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**Revised Administrative Rules**  
**44:90 Medical Cannabis**

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**Section by Section Analysis**

**Chapter 44:90:01 Definitions**

44:90:01:01

Provides definitions for commonly used terms throughout the chapter.

**Chapter 44:90:02 Registry Identification Cards**

44:90:02:01

Describes the requirements for a practitioner to certify a patient for medical cannabis, and method of submission to the department.

44:90:02:02

States that if a patient is under the age 18, that the practitioner must consult with the patient's parents or legal guardian to determine designated caregivers and include that information on the certification.

44:90:02:03

States the requirements for a practitioner's certification that a patient may cultivate cannabis at home. In the event the practitioner states that the patient may cultivate from more than three plants, there are additional requirements the practitioner must submit to the department.

44:90:02:04

States that practitioners are not required to provide medical cannabis certifications to any patient or to approve a patient for home cultivation.

44:90:02:05

States the requirements for a patient registry card application is a completed application form, identification, a photograph, low-income status if applicable, and the required fee.

44:90:02:06

States patients may designate caregivers who will be authorized to handle and administer medical cannabis to the patient. A caregiver is designated by a completed designation form submitted to the department, the caregiver's sworn statement that the caregiver has not been convicted of a disqualifying felony offense, and the applicable fee. Age restricted cardholders must designate at least one caregiver.

44:90:02:07

Requires that caregivers submit to the department every two years a form of identification, a Division of Criminal Investigation fingerprint card, and an authorization and release form releasing results of a state-only background check, as well as certain other requirements.

44:90:02:08

Requires a patient who has been certified by a practitioner to cultivate cannabis, or a designated caregiver, to submit an application to the department with a diagram and photo of the home where cannabis will be grown and cultivated, and the required fee. Upon approval of

the application, the department shall issue certifications for home-cultivation, one of which must be kept on the door of the place where cannabis is being grown.

44:90:02:09

Limits who may cultivate cannabis on behalf of a patient certified to do so, as well as the area where cannabis may be cultivated.

44:90:02:10

Requires a renewal application for a patient registry identification card be submitted 45 days prior to expiration.

44:90:02:11

States a patient may change or substitute designated caregivers at any time. Changes must be noticed to the designated caregivers in writing.

44:90:02:12

States a patient may change or substitute a designation to cultivate at any time. The patient may be required to submit an application based on the change. If the designation removes authority from someone who has been cultivating on behalf of the patient, that person shall be required to return the registry identification card and destroy all cannabis plants.

44:90:02:13

States method by which a designated caregiver may choose to cease serving as a caregiver.

44:90:02:14

States that upon death of a medical cannabis patient, registry identification cards will be returned to the Department and any plants destroyed.

44:90:02:15

States requirements for nonresidents to apply for a nonresident registration card, which would allow a nonresident to buy and use medical cannabis while in South Dakota.

44:90:02:16

States that nonresidents who meet the requirements may receive a nonresident registry card with a ten-digit number that will expire either one-year from date of issuance or upon expiration of the nonresidents' original certification to use medical cannabis from their home-state.

44:90:02:17

States the allowable amount of cannabis cardholders may possess in the state, in its various forms.

44:90:02:18

Places limitations on the age of persons who may possess inhalable cannabis products.

44:90:02:19

States the fees for the applications for a patient registry identification card, designated caregiver card, and home cultivation cards.

### **Chapter 44:90:03 Registration Certificates**

44:90:03:01

States the requirements for an initial application for a registration certificate.

44:90:03:02

Requires that a renewal application for a registration certificate be submitted once every twelve months, and must include the components of the initial application.

44:90:03:03

States the requirements of an application for transfer of the physical location of the registration certificate holder's business. These include a description of the new physical location, certificate of compliance with local government, and the change of location form. Nothing in this rule requires a city or county to issue a registration, license, or permit to operate at the new address.

44:90:03:04

Requires an initial application be submitted to the department when a medical cannabis establishment experiences a transfer of ownership in of 50% or more. A transfer of less than 50% requires that the establishment provide written notice to the department.

44:90:03:05

Requires the operating procedures of any medical cannabis establishment to include certain items, such as a management plan, a site plan, operating days and hours, a workplace safety plan, compliance plans per SDCL 11-10, a security plan, and plans to prevent diversion of cannabis.

44:90:03:06

Requires medical cannabis establishments to have operating procedures that comply with SDCL 34-20G.

44:90:03:07

Outlines the specific information required in a cannabis testing facility's operating procedures to ensure compliance with SDCL 34-20G.

44:90:03:08

Outlines the specific information required in a cannabis product manufacturing facility's operating procedures to ensure compliance with SDCL 34-20G.

44:90:03:09

Requires operating procedures for dispensaries to provide the department with sufficient information to ensure compliance with SDCL 34-20G.

44:90:03:10

Requires initial and renewal applications for a medical cannabis establishment to include a certification that the establishment complies with local government zoning requirements.

44:90:03:11

Requires initial and renewal applications for a medical cannabis establishment to include a certification that the applicant will obtain a local license, if applicable.

44:90:03:12

States time by which the department must receive medical cannabis establishment applications.

44:90:03:13

Requires applications for a medical cannabis establishment application to include certification that no principal officer or board members have previously been involved in a medical cannabis establishment that had its license revoked.

44:90:03:14

Requires applications to certify that no principal officer or board member has been convicted of a felony, and certify that background checks have been conducted for all officers and board members.

44:90:03:15

Describes the scoring criteria used by the Department after receipt of establishment applications.

44:90:03:16

Describes the tiebreaking procedures used by the Department after receipt and scoring of establishment applications, as well as requires establishments to become operational within a year after receipt of a license.

44:90:03:17

States the fees for applications in this section.

#### **Chapter 44:90:04 Establishments**

44:90:04:01

Requires establishments to report a change in management to the Department.

44:90:04:02

Requires establishments to keep written plans for corrective action preventive action.

44:90:04:03

Requires establishments to provide notice to law enforcement and the department within one business day after any criminal activity with regard to the cannabis, cannabis plants, or cannabis products.

44:90:04:04

Prohibits medical cannabis establishments from being co-located with other medical cannabis establishments, unless certain conditions are met.

44:90:04:05

States requirements for lighting at medical cannabis establishments.

44:90:04:06

States requirements for doors and windows at medical cannabis establishments.

44:90:04:07

States requirements for placement of security cameras at medical cannabis establishments.

44:90:04:08

States requirements as to video surveillance, and that the Department will have access to security camera footage from medical cannabis establishments.

44:90:04:09

States that video surveillance footage must be stored for 90 days.

44:90:04:10

States requirements for alarm systems at medical cannabis establishments.

44:90:04:11

Requires medical cannabis establishments to produce an employee or agent badge for each employee or agent of the establishment and establishes the information that must be contained on the badge.

44:90:04:12

Requires that agents and employees of a medical cannabis establishment display the badge.

44:90:04:13

States requirements that medical cannabis establishments must control access to the establishment.

44:90:04:14

Requires temporary workers or contractors at a medical cannabis establishment to display temporary agent badges.

44:90:04:15

Requires safety training for the use of heavy, agricultural, and industry machinery, if applicable, for employees and agents of a medical cannabis establishment.

44:90:04:16

Requires employees and agents to receive training regarding record-keeping.

44:90:04:17

Requires employees and agents to receive training regarding the establishment's security protocol.

44:90:04:18

Requires that medical cannabis establishments share information with the Department regarding each vehicle used to transport cannabis.

44:90:04:19

Requires transport manifests for all transportation of cannabis and cannabis products.

44:90:04:20

Requires a distinct transport manifest for each medical cannabis establishment that receives medical cannabis from a shipment in triplicate.

44:90:04:21

States requirements for cannabis storage during transportation.

44:90:04:22

States requirements for agent and employee conduct while transporting cannabis.

44:90:04:23

States requirements for notice following any incident during transportation of cannabis.

44:90:04:24

States requirements for storage of cannabis at a medical cannabis establishment.

### **Chapter 44:90:05 Cannabis Cultivation Facilities**

44:90:05:01

Requires cultivation facilities to have operating procedures for specific activities and a principal officer or manager to ensure the establishment complies with the operating procedures.

44:90:05:02

Outlines packaging and labeling requirements for cultivation facilities.

44:90:05:03

Requires all electrical equipment in a cultivation facility to be listed by a nationally recognized testing laboratory.

44:90:05:04

Outlines physical requirements for cultivation of medical cannabis.

44:90:05:05

Restricts the hours of operation of a cultivation facility to be consistent with those stated in the cultivation facility's approved operating procedures and provides some exceptions.

44:90:05:06

Outlines requirements for cultivation facilities cultivating, processing, or storing cannabis outdoors or in greenhouses that do not meet all the security requirements for buildings.

44:90:05:07

Requires that any cultivation establishment applying department-approved pesticides to hold a pesticide applicator license issued by the SD Department of Agriculture and Natural Resources and obtain training on their safe use.

44:90:05:08

Restricts the use of pesticides in the cultivation of medical cannabis except in certain specific conditions.

44:90:05:09

Contains the list of approved active ingredients in pesticides for three categories: synthetic chemical agents, bacterial or fungal agents, and plant extracts.

44:90:05:10

Clearly states the use or presence of any pesticide with an active ingredient not on the approved list is a violation of this article and SDCL chapter 34-20G and outlines the action level of the various pesticides.

### **Chapter 44:90:06 Cannabis Testing Facilities**

44:90:06:01

Requires testing facilities, upon licensure, to begin working with an accreditation body of licensing to ensure applicable rules and ensure progress toward ISO/IEC 17025 accreditation. Also requires testing facilities to complete accreditation within 18 months of licensing.

44:90:06:02

Requires cannabis testing facilities to adhere to certain quality control and quality assurance procedures including validation studies, proficiency testing, and annual assessment and documentation on the competency of all technical and scientific staff.

44:90:06:03

Requires cannabis testing facilities to adopt standing procedures for the collection of samples for testing including batch size, batch identifiers, methodology for collection, and cleaning methods to prevent sample contamination.

44:90:06:04

Requires cannabis testing facilities to conduct quarterly field audits and outlines some specific requirements for the field audits.

44:90:06:05

Requires cannabis testing facilities to develop chain of custody protocols and outlines specific requirements for the chain of custody protocols.

44:90:06:06

Outlines what must be contained in the chain of custody form.

44:90:06:07

Requires the results of any analytical test to be provided to the cultivation or manufacturing facility in the form of a certificate of analysis. Also requires testing facilities to update the inventory tracking system each day by midnight with certain specific information.

44:90:06:08

Requires, 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. 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 accredited testing facility, if the facilities meets certain requirements.

44:90:06:09

Requires that the results of confirmation testing made pursuant to 44:90:06:08 be made available to the originating cannabis testing facility. Provides a process for up to three rounds of testing.

#### **Chapter 44:90:07 Cannabis Product Manufacturing Facilities**

44:90:07:01

Sets minimum standards for product manufacturing facilities to ensure workplace, environmental, and product safety.

44:90:07:02

Sets minimum standards for the working environment of all agents of a cannabis product manufacturing facility.

44:90:07:03

Outlines requirements and levels of contamination to render cannabis products nonusable.

44:90:07:04

Creates a specific list of prohibited cannabis product manufacturing activities including prohibiting the manufacture of products in a shape to appeal to persons under 21 years of age, among others.

44:90:07:05

Outlines certain requirements cannabis product manufacturing facilities must follow for the extraction of cannabis.

44:90:07:06

Lists specific permissible methods of preparing concentrated cannabis if listed in the establishment's operating procedures.

44:90:07:07

Specifically permits the extraction of cannabis using certain substances, if 99 percent or greater in purity.

44:90:07:08

Requires the establishment to have a physical inspection of the facility and written approval by a licensed engineer prior to any extraction using inherently hazardous substances. Creates a list of solvents which are subject to the inherently hazardous extraction restrictions.

44:90:07:09

Requires any cannabis product manufacturing facility to be licensed as a food service establishment if producing edible products.

#### **Chapter 44:90:08 Cannabis Dispensaries**

44:90:08:01

Prohibits entry to a dispensary for anyone who is not a cardholder, or otherwise authorized to enter pursuant to 44:90:04:14. Lists acceptable methods of controlling access.

44:90:08:02

Requires that a website or mobile application hosted by the establishment include an age verification, require the cardholder's registry identification number, and limit online sales to cardholders.

44:90:08:03

Requires establishment employees undergo training regarding authenticity of registry identification cards, use of verification system, tracking the amount of cannabis sold to patients, and verifying designated dispensary status.

#### **Chapter 44:90:09 Sampling and Testing**

44:90:09:01

States that cultivation facilities and product manufacturing facilities must submit cannabis for certain testing prior to transferring that cannabis to another facility.

44:90:09:02

States that absence of mandatory testing may not be interpreted as allowing certain conduct or use of certain chemicals.

44:90:09:03

States that cannabis may not be transferred to a cannabis product manufacturing facility or dispensary unless certain conditions have been met.

44:90:09:04

Requires testing facilities to retain the certificate of analysis for a batch of cannabis for 180 days.

44:90:09:05

Requires any fees associated with testing to be paid by the entity submitting the cannabis for testing.

44:90:09:06

Requires the cultivation or manufacturing facility to sort cannabis into distinct batches for testing.

44:90:09:07

States requirements for submission of samples from each batch to be tested.

44:90:09:08

States requirements for packaging of samples to be tested.

44:90:09:09

States requirements for storage of cannabis pending test results.

44:90:09:10

States process for transfer of cannabis upon receipt of passing test results, and remediation of cannabis upon receipt of failing test results.

44:90:09:11

States requirements for remediation of a batch of cannabis.

44:90:09:12

States process for destruction of batch of nonusable cannabis.

### **Chapter 44:90:10 Packaging, Labeling, and Advertising**

44:90:10:01

States general requirements for packaging of cannabis for transfer or sale.

44:90:10:02

States general requirements for packaging of cannabis and cannabis products transferred to a patient or caregiver from a dispensary.

44:90:10:03

States requirements for packaging of cannabis flower or trim or an inhalable product.

44:90:10:04

States requirements for packaging of edible cannabis products.

44:90:10:05

States requirements for packaging of cannabis tinctures and oils.

44:90:10:06

States requirements for packaging of cannabis beverages.

44:90:10:07

States requirements for packaging of cannabis ointments, creams, and lotions.

44:90:10:08

States general requirements for labeling of cannabis, cannabis extract, and cannabis products.

44:90:10:09

States requirement for font size and language for cannabis labels.

44:90:10:10

Requires labels include the results of testing required by the department.

44:90:10:11

Requires labels to include information regarding the length of time it may take a patient to feel effects from the product, and the time the product's effects should last.

44:90:10:12

Requires labels to include allergen warnings, list of pesticides used, and chemicals used in extraction.

44:90:10:13

Requires labels to include the net weight or volume of the cannabis.

44:90:10:14

Requires labels to indicate that the product contains cannabis by use of a uniform symbol, as well as warnings regarding cannabis use.

44:90:10:15

States requirements for labels to include identifying information on the cannabis contained in the product.

44:90:10:16

Lists the items labels are prohibited from including, such as representations as to absence of contaminants, false statements, the term "candy," claims regarding patients' health, and others.

44:90:10:17

Lists the prohibited forms of advertising that a cannabis establishment may not engage in.

44:90:10:18

States the target audience for advertising cannabis and cannabis products must be cardholders who are 21 or older, other establishments, and readers of public medical publications. Prohibits advertising from targeting certain audiences.

44:90:10:19

States requirements for advertising on websites, social media, and mobile applications.

44:90:10:20

Lists prohibited content in cannabis advertising.

44:90:10:21

States that cannabis advertisements must include a statement that the product is for medical use only, and the medical cannabis establishment identification number of the establishment responsible for the advertisement.

44:90:10:22

States that nonconforming advertisement is a violation of the administrative rules and SDCL 34-20G, as well as authorizes department action.

### **Chapter 44:90:11 Recordkeeping**

44:90:11:01

Requires that all establishments utilize an inventory tracking system.

44:90:11:02

Requires that an establishment maintain certain records for a minimum of 18 months.

44:90:11:03

Requires that an establishment maintain certain current daily records.

44:90:11:04

Requires an establishment to maintain current daily records of any cannabis received from a cardholder or another establishment.

44:90:11:05

Requires an establishment to maintain current daily records of all testing.

44:90:11:06

Requires cultivation facilities to maintain a record of each plant, with a corresponding label on each plant.

44:90:11:07

Requires manufacturing establishments to maintain records of testing batch identification numbers and a record of cannabis received from any cultivation facility with additional requirements.

44:90:11:08

Requires testing facilities to maintain current daily records of all samples, all cannabis, quantities rendered unusable, quantities returned, quantity destroyed, and quantity of any sample unaccounted for.

44:90:11:09

Requires dispensaries to maintain inventory records updated daily.

44:90:11:10

Requires dispensaries to maintain daily transaction records.

44:90:11:11

States the department has access to all records during an inspection.

44:90:11:12

States the process upon a department finding of any inconsistencies in the recordkeeping of an establishment.

### **Chapter 44:90:12 Enforcement**

44:90:12:01

States requirements for medical cannabis establishments to allow an inspection by the department, and states the authorized conduct of the department agent.

44:90:12:02

States process by which the department may recall cannabis and cannabis products after a determination that the cannabis is unsafe, or should otherwise be recalled.

44:90:12:03

States the process by which the department may require an establishment engage in a corrective action plan.

44:90:12:04

States the authority for the department to suspend or revoke a registration certificate for violations of the administrative rules and SDCL 34-20G.

44:90:12:05

States the authority for the department to suspend or revoke a registration certificate for multiple violations of the administrative rules and SDCL 34-20G.

44:90:12:06

States an establishment may voluntarily surrender its registration certificate, and the department's options in such a case.

44:90:12:07

Allows the department to revoke a registry identification card upon a finding that the cardholder sold cannabis to someone not authorized to possess cannabis.

44:90:12:08

Allows the department to revoke a registry identification card upon a finding that the cardholder has committed violations of the administrative rules and SDCL 34-20G.

## **Chapter 44:90:13 Petitions to Recognize Debilitating Medical Conditions**

44:90:13:01

Lists qualifying debilitating medical conditions, in addition to the conditions listed in SDCL 34-20G-1(8).

44:90:13:02

States requirements for the petition to the department to add a medical condition to the list of debilitating medical conditions.

44:90:13:03

States requirements for the department's written decision within 180 days after receipt of a petition and states that the addition of other debilitating conditions will be done through the rules promulgation process.