ARTICLE 44:90

MEDICAL CANNABIS

Chapter

CHAPTER 44:90:01

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) "Agent identification badge" means a credential issued by the department to an establishment for the use by an agent while performing work-related duties;

(2) "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);

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

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

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

(6) "Cannabis beverage" means a liquid edible cannabis product with a concentration of less than 1 mg of THC per ounce of liquid;

(7) "Cannabis extract" means the resin extracted from any part of a cannabis plant;

(8) "Cannabis oil" means an edible cannabis product using a food safe oil as the primary non-cannabis ingredient;

(9) "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 are unfit for retail transfer to another cannabis establishment;

(10) "Certificate of analysis" means a written report of the results of analytical testing, including whether the results indicate compliance with this article;

(11) "Chain of custody" means documentation of the handling of cannabis and cannabis products to ensure the accuracy of cannabis testing and preventing diversion;

(12) "Collective" means two or more cardholders who physically assist each other in the act of cultivation or processing of 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;

(13) "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;

(14) "Concentrated cannabis" means cannabis extract or a compound, manufacture, salt, derivative, mixture, or preparation from such resin, including hashish;

(15) "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;

(16) "Detectable level" means the concentration of a contaminant that can be reliably detected by current laboratory technology but in no case may be lower than:

(A) For a permitted solvent, 1,000 parts per million (ppm);

(B) For a metal or prohibited solvent, 0.5 ppm;

(C) For a biological toxin or prohibited pesticide, 20 parts per billion (ppb);

(D) For yeast and mold,10,000 colony forming units per gram (CFU/g); and

(E) For bacteria, 1 CFU/g;

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

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

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

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

(21) "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 branches;

(22) "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;

(23) "Inhalable cannabis product" means cannabis concentrate or a cannabis product that is intended to be consumed by inhalation, including vaporizer cartridges, vaporizer pens, and concentrates in smokable form;

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

(25) "Inventory record" means a daily electronic record of all cannabis, including seeds, seedlings, plants, extracts, or products;

(26) "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;

(27) "ISO/IEC 17025 accreditation" means accreditation by the International Accreditation Service (IAS), the American Association for Laboratory Accreditation (A2LA), the ANSI National Accreditation Board (ANAB), 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;

(28) "Low-income" means having a gross monthly household income that is 130 percent or less of the federal poverty level;

(29) "Marketing layer" means the outermost layer of a retail sale container, which is most predominantly apparent and visible;

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

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

(32) "Method" means a body of procedures and techniques for performing an activity, including sampling, chemical analysis or quantification, systematically presented in the order in which they are to be executed;

(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 (2020);

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

(35) "Practitioner," as it relates to a South Dakota resident, means a physician licensed pursuant to SDCL chapter 36-4.

(36) "Remediation" means the further processing of a batch of cannabis or cannabis products that has failed testing, using a process approved by the department, for the purposes of addressing the reasons for failure and submitting the resulting cannabis or cannabis product for additional testing;

(37) "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;

(38) "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;

(39) "Smokable form" means in a form, including "kief," "hash," "rosin," "live resin," "shatter," "wax," and "budder," marketed to be heated in the presence of oxygen and inhaled through smoking or "dabbing";

(40) "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;

(41) "Technology" means a specific arrangement of analytical instruments, detection systems, and preparation techniques;

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

(43) "THC" means delta-9 tetrahydrocannabinol;

(44) "Tincture" means a liquid edible cannabis product with a concentration of greater than 1 mg of THC per ounce of liquid in the form of ethanol, propylene glycol, glycerin, or food safe oil;

(45) "Topical cannabis product" means a non-edible cannabis product that is intended to be applied externally to the skin, including salves, creams, lotions, transdermal patches, bath soaks, or balms;

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

(47) "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;

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

(49) "Valid form of personal identification" means an unexpired form of identification acceptable for voter identification pursuant to SDCL section 12-18-6.1; and

(50) "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

CHAPTER 44:90:02

REGISTRY IDENTIFICATION CARDS

Section

44:90:02:10 Allowable quantity of cannabis products.

44:90:02:11 Fees for registry identification cards.

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

1. Only a practitioner currently licensed pursuant to SDCL chapter 36-4 may issue a written certification pursuant to SDCL 34-20G-1(23) to a resident of South Dakota.
2. A practitioner's written certification must be on a form supplied by the Department and must include:
   (A) The practitioner's name and address;
   (B) The practitioner's South Dakota medical license and National Practitioner Identification numbers;
   (C) Certification that the practitioner has assessed the patient's medical history and current medical condition, including an in-person physical examination;
   (D) The date on which the physical examination was conducted;
   (E) Certification that the patient has a debilitating medical condition, as defined by 34-20G-1(8), specifying the International Classification of Diseases, Tenth Revision (ICD-10) code;
   (F) Certification that the practitioner and patient 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;
   (G) Certification that the practitioner is available for further consultation with the patient as required;

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

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

3. For patients under the age of 18, a practitioner shall consult with the patient's parents to determine how many designated caregivers are needed to manage the acquisition, dosage, frequency of use, and, if applicable, cultivation of cannabis and must indicate the number of designated caregivers on the written certification.

4. 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 indicate the number of designated caregivers on the written certification.

5. Nothing in this section requires a practitioner to provide a written certification.

Source:

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

Law Implemented: SDCL 34-20G-29

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

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

1. The department shall reject a recommendation for the cultivation of cannabis not issued by a practitioner currently licensed pursuant to SDCL chapter 36-4.

2. Unless the practitioner specifies a greater number, a recommendation to allow cultivation of cannabis is for three plants and expires on the same date as the patient's registry identification card.
3. If the practitioner recommends the cultivation of more than three plants, the recommendation must specify the reasons for the extended plant count, including:
   (A) 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;
   (B) 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;
   (C) The practitioner's reasoning as to why the extended plant count does not create an undue risk of diversion or abuse; and
   (D) Any other factors justifying the recommendation.
4. A recommendation for the cultivation of more than three plants expires 120 days after the date of the recommendation.
5. Nothing in this section requires a practitioner to provide a written certification.

Source:

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

Law Implemented: SDCL 34-20G-29

44:90:02:03. 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, must submit:

1. A completed application on a form supplied by the Department, which shall contain all information required by SDCL 34-20G-29 and 34-20G-33;
2. A completed practitioner certification on a form supplied by the Department;
3. A photocopy of a valid form of personal identification;
4. A photograph meeting all requirements for a United States passport;
5. If a low-income resident, documentation of household income, including:
   (A) If employed, wage stubs or earning statements for the past 30 days;
   (B) If self-employed, most recent federal income tax return and self-employment ledgers;
   (C) Proof of all other income (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) Most recent financial statement from checking accounts, savings accounts, certificates of deposit, credit union accounts, retirement accounts, stocks, bonds, or dividends; and
6. The required fee, pursuant to ARSD 44:90:02:11.

Source:

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

Law Implemented: SDCL 34-20G-29, 34-20G-33

44:90:02:04. Patient designation of designated caregivers – Minor patients – Person responsible for making medical decisions – Residents of health care facility or residential care facility.

1. A qualifying patient may designate an eligible individual as a designated caregiver by submitting:
   (A) A completed designation on a form supplied by the Department;
   (B) The designated caregiver's sworn statement that the designated caregiver has not been convicted of a disqualifying felony offense in the previous 10 years; and
   (C) Any additional fees.
2. A qualifying patient under 21 years of age shall designate at least one designated caregiver.
3. Each person designated as a designated caregiver to one or more qualifying patients shall submit to the Division of Criminal Investigation once every 2 years:
   (A) A photocopy of a valid form of personal identification;
   (B) A Division of Criminal Investigation fingerprint card processed by a local law enforcement agency;
   (C) 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.
4. A designated caregiver shall submit a photograph meeting all requirements for a United States passport once every 5 years.
5. A designated caregiver shall acknowledge in writing 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).

6. If a practitioner has recommended that a patient younger than 18 years of age have multiple designated caregivers, the custodial parents or legal guardians may designate other designated caregivers as advised.
7. 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.
8. The designation of a designated caregiver who is 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.
9. The designation expires on the same date as the qualifying patient's registry identification card.

Source:

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

Law Implemented: SDCL 34-20G-1(10), 34-20G-2(2), 34-20G-30 through 34-20G-33, 34-20G-35, 34-20G-39

44:90:02:05. Application to cultivate cannabis – Patient designation of designated caregivers to cultivate cannabis.

1. A patient applying to cultivate cannabis or designate a designated caregiver to cultivate cannabis on the patient's behalf must submit:

   (A) A practitioner's recommendation for the cultivation of cannabis;

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

(C) The fee required by ARSD 44:90:02:11.

2. A qualifying patient under 21 years of age may not cultivate cannabis but may designate a designated caregiver to cultivate cannabis on the patient's behalf.

3. Upon approval of the application, the Department will issue a two-part registry identification card to the patient or designated caregiver designated to cultivate cannabis:

(A) One part of the registration card must be posted on the door of the enclosed, locked facility in which the cannabis is cultivated; and

(B) The other part of the registration card must be carried by the patient or designated caregiver.

4. Only one person may cultivate cannabis on behalf of a patient, except that:

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

(B) Two custodial parents or legal guardians of a qualifying patient under 18 years of age who reside in the same dwelling may share the designation.

5. The entirety of a patient's cannabis must be cultivated in a single enclosed, locked facility.

6. No designated caregiver may simultaneously cultivate an extended plant count for more than one qualifying patient.

7. Two or more designated caregivers may not form a collective.

8. 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(10), 34-20G-1(13), 34-20G-29, 34-20G-33, 34-20G-51

44:90:02:06. Registry identification card renewal requirements.

1. A qualifying patient shall submit a renewal application, with the required fee, up to 45 days prior to the expiration of the patient's registry identification card on a form supplied by the department.
2. A qualifying patient may designate designated caregivers, including changing or removing the designation, 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, 34-20G-32

44:90:02:07. Change of designation of designated caregivers – Change of designation to cultivate.

1. A qualifying patient or the qualifying patient's legal representative may change the designation of designated caregivers at any time, including:
   (A) Removing a designated caregiver;
   (B) Substituting a new designated caregiver for a previous designated caregiver;
   (C) Adding an additional designated caregiver if recommended by a practitioner;
   (D) Adding a designated caregiver while a resident of a health care or residential care facility; or

(E) If cannabis cultivation is authorized, designating a designated caregiver to cultivate cannabis for the patient, or changing or ending such designation.

2. The process for designating a replacement designated caregiver or designating an additional designated caregiver shall be the same as designation at the time of an initial or renewal application, with the addition of any fee for issuing new registry identification cards to the patient and all designated caregivers.

3. If the change results in the removal of one or more designated caregivers:

(A) The patient shall notify each such designated caregiver in writing and shall certify to the department that notice has been given; and

(B) The designated caregiver shall have 15 days to return the registry identification card associated with that patient.

4. If the application indicates that the patient no longer wishes a designated caregiver to cultivate cannabis on the patient's behalf or wishes a different designated caregiver to cultivate cannabis on the patient's behalf:

(A) The patient shall notify the current designated caregiver in writing and shall certify to the department that notice has been given; and

(B) The designated caregiver shall, within 15 days, return the registry identification card and dispose of the cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

5. A designated caregiver shall provide written notice to the patient or the person legally responsible for making medical decisions for the patient 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 dispose of cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

6. 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 and, if applicable, shall dispose of 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, 34-20G-48

44:90:02:08. Nonresident registration – Required documentation.

1. The department shall accept any of the following as sufficient documentation of a nonresident's debilitating medical condition:
   (A) 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;
   (B) 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
   (C) Practitioner certification on a form supplied by the department.

2. 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)(14), in the jurisdiction of issuance.

Source:

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

Law Implemented: SDCL 34-20G-1(19)

44:90:02:09. Nonresident registration – Identification number.

1. The department shall issue to a nonresident cardholder who has met all registration requirements a nonrenewable 10-digit identification number, which expires on the earliest of:
   (A) Six months from the date of issuance of the identification number;
   (B) The expiration date of the nonresident's proof of authorization issued by the jurisdiction where the nonresident cardholder resides; or
   (C) Any earlier expiration date specified by the practitioner's statement.
2. The registration 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)

44:90:02:10. Allowable quantity of cannabis products.

1. Subject to the limits in paragraph 3 of this section, 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 pursuant to SDCL 34-20G-1(1)(a) does not exceed three ounces.

2. The equivalent cannabis weight of cannabis products shall be:

Type of cannabis	**Amount equivalent to one ounce of cannabis**
Concentrated cannabis	8 g (net weight)
Vaporizer pens or cartridges	8 g (net weight)
Edibles (including tinctures, oils, or beverages)	800 mg THC
Topical (ointment, cream, or lotion)	12 fluid ounces
Topical (dried plant material or powder)	1 ounce
Transdermal patches	800 mg THC

3. Except as permitted by SDCL 34-20G-1(1)(d):

   (A) No cardholder under 21 years of age may possess inhalable cannabis products, including vaporizer products or concentrated cannabis in smokable form; and

   (B) No cardholder may possess more than 4 grams of cannabis concentrate 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

44:90:02:11. 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 shall be:

   (A) $20 for a low-income qualifying patient; and

   (B) $75 for all other applicants.

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 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.

5. 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-31, 34-20G-33

CHAPTER 44:90:03

REGISTRATION CERTIFICATES

Section

44:90:03:02 Operating procedures – Required contents – All medical cannabis establishments.

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

44:90:03:04 Cannabis testing facility operating procedures – Additional requirements.

44:90:03:05 Cannabis product manufacturing facility operating procedures – Additional requirements.

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

44:90:03:07 Compliance with local zoning requirements – Form of certification.

44:90:03:08 Local registration, license, or permit – Department verification.

44:90:03:09 No registration certificate revocation – Department verification.

44:90:03:10 No disqualifying felonies – Form of certification.

44:90:03:11 Department review of competitive application – Scoring criteria.

44:90:03:12 Department notification of applicants – Tiebreaking procedures.

44:90:03:13 Fees for registration certificate – Application and renewal – Change in location or ownership.

44:90:03:01. Application for registration certificate – Components of complete application.

1. An initial application for a registration certificate for any type of medical cannabis establishment must include:

   (A) A completed application form;

   (B) Operating procedures consistent with this article;

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

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

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

(F) Photocopies of a valid form of identification issued in South Dakota, or its equivalent issued in another U.S. jurisdiction, for all principal officers and board members;

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

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

(I) The applicable fee.

2. A renewal application for a registration certificate:

(A) Is required every 12 months or whenever 50 percent or more of the ownership interest in the establishment has been transferred since the most recent renewal application; and

(B) Shall 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.

3. An application for the transfer of a registration certificate to a different physical location must include:

(A) A completed change of location form;

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

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

(D) Certification of compliance with all local zoning requirements;

(E) Copies of all required registration, licenses, or permits reflecting the establishment's new address; and

(F) The applicable fee.

4. An application to transfer less than 50 percent of the ownership interest in a medical cannabis establishment must include:

(A) A completed transfer of ownership interest form;

(B) Photocopies of a valid form of identification issued in South Dakota, or its equivalent issued in another U.S. jurisdiction, for any new principal officers and board members;

(C) Certification that background checks have been completed for any new medical cannabis establishment agents; and

(D) The applicable fee.

Source:

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

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

44:90:03:02. 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, including compliance with this article and SDCL chapter 34-20G and their specific management roles;
2. A site plan, which 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) Provide sufficient detail for the Department to determine that the establishment is completely self-contained and does not have any access to any residence or business other than a medical cannabis establishment owned by the same entity or entities, except by public right of way; and
   (E) Demonstrate, if applicable, physical separation in the form of lockable doors meeting all security requirements of this article from any other medical cannabis establishment owned by the same entity or entities;
3. Operating days and hours;
4. A workplace safety plan consistent with 29 C.F.R. part 1910 (2020), covering personal protective equipment, hazard assessment, safe equipment operation, proper application of agricultural chemicals, ladder use, hazard communication and other state and federal workplace safety requirements;
5. Plans for compliance with all applicable safety standards contained in local ordinance, SDCL chapter 11-10, ARSD article 61:15, and ARSD 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 non-cardholders;
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. If applicable, a wastewater plan that conforms to federal, state, or local rules, regulations, and laws, along with the applicant's certification of compliance;
11. Pre-employment screening procedures, including criminal background check; and
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), 34-20G-72(3)

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

44:90:03:03. 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;
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:

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

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

44:90:03:04. 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 that, as indicated by signature, 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, judgement, or operational integrity;

2. A signed disclosure by the owner(s) 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 quality control and quality assurance manual;
4. A list of analytical tests, specifying the analyte and technology for each, the applicant intends to offer and:
   (A) Prior to January 1, 2024, 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) On or after January 1, 2024:
      (1) Proof of ISO/IEC 17025 accreditation for each analytical test proposed; or
      (2) 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:
         (a) Submit quarterly reports to the department on its progress toward ISO/IEC accreditation; and
         (b) Comply with any department requests for confirmation testing at the cannabis testing facility's own expense;
5. Standard operating procedures for all preanalytical, analytical, and post-analytical processes performed by the laboratory;
6. Protocols for performing validation studies of all analytical tests to be performed;
7. 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;

8. A program to assess and document, at least annually, the competency of all technical and scientific staff that perform preanalytical, analytical, and postanalytical processes;
9. 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;
10. 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
    (F) Transport and storage conditions, including exposure to light, temperature, and humidity;
11. Chain of custody protocols and a sample chain of custody form; and
12. Equipment to be used and its listing by a nationally recognized testing laboratory.

Source:

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

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

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

44:90:03:05. 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, such as extracts, inhalable products, edible products, beverages, topical products, ointments, oils, and tinctures, 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;
   (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, if any, 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, excluding water, chemical, or potentially hazardous substance will be stored;
7. Plans for ventilation and filtration systems that reduce the risk of fire or respiratory harm within the facility;
8. Certification from an engineer licensed pursuant to SDCL chapter 36-18A of the safety of the equipment used for cannabis extraction and the location of the equipment and the licensed engineer's approval of the standard operating procedures for the cannabis extraction;
9. 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, ARSD article 61:15, and ARSD chapter 20:44:22; and
10. 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)

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

44:90:03:06. 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), 34-20G-72(3)

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

44:90:03:07. Compliance with local zoning requirements – Form of certification.

Each initial or renewal application must include the application's certification, on a form supplied by the department, of compliance with all applicable city and county zoning requirements, including any city or county odor ordinances or regulations.

Source:

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

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

44:90:03:08. Local registration, license, or permit – Department verification.

1. Each initial or renewal application must include either:

   (A) 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

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

2. 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)(e), 34-20G-60

44:90:03:09. 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 has 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)

44:90:03:10. 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 violent felony offense in the previous 10 years, whether in South Dakota or another jurisdiction.
2. The signatory to 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)

Law Implemented: SDCL 34-20G-61, 34-20G-62

44:90:03:11. Department review of competitive applications – Scoring criteria.

In cases where more applicants apply than are allowed by the local government, the department shall numerically score competitive applications according to the following criteria:

1. The city or county limiting the number of establishments, in response the department's inquiry, has endorsed the application as beneficial to the community (1 point).
2. The city or county limiting the number of establishments has not informed the department the location specified in the application is unsuitable, due to zoning regulations or inaccessibility to the public, for the proposed use (1 point).
3. All principal officers and board members have certified that they have not, in the previous 10 years, in any U.S. 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).
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

44:90:03:12. Department notification of applicants – Tiebreaking procedures.

1. The dispensary applicant with the highest score shall be awarded a registration certificate.
2. If the city or county has enacted an overall limit on the number of establishments, the department shall award registration certificates, in order of final score, until the limit is reached.
3. If the city or county has enacted a limit on establishments by establishment type, the department shall award registration certificates, in order of final score, 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.

5. The notification of unsuccessful applicants must identify the department's decision as a final department action subject to judicial review.

Source:

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

Law Implemented: SDCL 34-20G-56, 34-20G-58

44:90:03:13. Fees for registration certificates – Application and renewal – Change in location or ownership.

1. Applicants shall submit a $5,000 fee with an initial or renewal application for a registration certificate.
2. Establishments shall submit a $250 fee with an application to
   (A) Operate at a different physical location.
   (B) Transfer an ownership interest to any person not listed on the establishment's most recent initial or renewal application.
3. Establishments shall submit a $20 fee with each request for an agent identification badge.
4. The fees imposed under this section shall increase annually based on the index factor.
5. The fees imposed under this section shall be nonrefundable.

Source:

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

Law Implemented: SDCL 34-20G-55

CHAPTER 44:90:04

ESTABLISHMENTS

Section

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

An establishment must remain under the direction of the individuals identified in its management plan, as required in ARSD 44:90:03:02(1) and must provide the department an updated management plan 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

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
7. Ensuring that cannabis or cannabis products that are non usable 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

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

In addition to notice required by SDCL 34-20G-50, an establishment shall provide notice to the department within one business day upon its discovery of any plan or other action of any person to:

1. Steal cannabis plants, cannabis, cannabis products, cannabis paraphernalia, equipment, or money;
2. Sell or otherwise provide cannabis plants, cannabis, cannabis products, or cannabis paraphernalia to unauthorized persons;
3. Purchase or otherwise obtain cannabis plants, cannabis, cannabis products, or cannabis paraphernalia by 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

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

Any criminal activity reported to the department must also be reported to a local law enforcement agency.

Source:

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

Law Implemented: SDCL 34-20G-63, 34-20G-88

44:90:04:05. Co-location of medical cannabis establishments.

1. A medical cannabis establishment must be completely freestanding and must have separate means of ingress and egress from any other establishment, business, or residence, except that multiple cannabis establishments with common ownership may be co-located.

2. Co-located medical cannabis establishments must have lockable, alarmed doors separating activities performed under different licenses.
3. The door separating a dispensary from cultivation or product manufacturing activities must remain locked when cardholders are present, and signs must clearly state that entry is limited to employees and other authorized persons.
4. Nothing in this section shall be interpreted to allow:
   (A) A testing facility to be located in the same structure as any other cannabis establishment;
   (B) Extraction using ethanol, inherently hazardous substances, or compressed gas to take place in the same structure in which a cannabis dispensary is located; or
   (C) Pesticides to be applied in the same structure in which a dispensary is located.

Source:

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

Law Implemented: SDCL 34-20G-8 through 34-20G-11

44:90:04:06. Lighting.

1. 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.
2. 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

44:90:04:07. 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

44:90:04:08. Placement of security cameras.

All 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 non-public areas.
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, disposed, or prepared for transfer, sale, or testing.

Source:

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

Law Implemented: SDCL 34-20G-64

44:90:04:09. Recording by security cameras – Access by department.

1. Video surveillance must meet the following minimum requirements:

   (A) Minimum resolution of 720 pixels;

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

   (C) Minimum of 15 frames per second; and

   (D) Clear and accurate display of time and date.

2. The cameras must be 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, which to ensure patient privacy must be set to record only outside of the dispensary's operating hours.

3. Surveillance systems must have 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

44:90:04:10. Storage of camera footage.

1. An establishment shall maintain surveillance recordings for a minimum of 120 days, either:

   (A) 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

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

2. 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.
3. Licensees shall maintain a list of all persons with access to video surveillance recording and written procedures for controlling access to recordings.

Source:

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

Law Implemented: SDCL 34-20G-64

44:90:04:11. Alarm system.

1. Monitored sensors are required on all exterior doors, windows, and gates.
2. Alarm systems must be monitored by a security company capable of contacting the establishment and, if necessary, law enforcement.
3. The system must include an audible alarm, which must be capable of being disabled remotely by the security company.
4. Surveillance systems must alert the security company during a power failure and must operate for a minimum of four hours on backup power.

Source:

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

Law Implemented: SDCL 34-20G-64

44:90:04:12. Notification to department.

An establishment must notify local law enforcement and the department within 24 hours upon learning of any unauthorized entry or theft of cannabis, cannabis plants, or cannabis products.

Source:

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

Law Implemented: SDCL 34-20G-50

44:90:04:13. Agent identification badges to be obtained by establishments.

1. A medical cannabis establishment must obtain an agent identification badge for any agent before that person is permitted to perform duties on the site of the establishment or transport cannabis, cannabis extracts, or cannabis products.
2. The application for an agent identification badge must be made on a form supplied by the department, which must include an attestation that the establishment has obtained a criminal background check on the applicant and must be accompanied by a photograph meeting the requirements for a United States passport and the required fee.
3. The agent identification badge remains the property of the department.
4. An establishment must inform the department immediately if the individual ceases to be an agent of the establishment. The agent identification badge becomes void and must be returned to the department.

Source:

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

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

44:90:04:14. Agent identification badges to be displayed.

A medical cannabis establishment shall provide a department-issued 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.

Source:

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

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

44:90:04:15. Controlled access – Verification of identity.

1. No medical cannabis establishment may share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco.
2. A medical cannabis establishment must verify the age and identity of anyone entering the premises.
3. Unless permitted by ARSD 44:90:08:01, no person shall 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

44:90:04:16. Visitor badges to be worn by contractors performing work at a medical cannabis establishment.

A medical cannabis establishment must issue a visitor badge to any temporary contractor of the establishment whose scope of work will not involve the handling of 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 plants, cannabis, cannabis extracts, or cannabis products are present.

Source:

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

Law Implemented: SDCL 34-20G-65

44:90:04:17. Operation of agricultural, industrial, or other heavy equipment – Training requirements.

1. Establishment agents must 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 such equipment.
2. Establishment agents must complete OSHA-approved certification courses prior to using any equipment if required under local ordinance or state law.

Source:

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

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

44:90:04:18. Record-keeping – Use of inventory tracking system – Training requirements.

1. Prior to performing duties onsite or transporting cannabis, an establishment agent must receive at minimum two hours of training in record keeping, which must be documented in the establishment's records.
2. Any establishment agent who will enter data into the inventory tracking system required by the department must additionally receive at minimum two hours of hands-on training; and
3. At least one establishment agent 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-55, 34-20G-63

44:90:04:19. Security protocols– Training requirements.

Each establishment agent shall receive training in all aspects of the establishment's security protocol, focusing 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

44:90:04:20. Vehicle requirements – Establishments.

Establishments shall provide the following information to the department for each vehicle that will be used to transport cannabis, cannabis concentrate, or cannabis products, including samples for testing:

1. Make, model, and license plate number;
2. Proof of a valid insurance policy;
3. A description, with photos as necessary, of a secure, opaque, locking compartment to be used to secure cannabis and cannabis products; and
4. Verification that the vehicle has a functioning alarm system.

Source:

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

Law Implemented: SDCL 34-20G-63

44:90:04:21. Transport manifests – Form and content.

1. 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.
2. The transport manifest must contain:
   (A) The name, address, phone number, and license number of the establishment transporting the cannabis, cannabis extracts, or cannabis products;
   (B) The name, address, phone number, and license number of the establishment receiving the items;
   (C) The phone number and web address of the department's secure verification system;
   (D) Description and quantities, either by weight or unit, of all items, including samples, contained in each transport;

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

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

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

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

3. A separate transport manifest must be prepared for each medical cannabis establishment that will receive cannabis, cannabis extracts, or cannabis products.
4. The vehicle must carry three copies of each transport manifest:

   (A) One for the recipient;

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

   (C) 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.
5. 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 establishments inventory records after the items are returned.
6. A transport manifest must not otherwise be altered after departing from the originating premises.
7. 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-63

44:90:04:22. Storage during transport.

1. All cannabis or cannabis products being transported must be contained within an enclosed, locked area in the transport vehicle and out of public view.
2. Samples of cannabis, cannabis extracts, and cannabis products for testing must be transported in appropriately labeled sample collection containers with tamper evident seals affixed.
3. 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.
4. A cannabis product manufacturing facility or dispensary transporting any edible product requiring refrigeration to another establishment must provide refrigerated transport.
5. An establishment must 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-63

44:90:04:23. Conduct during transport.

1. Only agents of the establishment, wearing agent identification badges, and who are listed on each transport manifest, may be in the vehicle.
2. Any vehicle transporting cannabis, cannabis extract, or cannabis products must travel directly to the destinations listed on transport manifests, making stops only:

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

(B) For rest periods required by law;

(C) To refuel; or

(D) Under exigent circumstances, including collisions, traffic stops, mechanical breakdowns, weather emergencies, or medical emergencies.

3. The agents 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.

4. 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.

5. Upon law enforcement stop or other contact, all persons in the vehicle shall identify themselves with their agent identification badges and all transport manifests.

Source:

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

Law Implemented: SDCL 34-20G-63

44:90:04:24. Transport incident notification.

1. Any traffic stop, breakdown, or collision involving a vehicle being used by an establishment to transport cannabis, cannabis extract, or cannabis products, or any unscheduled stop lasting more than two hours must be reported to the department within one business day.

2. 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 immediately and to the department within one business day.
3. 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 good faith efforts to protect the shipment from diversion.

Source:

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

Law Implemented: SDCL 34-20G-63

44:90:04:25. 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 prevent 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-63

CHAPTER 44:90:05

CANNABIS CULTIVATION FACILITIES

Section

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

A cultivation facility shall have onsite, whenever establishment agents are present, a principal officer or other manager with responsibility for ensuring that all activities comply with the establishment's operating procedures, including:

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-64

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:

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-63, 34-20G-64

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

All electrical equipment, including but not limited to growing lights, cultivation equipment and packaging equipment, must be listed by a nationally recognized testing laboratory.

Source:

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

Law Implemented: SDCL 34-20G-63, 34-20G-64

44:90:05:04. Cultivation area.

Any cultivation of seedlings, immature plants, or mature plants must take place in:

1. An indoor facility meeting all security requirements of this article;
2. One or more greenhouses meeting all security requirements of an indoor facility; or
3. Within a secured fenced in area meeting all security requirements, either outdoors or in greenhouses not meeting security requirements.

Source:

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

Law Implemented: SDCL 34-20G-63, 34-20G-64, 34-20G-65

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

Agents of a cultivation facility may not, outside of the hours of operation stated in its approved operating procedures, plant, feed, water, treat, move, harvest, dry, cure, package, destroy, or dispose 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-63, 34-20G-64

44:90:05:06. Fences and greenhouses.

1. 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 lighting.
2. Fencing and all gates must be secure, at least six feet high and 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

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

1. Any establishment agent who applies a department-approved fungicide, insecticide, or rodenticide shall hold a current pesticide applicator certification issued by the South Dakota Department of Agriculture and Natural Resources pursuant to ARSD chapter 12:56:05.
2. 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)(d)

44:90:05:08. Application of pesticides.

1. The use of a pesticide in the cultivation of cannabis is prohibited unless it:

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

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

2. 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 label.

Source:

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

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

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

1. The following synthetic chemical agents are approved as active ingredients in pesticides when used in a manner consistent with the label:

(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;

(T) Potassium silicate;

(U) Potassium sorbate;

(V) Sodium bicarbonate;

(W) Sodium ferric EDTA;

(X) Sodium laurel sulfate; and

(Y) Sulfur.

2. The following bacterial or fungal agents are approved as active ingredients in pesticides when used in a manner consistent with the label:

(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. The following plant extracts are approved as active ingredients in pesticides when used in a manner consistent with the product label:

(A) Capsaicin;

(B) Castor oil;

(C) Cinnamon oil;

(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.

4. Substances identified as posing minimal risk in 40 C.F.R. § 180.950(e) (2021) 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)(d)

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

1. The use or presence at a medical cannabis establishment of any pesticide listing 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 non usable.
2. The knowing use or presence at a medical cannabis establishment of any pesticide listing as an active ingredient a synthetic chemical agent not on the approved list is a serious violation of this article and SDCL chapter 34-20G, and any cannabis to which the pesticide was applied is non usable.
3. 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 (2021) is a serious violation of this article and SDCL chapter 34-20G, and any cannabis to which the pesticide was applied is non usable.
4. Cannabis is non usable if it contains detectable levels of any of the following contaminants:

(A) Residual pesticides unless approved by the department;

(B) Residual solvents other than ethanol, glycerin, propylene glycol, or cooking fats;

(C) Mold; yeast; aflatoxins (B1, B2, G1, or G2); or ochratoxin A;

(D) Shiga-toxin producing Escherichia coli bacteria or salmonella bacteria; or

(E) Cadmium, lead, arsenic, or mercury.

Source:

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

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

CHAPTER 44:90:06

CANNABIS TESTING FACILITIES

Section

44:90:06:01. Required Accreditation and Registration – ISO/IEC 17025 – Drug Enforcement Agency.

1. Prior to January 1, 2024, all cannabis testing facilities shall, within 6 months of licensing, begin working with an accreditation body 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.
2. On or after January 1, 2024, a cannabis testing facility may not accept cannabis or cannabis products for testing unless:
   (A) The facility is ISO/IEC accredited and the analytical tests to be performed are within the facility's scope of accreditation; or
   (B) The facility has been licensed for less than 18 months, submits quarterly reports to the department on its progress toward ISO/IEC accreditation, and submits to confirmation testing at its own expense.
3. A cannabis testing facility shall register with the Drug Enforcement Agency pursuant to 21 C.F.R. part 1301 (2019).

Source:

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

Law Implemented: SDCL 34-20G-11

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

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

1. A cannabis testing facility shall adhere to its operating procedures, including:

(A) The written procedures for all preanalytical, analytical, and post-analytical processes;

(B) Its quality control and quality assurance manual;

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

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

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

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

2. Each cannabis testing facility shall adopt standard operating procedures for the collection of samples for testing, which must address:

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

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

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

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

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

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

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

3. 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, including:

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

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

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

(D) Recording any deficiencies identified;

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

(F) Instituting corrective action.

Source:

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

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

44:90:06:03. Chain of custody protocols.

1. The chain of custody protocols developed by a cannabis testing facility must be approved by the department and must address:

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

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

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

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

2. The chain of custody form must include the sample location, the number and types of containers, the mode of collection, the authorized individual who collected the sample, the date and time of collection, and requested analyses.

Source:

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

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

44:90:06:04. Reporting of test results.

1. The results of any analytical test of cannabis or cannabis products must be provided to the cannabis cultivation facility or cannabis product manufacturing facility in the form of a certificate of analysis.
2. The cannabis testing facility shall update, each day by midnight, the inventory tracking system, including:
   (A) All samples collected; and
   (B) 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), 34-20G-72(5)(e), 34-20G-72(5)(h), 34-20G-72(5)(k)

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

44:90:06:05. Analytical testing result verification.

1. Prior to January 1, 2024, all medical cannabis or cannabis products tested by cannabis testing facilities is subject to routine confirmation testing by the department or department designee.

2. The department shall conduct confirmation testing at regular intervals as needed to ensure consistent, reliable test results.

   (A) Upon request, the cannabis testing facility must submit residual material from samples with complete testing results to the department or department designee.

   (B) The department or department designee will perform testing using an acceptable method to verify initial results.

   (C) Results of confirmation testing will be made available to the originating cannabis testing facility, and

      (1) If initial testing results are found to be conforming, no additional action will be taken;

      (2) If discordant results are encountered, the sample will be subjected to a third and final round of testing; and

      (3) 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.

3. 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:

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

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

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

4. The department may from time to time 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)(k)

CHAPTER 44:90:07

CANNABIS PRODUCT MANUFACTURING FACILITIES

Section

44:90:07:01. Manufacturing practices.

1. A cannabis product manufacturing facility shall follow standard operating procedures to ensure workplace, environmental, and product safety, including:

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

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

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

(D) Ensuring that all electrical equipment is listed by a nationally recognized testing laboratory or inspected annually by an engineer licensed pursuant to SDCL chapter 36-18A; and

(E) Storing all chemicals in a safe manner.

2. As applicable, all agents of a cannabis product manufacturing facility must:

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

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

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

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

3. Any cannabis product is non usable if it contains detectable levels of any of the following contaminants:

(A) Residual pesticides, unless approved by the department;

(B) Residual solvents other than glycerin, propylene glycol, cooking fats, or for non inhalable products, ethanol;

(C) Mold, yeast, or biological toxins;

(D) Coliform bacteria, enterobacteriaceae, e. coli, or salmonella; or

(E) Cadmium, lead, arsenic, or mercury.

Source:

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

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e), 34-20G-72(5)(h)

44:90:07:02. 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 non-cannabis end product;
3. Manufacture any edible cannabis product, except a tincture, oil, or capsule or capsule containing oil that has more than 10 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) Cannabis concentrates, including dry sift, kief, hash, resin, shatter, wax, or budder;
   (C) Cannabis tinctures and oils, including capsules containing oil;
   (D) Cannabis beverages;
   (E) Other edible cannabis products, including lozenges, gummies, and cookies; and

(F) Topical cannabis products for external use, including ointments, creams, lotions, bath soaks, and transdermal patches;

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 triglycerides (MCT oil);
8. Manufacture a product using cannabis, concentrate, or extract that has not passed any test declared mandatory 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, including butane or propane in containers intended for camp stoves, handheld torch devices, refillable cigarette lighters, or similar consumer products.

Source:

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

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

44:90:07:03. Extraction – Approved operating procedures.

1. 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.
2. A cannabis product manufacturing facility performing extraction may be subject to inspection by the state fire marshal, local fire department, building inspector, or code

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, ARSD article 61:15, and ARSD chapter 20:44:22.

Source:

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

Law Implemented: SDCL 34-20G-5(g)

44:90:07:04. Generally safe extraction methods.

The following methods of extraction are permissible if listed in the establishment's operating procedures on file with the department:

1. Mechanical extraction 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:
   (A) Propylene glycol;
   (B) Glycerin; and
   (C) Butter, olive oil, or other typical cooking fats.

Source:

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

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

44:90:07:05. Potentially hazardous extraction methods.

The department will 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, including solutions of ethanol and water;

Source:

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

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

44:90:07:06. Extraction using inherently hazardous substances.

1. Extraction using an inherently hazardous substance requires 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.
2. Any extraction method using inherently hazardous substances must be listed in the operating procedures on file with the department and use an agent of 99 percent or greater purity.
3. The resulting extract must not exceed residual limits for the solvent established by the department as part of testing requirements.
4. The following solvents may be used in approved inherently hazardous extraction:
   (A) Butane;

(B) Propane;

(C) Acetone;

(D) Heptane; or

(E) Pentane.

5. The use of any other inherently hazardous substance requires written approval of the department, upon documentation of the safety and efficacy of the selected method.
6. All flammable gas must be odorized in compliance with state and federal regulations.

Source:

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

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

44:90:07:07. 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 department specifications;
3. Comply with all applicable standards of ARSD 44:02:07, and the city or county in which the establishment is located.

Source:

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

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

CHAPTER 44:90:08

CANNABIS DISPENSARIES

Section

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

1. No dispensary may allow entry into areas containing cannabis without first identifying an individual as a cardholder or other person authorized pursuant to ARSD 44:90:04:14.
2. No dispensary may allow entry to a patient who is under 21 years of age.
3. Acceptable methods of controlling access include:
   (A) Verification at an external cashier window or ticket window, followed by unlocking an exterior door to admit the individual into the building;
   (B) 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
   (C) Verification by an agent outside a locked exterior or interior door, followed by unlocking the door.
4. Verification may not take place in any area in which a person may access cannabis without passing through a lockable door.
5. Any website or mobile application developed or hosted by an establishment must:
   (A) Include verification that the visitor is 21 years of age or older;

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

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

Source:

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

Law Implemented: SDCL 34-20G-64

44:90:08:02. Preventing unauthorized sales – Training requirements.

Before interacting with any cardholder, all employees of a dispensary must be trained to:

1. Determine the authenticity of registry identification cards, including temporary registry identification cards and nonresident registration credentials;
2. Ensure that the person presenting a temporary or department-issued registry identification card or nonresident registration credential is the authorized cardholder;
3. Use the verification system, including all options for accessing the system by phone, point-of-sale software, or mobile application;
4. Track the amount of cannabis dispensed for a patient's use, including consolidating 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

CHAPTER 44:90:09

SAMPLING AND TESTING

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

1. The following tests are mandatory for all cannabis and cannabis products:

   (A) Beginning July 1, 2022:

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

      (2) Fungus testing for yeast and mold;

      (3) Bacteria testing for shiga-toxin producing Escherichia coli bacteria and salmonella bacteria;

   (B) Beginning July 1, 2023:

      (1) Biological toxin testing for Aflatoxins (B1, B2, G1, and G2); and ochratoxin A;

      (2) Solvent testing for acetone; butanes; ethanol; heptanes; isopropyl alcohol; propane; benzene; toluene; pentane; hexane; total xylenes (m–, p–, and o–); methanol; and ethyl acetate;

      (3) Heavy Metals testing for lead, arsenic, cadmium, and mercury; and

(4) Pesticides testing for abamectin, azoxystrobin, bifenazate, etoxazole, imazalil, imidacloprid, malathion, myclobutanil, permethrin, spinosad, spiromesifen, spirotetramat, and tebuconazole.

2. The absence of mandatory testing shall not be interpreted to allow:

(A) The use of prohibited solvents or pesticides;

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

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

3. Except as allowed by ARSD 44:90:09:06, 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:

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

(B) The cannabis or cannabis product is accompanied by a certificate of analysis issued by the cannabis testing facility and covering all mandatory tests.

4. 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 non usable and may not be remediated.

5. A cannabis product manufacturing facility or cannabis dispensary shall maintain the certificate of analysis for any cannabis or cannabis product for 180 days or until all of the cannabis or cannabis product has been transferred or disposed of, whichever is later.

6. The licensee submitting the cannabis or cannabis product for testing shall pay all fees associated with this testing.

Source:

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

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

44:90:09:02 Creation of batches -- Collection of samples.

1. A cannabis cultivation facility or cannabis product manufacturing facility shall:
   (A) Divide cannabis or cannabis products into batches as directed by a registered cannabis testing facility; and
   (B) Assign a unique batch identifier to the cannabis or cannabis product.
2. When cannabis is harvested or trimmed:
   (A) Cannabis flower must be assigned to a batch containing a single strain from single harvest date; and
   (B) Cannabis trim may be assigned to a batch containing multiple strains and from multiple trimming dates.
3. 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 product or as directed by the cannabis testing facility based on batch size.
4. Before January 1, 2024, samples for testing must be collected by an agent of either the testing facility or the establishment submitting the sample, if:
   (A) No agent collects samples prior to receiving full training on the cannabis testing facility's sample collection procedures;
   (B) The collection of samples takes place in full view of security cameras; and

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

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

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

44:90:09:03. 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)(k)

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

44:90:09:04. 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(s) 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

   (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-8, 34-20G-72(5)(f)

44:90:09:05. Receipt of results -- Remediation.

1. 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.
2. Upon receipt of a certificate of analysis indicating that cannabis or cannabis products are non usable, the cannabis or cannabis must remain, until remediated or disposed of in accordance with this article, in the same storage container(s) with a new 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;

(F) The reason for failed analytical testing; and

(G) In bold, capital letters, no smaller than 12-point font, "PRODUCT FAILED TESTING."

Source:

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

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

44:90:09:06. Remediation of non usable batches.

A cannabis cultivation facility or cannabis product manufacturing facility may elect to remediate a batch of cannabis or cannabis products that has failed testing, as follows:

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), 34-20G-72(5)(e)

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

44:90:09:07. Disposal of non usable batches.

If a cultivation facility or products manufacturing facility is unable or unwilling to mitigate a non usable batch of cannabis or cannabis products, the establishment shall:

1. Note in the inventory tracking system, or if unavailable, provide one business day's notice in writing, that the establishment will dispose of the cannabis or cannabis products;
2. Follow the procedures for disposing of cannabis waste in the establishment's approved operating procedures; and
3. Ensure that destruction and disposal of the non usable batch is captured by functioning security cameras and stored according to this article.

Source:

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

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

CHAPTER 44:90:10

PACKAGING, LABELING, AND ADVERTISING

Section

44:90:10:05 Packaging of cannabis tinctures and oils for retail sale.

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 Prohibited content – Advertisements.

44:90:10:20 Required information.

44:90:10:21 Nonconforming advertising.

44:90:10:01. Packaging for transfer or sale -- General requirements.

1. All cannabis or cannabis products must be packaged for transfer or sale in containers that:

(A) Are fully enclosable;

(B) Are resealable;

(C) Protect the packaged item from contamination; and

(D) Do not impart any toxic or deleterious substance to the packaged item.

2. A cultivation facility shall package all flower, trim, or pre-rolled cigarettes for retail sale before transfer to a dispensary.
3. 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)(j)

44:90:10:02. Packaging for retail sale – General requirements.

1. A dispensary shall transfer any cannabis, cannabis concentrate, or cannabis products to the patient or designated caregiver in packaging that is:

   (A) Child-resistant in compliance with compliant with 16 C.F.R. part 1700 (2020);

   (B) Tamper-evident, using a sealing method that provides clear, lasting evidence that the packaged has previously been opened;

   (C) Resealable, except for single-serving cannabis products; and

   (D) Opaque.

2. Unless otherwise specified by this article, each packaging requirement may be met either by the container provided by the cultivation facility or cannabis product manufacturing facility or by exit packaging supplied by the dispensary at the time of sale.

Source:

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

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

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 must be transferred by a dispensary only 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 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)(j)

44:90:10:04. Packaging of edible cannabis products for retail sale -- Tinctures, oils, and beverages excluded.

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, 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)(j)

44:90:10:05. Packaging of cannabis tinctures and oils for retail sale.

1. A cannabis tincture or oil must be packaged 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 four mil or greater in thickness and heat sealed.

2. A product manufacturing facility must indicate 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: 34-20G-72(5)(j)

44:90:10:06. Packaging of cannabis beverages for retail sale.

1. Single-serving cannabis beverages that do not contain more than 10 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 10 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.
3. 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)(j)

44:90:10:07. Packaging of topical cannabis products for retail sale.

1. Ointments, creams, and lotions must be packaged in a child-resistant container that has a resealing cap or closure compliant with 16 C.F.R. part 1700 (2020).

2. Dry bath soaks and transdermal patches must be packaged in a plastic four mil or greater in thickness to prevent unintended access to and ingestion by children or pets and be heat sealed with no easy-open tab, dimple, corner, or flap, as to make it difficult for a child to open.

Source:

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

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

44:90:10:08. Labeling required.

1. 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.
   (A) Prior to transferring cannabis to a dispensary, a cultivation facility shall label the marketing layer of each container.
   (B) Prior to transferring cannabis products to a dispensary, a cannabis product manufacturing facility shall label each the marketing layer of each container.
2. Unless otherwise specified, all required information may be printed directly on, 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(7)

Law Implemented: SDCL 34-20G-72(7)

44:90:10:09. Format of labeling – Font size – Multiple labels.

All required information must be printed clearly in English in type no smaller than 6-point font (1/12 inch). 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(7)

44:90:10:10. Labeling claims -- Results of testing.

1. The results of any testing mandated by the department must be included on the label of any cannabis or cannabis product.
2. The label must state the THC content, in milligrams of total THC and as a percentage of the product's weight.
3. No label may contain claims regarding CBD 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(7)

44:90:10:11. Expected effects – Time to take effect – Duration of effect.

1. The label of any cannabis or cannabis product must indicate:

(A) The length of time, in hours or minutes, that it may take the patient to feel effects; and

(B) The length of time the patient should expect the effects to last.

2. The estimated time to take effect and duration of effect must be based on the best estimate of the establishment printing the label.

3. All edible products, except ethanol-based tinctures, must additionally contain the following warning: "Effects of this product may not be felt for up to 4 hours."

Source:

General Authority: SDCL 34-20G-72(7)(a)

Law Implemented: SDCL 34-20G-72(7)(a)

44:90:10:12. Ingredients – Allergen warnings.

1. The label of any cannabis or cannabis product must identify any pesticides used in cultivation.

2. The label of any cannabis product must list all ingredients and, if applicable, gases, solvents, or other chemicals used in extraction.

3. The label of any edible cannabis product must identify any major allergens contained in the product in accordance with 21 U.S.C. § 343 (2021), including milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

Source:

General Authority: SDCL 34-20G-72(7)(c)

Law Implemented: SDCL 34-20G-72(7)(c)

44:90:10:13. Contents – Net weight or volume -- Nutritional information.

1. The label's statement of net contents must identify the net weight or volume of the cannabis, cannabis extract, or cannabis product, expressed:

   (A) If a solid, in both ounces and grams/milligrams; or

   (B) If a liquid or colloid, in both fluid ounces and milliliters.

2. The label of any cannabis product must state the equivalent cannabis weight, calculated according to the equivalent cannabis weight table included in section 44:90:02:10 of this article.

3. The label of any edible cannabis product except tinctures, oils, and capsules must identify the size, expressed in ounces and grams/milligrams, fluid ounces or milliliters, or number of pieces, of a serving providing 10 mg of THC and the number of servings per marketing layer;

4. The label of tinctures, oils, and capsules must 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;

5. The label of vaporizer cartridges, vaporizer pens, and topical cannabis products must be expressed in the weight of concentrate used to manufacture the product within the marketing layer in milligrams or grams and ounces.

6. Any edible cannabis product, except tinctures, oils, and capsules, must be labeled with a nutritional fact panel in accordance with 21 C.F.R. part 101 (2018).

Source:

General Authority: SDCL 34-20G-72(7)

Law Implemented: SDCL 34-20G-72(7)

44:90:10:14. Required warnings -- Indication that product contains cannabis – Side effects – Legal status of cannabis.

1. The department shall design a standard symbol that indicates an item contains cannabis or cannabis extract, which shall be used by all registered establishments.
2. 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.
3. Labels must contain the following warning statements in no smaller than 6-point font:
   (A) For all cannabis and cannabis products: "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) For all cannabis flower and trim, including pre-rolled cannabis cigarettes: "Not for retail sale to persons under 21 years of age.";
   (C) For all inhalable cannabis products: "Possession by persons under 21 years old illegal."; and
   (D) For concentrates in smokable form with a THC content greater than 60 percent: "Sale or possession of more than 4 grams of high-strength concentrate is illegal."

Source:

General Authority: SDCL 34-20G-72(7)(d)

Law Implemented: SDCL 34-20G-72(7)(d)

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 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(7)(d)

Law Implemented: SDCL 34-20G-72(7)(d)

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)(d)

Law Implemented: SDCL 34-20G-72(7)(d)

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. On television or radio;
5. Through a practitioner or health care facility, including placement of advertising material onsite or targeting their patients through direct mail, phone, text, or email.

Source:

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

Law Implemented: SDCL 34-20G-33, 34-20G-78

44:90:10:18. Target audience – Establishments and adult cardholders only – Prohibition on advertising to practitioners.

1. Advertisements must be targeted as directly as possible to:

(A) Other establishments;

(B) Cardholders who are 21 years of age or older; and

(C) Readers of medical publications.

2. Advertisements may not target:

(A) Non-cardholders, including:

(1) Suggesting a medical evaluation; or

(2) Interacting with the public at events sponsored by the establishment;

(B) Anyone under the age of 21, including:

(1) Depicting anyone under 21 years of age; or

(2) Using cartoons, toys, or other products or images commonly associated with or marketed to individuals under 21 years of age; or

(C) Practitioners or health care facilities, other than advertising in medical publications.

3. Any advertising on websites, social media, or mobile applications must include:

(A) A verification that the recipient is a cardholder 21 years of age or older; and

(B) A permanent opt-out feature.

Source:

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

Law Implemented: SDCL 34-20G-33, 34-20G-74, 34-20G-78

44:90:10:19. 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 of cannabinoid content verified by a testing facility);
3. Depict consumption of cannabis or cannabis products;
4. Depict pregnancy, breastfeeding, or operating a motorized vehicle, boat or machinery;
5. Depict or refer to candy or a specific type of candy;
6. Use a trademark associated with a non-cannabis product, including parody or other use that has similarity to the original;
7. Encourage the transportation of cannabis across state lines or otherwise encourage illegal activity;
8. Assert that cannabis is safe because it is regulated by the department, tested by a testing facility, or otherwise endorsed by any government agency;
9. Make claims that cannabis has curative or therapeutic effects;
10. Claim any health or physical benefits; or
11. Encourage excessive or rapid consumption.

Source:

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

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

44:90:10:20. Required information.

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.

Source:

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

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

44:90:10:21. Nonconforming advertising.

1. Any nonconforming advertising is a violation of this article and SDCL chapter 34-20G.
2. Upon notification by the department, the establishment must cease the nonconforming advertisements and remove any nonconforming advertising from websites, social media, mobile applications, or signs.
3. 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-80

CHAPTER 44:90:11

RECORDKEEPING

Section

44:90:11:01. Inventory tracking system – Required use.

Establishments are required to 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

44:90:11:02. Retention of records -- Electronic and paper – Amended records.

1. A cannabis establishment must maintain, for a minimum of 18 months, records to enable the department to identify and prevent diversion of cannabis and to protect patients from unsafe cannabis and cannabis products, including:

   (A) All point of sale records, whether in electronic or paper form;

   (B) Transport manifests; and

   (C) Daily inventory records, transfer records, testing sample records, and transaction records.

2. No inventory record, transfer record, testing sample record, or transaction record may be altered after the date on which it was created.
3. If necessary, an amended inventory record, transfer record, testing sample record, or transaction record may be created, but the original record is subject to record retention requirements.

Source:

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

Law Implemented: SDCL 34-20G-63

44:90:11:03. Daily inventory record.

1. A cannabis establishment must maintain and update by midnight each day of operation, an electronic record of the establishment's inventory of cannabis, including seeds, seedlings, plants, extracts, products, and waste.
2. For prepackaged cannabis or cannabis products, the inventory record shall include the number of marketing layers of each item.
3. The inventory record must use the following units of measure:
   (A) For seeds, seedlings, and plants, whole numbers;
   (B) For cannabis flower, trim, pre-rolled cannabis cigarettes, extract, and dry or powdered topical products, net weight in grams and ounces;
   (C) For vaporizer cartridges, vaporizer pens, and concentrate in smokable form, 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.

4. The inventory record must reflect:

   (A) The destruction of cannabis or disposal of cannabis waste;

   (B) Theft or other loss; and

   (C) Data from the transfer record.

5. The inventory record must 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

44:90:11:04. Daily transfer record.

1. A cannabis establishment shall maintain and update by midnight, an electronic record of all cannabis, including any seeds, plants, extracts, or products, obtained from a cardholder or another establishment, and all cannabis transferred to another establishment.
2. The transfer record must use the same units of measure as the inventory record.
3. The transfer record must reflect all transport manifests.
4. The transfer record must 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

44:90:11:05. Daily testing sample record.

1. A cannabis establishment shall maintain and update by midnight, an electronic testing sample record, including:

   (A) The batch identifier and quantity of each batch from which samples were drawn;

   (B) The sample identifier of each sample created, its quantity, and the batch identifier associated with the sample;

   (C) The tests to be performed; and

   (D) Test results, including a note of whether the testing facility has indicated the batch is safe or unsafe for transfer to another establishment.

2. 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

44:90:11:06. Cultivation facility inventory records – Additional requirements.

1. The inventory record of a cultivation facility must include a unique identifier for each immature plant and mature plant, which must also be printed on a tag or label affixed to the growing container or a tag around the plant's stalk.

2. The inventory record must be updated each time:

   (A) A seedling exceeds its size limit and is considered a plant;

   (B) A plant flowers for the first time;

   (C) A plant is trimmed or harvested;

   (D) A testing batch is created; or

(E) Cannabis is packaged for retail sale.

3. The record for a testing batch must indicate the unique identifier for each plant used to produce the batch.
4. 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.

Source:

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

Law Implemented: SDCL 34-20G-63, 34-20G-88

44:90:11:07. Cannabis product manufacturing facility inventory records – Additional requirements.

1. The inventory record of a cannabis product manufacturing facility must include the testing batch identification number of any cannabis obtained from a cultivation facility.
2. The inventory record must be updated each time:
   (A) A quantity of extract or concentrated cannabis is made from cannabis flower or trim;
   (B) A quantity of cannabis product is made from concentrated cannabis, cannabis extract, flower, or trim; or
   (C) A quantity of cannabis product is packaged for retail sale.
3. Any extract must be assigned to a testing batch, which must:
   (A) Consist only of extract produced on a single day using the same extraction method; and
   (B) Be entered into the inventory record with the identifier of any testing batch of cannabis from which it was produced.

4. Any cannabis product must be assigned to a testing batch, which 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 or any testing batch of cannabis or cannabis extract from which it was produced.

5. The record for cannabis extracts or products packaged and labeled for transfer to a 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-88

44:90:11:08. Testing facility inventory records – Additional requirements.

1. A testing facility shall maintain and update by midnight each day of operation, an inventory record of:

   (A) All samples in its possession, with unique identifiers and quantities expressed in units specified in its operating procedures; and

   (B) All other cannabis, cannabis extracts, and cannabis products acquired for training or reference purposes;

2. The inventory record must reflect:

   (A) The quantity of each sample rendered unusable by testing;

   (B) The quantity of each sample returned to the establishment;

   (C) The quantity of each sample destroyed or disposed of; and

(D) 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-88

44:90:11:09. Dispensary inventory records – Additional requirements.

1. The inventory record of a dispensary must include all cannabis, cannabis extracts, and cannabis products, including 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.
2. The inventory record must be updated each day of operation to reflect:
   (A) Any cannabis, cannabis extracts, or cannabis products received from another establishment;
   (B) Sales to qualifying cardholders, which must include the cardholder's identification number;
   (C) Returns of merchandise from cardholders, whether to be resold, returned to another establishment, or destroyed;
   (D) Transfers to another establishment, including returns; and
   (E) Destruction of cannabis.

Source:

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

Law Implemented: SDCL 34-20G-63, 34-20G-88

44:90:11:10. Daily transaction record.

1. A dispensary shall maintain and shall update by midnight each day of operation, a transaction record, which shall include:
   (A) 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
   (B) The cardholder identification number associated with each quantity.
2. The transaction record may contain no other identifying information relating to a cardholder.

Source:

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

Law Implemented: SDCL 34-20G-63, 34-20G-71

44:90:11:11. Department access to and use of establishment records.

1. The department's agents:
   (A) Shall have access to all records, including transport manifests during an inspection of an establishment or vehicle, or in response to a written or telephone inquiry.
   (B) May compare inventory onsite or in delivery vehicles to the establishment's inventory records.
   (C) May compare transport manifests or observed deliveries to the establishment's transfer records.
2. Upon the discovery of any inconsistencies in the establishment's record-keeping, the department shall:
   (A) Make a determination of whether the inconsistences are knowing or negligent;

(B) Inform the establishment in writing of its findings;

(C) If applicable, initiate suspension or revocation proceedings; and

(D) 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, SDCL 34-20G-88

CHAPTER 44:90:12

ENFORCEMENT

Section

44:90:12:01. Department inspection of establishments – Recalls -- Corrective action plan.

1. Agents of the department may conduct routine, unannounced inspections and inspections in response to complaints.

2. Agents of the department:

(A) Must present identification before commencing an inspection of an establishment;

(B) Shall have complete and unrestricted access to establishments during business hours or when establishment agents are present for the purposes of inspections, sample collection, testing, interviews, or other investigations;

(C) 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;

(D) 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

(E) Shall have access to inventory records and certificates of analysis maintained by the establishment, including collecting paper or electronic copies for further review.

3. 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 non usable;

4. 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:

(A) The department shall request that any establishment that cultivated, manufactured, or sold the affected cannabis or cannabis products initiate a voluntary recall;

(B) The department's correspondence shall include the reasons for the recall request;

(C) The affected establishments must immediately store the affected cannabis in storage containers labeled prominently with the words "RECALLED – DO NOT TRANSFER;

(D) The affected establishments may voluntarily issue a recall of the cannabis or cannabis products;

(E) 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

(F) 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.

5. Upon the discovery of suspected violations of this article or SDCL chapter 34-20G, agents of the department may order the establishment to comply with a corrective action plan, which may include:

(A) Modifying operating procedures to comply with this article and SDCL chapter 34-20G;

(B) Halting transfer of cannabis or cannabis products that are mislabeled or otherwise pose a threat to public health; and

(C) Destroying or remediating cannabis or cannabis products that pose a threat to public health.

6. 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.

7. Nothing in this section prohibits licensees from initiating corrective action, including voluntarily recalling cannabis or cannabis products.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-69

44:90:12:02. Suspension or revocation of registration certificates for serious violations.

1. 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, diversion, or threat to public health or safety, including knowingly:
   (A) Selling or otherwise transferring cannabis in exchange for anything of value to a person other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent;
   (B) Making a false statement to a law enforcement official;
   (C) Sharing confidential information about a cardholder for monetary gain or to cause harm to the cardholder;
   (D) Submitting false records or documentation required by the department to certify a medical cannabis establishment;
   (E) Failing to meet obligations or conditions agreed to in the application for a registration certificate;
   (F) Dispensing, transferring, or selling cannabis while a registration certificate is suspended;
   (G) Obtaining cannabis seeds, cannabis seedlings, cannabis plants, cannabis, cannabis extract, or cannabis products in violation of this article or SDCL chapter 34-20G;
   (H) Failing to enter cannabis seedlings, cannabis plants, cannabis, cannabis extracts, or cannabis products into the establishment's inventory records;
   (I) Applying pesticides to cannabis plants without following all requirements of this article;
   (J) Using solvents without authorization or in an unsafe manner;

(K) Misrepresenting the results of laboratory analysis;

(L) Transferring non usable cannabis or cannabis products, unless allowed by this article for the purposes of remediation; or

(M) Committing any misdemeanor or felony offense in connection with the operation of a medical cannabis establishment.

2. 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:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-80, 34-20G-81

44:90:12:03. Suspension or revocation of a registration certificate for multiple violations.

1. 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 violations of this article or SDCL chapter 34-20G, including:

(A) Serious violations of this article or SDCL chapter 34-20G;

(B) Negligent violations of this article or SDCL chapter 34-20G;

(C) Deviation from operating procedures in a manner that poses a threat to public safety or health, including the availability of cannabis, cannabis extract, or cannabis products to qualifying patients, including low-income qualifying patients;

(D) Sharing a cardholder's personal information;

(E) Minor or technical violations of this article that did not result in diversion of cannabis or harm to public health or safety;

(F) Violations of local ordinances governing the time, place, and manner of a medical cannabis establishment that may operate in the locality;

(G) Failure to allow agents of the department or any law enforcement agency access to an establishment during normal business hours; or

(H) Failure to provide a notice required by this article or SDCL chapter 34-20G.

2. 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:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-80, 34-20G-81

44:90:12:04. Voluntary surrender of registration certificate.

An establishment may offer to voluntarily surrender its registration certificate, cease operations, and may not renew or transfer the registration certificate. 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-80, 34-20G-81

44:90:12:05. Revocation of registry identification card for unauthorized sale.

Upon a finding that a cardholder has 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.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-83

44:90:12:06. 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-84

CHAPTER 44:90:13

PETITIONS TO RECOGNIZE DEBILITATING MEDICAL CONDIITIONS

Section

44:90:13:01. Qualifying debilitating medical conditions.

1. In addition to the conditions listed in SDCL 34-20G-1(8), the following conditions and treatments are recognized as qualifying debilitating medical conditions:
   (A) Acquired immune deficiency syndrome (AIDS) and positive status for human immunodeficiency virus (HIV);
   (B) Amyotrophic lateral sclerosis (ALS);
   (C) Multiple sclerosis (MS);
   (D) Cancer or its treatment, if associated with severe or chronic pain, nausea or severe vomiting, or cachexia or severe wasting;
   (E) Crohn's disease;

(F) Epilepsy and seizures;

(G) Glaucoma; and

(H) Post-Traumatic Stress Disorder (PTSD).

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 secretary to add a medical condition to the list of debilitating medical conditions for which a practitioner may recommend the medical use of cannabis must be submitted on forms provided by the department. The 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 (ICD-10) 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 secretary's written decision to approve or deny a petition must 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 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.

Source:

General Authority: SDCL 34-20G-72(1)

Law Implemented: SDCL 34-20G-26