

ARTICLE 12:82

INDUSTRIAL HEMP

Chapter

12:82:01 Definitions.

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~~12:82:09 Transportation, Repealed.~~

CHAPTER 12:82:01

DEFINITIONS

Section

12:82:01:01 Definitions.

12:82:01:01. Definitions. Terms defined in SDCL 38-35-1 shall have the same meaning in this article. In addition, terms used in this article mean:

(1) “Acceptable hemp THC level” means when the application of the measurement of uncertainty to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less.

(2) “Certificate of analysis” means a report prepared by a certified laboratory that contains the analytical testing it performed and the results of the testing.

~~(1)~~(3) “Measurement of uncertainty” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(4) “Residential dwelling” means any building, structure, including single family or multi-family homes, used and occupied for human habitation.

(5) “THC Byproduct” means processed industrial hemp with a total delta-9-tetrahydrocannabinol greater than the acceptable hemp THC level that has not entered the stream of commerce.

Source:

General Authority: SDCL 38-35-11, ~~38-35-13~~

Law Implemented: SDCL 38-35-1, 38-35-11, ~~38-35-13~~

CHAPTER 12:82:02

APPLICATION AND LICENSURE

Section

12:82:02:01 Applications.

12:82:02:02 Grower application requirements.

12:82:02:03 ~~Grower application submission period~~ Repealed.

12:82:02:04 Grower license application fee.

12:82:02:05 Grower license approval -- Grower license fee -- License number --
License nontransferable.

12:82:02:06 ~~Grower license fee~~ Repealed.

12:82:02:07 Grower license amendment.

12:82:02:08 Grower license expiration -- Renewal.

12:82:02:09 Processor application requirements.

12:82:02:10 Processor license application fee.

12:82:02:11 Processor license approval -- Processor license fee -- License number --
License nontransferable.

12:82:02:12 ~~Processor license fee.~~ Repealed.

12:82:02:13 ~~Processor license amendment.~~ Repealed.

12:82:02:14 Processor license expiration--Renewal.

12:82:02:15 Research application requirements.

12:82:02:16 Research license application fee.

12:82:02:17 Research license approval -- Research license fee -- License number --
License nontransferable.

12:82:02:18 Research license amendment.

12:82:02:19 Research license expiration--Renewal.

12:82:02:01. Applications. Any person or legal business entity in South Dakota shall obtain a license from the ~~department~~ Department to purchase, receive, or obtain industrial hemp, ~~other than industrial hemp product,~~ including seedlings and clones, for planting, storing, propagating, producing, or processing industrial hemp.

~~Employees of the State of South Dakota are not required to obtain a license when performing official duties.~~ An industrial hemp license is not required for:

(1) The possession or distribution of hemp seed;

(2) Obtaining industrial hemp product, as defined by SDCL 38-35-1(6);

(3) Employees of the State of South Dakota when performing official duties;

(4) Facilities testing industrial hemp seed to determine label information, in accordance with SDCL 38-12A-9.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-2, SDCL 38-12A-9.

12:82:02:02. Grower application requirements. ~~An applicant for a grower license shall apply to the secretary on a form prescribed by the secretary. No application to plant, grow, or produce industrial hemp may be for less than five contiguous outdoor acres. The~~ A grower license application must contain:

(1) The applicant name, mailing address, physical address, telephone number, and email address, if available;

(2) A legal description and ~~geospatial~~ latitude and longitude coordinates of the area(s) where industrial hemp will be ~~located~~ grown, stored, and handled.

a. A licensed industrial hemp grower shall not grow, store, or handle industrial hemp within a residential dwelling.

(3) If the applicant is a business entity, the full name of the business and physical address of the principal business location; and identify the full name and titles of the business entity's key participants who have authority to act on behalf of the business entity; the email address of the business entity, if available; and the business entity's taxpayer identification number;

(4) An authorization allowing the Department to access state and federal background checks conducted by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation on the applicant, key participants, and landowner; ~~and~~

(5) Verification that the growing, handling, and storing locations are not within a “Territory of the Indian Tribe” as defined by 7 C.F.R. § 990 (March 22, 2021); and

(6) If the lot is within the corporate limits of any incorporated municipality, the applicant must provide documentation from a local municipal official verifying the location meets all applicable municipal zoning regulations.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3.

~~**12:82:02:03. Grower application submission period.** Applications for grower licenses shall be accepted by the department for the first sixty days after these rules become effective. Every year thereafter, the department shall accept grower license applications annually, during a sixty-day time period from November 1 through December 30. Repealed.~~

~~**Source:**~~

~~**General Authority:** SDCL 38-35-11(1).~~

~~**Law Implemented:** SDCL 38-35-3.~~

12:82:02:04. Grower license application fee. An applicant shall submit at the time of application a nonrefundable grower license application fee in the amount of fifty dollars.

Source:

General Authority: SDCL 38-35-11(1)(5).

Law Implemented: SDCL 38-35-3.

12:82:02:05. Grower license approval -- Grower license fee -- License number -- License non-transferable. An applicant will be notified by email, if provided, or via U.S. Mail, when the application has been approved or denied. Upon notification of approval of a grower license application, the applicant must remit to the Department a license fee in the amount of five hundred dollars. Upon approval and receipt of payment of a grower license fee, the licensee will be assigned a grower license number by the department Department, and the license will be sent to the licensee.

The grower license number will not be duplicated or reassigned to any other licensee by the ~~department~~ Department. Licensee will retain the same grower number for all subsequent licenses. Licenses are non-transferable.

Source:

General Authority: SDCL 38-35-11(1)(5).

Law Implemented: SDCL 38-35-7.

12:82:02:06. Grower license fee. ~~Upon notification of approval of a grower license application, the applicant must remit to the department a license fee in the amount of five hundred dollars. Upon receipt of payment of license fee, the grower license will be issued in electronic format by email, if provided, and the original mailed to the licensee via U.S. Mail~~ Repealed.

Source:

General Authority: ~~SDCL 38-35-11(1)(5).~~

Law Implemented: ~~SDCL 38-35-3, 38-35-7.~~

12:82:02:07. Grower license amendment. Any change to the required information on an approved grower license requires a licensee to submit a license amendment on a form prescribed by the secretary, within ten business days of the change.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3, 38-35-7.

12:82:02:08. Grower license expiration -- Renewal. ~~A grower license is valid for fifteen months from the date of issue. A grower licensee who seeks to renew a license shall submit a new license application during the annual application submission period at least 30 days prior to the expiration of the current license.~~

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3, 38-35-7.

12:82:02:09. Processor application requirements. A licensed industrial hemp processor shall not process, store, and handle industrial hemp within a residential dwelling. The processor application must contain:

- (1) The applicant's name, physical address, telephone number, and email address, if available;
- (2) The physical address of processing location(s) or headquarters of mobile processing;

- (3) The legal description and ~~geospatial~~ latitude and longitude coordinates for any location where hemp will be processed and stored;
- (4) If the applicant is a business entity, the full name of the business, the physical and mailing address of the principal business location; and the full names and titles of the business entity's key participants who have authority on behalf of the business entity;
- (5) The full name and title of the key participants, email address, if available, and the taxpayer identification number of the business entity;
- (6) Authorization allowing the Department to access state and federal background check conducted by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation on the applicant and key participants; ~~and~~
- (7) If the applicant is a business entity, a certificate of good standing provided by the secretary of state; and
- (8) Verification that the processing location(s) is not within a "Territory of the Indian Tribe" as defined by 7 C.F.R. § 990 (March 22, 2021).

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-4.

12:82:02:10. Processor license application fee. An applicant for a processor license shall submit at the time of application a nonrefundable processor application fee in the amount of fifty dollars.

Source:

General Authority: SDCL 38-35-11(1)(5).

Law Implemented: SDCL 38-35-4.

12:82:02:11. Processor license approval -- Processor license fee -- License number -- License non-transferable. An applicant for a processor license will be notified by email, if provided, or via U.S. mail, when the application has been approved or denied. Upon notification of approval of a processor license application, the applicant must remit to the Department a license fee in the amount of two thousand dollars. Upon approval and receipt of payment of a processor license fee, the licensee will be assigned a processor license number by the department Department, which and the processor license will be issued to the licensee.

The processor license number will not be duplicated or reassigned to any other licensee by the department Department. Licensee will retain the same processor number for all subsequent licenses. Licenses are non-transferable.

Source:

General Authority: SDCL 38-35-11(1)(5).

Law Implemented: SDCL 38-35-7.

12:82:02:12. Processor license fee. ~~Upon notification of approval of a processor license application, the applicant shall remit to the department a license fee in the amount of two thousand dollars. Upon receipt of payment of license fee, the processor license will be issued in electronic format by email, if provided, and the original mailed to licensee via U.S. mail. Repealed.~~

Source:

General Authority: ~~SDCL 38-35-11(1)(5).~~

Law Implemented: ~~SDCL 38-35-4.~~

~~**12:82:02:13. Processor license amendment.** Any change to the required information on an approved processor license requires a licensee to submit a license amendment on a form prescribed by the secretary, within twenty days of the change.~~
Repealed.

~~**Source:**~~

~~**General Authority:** SDCL 38-35-11(1).~~

~~**Law Implemented:** SDCL 38-35-4, 38-35-7.~~

12:82:02:14. Processor license expiration -- Renewal. A processor license expires on December 31st of the calendar year that the license was issued. A processor licensee who seeks to renew a processor license, shall submit a processor license renewal application by ~~October 1,~~ at least 30 days prior to the expiration of the current license.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-4, 38-35-7.

12:82:02:15. Research application requirements. A licensed industrial hemp researcher shall not grow, process, store, or handle industrial hemp within a residential dwelling. The research application must contain:

(1) The applicant's name, physical address, telephone number, and email address, if available;

(2) The physical address of the research location(s);

(3) The legal description and latitude and longitude coordinates for any location where hemp will be grown, processed, stored, or handled;

(4) If the applicant is a business entity, the full name of the business, the physical and mailing address of the principal business location; and the full names and titles of the business entity's key participants who have authority on behalf of the business entity;

(5) The full name and title of the key participants, email address, if available, and the taxpayer identification number of the business entity;

(6) Authorization allowing the Department to access state and federal background checks conducted by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation on the applicant and key participants;

(7) If the applicant is a business entity, a certificate of good standing provided by the secretary of state; and

(8) Verification that the research location(s) is not within a "Territory of the Indian Tribe" as defined by 7 C.F.R. § 990 (March 22, 2021).

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3.1.

12:82:02:16. Research license application fee. An applicant for a processor license shall submit at the time of application a nonrefundable research application fee in the amount of fifty dollars.

Source:

General Authority: SDCL 38-35-11(1)(5).

Law Implemented: SDCL 38-35-3.1.

12:82:02:17. Research license approval -- Research license fee -- License number -- License non-transferable. An applicant for a research license will be notified when the application has been approved or denied. Upon notification of approval of a research license application, the applicant must remit to the Department a license fee in the amount of one hundred dollars. Upon approval and receipt of payment of a research license fee, the licensee will be assigned a research license number by the Department, and the research license will be issued to the licensee.

The research license number will not be duplicated or reassigned to any other licensee by the Department. Licensee will retain the same research number for all subsequent licenses. Licenses are non-transferable.

Source:

General Authority: SDCL 38-35-11(1)(5).

Law Implemented: SDCL 38-35-7.

12:82:02:18. Research license amendment. Any change to the required information on an approved research license requires a licensee to submit a license amendment on a form prescribed by the secretary, within ten days of the change.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3.1, 38-35-7.

12:82:02:19. Research license expiration -- Renewal. A research licensee who seeks to renew a research license, shall submit a research license application at least 30 days prior to the expiration of the current license.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-3.1, 38-35-7.

CHAPTER 12:82:03

RECORDS

Section

12:82:03:01 Grower records.

12:82:03:02 Submission of planting and harvest data to United States Department of Agriculture Farm Service Agency.

12:82:03:03 Processor records.

12:82:03:04 Research records.

12:82:03:01. Grower Records. Grower records shall be available for examination by the department Department and the Department of Public Safety during normal business hours on site. Grower licensees shall maintain the following grower records for three years in order to document and report as required:

- (1) All license number information and United States Department of Agriculture Farm Service Agency authorization number;
- (2) Physical address;
- (3) Geospatial location(s) of each lot where industrial hemp will be produced or stored;

- (4) Industrial hemp crop acreage;
- (5) Total acreage and square footage, if grown indoors, of industrial hemp planted, harvested, remediated, and disposed;
- (6) Record of all processors sold to and quantities sold to each processor;
- (7) Variety/strain for each lot;
- (8) Copies of all notifications of total delta-9 tetrahydrocannabinol (THC) test results for each lot;
- (9) All records, documents, and forms regarding the disposal of non-compliant industrial hemp produced in violation of the United States Department of Agriculture guidelines;
- (10) All records, documents, and forms regarding the disposal of industrial hemp for any reason other than produced in violation of the United State Department of Agriculture guidelines;
- (11) Copies of all records, forms, and reports submitted to the ~~department~~, Department, the Department of Public Safety, law enforcement officers, and to the United States Department of Agriculture Farm Service Agency related to industrial hemp; and
- (12) All Copies of all records and forms that support, document, or verify the information submitted to the ~~department~~, Department, the Department of Public Safety, law enforcement officers, and the United States Department of Agriculture Farm Service Agency related to industrial hemp.

Source:

General Authority: SDCL 38-35-11(6).

Law Implemented: SDCL 38-35-8, 38-35-9.

12:82:03:02. Submission of planting and harvest data to United States

Department of Agriculture Farm Service Agency. Grower and research licensees are required to provide their industrial hemp license number and certify industrial hemp acreage and square footage planted for all growing location(s) with their local office of the United States Department of Agriculture Farm Service Agency.

Source:

General Authority: SDCL 38-35-11(6).

Law Implemented: SDCL 38-35-18.

12:82:03:03. Processor records. All processor records shall be available for examination by the ~~department~~ Department and the Department of Public Safety during normal business hours and be maintained onsite. A processor licensee shall maintain these records for three years. Processor licensees shall keep the following information:

- (1) Industrial hemp crop acquisitions, including a certificate of analysis, grower name, grower address, copy of grower license number, quantity purchased, and transaction date;
- (2) Records of all unprocessed or processed industrial hemp purchased from another processor including a certificate of analysis, processor name, processor address, processor registration or license, quantity purchased, and transaction date;
- (3) Records of all unprocessed or processed industrial hemp sold to another processor including a certificate of analysis, processor name, processor address, processor registration or license, quantity sold, and transaction date; ~~and~~

- (4) THC byproduct secure storage and disposal records; and
- (5) Certificate of Analysis of product in process prior to transport;
- (6) Processor license number information, including physical address and latitude and longitude coordinates of where industrial hemp will be processed.

Source:

General Authority: SDCL 38-35-11(1).

Law Implemented: SDCL 38-35-9.

12:82:03:04. Research Records. Research records shall be available for examination by the Department and the Department of Public Safety during normal business hours on site. Research licensees shall maintain the following records for three years in order to document and report as required:

- (1) All license number information and United States Department of Agriculture Farm Service Agency authorization number, if applicable;
- (2) Physical address;
- (3) Latitude and longitude coordinates of each lot where industrial hemp will be produced, stored, handled, and processed;
- (4) Total acreage and square footage, if grown indoors, of industrial hemp planted and disposed;
- (5) Variety/strain for each lot;
- (6) Copies of all total delta-9 tetrahydrocannabinol (THC) test results for each lot;
- (7) All records, documents, and forms regarding the disposal of industrial hemp produced;

(8) Industrial hemp crop acquisitions, including certificate of analysis, grower name, grower address, copy of grower license number, quantity purchased, and transaction date;

(9) Records of all unprocessed or processed industrial hemp purchased from another processor including certificate of analysis, processor name, processor address, processor registration or license, quantity purchased, and transaction date;

(10) Copies of all records, forms, and reports submitted to the Department, the Department of Public Safety, law enforcement officers, and to the United States Department of Agriculture Farm Service Agency related to industrial hemp; and

(11) Copies of all records and forms that support, document, or verify the information submitted to the Department, the Department of Public Safety, law enforcement officers, and the United States Department of Agriculture Farm Service Agency related to industrial hemp.

Source:

General Authority: SDCL 38-35-11(6).

Law Implemented: SDCL 38-35-3.1, 38-35-8, 38-35-9.

CHAPTER 12:82:04

ENFORCEMENT

Section

12:82:04:01 Negligent violation.

12:82:04:02 Corrective actions.

12:82:04:03 Non-negligent violations.

12:82:04:01. Negligent violation. Upon any determination that a negligent violation related to the growth or processing ~~or transportation~~ of industrial hemp has occurred, the ~~department~~ Department ~~and the Department of Public Safety~~ will institute a corrective action plan. Negligent violations include:

- (1) Failure to provide accurate legal description of land where industrial hemp is produced;
- (2) Failure to obtain a license for inadvertent or unknown growth of industrial hemp;
- (3) Production of cannabis with total THC exceeding ~~the acceptable industrial hemp~~ THC level 1% on a dry weight basis; or
- (4) Growth of industrial hemp outside of a licensed planting site.

As a result of a negligent violation, a licensee shall not be subject to any criminal enforcement action. Three negligent violations in a five-year period shall result in a grower being ineligible to produce industrial hemp for a period of five years from the date of the last violation. A grower licensee will not receive more than one negligent violation in a calendar year.

Source:

General Authority: SDCL 38-35-11(3)~~(7)(8)~~, ~~38-35-13(5)~~

Law Implemented: SDCL 38-35-2, 38-35-9, 38-35-11, ~~38-35-13~~, 38-35-16.

12:82:04:02. Corrective actions A corrective action plan established by the ~~department~~ Department ~~and the Department of Public Safety~~ to correct negligent violations may include:

- (1) A reasonable date to correct the negligent violation; and

(2) A requirement to periodically report to the department Department regarding compliance with the corrective action plan for a period of not less than two consecutive calendar years.

~~The department shall notify the Department of Public Safety of all corrective action plans. The Department of Public Safety shall conduct inspections to determine if corrective action plans have been completed.~~

Source:

General Authority: SDCL 38-35-11(7)(8)(9), 38-35-13(2)(5).

Law Implemented: SDCL 38-35-10, 38-35-11, ~~38-35-13.~~

12:82:04:03. Non-negligent violations. Violations with a culpable mental state greater than negligence as determined by the department, Department, including knowingly growing industrial hemp containing a total delta-9-THC concentration that exceeds ~~three-tenths~~ one percent (0.3%) on a dry weight basis or a tolerance range ~~as specified by the United States Department of Agriculture~~, shall immediately be reported to the United States Attorney General and the South Dakota Attorney General, Division of Criminal Investigation.

~~The department may deem ineligible, and either deny any application for, or revoke or suspend, any license if any applicant, licensee, key participant, or landowner does any of the following:~~

~~(1) Violates state law or USDA rules regarding industrial hemp;~~

~~(2) Provides false or misleading information in connection with any application;~~

~~(3) Has a conviction of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law in the last ten years, unless participating in a state industrial hemp pilot program authorized under the Agricultural Act of 2014, P.L. 413-79, before December 20, 2018; or~~

~~(4) Has been charged with a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law since the most recent background check.~~

~~The department may deny, revoke, or suspend the license of a grower or processor following a contested case hearing pursuant to SDCL chapter 1-26.~~

Source:

General Authority: SDCL 38-35-11(3)(8)(7).

Law Implemented: SDCL 38-35-7, 38-35-9, 38-35-11.

CHAPTER 12:82:05

HANDLING REQUIREMENTS

Section

12:82:05:01 Transportation.

12:82:05:02 Equipment.

12:82:05:01. Transportation. All industrial hemp plant material, including hemp seed must be covered during transport to avoid inadvertent dissemination of industrial hemp.

Source:

General Authority: SDCL 38-35-11(2).

Law Implemented: SDCL 38-35-11.

12:82:05:02. Equipment. All equipment used to sow or harvest industrial hemp must be thoroughly cleaned ~~after each use~~ before leaving each licensed area to avoid inadvertent dissemination of industrial hemp.

Source:

General Authority: SDCL 38-35-11(2).

Law Implemented: SDCL 38-35-11.

CHAPTER 12:82:06

INSPECTIONS

Section

12:82:06:01 Inspection requirements.

12:82:06:02 Planting verification inspection -- Non-conforming lots.

12:82:06:03 Grower Pre-harvest inspection.

12:82:06:04 Disposal inspection.

12:82:06:05 Grower Pre-harvest inspection procedures.

12:82:06:06 Grower inspection fee.

12:82:06:07 Processor inspection procedures.

12:82:06:08 Processor inspection fee.

12:82:06:01. Inspection requirements. The ~~department~~ Department and the Department of Public Safety shall have complete and unrestricted access during business hours and may enter on any land or other property where industrial hemp is

planted, stored, propagated, produced, or processed for the purpose of inspections, sample collections, testing, or investigation. The Department of Public Safety will report all inspection data to the ~~department~~ Department.

Source:

General Authority: SDCL ~~38-35-13(2)~~ 38-35-11(9).

Law Implemented: SDCL 38-35-9.

12:82:06:02. Planting verification inspection -- Nonconforming lots. Within thirty days of planting, each grower licensee shall file with the ~~department~~ Department documentation to identify the type and variety of each industrial hemp ~~seed~~ seed, seedling, or clone planted with its corresponding lot. Upon receipt of this documentation, a planting verification inspection may be scheduled by the ~~department~~ Department. This inspection will verify the geospatial coordinates of the lots and legal description, address, ~~acreage~~, location ID, ~~and the actual sites and acreage~~ and square footage planted. The grower licensee or a key participant, shall be present at the inspection. Any growing sites that do not conform to the license must be destroyed, or the license must be amended.

Source:

General Authority: SDCL ~~38-35-13(2)~~ 38-35-11(9).

Law Implemented: SDCL 38-35-8, 38-35-9.

12:82:06:03. Grower Pre-harvest inspection. The Department or the Department of Public Safety shall may conduct inspections and collect samples of each lot not more than ~~45~~ 30 days before the hemp is harvested. The industrial hemp may only be

harvested after the sample is collected. No grower may commingle a harvested lot of industrial hemp ~~may be commingled~~ with another harvested lot of industrial hemp or other material except with documented prior written permission by the ~~department~~ Department. No industrial hemp may leave the dominion of control of the grower licensee until the licensee receives a laboratory result from the ~~department~~ Department confirming that the sample representative of the lot complies with the law meets the acceptable hemp THC level. The grower licensee or a key participant shall be present at the inspection.

Source:

General Authority: SDCL ~~38-35-13(2)~~ 38-35-11(9).

Law Implemented: SDCL 38-35-10.

12:82:06:04. Disposal inspection.

The Department or the Department of Public Safety ~~shall~~ may conduct disposal verification inspections to verify that the lot is disposed of in a manner that renders the lot non-retrievable, non-ingestible, and unfit to enter the stream of commerce. The grower licensee or a key participant must be present at the inspection. A disposal inspection is not required for disposal of industrial hemp lots damaged or destroyed due to pests, insects, weeds, disease, poor stand, or destroyed by natural disaster or weather such as flood, wind, or hail.

Source:

General Authority: SDCL ~~38-35-13(2)~~ 38-35-11(9).

Law Implemented: SDCL 38-35-9.

12:82:06:05. Grower Pre-harvest inspection procedures. The grower licensee must contact the ~~Department of Public Safety~~ Department at least ~~30~~ 10 days prior to harvest in order to schedule an inspection. If the grower licensee or a key participant fails to be present at the scheduled inspection, a second request for inspection must be made to the ~~Department of Public Safety~~ Department. Failure to harvest the crop within ~~45~~ 30 days after the lot was sampled requires a resampling for total THC concentration or issuance of an order of destruction by the ~~Department of Public Safety~~ Department.

Source:

General Authority: SDCL ~~38-35-13(1)(2)~~ 38-35-11(4)(9).

Law Implemented: SDCL 38-35-10.

12:82:06:06. Grower inspection fee. The licensee shall pay to the ~~department~~ Department a grower inspection fee in the amount of two hundred fifty dollars per lot for the purpose of grower pre-harvest inspection and sample collection.

Source:

General Authority: SDCL ~~38-35-13(2)~~ 38-35-11(9).

Law Implemented: SDCL ~~38-35-13~~ 38-35-11.

12:82:06:07. Processor inspection. The ~~Department of Public Safety~~ Department shall inspect every processor location annually. The processor licensee or a key participant shall be present at the scheduled inspection.

Source:

General Authority: SDCL ~~38-35-13(2)~~ 38-35-11(9).

Law Implemented: SDCL 38-35-9, 38-35-10, ~~38-35-13~~ 38-35-11.

12:82:06:08. Processor inspection fee The licensee shall pay to the ~~department~~
Department a processor inspection fee in the amount of five hundred dollars per
location.

Source:

General Authority: SDCL ~~38-35-13(2)~~ 38-35-11(9).

Law Implemented: SDCL ~~38-35-13~~ 38-35-11.

CHAPTER 12:82:07

SAMPLES AND TESTING

Section

12:82:07:01 Samples.

12:82:07:02 Sample Protocols.

12:82:07:03 Testing.

12:82:07:04 ~~Notice~~ Laboratory results.

12:82:07:05 Retesting.

12:82:07:01. Samples. Samples will represent a homogenous composition of the
lot to ensure at a confidence level of 95 percent that no more than one percent of the
plants in the lot would exceed the acceptable hemp THC level.

Source:

General Authority: SDCL ~~38-35-13(4)~~ 38-35-11(10).

Law Implemented: SDCL ~~38-35-13~~ 38-35-11.

12:82:07:02. Sample protocols. Each sample must be sealed in a collection bag and identified by: inspector, grower licensee name, grower license number, date, and lot ID as provided by the United States Department of Agriculture Farm Service Agency.

Source:

General Authority: SDCL ~~38-35-13(4)~~ 38-35-11(10).

Law Implemented: SDCL ~~38-35-13~~ 38-35-11.

12:82:07:03. Testing. The laboratory will determine Delta-9-Tetrahydrocannabinol ($\Delta 9$ -THC) and Delta-9- Tetrahydrocannabinolic Acid ($\Delta 9$ -THCA) concentration in industrial hemp sample by using liquid chromatography-electrospray/mass spectrometry. The laboratory must report the total Delta-9-Tetrahydrocannabinol content concentration level on dry weight basis and the measurement of uncertainty. ~~The acceptable industrial hemp THC level for the purpose of compliance is when the application of the measurement of uncertainty to the reported Delta-9-Tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of 0.3% or less.~~

Source:

General Authority: SDCL ~~38-35-13(4)~~ 38-35-11(10).

Law Implemented: SDCL ~~38-35-13~~ 38-35-11, 38-35-14.

12:82:07:04. Notice Laboratory results. Laboratory results must be provided to the ~~department~~ Department and electronically provided to the United States

Department of Agriculture using the Laboratory Test Results Reporting format. The ~~department~~ Department will provide individual test results to licensees ~~via email when provided, and if not provided, via U.S. mail.~~ Industrial hemp may not be processed or enter the stream of commerce until the grower licensee is notified that the industrial hemp lot sampled and tested is compliant with an acceptable hemp THC level ~~when the application of the measurement of uncertainty to the reported Delta 9-Tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of 0.3% or less.~~

Source:

General Authority: SDCL ~~38-35-13(4)~~ 38-35-11(10).

Law Implemented: SDCL 38-35-9, ~~38-35-13~~ 38-35-11.

12:82:07:05. Retesting. ~~When the sample test result reveals total THC content concentration level on a dry weight basis that produces a distribution or range that exceeds 0.3% but is less than 0.5%, the sample may be retested at the expense of the grower licensee. If the sample test result is above the acceptable hemp THC level, The the grower licensee may request the retest within 2 business days after the receipt of the initial test results by the grower licensee. If the grower licensee chooses to remediate a noncompliant lot, the licensee must request a retest of the remediated lot to determine compliance with the acceptable hemp THC level, at the expense of the licensee.~~

Source:

General Authority: SDCL ~~38-35-13(4)~~ 38-35-11(10).

Law Implemented: SDCL ~~38-35-13~~ 38-35-11, 38-35-14.

CHAPTER 12:82:08

REMEDATION AND DISPOSAL

Section

12:82:08:01 Disposal or remediation of non-compliant hemp.

12:82:08:02 ~~Disposal~~ Destruction or remediation plan —~~Witnessed destruction.~~

12:82:08:01. Disposal or remediation of non-compliant hemp. Disposal or remediation is required for any non-compliant industrial hemp lot ~~where the acceptable THC level is non-compliant.~~ If a grower licensee chooses to remediate a non-compliant lot, the licensee must schedule an additional sampling inspection with the Department to retest the remediated lot. If a remediated lot does not meet the acceptable hemp THC level, it is non-compliant and must be destroyed using the United States Department of Agriculture methods. ~~The acceptable hemp THC level for the purpose of compliance is when the application of the measurement of uncertainty to the reported THC content concentration level on a dry weight basis produces a distribution or range of 0.3% or less. These non-compliant lots must be disposed of under the direction of, and documented by, the Department of Public Safety. On-site disposal is also required for industrial hemp lots that have been destroyed.~~ If the grower licensee determines all or a portion of their industrial hemp crop is unfit for commerce due to pests, insects, weeds, disease, poor stand, or industrial hemp lots destroyed by a natural disaster or weather event such as a flood, wind, or hail, the damaged industrial hemp must be disposed in accordance with the United States Department of Agriculture methods. ~~Each lot must be chemically or~~

~~mechanically destroyed and rendered non-retrievable, non-ingestible, and unfit to enter the stream of commerce using guidelines approved by the United States Department of Agriculture.~~

Source:

General Authority: SDCL ~~38-35-13(5)~~ 38-35-11(7).

Law Implemented: SDCL 38-35-9, ~~38-35-13~~, 38-35-14.

12:82:08:02. ~~Disposal~~ Destruction or remediation plan -- ~~Witnessed destruction.~~ Licensee must submit a destruction or remediation plan to the ~~department~~ Department for approval within five business days of the receipt of a notice of non-compliance. The disposal method must chemically or mechanically render industrial hemp non-retrievable, non-ingestible, and unfit to enter the stream of commerce. The Department or Department of Public Safety shall ~~witness and document~~ verify remediation or destruction and disposal of non-compliant hemp has occurred in accordance with the approved ~~disposal~~ plan. The licensee shall pay to the Department a remediation fee in the amount of one hundred dollars per hour for the verification of remediation.

Source:

General Authority: SDCL ~~38-35-13(5)~~, 38-35-11(9)(10).

Law Implemented: SDCL 38-35-9, ~~38-35-13~~, 38-35-14.

CHAPTER 12:82:09

TRANSPORTATION

(Repealed)

Section

~~12:82:09:01 Industrial Hemp Grower Transportation Permit — Fee.~~

~~12:82:09:02 Industrial Hemp General Transportation Permit — Fee.~~

~~12:82:09:01. Industrial hemp grower transportation permit — Fee.~~ The Department of Public Safety may issue an industrial hemp grower transportation permit to an industrial hemp grower licensed pursuant to ~~SDCL 38-35-7~~. The permit is valid for the length and time period of the grower license. The permit does not allow the permittee to exceed any size or weight limitations in SDCL chapter 32-22. The permit allows the grower licensee to transport industrial hemp from the land described in the licensee's grower license application, to the storage location described in the licensee's grower license application. No other plant material marijuana may be transported concurrently with the industrial hemp. Transportation under this permit may only be done by the grower licensee, a key participant, or a person working under contract with, or under the direction of, the grower licensee. The operator of any vehicle operated under this permit must have in their physical possession a copy of the permit, a copy of the grower license under which the industrial hemp was grown or produced, and a manifest that includes the following information about the industrial hemp being transported:

- ~~(1) — Specific name and address of the transporter;~~
- ~~(2) — Specific lot from which the hemp was harvested;~~
- ~~(3) — Destination storage location for the hemp; and~~

~~(4) Type of vehicle being used to transport the hemp, to include the make and model of vehicle, and license plate number issued to the vehicle transporting industrial hemp must have either a physical or electronic copy of of all required documentation pursuant to SDCL 38-35-17 and SDCL 38-35-17.1.~~

~~Permit applications must be made on a form and in a manner required by the Department of Public Safety. Applications must be submitted to the Department of Public Safety at least five business days before the trip. The fee for this industrial hemp grower transportation permit is twenty five dollars.~~

Source:

General Authority: SDCL 38-35-13(3).

Law Implemented: SDCL 38-35-17, 38-35-17.1.

~~**12:82:09:02. Industrial hemp general transportation permit -- Fee.** The Department of Public Safety may issue an industrial hemp general transportation permit for all other transportation not conducted under an industrial hemp grower licensee transportation permit issued pursuant to SDCL 38-35-17. The permit is valid for transportation of industrial hemp from the storage location, described in the licensee's application, to market, or for transportation of industrial hemp grown in another jurisdiction through this state. No other plant material may be transported concurrently with the industrial hemp. Permit applications must be submitted to the Department of Public Safety at least five business days before the trip. The permit must be issued to the motor carrier responsible for the transportation of the industrial hemp. A copy of this permit must be in physical possession of the vehicle operator~~

~~when transporting industrial hemp. In addition to this permit, the operator must be in physical possession of:~~

~~(1) A copy of the license under which the industrial hemp was grown or produced;~~

~~(2) A laboratory report produced by a Drug Enforcement Administration-registered laboratory that confirms the lot of origin of all industrial hemp being transported complies with 7 U.S.C. Chapter 38, Subchapter VII, as provided in 7 C.F.R §§ 990.70(d) and 990.71(d) in effect as of January 1, 2020;~~

~~(3) A signed affirmation from the licensee and the transporter that no illicit drugs or variations of hemp not explicitly authorized by 7 U.S.C. Chapter 38, Subchapter VII will be transported; and~~

~~(4) A bill of lading or manifest that includes the shipment contents, the specific name and address of the transporter, the specific name and address of the origin and lot of origin, the destination of the shipment, the total weight of the load, and the type of vehicle being used, to include the make and model of vehicle, and license plate number issued to the vehicle.~~

~~—Permit applications must be made on a form and in a manner required by the Department of Public Safety. Applications for the permit must be submitted to the Department of Public Safety at least five business days before the trip. The fee for this industrial hemp general transportation permit is twenty-five dollars Repealed.~~

Source:

General Authority: SDCL 38-35-13(3).

Law Implemented: SDCL 38-35-17.