ARTICLE 44:90

MEDICAL CANNABIS

Chapter

CHAPTER 44:90:01

DEFINITIONS

Section

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 mean:

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

(2) "Age-restricted cardholder," ~~means~~ a cardholder or nonresident cardholder who is under 18 years of age or who is a student as described in § 23:80:02:07;

(3) "Agent identification badge," ~~means~~ a credential provided by an establishment for use by an agent while performing work-related duties;

(4) "Allowable quantity of cannabis products," ~~means~~ an amount of cannabis products that may be possessed by a cardholder or nonresident cardholder pursuant to SDCL 34-20G-1(1)(b) and (c). This term does not apply to drugs approved by the Food and Drug Administration;

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

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

(7) "Authorized transfer," ~~means~~ the distribution of cannabis and cannabis products between medical cannabis establishments that is allowable within inventory tracking system procedures;

(8) "Batch," ~~means~~ a specific quantity of cannabis that is the same strain, grown under the same conditions, and harvested during a specified period of time from a specified cultivation area within a cultivation facility, with the exception of trim; or a specific quantity of cannabis products that is produced during a specified period of time using the same extraction or manufacturing method, formulation, and/or recipe;

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

(10) "Cannabinoid," any of the chemical compounds that are the active elements of cannabis;

~~(10)~~(11) "Cannabis beverage," ~~means~~ a liquid edible cannabis product with a concentration of less than one milligram of ~~delta-9 tetrahydrocannabinol (~~THC~~)~~ per ounce of liquid;

~~(11)~~(12) "Cannabis extract," ~~means~~ the resin extracted from any part of a cannabis plant using a liquid or gaseous solvent other than water;

~~(12)~~(13) "Cannabis oil," ~~means~~ an edible cannabis product using a food-safe oil as the primary noncannabis ingredient and with no added flavors, colors, or scents;

~~(13)~~(14) "Cannabis testing facility designee," ~~means~~ a person or entity contracted or designated by the testing facility that has documented authorization from the testing facility and has completed the required training for the purposes of sample collection;

~~(14)~~(15) "Cannabis waste," ~~means~~ cannabis flower or trim, cannabis seeds, cannabis products, byproducts containing cannabis, or cannabis plants, excluding stalks without trichomes and root balls, that have been designated for destruction;

~~(15)~~(16) "Certificate of analysis," ~~means~~ a written report of the results of analytical testing, indicating whether the results comply with this article;

~~(16)~~(17) "Chain of custody," ~~means~~ documentation of the handling of cannabis and cannabis products;

~~(17)~~(18) "Collective," ~~means~~ two or more cardholders who physically assist each other in the act of cultivating or processing cannabis for medical use, except that the sharing of an enclosed, locked facility for cultivation by two or more cardholders in their own dwelling is not a collective;

~~(18)~~(19) "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;

~~(19)~~(20) "Concentrated cannabis" or "cannabis concentrate," ~~means~~ cannabis extract or a preparation made by using heat, temperature, or mechanical means to separate cannabinoids from cannabis, including hashish;

~~(20)~~(21) "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;

(22) "Diversion," the act of selling, gifting, or transferring medical cannabis to a non-cardholder, an unauthorized person, or an unlicensed establishment;

~~(21)~~(23) "Equivalent cannabis weight," ~~means~~ the weight, in ounces, that a given quantity of cannabis product counts against the total allowable amount of cannabis under SDCL 34-20G-1(1);

~~(22)~~(24) "Exit packaging," ~~means~~ a bag, box, or other container for use in transporting cannabis or cannabis products after purchase at a dispensary;

(25) "Final form," the condition cannabis or a cannabis product is in immediately prior to transfer to a medical cannabis establishment and immediately prior to presentation for retail sale;

~~(23)~~(26) "Flower," ~~means~~ the pistillate reproductive organs of a mature cannabis plant, whether processed or unprocessed, including the flowers and buds of the plant;

~~(24)~~(27) "Immature plant," ~~means~~ a nonflowering cannabis plant that measures ~~12~~ twelve inches or more from the base of the main plant stalk to the most distant point of the plant's leaf stems or branches;

~~(25)~~(28) "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;

~~(26)~~(29) "Inhalable cannabis product," ~~means~~ a cannabis product that is intended to be consumed by inhalation;

~~(27)~~(30) "Inherently hazardous substance," ~~means~~ any solvent or chemical, other than ethanol, with a flash point at or lower than ~~100~~ one hundred degrees Fahrenheit;

~~(28)~~(31) "Inventory record," ~~means~~ a daily electronic record of all cannabis;

~~(29)~~(32) "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 or cannabis products;

~~(30)~~(33) "ISO/IEC 17025 accreditation," ~~means~~ accreditation by the International Accreditation Service, the American Association for Laboratory Accreditation, the American National Standards

Institute's National Accreditation Board, or another laboratory accreditation board that the testing facility meets *General Requirements for the Competence of Testing and Calibration Laboratories* developed by the International Organization for Standardization and the International Electrotechnical Commission for a particular analyte and technology;

~~(31)~~(34) "Low-income," ~~means~~ having a gross monthly household income that is ~~130~~ one hundred thirty percent or less of the federal poverty level as defined by § 67:11:01:03;

~~(32)~~(35) "Marketing layer," ~~means~~ the outermost layer of a retail sale container predominantly apparent and visible;

~~(33)~~(36) "Matrix," ~~means~~ a component or substrate that contains an analyte being tested for;

~~(34)~~(37) "Mature plant," ~~means~~ a cannabis plant that has flowered;

~~(35)~~(38) "Nationally recognized testing laboratory," ~~means~~ an independent laboratory recognized by the Occupational Health and Safety Administration pursuant to 29 C.F.R. § 1910.7 (February 18, 2020);

~~(36)~~(39) "Nonusable," ~~means~~ unfit for sale or, except for the purposes of remediation, transfer;

~~(37)~~(40) "Remediation," ~~means~~ the further processing of a batch of cannabis or cannabis products that has failed testing, using a process approved by the department to address the reasons for the failure;

~~(38)~~(41) "Representative sample," ~~means~~ the amount of cannabis and cannabinoids within the product being consistent and reasonably equally dispersed throughout the product or each portion of the product;

~~(39)~~(42) "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;

~~(40)~~(43) "Seedling," ~~means~~ a nonflowering cannabis plant or rooted cutting that measures less than ~~12~~ twelve inches from the base of the main plant stalk to the most distant point of the plant's leaf stems or branches;

~~(41)~~(44) "Smokable form," ~~means~~ in a form of cannabis or cannabis product marketed to be heated in the presence of oxygen and inhaled through smoking;

~~(42)~~(45) "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;

~~(43)~~(46) "Testing sample record," ~~means~~ a daily electronic record maintained by an establishment of batch identifiers, sample identifiers, and associated information;

(47) "THC," delta-9 tetrahydrocannabinol, the primary psychoactive cannabinoid found in the Cannabis sativa plant;

~~(44)~~(48) "Tincture," ~~means~~ a liquid, unflavored edible cannabis product with a concentration of greater than one milligram of THC per ounce of liquid in the form of ethanol, propylene glycol, glycerin, or food safe oil;

~~(45)~~(49) "Topical cannabis product," ~~means~~ a nonedible cannabis product that is intended to be applied externally to the skin;

(50) "Total THC," the percentage of cannabis or a cannabis product calculated as (Percentage of tetrahyrdocannabinolic acid times 0.877) plus the percentage of tetrahyrocannabinol;

~~(46)~~(51) "Transaction record," ~~means~~ a daily electronic record created and maintained by a dispensary to track transactions with patients;

~~(47)~~(52) "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)~~(53) "Trim," ~~means~~ trichome-containing leaves of the cannabis plant that have been intentionally removed during cultivation; and

~~(49)~~(54) "Vaporizer product," ~~means~~ an inhalable cannabis product containing only concentrated cannabis that is heated below the point of combustion.

Source: 48 SDR 40, effective October 5, 2021; 49 SDR 9, effective August 8, 2022.

General Authority: SDCL 34-20G-72.

Law Implemented: SDCL 34-20G-72.

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

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

CHAPTER 44:90:02

REGISTRY IDENTIFICATION CARDS

Section

44:90:02:16. Allowable quantity of cannabis products. Under 34-20G-1(1)(b), cardholders and nonresident cardholders may possess cannabis products if the equivalent cannabis weight of the products plus the amount of cannabis flower and trim possessed does not exceed three ounces pursuant to SDCL 34-20G-1(1)(a). The equivalent cannabis weight of cannabis products shall be:

Type of cannabis	**Amount equivalent to one ounce of cannabis**
Concentrated cannabis in smokable form	8 grams (net weight)
Vaporizer pens or cartridges	8 grams (net weight)
~~Oils~~ Edible oils in oral dosage syringe or capsule form (including tincture)	~~5~~ 15 grams (net weight)
Edibles (excluding oils)	~~800~~ 2,000 milligrams THC
Topical (ointment, cream, or lotion)	12 fluid ounces
Topical (dried plant material or powder)	~~1 ounce~~ 16 ounces
Transdermal patches	800 milligrams THC

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

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

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

CHAPTER 44:90:03

REGISTRATION CERTIFICATES

Section

44:90:03:02.01 Notice of non-renewal of certificate -- Alternate lottery winner awarded certificate. An establishment not intending to renew a certificate shall notify the department forty-five days before the expiration of the certificate. If the non-renewing establishment was a lottery winner in accordance with § 44:90:03:16, the alternative lottery winner may apply for the certificate.

Source:

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

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

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 must be ranked via the lottery system to establish the order and 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 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. For the purposes of this section, the calculation of the one-year time frame for establishments to become operational is three hundred sixty-five days, or, if a leap year, three hundred sixty-six days. 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; 49 SDR 47, effective November 22, 2022.

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

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

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

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

General Authority: SDCL 34-20G-72~~(10)~~(9).

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

CHAPTER 44:90:04

ESTABLISHMENTS

Section

44:90:04:25. Scales. All scales used at any point during the process of cultivating, manufacturing, testing, or dispensing of cannabis or cannabis products must be certified in accordance with SDCL chapter 37-20.

Source:

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

Law Implemented: SDCL 34-20G-70~~(3)~~, 34-20G-71.

CHAPTER 44:90:06

CANNABIS TESTING FACILITIES

Section

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.

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

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

(2) Successfully complete accreditation within ~~18~~ thirty-two months of licensing.

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

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

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

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

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

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

CHAPTER 44:90:07

CANNABIS PRODUCT MANUFACTURING FACILITIES

Section

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

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

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

(3) Manufacture any edible cannabis product, except a tincture, oil, or capsule that has more than ~~ten~~ fifty 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~~ five hundred milligrams of total THC;

(5) Manufacture any cannabis product except:

(a) Vaporizer pens or cartridges;

(b) Concentrated cannabis;

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

(d) Cannabis beverages;

(e) Other edible cannabis products; and

(f) Topical cannabis products for external use;

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

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

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

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

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

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

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

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

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

44:90:07:10. Use of unadulterated cannabis, cannanbis concentrates, or cannabis extracts in manufacturing process. A cannabis product manufacturing facility may only manufacture products made

with unadulterated cannabis, cannabis concentrates, or cannabis extracts. No botanical, synthetic, or artificial terpenes may be added to any cannabis product during the manufacturing process. No artificial, synthetic, or hemp-based cannabinoids, including Delta-8 THC, may be added to any cannabis product during the manufacturing process.

For the purposes of this section, additive means any non-cannabis derived substance added to cannabis to achieve a specific technical or functional purpose during processing, storing, or packaging. Additives may be direct, meaning intentionally added, or indirect, meaning not intentionally added but may be present in trace amounts as a result of processing, packaging, shipping, or storing.

For the purposes of this section, terpene is a compound that occurs naturally in the trichomes of the cannabis plant, responsible for each strains unique smell and flavor and that can cause an entourage effect with other cannabinoids to amplify or better balance the effects of cannabis. The entourage effect is the theory that the full spectrum of the cannabis plant works best together.

Source:

General Authority: SDCL 34-20B-72(4)(d); 34-20G-72(4)(e); 34-20G-72(4)(h).

Law Implemented: SDCL 34-20G-72.

CHAPTER 44:90:08

CANNABIS DISPENSARIES

Section

44:90:08:04. Sales of cannabis and cannabis products. No cannabis or cannabis product sale may take place at any location other than at a certified medical cannabis dispensary. All sales must take place at a certified medical cannabis dispensary in clear view of security cameras.

Source:

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

Law Implemented: SDCL 34-20G-72.

CHAPTER 44:90:09

SAMPLING AND TESTING

Section

44:90:09:01. Mandatory testing prior to transfer for retail sale. A ~~cultivation facility or cannabis product manufacturing facility~~ medical cannabis establishment must test every batch of cannabis or cannabis product intended ~~for consumption prior to transfer~~ for retail sale in final form prior to transfer. Any alterations made by a medical cannabis establishment after receipt of cannabis or cannabis product results in the creation of a new final form.

The following tests are required for cannabis and cannabis products ~~prior to transfer for retail sale~~:

(1) ~~Beginning July 1, 2022:~~

~~(a)~~ Potency testing for THC content and, if so labeled, CBD content. The allowed variance for THC content may not exceed plus or minus ten percent; and

~~(b)~~(2) Microbials listed in §44:90:05:10(3);

~~(2) Beginning July 1, 2023:~~

~~(a)~~(3) Mycotoxins listed in §44:90:05:10(2);

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

~~(c)~~(5) Pesticides listed in §44:90:05:10(1); and

~~(d)~~(6) Solvents listed in §44:90:07:03.

Source: 48 SDR 40, effective October 5, 2021; 49 SDR 9, effective August 8, 2022.

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

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

44:90:09:07.01. Requirements for samples of cannabis and cannabis products. ~~With the exception of pre-rolls, all~~ All cannabis and cannabis products must be in final form ready to be packaged upon receipt of passing results for all required tests in order to be sampled. A ~~cannabis cultivation facility or cannabis product manufacturing facility~~ medical cannabis establishment may not alter the cannabis or cannabis product batch after sampling has occurred.

The cannabis testing facility or a designee of a cannabis testing facility shall sample the amount of cannabis and cannabis products in increments in accordance with the tables below, in addition to sample collection procedures:

	Cannabis Flower and Trim		
Batch Size Range (lbs)	Batch Size Range (kg)	Minimum Sample Amount (g)	Sample Increments Representing Total Minimum Sample Amount
0-1.00	0 - 0.453592	2.50	5
1.01-10.00	0.4581283 - 4.53592	4.00	8
10.01-20.00	4.5404596 - 9.07185	7.50	15
20.01-40.00	9.0763833 - 18.1437	11.0	22
40.01-50.00	18.148231 - 22.6796	16.50	33

If a cannabis testing facility or a cannabis testing facility designee requires a sample amount that exceeds the minimum sample amount for cannabis batch size range as specified in the table above, the testing facility or designee must use sample increments of 0.5 grams.

	Cannabis Products – Concentrated Cannabis		
Batch Size Range (lbs)	Batch Size Range (kg)	Minimum Sample Amount (g)	Sample Increments Representing Total Minimum Sample Amount
0-1.00	0 - 0.453592	1.25	5
1.01-2.00	0.4581283 - 0.907185	2.00	8

2.01-5.00	0.9117207 - 2.26796	3.75	15
5.01-15.00	2.272498 - 6.80389	5.50	22
15.01-50.00	6.8084215 - 22.6796	8.25	33

If a cannabis testing facility or a cannabis testing facility designee requires a sample amount that exceeds the minimum sample amount for the batch size range of a cannabis product containing concentrated cannabis, as specified in the table above, the testing facility or designee must use sample increments of 0.25 grams.

	Cannabis Products – Cannabis Infused Products				
Batch Size Range (Unpackaged Servings)	Minimum Sample Amount (Unpackaged Servings)	Minimum Number of units for Sampling a 5-Serving Unit	Minimum Number of units for Sampling a 10-Serving Unit	Minimum Number of units for Sampling a 20-Serving Unit	Minimum Number of units for Sampling a 100-Serving Unit
0-100	5	2	2	2	2
100-1,000	8	2	2	2	2
1,000-5,000	15	3	2	2	2
5,000-10,000	22	5	3	2	2
10,000-50,000	33	7	4	2	2
50,000-70,000	43	9	5	3	3

A serving unit is a single quantity of all pre-packaged total servings for one product package of cannabis infused product intended for sale.

The cannabis product manufacturing facility must determine the size of a serving for each cannabis infused product in accordance with § 44:90:07:04, and the number of servings in the cannabis product batch. If the minimum required number of sample servings does not align with the anticipated final form of the product, the cannabis testing facility or a cannabis testing facility designee must increase sample increments to ensure products are sampled in final form.

If a cannabis testing facility or a cannabis testing facility designee requires a sample amount that exceeds the minimum sample amount for the batch size range of a cannabis product containing cannabis infused cannabis, as specified in the table above, the testing facility or designee must use sample increments of one serving.

Source: 49 SDR 9, effective August 8, 2022.

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

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

CHAPTER 44:90:10

PACKAGING, LABELING, AND ADVERTISING

Section

44:90:10:01. Packaging for retail sale -- General requirements. A dispensary shall transfer any cannabis or cannabis products to the patient or designated caregiver in packaging that is:

(1) Child-resistant in compliance with 16 C.F.R. part 1700.15 (July 21, 1995);

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

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

(4) Opaque and does not allow the product to be seen without opening the packaging material.

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

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

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

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

44:90:10:12. Contents -- Net weight or volume -- Nutritional information. The label of any cannabis or cannabis product must:

(1) Include a statement of net contents identifying the net weight or volume of the cannabis or cannabis product, expressed:

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

(b) If a liquid or colloid, in both fluid ounces and milliliters;

(2) State the equivalent cannabis weight, calculated according to the equivalent cannabis weight table included in § 44:90:02:16;

(3) For any edible cannabis product, except tinctures, oils, and capsules:

(a) Identify the size of a serving ~~providing ten milligrams~~ of THC expressed in ounces and grams or milligrams, fluid ounces or milliliters, or number of pieces, and the number of servings per marketing layer; ~~and~~

(b) Labeled with a nutritional fact panel in accordance with 21 C.F.R. part 101.9 (August 29, 2016); and

(c) Labeled with:

(i) A product expiration date, upon which the edible cannabis product will no longer be fit for consumption; or

(ii) A use-by-date, upon which the edible cannabis product will no longer be optimally fresh.

Once affixed to a container containing an edible cannabis product and any marketing layer, an establishment may not alter the expiration or use-by date label or affix a new label with a later expiration or use-by date.

(4) For tinctures, oils, and capsules, contain the size of one or more dosages, expressed in milliliters, number of drops, or number of capsules, along with the amount of THC, in milligrams, in each dosage identified; and

(5) For vaporizer cartridges, vaporizer pens, and topical cannabis products, expressed in the weight of concentrated cannabis used to manufacture the product in milligrams or grams.

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

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

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

CHAPTER 44:90:11

RECORDKEEPING

Section

44:90:11:01. Inventory tracking -- Requirements and procedures. A medical cannabis establishment shall use an inventory tracking system prescribed by the department to create all required inventory records, transfer records, testing sample records, and transaction records.

An establishment shall follow all inventory tracking system procedures, including:

(1) Reconciling all on-premises and in-transit cannabis and cannabis product inventories in the inventory tracking system each day by midnight;

(2) Utilizing a standard of weights and measures that is supported by the inventory tracking system;

(3) Maintaining the security of the inventory tracking system;

(4) Monitoring all inventory tracking system notifications;

(5) Responding to all inventory tracking system notifications with appropriate responses;

(6) Resolving all inventory tracking system notifications that identify areas of noncompliance;

(7) Properly indicating the creation of a cannabis or cannabis product batch;

(8) Inputting the correct assigned batch number;

(9) Accurately identifying the cultivation rooms where each plant is located;

(10) Accurately identifying when inventory has departed the premises or is part of an authorized transfer with an accompanying transportation manifest;

(11) Properly indicating all test results from a cannabis testing facility;

(12) Inputting the correct category for all cannabis and cannabis products;

(13) Providing a written explanation for any cannabis or cannabis products destruction; ~~and~~

(14) Providing a written explanation for any adjustment of weights in the inventory tracking system;

(15) Keeping the correct inventory tracking system package tags with cannabis or cannabis products until they are sold; and

(16) Properly disposing of the inventory tracking system package tags once the cannabis or cannabis products are sold by shredding the tag.

All establishments and any inventory tracking system users and administrators shall enter data into the inventory tracking system that fully accounts for all inventory tracking activities. Any omissions or misinformation in the inventory tracking system is considered a violation of this article and SDCL chapter 34-20G.

The absence of a live inventory tracking system prescribed by the department may not be misconstrued to excuse medical cannabis establishments of the requirements of §§ 44:90:11:02 to 44:90:11:13, inclusive.

The department shall notify all medical cannabis establishments when the inventory tracking system is live. Upon notification by the department, a medical cannabis establishment shall comply with the inventory tracking system requirements and this section and complete all external transfers into the system within ~~45~~ forty-five days. An external transfer for purposes of this section means a transaction in the inventory tracking system where an establishment enters inventory into the system from a source that was not previously recorded in the tracking system. External transfers pursuant to SDCL 34-20G-12 may continue to occur after the ~~45-day~~ forty-five-day deadline.

Source: 48 SDR 40, effective October 5, 2021; 49 SDR 9, effective August 8, 2022.

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

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

44:90:11:03. Daily inventory record. A medical cannabis establishment shall maintain and update by midnight of each day of operation, an electronic record of the establishment's inventory of cannabis and cannabis products that must:

(1) For prepackaged cannabis or cannabis products, the inventory record shall include the number of marketing layers of each item;

(2) Use the following units of measure:

(a) For seeds, seedlings, and plants, whole numbers;

(b) For cannabis flower, trim, pre-rolled cannabis cigarettes, and dry or powdered topical products, net weight in grams and ounces;

(c) For vaporizer cartridges, vaporizer pens, ~~and~~ concentrated cannabis, tinctures, and other edible oils, net weight in ~~milligrams~~ grams;

(d) For edible cannabis products and transdermal patches, milligrams of THC; and

(e) For ointments, creams, or lotions, net volume in fluid ounces;

(3) Reflect:

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

(b) Theft or other loss; and

(c) Data from the transfer record; and

(4) Be maintained securely and may not identify any cardholder other than by the cardholder's identification number.

Source: 48 SDR 40, effective October 5, 2021; 49 SDR 9, effective August 8, 2022.

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

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

44:90:11:06. Cultivation facility inventory records -- Additional requirements. The inventory record of a cultivation facility must include a unique identifier for each immature plant and mature plant that must also be printed on a ~~tag or~~ label affixed to the growing container or ~~a~~ on the inventory tracking system plant tag around the plant's stalk. Each cannabis plant shall have an inventory tracking system plant tag attached once it is over twelve inches in height. The inventory record must be updated each time:

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

(2) A plant flowers for the first time;

(3) A plant is trimmed or harvested;

(4) A testing batch is created; or

(5) Cannabis is packaged for retail sale.

The record for a testing batch must indicate the unique identifier for each plant used to produce the batch. The record for cannabis packaged and labeled for transfer to a dispensary must include the number of marketing layers and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement.

Source: 48 SDR 40, effective October 5, 2021; 49 SDR 9, effective August 8, 2022.

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

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

CHAPTER 44:90:13

PETITIONS TO RECOGNIZE DEBILITATING MEDICAL CONDIITIONS

(Repealed)

Section

44:90:13:02 Department's decision, Repealed.

44:90:13:01. Petitions -- Required forms. ~~A petition to the department to add a medical condition to the list of debilitating medical conditions for which a practitioner may recommend the medical use of cannabis shall be submitted on forms provided by the department. The petition must include:~~

~~(1) The name and address of the South Dakota resident filing the petition;~~

~~(2) A clear description of the specific medical condition, defined as narrowly as possible, including any International Classification of Diseases, Tenth Revision code applicable to the condition;~~

~~(3) The diagnostic criteria for determining whether cannabis is appropriate for a patient with the medical condition; and~~

~~(4) A detailed summary, with citations, of peer-reviewed research that treatment with cannabis produces superior treatment outcomes or fewer side effects, compared to currently available medications or other interventions;~~

~~(5) Letters of support from two practitioners; and~~

~~(6) Complete copies of any research cited in the petition~~ Repealed.

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

~~**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/~~

44:90:13:02. Department's decision. ~~The department's written decision to approve or deny a petition shall be issued within 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) Medical use of cannabis is determined to provide benefits that outweigh the risks of cannabis use.~~

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

Source: 48 SDR 40, effective October 5, 2021; 49 SDR 47, effective November 22, 2022.

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

~~**Law Implemented:** SDCL 34-20G-26.~~