

44:90:01:01. Definitions. Terms defined in SDCL 34-20G-1 have the same meaning when used in this article. Terms used in this article mean:

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

(2) “Age-restricted cardholder,” a cardholder or nonresident cardholder who is under eighteen years of age or who is a student as described in § 24:80:02:07;

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

(4) “Analyte,” a chemical, compound, element, bacteria, yeast, fungus, or toxin that is identified or measured by testing;

(5) “Analytical test,” the use of a single technology to detect the presence or concentration of a single analyte on one or more matrices;

(6) “Authorized transfer,” the distribution of cannabis and cannabis products between medical cannabis establishments that is allowable within inventory tracking system procedures;

(7) “Batch,” a specific quantity of:

(a) 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

(b) Cannabis products that are produced during a specified period of time using the same extraction or manufacturing method, formulation, or recipe;

(8) “Batch identifier,” a unique number or code assigned by an establishment to a quantity of cannabis or cannabis products for testing;

(9) “Cannabinoid,” any chemical compound that is an active element of cannabis;

(10) “Cannabis beverage,” a liquid edible cannabis product with a concentration of less than one milligram of delta-9 tetrahydrocannabinol per ounce of liquid;

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

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

(13) “Cannabis testing facility designee,” 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) “Cannabis waste,” 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) “Certificate of analysis,” a written report of the results of analytical testing, indicating whether the results comply with this article;

(16) “Chain of custody,” documentation of the handling of cannabis and cannabis products;

(17) “Collective,” 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) “Competitive application,” 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) “Concentrated cannabis,” cannabis extract or a preparation made by using heat, temperature, or mechanical means to separate cannabinoids from cannabis;

(20) “Confirmation testing,” testing performed by, or at the direction of, the department to determine consistency and accuracy of tests offered by a cannabis testing facility;

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

(22) “Equivalent cannabis weight,” 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);

(23) “Exit packaging,” a bag, box, or other container for use in transporting cannabis or cannabis products after purchase at a dispensary;

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

(25) “Flower,” the pistillate reproductive organs of a mature cannabis plant, whether processed or unprocessed, including the flowers and buds of the plant;

(26) “Immature plant,” a nonflowering cannabis plant that measures 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;

(27) “Inhalable cannabis product,” a cannabis product that is intended to be consumed by inhalation;

(28) “Inherently hazardous substance,” any solvent or chemical, other than ethanol, with a flash point at or lower than one hundred degrees Fahrenheit;

(29) “Inspection,” an onsite visit, social media monitoring, software desk audit, randomized camera footage viewing, or inventory monitoring conducted by the department to determine compliance with SDCL 34-20G and this Article;

(30) “Inventory record,” a daily electronic record of all cannabis;

~~(30)~~(31) “Inventory tracking system,” an electronic system specified by the department for the purposes of identifying and preventing diversion and protecting patients from unsafe cannabis or cannabis products;

~~(31)~~(32) “ISO/IEC 17025 accreditation,” 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;

(32)(33) “Low-income,” having a gross monthly household income that is one hundred thirty percent or less of the federal poverty level as defined by § 67:11:01:03;

(33)(34) “Marketing layer,” the outermost layer of a retail sale container predominantly apparent and visible;

(34)(35) “Matrix,” a component or substrate that contains an analyte being tested for;

(35)(36) “Mature plant,” a cannabis plant that has flowered;

(37) “Multiple violations,” more than one violation of SDCL 34-20G or this Article;

(36)(38) “Nationally recognized testing laboratory,” an independent laboratory recognized by the Occupational Health and Safety Administration pursuant to 29 C.F.R. § 1910.7, in effect on February 18, 2020;

(37)(39) “Nonusable,” unfit for sale or, except for the purposes of remediation, transfer;

(38)(40) “Remediation,” 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;

(39)(41) “Representative sample,” the amount of cannabis and cannabinoids within the product being consistent and reasonably equally dispersed throughout the product or each portion of the product;

(42) “Resealable,” a package that maintains its child-resistant effectiveness, as well as preserving the integrity of cannabis products contained within, until each individual serving is consumed;

(40)(43) “Sample identifier,” 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;

(41)(44) “Seedling,” a nonflowering cannabis plant or rooted cutting that measures less than

twelve inches from the base of the main plant stalk to the most distant point of the plant's leaf stems or branches;

(45) “Serious violation,” a violation of SDCL 34-20G or this Article for which a strong likelihood exists of a threat to the public health or safety as a result;

~~(42)~~(46) “Testing sample record,” a daily electronic record maintained by an establishment of batch identifiers, sample identifiers, and associated information;

~~(43)~~(47) “Tetrahydrocannabinol,” the primary psychoactive cannabinoid found in the Cannabis sativa plant, also known as delta-9;

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

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

~~(46)~~(50) “Total tetrahydrocannabinol,” the percentage of cannabis or a cannabis product calculated as the percentage of tetrahydrocannabinolic acid times 0.877 plus the percentage of tetrahydrocannabinol;

~~(47)~~(51) “Transaction record,” a daily electronic record created and maintained by a dispensary to track transactions with patients;

~~(48)~~(52) “Transfer record,” 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;

~~(49)~~(53) “Trim,” trichome-containing leaves of the cannabis plant that have been intentionally removed during cultivation; and

~~(50)~~(54) “Vaporizer product,” an inhalable cannabis pen or cartridge 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; 50 SDR 62, effective November 27, 2023.

General Authority: SDCL 34-20G-72.

Law Implemented: SDCL 34-20G-1, 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.

44:90:02:01. Practitioner's written certification of debilitating medical condition. Only a practitioner as defined by SDCL 34-20G-1 may issue a written certification to a resident of South Dakota. A practitioner's written certification shall be submitted to the department and must be on a form supplied by the department. The certification must include:

- (1) The practitioner's name and address;
- (2) The practitioner's South Dakota license and National Practitioner Identification numbers, if applicable;
- (3) Certification that the practitioner has assessed the patient's medical history and current medical condition, including an in-person physical examination;
- (4) The date on which the physical examination was conducted;
- (5) Certification that the patient has a debilitating medical condition, as defined by SDCL 34-20G-1(8), ~~specifying the International Classification of Diseases, Tenth Revision code;~~
- (6) Certification that the practitioner and patient, or the patient's parents or legal guardian, have discussed treatment options for the patient's debilitating medical condition;
- (7) Certification that the practitioner is available for further consultation and follow-up care with the patient or the patient's parents or legal guardian to monitor the medical use of cannabis;
- (8) The date of expiration, not to exceed one year;
- (9) The number of designated caregivers, if more than one, that the patient's age or medical condition necessitates; and
- (10) Certification that a bona fide practitioner-patient relationship exists.

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

General Authority: SDCL 34-20G-72(4)(3).

Law Implemented: SDCL 34-20G-1(2), 34-20G-1(26), 34-20G-29.

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

44:90:02:14. Nonresident registration -- Required documentation. The department shall accept any of the following as sufficient documentation of a nonresident's debilitating medical condition:

(1) 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;

(2) 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

(3) Practitioner certification on a form supplied by the department.

~~— 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) and 34-20G-1(14), in the jurisdiction of issuance.~~

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

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

Law Implemented: SDCL 34-20G-1(19)(20), 34-20G-72(8).

44:90:02:15. Nonresident registration -- Registry identification number. The department shall issue to a nonresident cardholder who has met all registration requirements a ~~nonrenewable~~ ten-digit alphanumeric registry identification number, which expires on the earliest of:

(1) One year from the date of issuance of the registry identification number;

(2) The expiration date of the nonresident's ~~proof of authorization~~ practitioner certification issued ~~by~~ in the jurisdiction where the nonresident cardholder resides; or

(3) ~~Any earlier expiration date specified by the practitioner's statement~~ One year from the

date on the nonresident's practitioner certification issued in the jurisdiction where the nonresident cardholder resides.

The registry identification number is valid at no more than two dispensaries, which must be designated by the nonresident cardholder at the time of registration.

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

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

Law Implemented: SDCL 34-20G-1(19), 34-20G-72(8).

44:90:02:16. Allowable quantity of cannabis products. Under SDCL subsection 34-20G-1(1)(b), cardholders and nonresident cardholders may possess cannabis products if the equivalent cannabis weight of the products, plus the weight of cannabis flower and trim possessed by the cardholder, does not exceed three ounces pursuant to SDCL subsection 34-20G-1(1)(a). The amount possessed by the cardholder does not apply to drugs approved by the Food and Drug Administration. The equivalent cannabis weight of cannabis products is:

Type of cannabis	Amount equivalent to one ounce of cannabis
Concentrated cannabis in smokable form	8 grams (net weight)
Vaporizer product	8 grams (net weight)
Cannabis oil or tincture in oral dosage syringe or capsule form	15 <u>25</u> grams (net weight)
Edibles, excluding oils	2,000 milligrams tetrahydrocannabinol
Topical ointment, cream, or lotion	12 fluid ounces

Topical dried plant material or powder	16 ounces
Transdermal patch	800 milligrams tetrahydrocannabinol

Source: 48 SDR 40, effective October 5, 2021; 50 SDR 62, effective November 27, 2023.

General Authority: SDCL 34-20G-72(8)(9).

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

44:90:03:01. Initial application for registration certificate. An initial application for a registration certificate for any type of medical cannabis establishment must include:

- (1) A completed application form;
- (2) Operating procedures consistent with this article;
- (3) Proof of the property owner's consent to use the property for cultivation, manufacturing, dispensing, or testing cannabis, as applicable;
- (4) Certification of compliance from the local municipality or county, as applicable, ensuring applicant's proposed plans and location meet all local zoning and ordinance requirements;
- ~~(5) Copies of all required registrations, licenses, or permits;~~
- ~~—(6)~~ Photocopies of a valid form of identification issued in South Dakota, or its equivalent issued in another United States jurisdiction, for all principal officers and board members;
- ~~(7)(6)~~ Photocopies of organizing documents, operating agreements, management agreements, bylaws, and other legal documents relating to the applicant's business structure;
- ~~(8)(7)~~ Certification that background checks have been completed for all medical cannabis establishment agents; and
- ~~(9)(8)~~ The applicable fee pursuant to § 44:90:03:17.

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

General Authority: SDCL 34-20G-72(2)(1)(10).

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

44:90:03:05. 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 and their specific management roles;
- (2) A site plan that 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) Demonstrate compliance with § 44:90:04:05;

(3) Operating days and hours;

(4) A workplace safety plan consistent with 29 C.F.R. § 1910.23 (November 18, 2016), 29 C.F.R. § 1910.123 (November 18, 2016) and 29 C.F.R. § 1200 (February 8, 2013), covering personal protective equipment, hazard assessment, safe equipment operation, proper application of agricultural chemicals, ladder use, and hazard communication;

(5) Plans for compliance with all applicable safety standards contained in local ordinance, SDCL chapter 11-10, article 61:15, and 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 noncardholders;

(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 prior to the waste leaving the premises, and no later than seven days after becoming waste, by grinding and mixing the waste with at least ~~50~~ fifty percent other waste, including soil, sawdust, grease, food waste, or yard waste, ~~or shredded paper~~;

(b) A description of how the waste will be composted, if applicable, within thirty days of becoming waste; and

(c) A description of how the waste will be hauled from the premises within thirty days

of becoming waste;

(10) A wastewater plan, including:

(a) For establishments connecting to a public wastewater system, a pretreatment industrial use permit or a determination by the Department of Agriculture and Natural Resources that no such permit is necessary; or

(b) For establishments using an onsite wastewater system, the applicant's certification of compliance with chapter 74:53:01;

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

General Authority: SDCL 34-20G-72(2)(5)(1)(4).

Law Implemented: SDCL 34-20G-55(1), 34-20G-72(5)(4).

CHAPTER 44:90:04

ESTABLISHMENTS

Section

- 44:90:04:01 Change in management -- Duty to report.
- 44:90:04:02 Corrective and preventive action -- Written procedures.
- 44:90:04:03 Duty to report criminal activity to department and law enforcement.
- 44:90:04:04 Co-location of medical cannabis establishments.
- 44:90:04:05 Lighting.
- 44:90:04:06 Doors and windows.
- 44:90:04:07 Placement of security cameras.
- 44:90:04:08 Recording by security cameras -- Access by department.
- 44:90:04:09 Storage of camera footage.
- 44:90:04:10 Alarm system.
- 44:90:04:11 Agent identification badges to be provided by establishments.
- 44:90:04:12 Agent identification badges to be displayed.
- 44:90:04:13 Controlled access -- Verification of identity.
- 44:90:04:14 Visitor badges to be worn by contractors performing work at a medical cannabis establishment.
- 44:90:04:15 Operation of agricultural, industrial, or other heavy equipment -- Training requirements.
- 44:90:04:16 Record-keeping -- Use of inventory tracking system -- Training requirements.
- 44:90:04:17 Security protocols -- Training requirements.
- 44:90:04:18 Vehicle requirements -- Establishments.
- 44:90:04:19 Transport manifests -- Form and content.
- 44:90:04:20 Separate transport manifest required.

- 44:90:04:21 Storage during transport.
- 44:90:04:22 Conduct during transport.
- 44:90:04:23 Transport incident notification.
- 44:90:04:24 Health and safety standards for storage.
- 44:90:04:25 Scales.
- 44:90:04:26 Fences and gates.

44:90:04:26. Fences and gates. Any medical cannabis establishment cultivating, processing, or storing cannabis or cannabis waste, outdoors or in greenhouses or other structures that do not meet all security requirements for buildings must secure such areas with fencing and gates that:

- (1) Are secure and undamaged;
- (2) Are at least six feet high; and
- (3) 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(4).

Law Implemented: SDCL 34-20G-64, 34-20G-65, 34-20G-72(4).

CHAPTER 44:90:05

CANNABIS CULTIVATION FACILITIES

Section

- 44:90:05:01 Cultivation activities -- Compliance with operating procedures.
- 44:90:05:02 Packaging and labeling cannabis for retail sale.
- 44:90:05:03 Cultivation equipment-- Safety.
- 44:90:05:04 Cultivation area.
- 44:90:05:05 Hours of operation -- Exigent circumstances.
- 44:90:05:06 Fences and gates, Repealed.
- 44:90:05:07 Safe application of pesticides and other chemicals used in cultivation -- Training requirements.
- 44:90:05:08 Application of pesticides.
- 44:90:05:09 List of approved active ingredients in pesticides.
- 44:90:05:10 Safety of cannabis -- Use or presence of prohibited pesticides -- Contaminants.

44:90:05:06. Fences and gates. ~~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 gates that:~~

- ~~—— (1) Are secure and undamaged;~~
- ~~—— (2) Are at least six feet high; and~~
- ~~—— (3) Obscure, or have a cover that obscures, regulated activities from being readily viewed from outside of the fenced-in area~~ Repealed.

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

~~—— **General Authority:** SDCL 34-20G-72(5)(c).~~

~~—— **Law Implemented:** SDCL 34-20G-64, 34-20G-65, 34-20G-72(5).~~

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

Training requirements. Any establishment agent who applies a department-approved pesticide shall hold a current pesticide applicator certification in category G and category 4 issued by the South Dakota Department of Agriculture and Natural Resources pursuant to chapter 12:56:05. 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: 48 SDR 40, effective October 5, 2021.

General Authority: SDCL 34-20G-72(~~5~~)(4)(d).

Law Implemented: SDCL 34-20G-72(~~5~~)(4).

44:90:05:08. Application of pesticides. The use of a pesticide in the cultivation of cannabis is prohibited unless it:

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

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

An approved pesticide may be applied only by an establishment agent with a current pesticide applicator license in category G and category 4 issued by the South Dakota Department of Agriculture and Natural Resources pursuant to chapter 12:56:05 and only in a manner consistent with the product label.

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

General Authority: SDCL 34-20G-72(~~5~~)(4) (d).

Law Implemented: SDCL 34-20G-72(~~5~~)(4).

44:90:06:01. Required accreditation and registration -- Drug Enforcement Agency.

Upon successful registration ~~and prior to accepting cannabis or cannabis products for testing~~, a cannabis testing facility must:

(1) ~~Begin~~ Prior to accepting cannabis or cannabis products for testing, 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; and

(2) Successfully complete accreditation within thirty-two months of registration.

If a cannabis testing facility fails to successfully complete accreditation within thirty-two months of initial registration, the department must revoke the facility's registration.

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

Source: 48 SDR 40, effective October 5, 2021; 50 SDR 62, effective November 27, 2023.

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

Law Implemented: SDCL 34-20G-72(4)(k).

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.

44:90:09:07. Collection of samples – Designee training requirements. A cannabis testing facility or a designee of a cannabis testing facility shall collect representative samples for laboratory testing from each batch of cannabis or cannabis products created pursuant to § 44:90:09:06.

A cannabis testing facility designee may only collect samples on behalf of a cannabis testing facility upon completing the following requirements:

- (1) Obtain documented authorization from testing facility;
- (2) Complete no less than ~~10~~ ten hours of initial training on sample collection procedures that are in accordance with this chapter, provided by the testing facility; and
- (3) Demonstrate competency in sample collection in compliance with the cannabis testing facility's sample collection procedures and this chapter.

A cannabis testing facility designee must attend no less than ~~10~~ five hours of continuous training each year performed or approved by the testing facility in addition to the initial training requirements.

Prior to performing sample collection for mandatory tests, the cannabis testing facility designee shall ~~contact the testing facility to~~ obtain instructions from the testing facility for each sampling event, including the instruments to be used, the containers required to store samples, storage and transportation requirements, and the receipt and recordkeeping of the samples.

The collection of samples must comply in all manner with this section through § 44:90:09:09, the testing facility's standard operating procedures and sample collection procedures, and requirements for ISO/IEC 17025 accreditation.

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

General Authority: SDCL 34-20G-72(5)(4) (d)(k)(l).

Law Implemented: SDCL 34-20G-72(5)(4).

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.

Proposed

CHAPTER 44:90:10

PACKAGING, LABELING, AND ADVERTISING

Section

- 44:90:10:01 Packaging for retail sale -- General requirements.
- 44:90:10:01.01 Packaging for transfer or sale -- General requirements.
- 44:90:10:02 Packaging of cannabis flower or trim or inhalable cannabis products for retail sale.
- 44:90:10:03 Packaging of edible cannabis products for retail sale -- Tinctures, oils, and beverages excluded.
- 44:90:10:04 Packaging of cannabis tinctures and oils for retail sale.
- 44:90:10:05 Packaging of cannabis beverages for retail sale.
- 44:90:10:06 Packaging of topical cannabis products for retail sale.
- 44:90:10:07 Labeling required.
- 44:90:10:08 Format of labeling -- Font size -- Multiple labels.
- 44:90:10:09 Labeling claims -- Results of testing.
- 44:90:10:10 Expected effects -- Time to take effect -- Duration of effect.
- 44:90:10:11 Ingredients -- Allergen warnings.
- 44:90:10:12 Contents -- Expiration date -- Net weight or volume -- Nutritional information.
- 44:90:10:12.01 Required warnings -- Indication that edible product contains cannabis -- Side effects -- Legal status of cannabis.
- 44:90:10:12.02 Retesting or repurposing of expired cannabis or cannabis product -- New expiration date.
- 44:90:10:13 Identifying information -- Establishment identification number -- Batch -- Dates.
- 44:90:10:14 Labeling prohibitions.
- 44:90:10:14.01 Prohibited forms of advertising.

44:90:10:15 Target audience -- Establishments and adult cardholders only -- Prohibition on advertising to practitioners.

44:90:10:16 Advertising on websites, social media and mobile applications.

44:90:10:17 Prohibited content -- Advertisements.

44:90:10:18 Required information -- Advertisements.

44:90:10:19 Nonconforming advertising.

Proposed

44:90:10:03. Packaging of edible cannabis products for retail sale -- Tinctures, oils, and

beverages excluded. Edible cannabis products shall be packaged as follows:

(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~~ serving does not exceed ~~100~~ one hundred 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~~ five hundred 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: 48 SDR 40, effective October 5, 2021.

General Authority: SDCL 34-20G-72~~(5)~~(4)(j).

Law Implemented: SDCL 34-20G-72~~(5)~~(4).

44:90:10:04. Packaging of cannabis tinctures and oils for retail sale. Cannabis tinctures or oils shall not contain more than five thousand milligrams of THC and shall be packaged:

(1) 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 that is four mil or greater in thickness and heat-sealed; and

(2) With an indication of 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: 48 SDR 40, effective October 5, 2021.

General Authority: SDCL 34-20G-72~~(5)~~(4)(j).

Law Implemented: SDCL 34-20G-72~~(5)~~(4).

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

(1) Effective October 1, 2025, include a product expiration date that does not exceed one year from the date of harvest or manufacture, as applicable;

____(2) 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)~~(3) State the equivalent cannabis weight, calculated according to the equivalent cannabis weight table in § 44:90:02:16;

~~(3)~~(4) For any edible cannabis product, except tinctures, oils, and capsules:

(a) Identify the size of a serving of delta-9 tetrahydrocannabinol (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) Include a nutritional fact panel in accordance with 21 C.F.R. § 101.9, in effect on August 29, 2016; ~~and~~

~~_____ (c) Include a product expiration date, upon which the edible cannabis product will no longer be fit for consumption, or a use-by date, upon which the edible cannabis product will no longer be optimally fresh;~~

(4)(5) 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 tetrahydrocannabinol, in milligrams, in each dosage identified; and

~~(5)(6)~~ For vaporizer products and topical cannabis products, the weight of concentrated cannabis used to manufacture the product in milligrams or grams.

Once affixed to a container containing an edible to cannabis or a 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 unless testing pursuant to § 44:90:10:12.02 supports a longer shelf life. No product may be pre-treated prior to testing or remediated after testing for the purpose of extending the expiration date.

Source: 48 SDR 40, effective October 5, 2021; 50 SDR 62, effective November 27, 2023.

General Authority: SDCL 34-20G-72(6)(4)(j)(7).

Law Implemented: SDCL 34-20G-72(6)(4)(j)(7).

44:90:10:12.02. Retesting or repurposing of expired cannabis or cannabis product --

New expiration date. After the initial expiration date:

(1) Flower product may not be retested but may be extracted and manufactured into a new product subject to the testing requirements in § 44:90:09:01 and given a new expiration date not to exceed one year; and

(2) Concentrates may be retested for potency, microbials, and mycotoxins pursuant to § 44:90:09:01 01 and upon passage, repurposed and given a new expiration date not to exceed one year.

No product may be retested or repurposed more than once.

Source:

General Authority: SDCL 34-20G-65.1, 34-20G-72(4)(j)(7).

Law Implemented: SDCL 34-20G-65.1, 34-20G-72(4)(j)(7).

Proposed

44:90:10:14.01. Prohibited forms of advertising. Unless and until the United States Drug Enforcement Administration removes marijuana or cannabis as a Schedule I controlled substance, 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) Through publication, except that a dispensary may advertise on publications within its own premises;
- (5) Through radio, television, and other media, not including the establishment's website or social media account; or
- (6) Through a practitioner or health care facility, by placing advertising material at a practitioner's office or health care facility, or by targeting the practitioner's or health care facility's patients through direct mail, phone, text, or email.

Source: 48 SDR 54, effective November 15, 2021.

General Authority: SDCL 34-20G-72~~(5)~~(4)(i).

Law Implemented: SDCL 34-20G-72~~(5)~~(4).

CHAPTER 44:90:12

ENFORCEMENT

Section

44:90:12:01 Department inspection of establishments.

44:90:12:02 Recalls.

44:90:12:03 Corrective action plan.

44:90:12:03.01 Testing in lieu of destruction.

44:90:12:03.02 Destruction of damaged cannabis or cannabis product.

44:90:12:04 Suspension or revocation of registration certificate for serious and knowing violations.

44:90:12:05 Suspension or revocation of registration certificate for multiple violations.

44:90:12:06 Voluntary surrender of registration certificate.

44:90:12:07 Revocation of registry identification card for unauthorized sale.

44:90:12:08 Revocation of registry identification card for serious or multiple violations.

44:90:12:09 Determination of serious violation.

44:90:12:10 Imposition of fines -- Violations.

44:90:12:11 Schedule of fines.

44:90:12:12 Payment of fine.

44:90:12:01. Department inspection of establishments. The department may ~~inspect~~ conduct an onsite inspection of an establishment during an unannounced visit or in response to a complaint. ~~Agents~~ An agent of the department:

(1) Shall present identification before commencing an inspection of an establishment;

(2) Shall have complete and unrestricted access to establishments during business hours for the purposes of inspections, sample collection, testing, interviews, or other investigations;

(3) 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;

(4) 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

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

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 nonusable.

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

General Authority: SDCL 34-20G-72(6)(4).

Law Implemented: SDCL 34-20G-69, 34-20G-72(6)(4).

44:90:12:03. Corrective action plan. Upon the discovery of suspected violations of this article or SDCL chapter 34-20G, the department may order the establishment to comply with a corrective action plan, which may include:

- (1) Modifying operating procedures to comply with this article and SDCL chapter 34-20G;
- (2) Halting transfer of cannabis or cannabis products that are mislabeled or otherwise pose a threat to public health; and
- (3) Destroying or remediating cannabis or cannabis products that pose a threat to public health.

The department may order ~~a licensee~~ an establishment to destroy a batch of cannabis or cannabis products that fails testing ~~and or otherwise poses a threat to public health~~. The department does not need to demonstrate that the presence of contaminants or the unsafe condition of the product was due to the action or inaction of the licensee establishment. Such notice must identify the

department's decision as a final department action subject to judicial review pursuant to SDCL chapter 1-26. The establishment must destroy the cannabis or cannabis product within forty-eight hours of receipt of the notice of destruction from the department.

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

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

General Authority: SDCL 34-20G-72(6)(4).

Law Implemented: SDCL 34-20G-69, 34-20G-72(6)(4).

44:90:12:03.01. Testing in lieu of destruction. In lieu of destruction pursuant to § 44:90:12:03, the establishment may elect to test the cannabis or cannabis product provided the testing is available in South Dakota and is relevant to reason cited in the notice of destruction from the department. An establishment must notify the department within forty-eight hours of receiving the notice of destruction of its intent to have the cannabis or cannabis product tested. The establishment must notify the department of the results of the test within twenty-four hours of receipt from the testing facility.

Cannabis or cannabis product must be submitted to the testing facility within fifteen business days of the department's notice of destruction. If the test results show the cannabis or cannabis product is safe for human consumption, the establishment does not need to destroy the cannabis or cannabis product. If the cannabis or cannabis product fails testing, the cannabis or cannabis product must be destroyed within forty-eight hours of receipt of the test results by the establishment.

All costs incurred for testing are the sole responsibility of the establishment.

Source:

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

Law Implemented: SDCL 34-20G-69, 34-20G-72(4).

44:90:12:03.02 Destruction of damaged cannabis or cannabis product. Any cannabis or cannabis product that has been damaged as a result of a flood, fire, tornado, earthquake, or other natural or manmade disaster cannot be retested and must be destroyed.

Source:

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

Law Implemented: SDCL 34-20G-69, 34-20G-72(4).

44:90:12:09. Determination of serious violation. In determining if a violation is a serious violation, the department shall consider:

- (1) The nature and gravity of the violation;
- (2) The willfulness and deliberateness of the violation;
- (3) The actual or potential harm to the public, consumer, or an establishment agent;
- (4) Any prior violations;
- (5) Duration of noncompliance;
- (6) Number and nature of current violations;
- (7) Likelihood of reoccurrence of the violation; and
- (8) Any other factor that adversely impacts public health or safety.

Source:

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

Law Implemented: SDCL 34-20G-69, 34-20G-72(4)(a).

44:90:12:10. Imposition of fines -- Violations. The department may, in addition to, or in lieu of suspension, revocation, or any other penalty allowed pursuant to SDCL 34-20G, assess fines based on the following violations found as a result of an inspection.

(1) Category 1 violation:

<u>Violation</u>	<u>Statute or Rule Violated</u>
<u>(a) Sale of medical cannabis to non-cardholder</u>	<u>SDCL 34-20G-74; ARSD 44:90:04:13; ARSD 44:90:08:01</u>
<u>(b) Diversion of medical cannabis outside the regulated distribution system</u>	<u>SDCL 34-20G-72(6), ARSD 44:90:03:05</u>
<u>(c) Possessing cannabis or cannabis products obtained from outside the regulated distribution system or from an unauthorized source</u>	<u>ARSD 44:90:04:03(3)</u>
<u>(d) Submitting false documents with certificate applications and certificate renewals</u>	<u>SDCL 34-20G-77</u>
<u>(e) Failure to cooperate with department investigators during the course of an inspection or investigation</u>	<u>SDCL 34-20G-69, ARSD 44:90:12:01(2)</u>
<u>(f) Packaging or labeling violations that directly impact patient or public safety</u>	<u>ARSD Chapter 44:90:10</u>
<u>(g) Any violation related to the mandatory testing program</u>	<u>ARSD 44:90:09</u>
<u>(h) Knowingly adulterating or altering or attempting to adulterate or alter any</u>	<u>ARSD 44:90:09:01; 44:90:09:07.01</u>

<u>form of medical cannabis after sampling has occurred</u>	
<u>(i) Manufacturing a cannabis product with a prohibited additive or solvent</u>	<u>ARSD 44:90:07:03; 44:90:09:02</u>
<u>(j) Cultivating cannabis with a pesticide that contains an active ingredient not approved by the department for use</u>	<u>ARSD 44:90:05:09</u>
<u>(k) Sale or unauthorized transfer of cannabis that does not meet the testing requirements</u>	<u>ARSD 44:90:05:10; 44:90:07:03</u>

(2) Category 2 violation:

<u>Violation</u>	<u>Statute or Rule Violated</u>
<u>(a) Medical cannabis sales in excess of the current patient purchase limitations</u>	<u>SDCL 34-20G-1(1); ARSD 44:90:03:09</u>
<u>(b) Manufacturing a product using cannabis waste</u>	<u>ARSD 44:90:09:12(2)</u>
<u>(c) Manufacturing edibles without a food service license</u>	<u>ARSD 44:90:07:09</u>
<u>(d) Performing extraction methods without prior department approval</u>	<u>ARSD 44:90:03:08; 44:90:07:05</u>
<u>(e) Making misstatements or omissions in the inventory tracking system</u>	<u>ARSD 44:90:11:01</u>
<u>(f) Failure to report a transfer</u>	<u>ARSD 44:90:11:04</u>

<u>(g) Sharing licensed premises between medical cannabis establishment and practitioners</u>	<u>SDCL 34-20G-67</u>
<u>(h) Advertising directly targeting minors or non-cardholders</u>	<u>ARSD 44:90:10:15</u>
<u>(i) Failure to immediately report theft</u>	<u>ARSD 44:90:04:03</u>
<u>(j) Failure to maintain onsite records as required</u>	<u>ARSD 44:90:11</u>
<u>(k) Utilizing advertising material containing prohibited content</u>	<u>ARSD 44:90:10:17</u>
<u>(l) Failure to maintain security and camera requirements</u>	<u>ARSD 44:90:04:05; 44:90:04:06; 44:90:04:07; 44:90:04:08; 44:90:04:09; 44:90:04:10</u>
<u>(m) Improper handling, storage, or disposal of medical cannabis, medical cannabis products, or medical cannabis waste</u>	<u>ARSD 44:90:09:12</u>
<u>(n) Sale of inhalable cannabis product to a patient under 21 years of age</u>	<u>ARSD 44:90:02:16.01</u>
<u>(o) Sharing premises between medical cannabis establishment and a residence, business, or non-certified medical cannabis business</u>	<u>ARSD 44:90:04:13</u>
<u>(p) Sharing premises between medical</u>	<u>ARSD 44:90:04:04</u>

<u>cannabis establishments and another medical cannabis establishment without common ownership</u>	
<u>(q) Pesticide application by an establishment agent that does not hold a current commercial pesticide applicator certification</u>	<u>ARSD 44:90:05:07</u>

(3) Category 3 violation:

<u>Violation</u>	<u>Statute or Rule Violated</u>
<u>(a) Failure to comply with transfer requirements</u>	<u>ARSD 44:90:04:19; 44:90:04:20; 44:90:04:21; 44:90:04:22; 44:90:04:23; 44:90:04:24</u>
<u>(b) Failure to follow advertising guidelines</u>	<u>ARSD 44:90:10:14.01</u>
<u>(c) Failure to notify the department of any change in operating hours or failure to have an agent on site for purpose of inspections during operating hours</u>	<u>ARSD 44:90:12:01(2); 44:90:03:05(3)</u>

(4) Category 4 violation:

<u>Violation</u>	<u>Statute or Rule Violated</u>
<u>(a) Failure to follow and maintain standard operating procedures</u>	<u>ARSD 44:90:03:05</u>
<u>(b) Establishment website and social</u>	<u>ARSD 44:90:10:16</u>

<u>media account does not utilize</u> <u>measures to properly verify a visitor's</u> <u>age each time</u>	
<u>(c) Transferring of establishment</u> <u>ownership to a non-approved party</u> <u>without prior department approval</u>	<u>ARSD 44:90:03:04</u>

(5) Category 5 violation:

<u>Violation</u>	<u>Statute or Rule Violated</u>
<u>(a) Failure to comply with scale</u> <u>requirements</u>	<u>ARSD 44:90:04:25</u>
<u>(b) Failure to notify department within</u> <u>seven days of a change in management</u>	<u>ARSD 44:90:04:01</u>
<u>(c) Failure to complete required</u> <u>training in the inventory tracking</u> <u>system</u>	<u>ARSD 44:90:04:16</u>
<u>(d) Failure to provide agent</u> <u>identification badges</u>	<u>ARSD 44:90:04:11</u>
<u>(e) Failure to display required agent</u> <u>badges</u>	<u>ARSD 44:90:04:12</u>
<u>(f) Failure to comply with visitor rules</u>	<u>ARSD 44:90:04:13; 44:90:04:14</u>

The department may assess fines for multiple violations, however the total fines assessed per inspection may not exceed ten thousand dollars.

Source:

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

Law Implemented: SDCL 34-20G-72(6)(a), 34-20G-80.

44:90:12:11. Schedule of fines. The following fines may be assessed by the department:

(1) Category 1 violation:

(a) First offense – five thousand dollars;

(b) Second offense – seven thousand dollars;

(c) Third and subsequent offense – ten thousand dollars;

(2) Category 2 violation:

(a) First offense – three thousand dollars;

(b) Second offense – four thousand dollars;

(c) Third and subsequent offense – five thousand dollars;

(3) Category 3 violation:

(a) First offense – one thousand five hundred dollars;

(b) Second and subsequent offense – two thousand five hundred dollars;

(4) Category 4 violation: one thousand dollars; and

(5) Category 5 violation: five hundred dollars.

No previous violation of § 44:90:12:10 occurring more than five year prior to the date of the violation cited may be used to determine that the violation being charged is a second, third, or subsequent offense.

Source:

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

Law Implemented: SDCL 34-20G-72(6)(a), 34-20G-80.

44:90:12:12. Payment of fine. An establishment must pay any fine imposed under this chapter within thirty days of receipt of notice or be subject to further disciplinary action, up to and including suspension or revocation of the registration certificate. The imposition of a fine is a final

decision by the department and is subject to appeal pursuant to SDCL 1-26.

Source:

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

Law Implemented: SDCL 34-20G-72(6)(a), 34-20G-80, 34-20G-81.

Proposed