either:

(a) With a resealable child-resistant cap; or

(b) With a resealable cap and enclosed in a child-resistant, soft-sided container made of plastic that is four mil or greater in thickness and heat-sealed; and

(2) With an indication of individual servings, either:

(a) By dividing cannabis oil into individual gelatin capsules; or

(b) By including with the cannabis tincture or oil a measuring device such as a dosing syringe, measuring cap, or dropper. Hash marks on the bottle or package do not qualify as a measuring device.

Source:

General Authority: SDCL 34-20G-72(5)(j).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:10:06. Packaging of cannabis beverages for retail sale. Cannabis beverages shall be packaged as follows:

(1) Single-serving cannabis beverages that do not contain more than ten milligrams of THC must be packaged in:

(a) A child-resistant container;

(b) A metal can with a stay tab mechanism opening; or

(c) A glass bottle with a cork or metal crown style bottle cap;

(2) Multiple-serving cannabis beverages that contain more than ten milligrams of THC but no more than 100 milligrams of THC must:

(a) Be packaged in a child-resistant container that has a resealing cap or closure; and

(b) Include a measuring device such as a measuring cap or dropper. Hash marks on the bottle or package do not qualify as a measuring device.

Cannabis beverages packaged according to this section may be bundled into a larger marketing layer so long as the total amount of THC per marketing layer does not exceed 100 milligrams.

Source:

General Authority: SDCL 34-20G-72(5)(j).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:07. Packaging of topical cannabis products for retail sale. Ointments, creams, and lotions must be packaged in a child-resistant container that has a resealing cap or

Revised Rules

closure compliant with 16 C.F.R. part 1700.15 (July 21, 1995). Dry bath soaks and transdermal patches must be packaged in a plastic that is four mil or greater in thickness to prevent unintended access to and ingestion by children or pets and is heat-sealed with no easy-open tab, dimple, corner, or flap.

Source:

General Authority: SDCL 34-20G-72(5)(j).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:08. Labeling required. All cannabis, cannabis extract, and cannabis products must be labeled in accordance with this chapter before sale or transfer to the patient or designated caregiver.

Prior to transferring cannabis to a dispensary, a cultivation facility shall label the marketing layer of each container. Prior to transferring cannabis products to a dispensary, a cannabis product manufacturing facility shall label each the marketing layer of each container.

Unless otherwise specified, all required information shall be printed directly on the marketing layer of the cannabis or cannabis product or printed on a sticker attached to the marketing layer of the cannabis, cannabis extract, or cannabis product.

Source:

General Authority: SDCL 34-20G-72(5)(j),(7).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:09. Format of labeling – Font size – Multiple labels. All required information must be printed clearly in English on the label in type no smaller than six-point font (1/12 inch).

Revised Rules

An establishment may affix an extendable, accordion-style label, layered label, or multiple labels to the marketing layer if none of the required information is obstructed and the label can be easily identified by a patient or designated caregiver as containing important information.

Source:

General Authority: SDCL 34-20G-72(7).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:10. Labeling claims – Results of testing. The results of any testing mandated by the department must be included on the label of any cannabis or cannabis product. The label must state the THC content in milligrams of total THC and as a percentage of the product's weight. No label may contain claims regarding cannabidiol content or the absence of microbials, metals, solvents, or pesticides except to list the results of analytical tests performed by a registered cannabis testing facility.

Source:

General Authority: SDCL 34-20G-72(7).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:11. Expected effects – Time to take effect – Duration of effect. The label of any cannabis or cannabis product must indicate:

(1) The length of time, in hours or minutes, that it may take the patient to feel effects; and

(2) The length of time the patient should expect the effects to last.

The estimated time to take effect and duration of effect shall be based on the best

Revised Rules

estimate of the establishment printing the label. The label on any edible product, except an ethanol-based tincture, must additionally contain the following warning: Effects of this product may not be felt for up to four hours.

Source:

General Authority: SDCL 34-20G-72(7)(a).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:12. Ingredients – Allergen warnings. The label of any cannabis or cannabis product must identify any pesticides used in cultivation. The label of any cannabis product must list all ingredients and, if applicable, gases, solvents, or other chemicals used in extraction. The label of any edible cannabis product must identify any major allergens contained in the product in accordance with 21 U.S.C. § 321(qq) (April 23, 2021), including milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

Source:

General Authority: SDCL 34-20G-72(7)(b).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:13. Contents – Net weight or volume – Nutritional information. The label of any cannabis or cannabis product must:

(1) Include a statement of net contents identifying the net weight or volume of the cannabis, cannabis extract, or cannabis product, expressed:

(a) If a solid, in both ounces and grams or milligrams; or

(b) If a liquid or colloid, in both fluid ounces and milliliters;

Revised Rules

(2) State the equivalent cannabis weight, calculated according to the equivalent cannabis weight table included in § 44:90:02:17;

(3) For any edible cannabis product, except tinctures, oils, and capsules:

(a) Identify the size of a serving providing ten milligrams of THC expressed in ounces and grams or milligrams, fluid ounces or milliliters, or number of pieces, and the number of servings per marketing layer; and

(b) Labeled with a nutritional fact panel in accordance with 21 C.F.R. part 101.9 (August 29, 2016);

(4) For tinctures, oils, and capsules, contain the size of one or more dosages, expressed in milliliters, number of drops, or number of capsules, along with the amount of THC, in milligrams, in each dosage identified; and

(5) For vaporizer cartridges, vaporizer pens, and topical cannabis products, expressed in the weight of concentrated cannabis used to manufacture the product in milligrams or grams .

Source:

General Authority: SDCL 34-20G-72(7).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:14. Required warnings – Indication that product contains cannabis – Side effects – Legal status of cannabis. The department shall design a standard symbol that indicates an item contains cannabis or cannabis extract that shall be used by all registered establishments. This standard symbol must appear on the front or most predominantly displayed area of the marketing layer of an edible cannabis product, no smaller than 1/2 inch by 1/2 inch.

Labels must contain the following warning statements in no smaller than six-point font:

Revised Rules

(1) For all cannabis and cannabis products:

(a) Contains cannabis. For medical use by qualifying patients only. There may be health risks associated with the use of this product. There may be additional health risks associated with the use of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant. Do not drive a motor vehicle or operate heavy machinery while using this product.;

(b) Cannabis has a high potential for abuse. This product has not been approved by the United States Food and Drug Administration for preventing or treating any condition or disease process;

(2) For all cannabis flower and trim, including pre-rolled cannabis cigarettes: Not for retail sale to persons under 21 years of age.;

(3) For all inhalable cannabis products: Possession by persons under 21 years old illegal.;

(4) For concentrated cannabis in smokable form with a THC content greater than 60 percent: Sale or possession of more than four grams of high-strength concentrate is illegal.

Source:

General Authority: SDCL 34-20G-72(7).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:15. Identifying information – Establishment identification number – Batch – Dates. The container or exit packaging for any cannabis or cannabis product sold by a dispensary must identify:

(1) The registration number of any cultivation facility, cannabis product manufacturing

Revised Rules

facility, or dispensary involved in the cultivation, processing, or sale of the item;

(2) Batch numbers;

(3) Cultivation date of cannabis flower or trim; and

(4) Production date of cannabis products.

Source:

General Authority: SDCL 34-20G-72(5)(j),(7).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:16. Labeling prohibitions. No label may:

(1) Include representations as to cannabinoid content or to the absence of pesticides, mold, or other contaminants, other than to provide the results of analysis performed by a cannabis testing facility certified in accordance with this article;

(2) Make claims regarding health or physical benefits to the consumer;

(3) Include any false or misleading statements;

(4) Obscure identifying information or warning statements;

(5) Use any trademark without authorization;

(6) Depict a human, animal, creature, vehicle, fruit, cartoon character, toy, emoji, or other artwork likely or intended to appeal to anyone under 21 years of age;

(7) Include the word "candy" or "candies"; or

(8) Refer to any item typically marketed to persons under 21 years of age.

Source:

General Authority: SDCL 34-20G-72(7).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:10:17. Prohibited forms of advertising. No establishment may advertise:

(1) On a sign or billboard, except that a dispensary may advertise on signs on its own premises;

(2) By distributing handbills in public areas or on publicly owned property;

(3) Through direct mail, phone, text, or email without verifying the recipient is a cardholder or medical cannabis establishment and offering a permanent opt-out feature;

(4) Through publication and radio, television, and other media;

(5) Through a practitioner or health care facility, by placing advertising material at a practitioner's office or health care facility, or by targeting the practitioner's or health care facility's patients through direct mail, phone, text, or email.

Source:

General Authority: SDCL 34-20G-72(5)(i).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:18. Target audience – Establishments and adult cardholders only – Prohibition on advertising to practitioners. Advertisements must be targeted as directly as possible to other establishments, cardholders who are 21 years of age or older, and readers of medical publications. Advertisements may not target:

(1) Non-cardholders, including:

(a) Suggesting a medical evaluation; or

(b) Interacting with the public at events sponsored by the establishment;

(2) Anyone under the age of 21, including:

Revised Rules

(a) Depicting anyone under 21 years of age; or

(b) Using cartoons, toys, or other products or images commonly associated with or marketed to individuals under 21 years of age; or

(3) Practitioners or health care facilities, other than advertising in medical publications.

Source:

General Authority: SDCL 34-20G-72(5)(i).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:19. Advertising on websites, social media, and mobile applications. Any advertising on websites, social media, or mobile applications must include:

(1) A verification that the recipient is a cardholder 21 years of age or older; and

(2) A permanent opt-out feature.

Source:

General Authority: SDCL 34-20G-72(5)(i).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:20. Prohibited content – Advertisements. No advertisement for a medical cannabis establishment may:

(1) Make deceptive, false or misleading statements;

(2) Make claims related to potency beyond listing the cannabinoid content of the cannabis or cannabis product advertised, as verified by a testing facility;

(3) Depict consumption of cannabis or cannabis products;

(4) Depict pregnancy, breastfeeding, or operating a motorized vehicle, boat or

Revised Rules

machinery;

(5) Depict or refer to candy or a specific type of candy;

(6) Use a trademark associated with a non-cannabis product

(7) Use a parody or other use that has similarity to the original;

(8) Encourage the transportation of cannabis across state lines or otherwise encourage illegal activity;

(9) Assert that cannabis is safe because it is regulated by the department, tested by a testing facility, or otherwise endorsed by any government agency;

(10) Make claims that cannabis has curative or therapeutic effects;

(11) Claim any health or physical benefits; or

(12) Encourage excessive or rapid consumption.

Source:

General Authority: SDCL 34-20G-72(5)(i).

Law Implemented: SDCL 34-20G-72(5).

44:90:10:21. Required information – Advertisements. Any advertisement must contain the following information:

(1) A statement: For medical use by qualifying patients only.; and

(2) The medical cannabis establishment identification number of the establishment responsible for the advertisement.

Source:

General Authority: SDCL 34-20G-72(5)(i).

Law Implemented: SDCL 34-20G-72(5).

Revised Rules

44:90:10:22. Nonconforming advertising. Any nonconforming advertising is a violation of this article and SDCL chapter 34-20G.

(1) Upon notification by the department, the establishment shall cease the nonconforming advertisements and remove any nonconforming advertising from websites, social media, mobile applications, or signs.

(2) Failure to cease or remove the advertising within 48 hours is a serious and knowing violation of this article and SDCL chapter 34-20G.

Source:

General Authority: SDCL 34-20G-72(5)(i).

Law Implemented: SDCL 34-20G-72(5),34-20G-80.

CHAPTER 44:90:11

RECORDKEEPING

Section

44:90:11:01 Inventory tracking system – Required use.

44:90:11:02 Retention of records – Electronic and paper – Amended records.

44:90:11:03 Daily inventory record.

44:90:11:04 Daily transfer record.

44:90:11:05 Daily testing sample record.

44:90:11:06 Cultivation facility inventory records – Additional requirements.

44:90:11:07 Cannabis product manufacturing facility inventory records – Additional

Revised Rules

requirements.

44:90:11:08 Testing facility inventory records – Additional requirements.

44:90:11:09 Dispensary inventory records – Additional requirements.

44:90:11:10 Daily transaction record.

44:90:11:11 Department access to and use of establishment records.

44:90:11:12 Inconsistencies in establishment recordkeeping – Department action.

44:90:11:01. Inventory tracking system – Required use. Establishments shall use an electronic inventory tracking system prescribed by the department to create all required inventory records, transfer records, testing sample records, and transaction records.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:02. Retention of records – Electronic and paper – Amended records. A cannabis establishment shall maintain, for a minimum of 18 months, the following records:

(1) All point of sale records, whether in electronic or paper form;

(2) Transport manifests; and

(3) Daily inventory records, transfer records, testing sample records, and transaction records.

No inventory record, transfer record, testing sample record, or transaction record may be altered after the date on which it was created. If necessary, an amended inventory record, transfer record, testing sample record, or transaction record may be created, but the original record is

Revised Rules

subject to record retention requirements.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:03. Daily inventory record. A cannabis establishment shall maintain and update by midnight of each day of operation, an electronic record of the establishment's inventory of cannabis and cannabis products that must

(1) For prepackaged cannabis or cannabis products, the inventory record shall include the number of marketing layers of each item;

(2) Use the following units of measure:

(a) For seeds, seedlings, and plants, whole numbers;

(b) For cannabis flower, trim, pre-rolled cannabis cigarettes, and dry or powdered topical products, net weight in grams and ounces;

(c) For vaporizer cartridges, vaporizer pens, and concentrated cannabis, net weight in milligrams;

(d) For edible cannabis products and transdermal patches, milligrams of THC; and

(e) For ointments, creams, or lotions, net volume in fluid ounces;

(3) Reflect:

(a) The destruction of cannabis or disposal of cannabis waste;

(b) Theft or other loss; and

(c) Data from the transfer record; and

Revised Rules

(4) Be maintained securely and may not identify any cardholder other than by the cardholder's identification number.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:04. Daily transfer record. A cannabis establishment shall maintain and update by midnight of each day of operation, an electronic record of all cannabis obtained from a cardholder or another establishment, and all cannabis and cannabis products transferred to another establishment that:

(1) Use the same units of measure as the inventory record;

(2) Reflect all transport manifests; and

(3) Be maintained securely and may not identify any cardholder except by the cardholder's identification number.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:05. Daily testing sample record. A cannabis establishment shall maintain and update by midnight of each day of operation, an electronic testing sample record that must include:

(1) The batch identifier and quantity of each batch from which samples were drawn;

(2) The sample identifier of each sample created, its quantity, and the batch identifier

Revised Rules

associated with the sample;

(3) The tests to be performed; and

(4) Test results, including a note of whether the testing facility has indicated the batch is safe or unsafe for transfer to another establishment.

The quantity of each batch and each sample must be expressed in the same units as the inventory record.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:06. Cultivation facility inventory records – Additional requirements. The inventory record of a cultivation facility must include a unique identifier for each immature plant and mature plant that must also be printed on a tag or label affixed to the growing container or a tag around the plant's stalk. The inventory record must be updated each time:

(1) A seedling exceeds its size limit and is considered a plant;

(2) A plant flowers for the first time;

(3) A plant is trimmed or harvested;

(4) A testing batch is created; or

(5) Cannabis is packaged for retail sale.

The record for a testing batch must indicate the unique identifier for each plant used to produce the batch. The record for cannabis packaged and labeled for transfer to a dispensary must include the number of marketing layers and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement.

Revised Rules

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:07. Cannabis product manufacturing facility inventory records – Additional requirements. The inventory record of a cannabis product manufacturing facility must include the testing batch identification number of any cannabis and cannabis product obtained from a cultivation facility as follows:

(1) The inventory record must be updated each time:

(a) A quantity of concentrated cannabis is made from cannabis flower or trim;

(b) A quantity of cannabis product is made from cannabis or concentrated cannabis; or

(c) A quantity of cannabis product is packaged for retail sale.

(2) Any concentrate cannabis must be assigned to a testing batch, that must:

(a) Consist only of concentrated cannabis produced on a single day using the same concentration or extraction method; and

(b) Be entered into the inventory record with the identifier of any testing batch of cannabis from which it was produced.

(3) Any cannabis product shall be assigned to a testing batch that must:

(a) Consist only of a single type of product produced on a single day; and

(b) Be entered into the inventory record with the identifier of any testing batch of cannabis or concentrated cannabis from which it was produced.

The record for cannabis extracts or products packaged and labeled for transfer to a

Revised Rules

dispensary must include the testing batch identifier, the number of marketing layers, and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72.

44:90:11:08. Testing facility inventory records – Additional requirements. A testing facility shall maintain and update by midnight each day of operation, an inventory record of:

(1) All samples in its possession, with unique identifiers and quantities expressed in units specified in its operating procedures; and

(2) All other cannabis, cannabis extracts, and cannabis products acquired for training or reference purposes;

(3) The quantity of each sample rendered unusable by testing;

(4) The quantity of each sample returned to the establishment;

(5) The quantity of each sample destroyed; and

(6) The quantity of any sample lost, stolen, or otherwise unaccounted for.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:09. Dispensary inventory records – Additional requirements. The inventory record of a dispensary must include the type of product, the testing batch identifier, the number

Revised Rules

of marketing layers, and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement for all cannabis and cannabis products. The inventory record shall be updated each day of operation to reflect:

(1) Any cannabis, cannabis extracts, or cannabis products received from another establishment;

(2) Sales to qualifying cardholders, which must include the cardholder's identification number;

(3) Returns of merchandise from cardholders, whether to be resold, returned to another establishment, or destroyed;

(4) Transfers to another establishment, including returns; and

(5) Destruction of cannabis.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5).

44:90:11:10. Daily transaction record. A dispensary shall maintain and update by midnight each day of operation, a transaction record, that must include:

(1) The type of product, the testing batch identifier, the number of marketing layers, and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement, for each sale or return; and

(2) The cardholder identification number associated with each quantity. The transaction record may not contain any other identifying information relating to a cardholder.

Source:

Revised Rules

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-71, 34-20G-72(5).

44:90:11:11. Department access to and use of establishment records. An establishment shall provide to the department agents access to all records during an inspection of an establishment or vehicle or upon request.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5), 34-20G-88.

44:90:11:12. Inconsistencies in establishment recordkeeping – Department action. Upon the discovery of any inconsistencies in the establishment's record-keeping, the department shall:

(1) Make a determination of whether the inconsistences are knowing or negligent;

(2) Inform the establishment in writing of its findings;

(3) If applicable, initiate suspension or revocation proceedings; and

(4) If applicable, refer possible criminal violations to state and local law enforcement.

Source:

General Authority: SDCL 34-20G-72(5)(b).

Law Implemented: SDCL 34-20G-63, 34-20G-72(5), 34-20G-88.

Revised Rules

CHAPTER 44:90:12

ENFORCEMENT

Section

44:90:12:01 Department inspection of establishments.

44:90:12:02 Recalls.

44:90:12:03 Corrective action plan.

44:90:12:04 Suspension or revocation of registration certificate for serious and knowing violations.

44:90:12:05 Suspension or revocation of registration certificate for multiple violations.

44:90:12:06 Voluntary surrender of registration certificate.

44:90:12:07 Revocation of registry identification card for unauthorized sale.

44:90:12:08 Revocation of registry identification card for serious or multiple violations.

44:90:12:01. Department inspection of establishments. The department may inspect an establishment during an unannounced visit or in response to a complaint. Agents of the department:

(1) Shall present identification before commencing an inspection of an establishment;

(2) Shall have complete and unrestricted access to establishments during business hours for the purposes of inspections, sample collection, testing, interviews, or other investigations;

(3) May collect samples of cannabis and cannabis products and perform analytical tests on those samples or submit them to a cannabis testing facility for testing;

(4) May inspect the contents of any vehicle used by an establishment to transport cannabis, cannabis extracts, or cannabis products and examine the transport manifest; and

Revised Rules

(5) Shall have access to inventory records and certificates of analysis maintained by the establishment, including collecting paper or electronic copies for further review.

The department shall provide an establishment the results of any analytical tests performed on samples taken from the establishment and shall inform the establishment whether the cannabis or cannabis products from which the samples were taken are nonusable.

Source:

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-69, 34-20G-72(6).

44:90:12:02. Recalls. If the department determines that cannabis or cannabis products that have been transferred to a dispensary pose a risk to public health or safety due to contamination, spoilage, mislabeling, or other reasons, the department may initiate a recall as follows:

(1) The department shall request that any establishment that cultivated, manufactured, or sold the affected cannabis or cannabis products initiate a voluntary recall;

(2) The department's correspondence shall include the reasons for the recall request;

(3) The affected establishments shall immediately store the affected cannabis in storage containers labeled prominently with the words RECALLED – DO NOT TRANSFER;

(4) The affected establishments may voluntarily issue a recall of the cannabis or cannabis products;

(5) If the affected establishments agree to issue a recall, then the dispensary shall inform patients who purchased the recalled products that they should discontinue use and return the items to the dispensary; and

Revised Rules

(6) If one or more affected establishments do not agree with the recall request, the department may order the recall of the affected items and shall identify the department's decision as a final department action subject to judicial review pursuant to SDCL chapter 1-26.

Source:

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-69, 34-20G-72(6).

44:90:12:03. Corrective action plan. Upon the discovery of suspected violations of this article or SDCL chapter 34-20G, the department may order the establishment to comply with a corrective action plan, which may include:

(1) Modifying operating procedures to comply with this article and SDCL chapter 34-20G;

(2) Halting transfer of cannabis or cannabis products that are mislabeled or otherwise pose a threat to public health; and

(3) Destroying or remediating cannabis or cannabis products that pose a threat to public health.

The department may order a licensee to destroy a batch of cannabis or cannabis products that fails testing and does not need to demonstrate that the presence of contaminants was due to the action or inaction of the licensee. Such notice must identify the department's decision as a final department action subject to judicial review pursuant to SDCL chapter 1-26.

Nothing in this section prohibits licensees from initiating corrective action, including voluntarily recalling cannabis or cannabis products.

Source:

Revised Rules

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-69, 34-20G-72(6).

44:90:12:04. Suspension or revocation of registration certificate for serious and knowing violations. The department may, pursuant to SDCL chapter 1-26 and SDCL 34-20G-81, suspend for up to six months or revoke a registration certificate for any knowing violation of this article or SDCL chapter 34-20G that involves dishonesty, concealment, breach of patient privacy, diversion, or threat to public health or safety.

Upon the discovery of serious and knowing violations that pose an ongoing threat to public health, safety, or welfare, the department may initiate emergency suspension proceedings pursuant to SDCL 1-26-29.

Source:

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-72(6), 34-20G-80, 34-20G-81.

44:90:12:05. Suspension or revocation of registration certificate for multiple violations. The department may, pursuant to SDCL chapter 1-26 and SDCL 34-20G-81, suspend for up to six months or revoke a registration certificate upon finding that the establishment has committed multiple knowing and negligent violations of this article or SDCL chapter 34-20G.

Upon the discovery of violations that pose an ongoing threat to public health, safety, or welfare, the department may initiate emergency suspension proceedings pursuant to SDCL 1-26-29.

Source:

Revised Rules

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-72(6), 34-20G-80, 34-20G-81.

44:90:12:06. Voluntary surrender of registration certificate. An establishment may offer to voluntarily surrender its registration certificate and cease operations. In such cases, the department has the discretion:

(1) To reject voluntary surrender;

(2) To accept the voluntary surrender without conditions; or

(3) To negotiate conditions of a voluntary surrender, including the amount of time before which the establishment or any principal officer or board member may apply for a registration certificate.

Source:

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-72(6), 34-20G-80, 34-20G-81.

44:90:12:07. Revocation of registry identification card for unauthorized sale. Upon a finding that a cardholder sold cannabis to any person who is not authorized to possess cannabis for medical purposes, the department shall initiate emergency suspension proceedings pursuant to SDCL 1-26-29 and notify the cardholder in writing of the revocation of the registry identification card, along with notice of the right to appeal pursuant to SDCL chapter 1-26.

Source:

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-72(6), 34-20G-83.

Revised Rules

44:90:12:08. Revocation of registry identification card for serious or multiple violations. The department may, pursuant to SDCL chapter 1-26 and SDCL 34-20G-84 revoke a registry identification card upon finding that the cardholder has committed serious or multiple violations of SDCL chapter 34-20G, including:

(1) Transferring cannabis to any person who is not authorized to possess cannabis for medical purposes;

(2) Submitting false information to the department;

(3) Making false statements to a law enforcement officer;

(4) Allowing unauthorized use of a registry identification card;

(5) Accepting remuneration other than direct costs incurred for assisting with the registered qualifying patient's medical use of cannabis, pursuant to SDCL 34-20G-2(2); or

(6) Cultivating cannabis in violation of SDCL chapter 34-20G.

Source:

General Authority: SDCL 34-20G-72(6).

Law Implemented: SDCL 34-20G-72(6), 34-20G-84.

Revised Rules

CHAPTER 44:90:13

PETITIONS TO RECOGNIZE DEBILITATING MEDICAL CONDIITIONS

Section

44:90:13:01 Qualifying debilitating medical conditions.

44:90:13:02 Petitions – Required forms.

44:90:13:03 Department's decision.

44:90:13:01. Qualifying debilitating medical conditions. In addition to the conditions listed in SDCL 34-20G-1(8), the following conditions and treatments are recognized as qualifying debilitating medical conditions if the practitioner certifies they are debilitating for the patient:

(1) Acquired immune deficiency syndrome and positive status for human immunodeficiency virus;

(2) Amyotrophic lateral sclerosis;

(3) Multiple sclerosis;

(4) Cancer or its treatment, if associated with severe or chronic pain, nausea or severe vomiting, or cachexia or severe wasting;

(5) Crohn's disease;

(6) Epilepsy and seizures;

(7) Glaucoma; and

(8) Post-traumatic stress disorder.

Source:

General Authority: SDCL 34-20G-72(1).

Law Implemented: SDCL 34-20G-26.

44:90:13:02. Petitions – Required forms. A petition to the department to add a medical condition to the list of debilitating medical conditions for which a practitioner may recommend the medical use of cannabis shall be submitted on forms provided by the department. The

Revised Rules

petition must include:

(1) The name and address of the South Dakota resident filing the petition;

(2) A clear description of the specific medical condition, defined as narrowly as possible, including any International Classification of Diseases, Tenth Revision code applicable to the condition;

(3) The diagnostic criteria for determining whether cannabis is appropriate for a patient with the medical condition; and

(4) A detailed summary, with citations, of peer-reviewed research that treatment with cannabis produces superior treatment outcomes or fewer side effects, compared to currently available medications or other interventions;

(5) Letters of support from two practitioners; and

(6) Complete copies of any research cited in the petition.

Source:

General Authority: SDCL 34-20G-72(1).

Law Implemented: SDCL 1-26-13, 34-20G-26.

Reference: National Center for Health Statistics. (2021). *International Classification of Diseases, 10th Revision, Clinical Modification.* https://icd10cmtool.cdc.gov/

44:90:13:03. Department's decision. The department's written decision to approve or deny a petition shall be issued within 180 days of submission and must include the factors supporting the decision, including whether the written petition, public testimony, written comments, peer-reviewed research, and consultation with practitioners support the following

Revised Rules

conclusions:

(1) The proposed medical condition is recognized by the medical profession as a serious and chronic medical condition;

(2) Treatments currently available for the proposed condition are either ineffective or produce harmful side effects; and

(3) Medical use of cannabis will provide therapeutic or palliative benefits that outweigh the risks of cannabis use.

A qualifying medical condition shall be recognized through rules promulgated by the department pursuant to chapter 1-26.

Source:

General Authority: SDCL 34-20G-72(1).

Law Implemented: SDCL 34-20G-26.

Revised Rules