

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

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

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

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

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

Any establishment granted a certificate pursuant to this section must become operational within one year of the date of award or the certificate is deemed void and ~~will~~ must be awarded to the next applicant on the waiting list. If the establishment granted a certificate pursuant to this section cannot become operational within one year, the establishment may submit to the department, at least two weeks prior to the expiration of the certificate, written documentation of the efforts made by the establishment to meet the deadline. The written documentation must include the action taken by the establishment to secure equipment and services necessary to become operational, and the reason why the establishment is unable to meet the deadline. Upon a

finding by the department that, despite the establishment's documented timely efforts to secure all equipment and services necessary to become operational, the establishment is unable to become operational by the certificate expiration date, the department may grant the establishment an extension of time by which the establishment must become operational. The department may only grant an extension for one additional year from the date of expiration of the certificate. No further extensions may be granted. Establishments must comply with the requirements for renewal in § 44:90:03:02 regardless of the extension.

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

Source: 48 SDR 40, effective October 5, 2021.

General Authority: SDCL 34-20G-72(3), 34-20G-72(5).

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

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

(1) The agent's photograph that meets the requirements of ~~§~~ subdivision 44:90:02:04(3), except that the photograph may be as small as seven-eighths inch by one-and-five-thirty-seconds inches; and

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

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

(b) The name of the establishments.

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

Source: 48 SDR 40, effective October 5, 2021.

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

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

**CHAPTER 44:90:06
CANNABIS TESTING FACILITIES**

Section

- 44:90:06:01 Required accreditation and registration -- Drug Enforcement Agency.
- 44:90:06:02 Adherence to standard operating procedures -- Quality control and quality assurance.
- 44:90:06:03 Sample collection.
- 44:90:06:04 Field audits.
- 44:90:06:05 Chain of custody protocols.
- 44:90:06:06 Chain of custody -- Forms.
- 44:90:06:07 Reporting of test results.
- 44:90:06:08 Analytical testing result verification.
- 44:90:06:09 Results of confirmation testing.
- 44:90:06:10 Transportation to the South Dakota Public Health Laboratory.

44:90:06:10. Transportation to the South Dakota Public Health Laboratory. A cannabis testing facility that is directed by the department to transfer cannabis to the South Dakota Public Health Laboratory for testing pursuant to § 44:90:06:08 may transport the cannabis by use

of a courier service designated by the South Dakota Public Health Laboratory in tamper resistant packaging, or as otherwise directed by the South Dakota Public Health Laboratory. The requirements of §§ 44:90:04:18 through 44:90:04:23 do not apply when cannabis is being transported to the South Dakota Public Health Laboratory.

Source:

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

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

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

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

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

- (1) Butane;
- (2) Propane;
- (3) Acetone;

(4) Heptane; or

(5) Pentane.

The use of any inherently hazardous substance other than butane, propane, acetone, heptane, or pentane requires written prior approval of the department, upon documentation of the safety and efficacy of the selected method. All flammable gas must be ~~odorized~~ stored and handled in accordance with all applicable safety standards contained in local ordinance, SDCL chapter 11-10, article 61:15, and chapter 20:44:22.

Source: 48 SDR 40, effective October 5, 2021.

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

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

44:90:13:02. Department's decision. The department's written decision to approve or deny a petition shall be issued within ~~180~~one hundred and eighty 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; and

(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~~ is determined to provide benefits that outweigh the risks of cannabis use.

A qualifying medical condition ~~shall~~ may only be recognized through rules promulgated by the department pursuant to chapter 1-26.

Source: 48 SDR 40, effective October 5, 2021.

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

Law Implemented: SDCL 34-20G-26.