



September 4, 2026

Ms. Jennifer Jorgenson
Department of Health
600 East Capitol Avenue
Pierre, SD 57501

Dear Ms. Jorgenson:

The Legislative Research Council (LRC) received proposed rules from the Department of Health on August 21, 2026. In accordance with SDCL 1-26-6.5, the LRC reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommendations.

Please find enclosed:

- Proposed Rules Review Checklists;
- The proposed rules with recommended form, style, clarity, and minor legality edits;
- Directions for Submitting the Final Draft of the Rules; and
- The Interim Rules Review Committee Rules Presentation Format.

In addition to the recommendations provided in the enclosed packet, LRC notes that the Form 5 - Fiscal Note states in a conclusory fashion that the rules have "[n]o impact on government" and that "[n]o additional medical cannabis staff or resources are required as a result of the proposed rules changes." And yet, the Form 6 - Notice of Public Hearing, speaks to how the effect of the proposed rules is, in part, to "modernize administrative processes." While that effect may not necessarily result in the need for additional staff or resources, it is hard to reconcile that Form 6 statement with the Form 5 statement that there is "no impact on government." Please resubmit the Form 5--with a sentence or two addressing this seeming discrepancy--prior to submission of the final rules packet to the Committee and LRC staff.

Under SDCL 1-26-4(4), the Department is required to adopt LRC recommendations, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination. Note, however, that LRC reserves the right to withdraw recommendations if they are resolved via discussion with Department staff.

Please do not hesitate to contact me if you have any questions or to discuss and possibly resolve any of the recommendations before your agency's public hearing on this rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin J. Goetz". The signature is stylized with a large, sweeping "J" and "G".

Justin J. Goetz
Code Counsel
Enclosures

CC: Melissa Magstadt, Secretary, Department of Health

**Legislative Research Council
Proposed Rules Research Review Checklist**

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

"No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter." (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY			
ENTRY:	"[Initials]"	"N/A"	"[Initials]*)"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue
1. Verify the rules packet includes (SDCL 1-26-4(2)):			
a. The proposed rules:			
i. Any incorporated material:			
b. Notice of hearing (Form 6):			
2. Verify all documents have correct citations to the proposed rules provided in the packet.			
3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. (SDCL 1-26-4(1))			
4. If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.			
5. Review proposed rules for:			
a. Form, style, and clarity in accordance with the Administrative Rules Drafting Manual (including all existing language, not just amended language).			
i. Verify the most recent rule is used. (Manual , pg. 5)			
ii. Verify all cross-references in text are current. (Manual , pg. 6)			
iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. (Manual , pg. 6)			
iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. (Manual , pg. 7)			

b. Legality, including:

- i. Verify the General Authority statute provides rule-making authority (i.e., “. . . shall/may promulgate rules to . . .”). ([Manual](#), pg. 8) _____
- ii. Verify the Law Implemented statute identifies the policy intended to be implemented. ([Manual](#), pg. 8) _____
- iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. ([SDCL 1-26-6.6](#); [Manual](#), pg. 11) _____

For incorporated material that is not CFR, USC, Fed. Reg., Stat.:
 - 1. Verify the proposed rule includes a reference note identifying the publication by title, date of publication, author, version/edition and where and at what cost the publication may be obtained. _____
 - 2. Verify there is a statement attached to the material that includes the agency’s name, the section number of the rule that incorporates the material, and the date the proposed rule was served on the LRC. _____
- iv. Verify the proposed rule does not incorporate or reiterate any statutory language other than definitions, and that the agency is not publishing or distributing statutory material. ([SDCL 1-26-6.1](#)) _____
- v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. ([SDCL 1-26-6.10](#)) _____
- vi. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ [23](#)(9), [26](#)) _____
- vii. Verify the rule does not allow the agency to circumvent the SDCL ch. 1-26 rulemaking process (e.g., authorizing it to make its own rules). (See SDCL [1-26-4](#), [1-26-6.5](#), [1-26-6.6](#), [1-26-38](#)(2)) _____
- viii. Verify the rule does not contain the agency’s internal processes or policy (e.g., personnel policies) or other matter that is not defined as a rule per [SDCL 1-26-1](#)(8). _____
- ix. Verify the rule does not incorporate a future rule or regulation, or incorporate future amendments to an existing rule or regulation, of another state or the federal government. ([State v. Johnson](#), 84 S.D. 556, 173 N.W.2d 894 (1970)) _____
- x. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. ([Manual](#), pg. 8) _____

6. Review Notice of Public Hearing ([SDCL 1-26-4.1](#)):

- a. Verify the LRC received the proposed rules at least 20 days prior to the scheduled public hearing. _____

- b. Verify the notice contains a narrative description of the effect of the proposed rule. _____
- c. Verify the notice contains the reason for adopting the proposed rule. _____
- d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing. _____
- e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented. _____
- f. Verify the notice contains a deadline for submission of comments. _____
 - i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. ([SDCL 1-26-4](#)(6)) _____
 - ii. If the authority promulgating the rule is a part-time citizen board, Commission, committee, or task force, ensure the deadline is at least 72 hours before the public hearing (not including hearing day). ([SDCL 1-26-4](#)(6)). _____
- g. Verify the notice contains information for how the public may obtain copies of the proposed rules. _____

Reviewed by Code Counsel on _____

Legislative Research Council
Proposed Rules Fiscal Review Checklist

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

"No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter." (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the code counsel within ten business days from the date the proposed rules are received by the LRC.

KEY

ENTRY:	"[Initials]"	"N/A"	"[Initials]*"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue

1. Verify the rules packet includes ([SDCL 1-26-4\(2\)](#)):
 - a. Fiscal Note (Form 5): _____
 - b. Regulatory Impact Analysis (Form 14): _____
 - c. Housing Cost Impact Statement (Form 16), if applicable: _____
 - d. Agency Financial Resources (Form 17), if applicable: _____
2. Indicate whether the rulemaking increases a fee of a professional or occupational licensing board or commission for which no maximum fee is established in statute, in which case, initial. If the fee increases by more than 20%, note the issue. ([SDCL 1-26-6.9](#)) _____
3. Review the Fiscal Note ([SDCL 1-26-4.2](#)):
 - a. Verify the Fiscal Note states whether the rulemaking will have any effect on the revenues, expenditures, or fiscal liability of the state, agencies, and subdivisions: _____
 - i. Verify whether the form summarizes the changes resulting from the rulemaking to processes or activities of any state or local government entities. _____
 - ii. If there is an effect, verify the Fiscal Note includes an explanation of how the effect was computed. _____
 - iii. Verify if the depicted effect is reasonable. _____
 - iv. If there is an effect on subdivisions, is that effect described? _____

4. Review Regulatory Impact Analysis ([SDCL 1-26-4.11](#)), verify:

- a. The form lists the articles, chapters, and sections added, revised, or repealed in the rulemaking. _____
- b. The explanation of whether the rulemaking is a "major rule" ([SDCL 1-26-1](#)) is reasonable. _____
 - i. If the rulemaking qualifies as a "major rule," also verify the agency's "sufficient authority" explanation is accurate and aligns with the description in the footer of the form. _____
- c. There is a reasonable, narrative explanation of the need for the rulemaking at this time. _____
 - i. Also verify there is no indication that the rulemaking is artificially structured with recent prior rulemakings to circumvent the "major rule" threshold. _____
 - ii. Also verify that if the rulemaking covers disparate types of rules, an explanation of the need is provided for each type. _____
- d. There is a reasonable, narrative explanation of the alternative options, if any, to satisfy the need that is the basis for the rulemaking, but were not pursued. _____
- e. The estimated primary or direct benefits resulting from the rulemaking are reasonable. _____
- f. The estimated cost savings or financial benefits to individuals and entities other than the federal or state government, which result from the rulemaking, are reasonable. _____
- g. The estimated costs of implementation or compliance to individuals and entities other than the federal or state government, which result from the rulemaking, are reasonable and are provided in sufficient detail. _____
- h. The estimated secondary or indirect costs to individuals and entities other than the federal or state government, which result from the rulemaking, are reasonable. _____
- i. The estimated cost of compliance because of the removal of private capital from the marketplace by the rulemaking is reasonable. _____
- j. The sources consulted by the agency in preparing this analysis appear to be reasonably accurate. _____
- k. If the rulemaking has any small business impact on its face. _____
- l. The identification of and estimated number of small businesses subject to the proposed rules revised in the rulemaking is reasonably accurate. _____
- m. The agency provides a reasonable statement of the probable effect of the rulemaking on impacted small business. _____

- n. The projected small business reporting and record-keeping required for compliance with the rulemaking is reasonable. _____
- o. The types of professional skills necessary for preparation of required reports or records are reasonable. _____
- 5. Agency Financial Resources ([SDCL 1-26-4.8](#)), if applicable, verify:
 - a. The revenue of the fund into which the fee is paid is accurately depicted. _____
 - b. The fee's estimated revenue is reasonably reflected in the form. _____
 - c. The expenses paid out of the fund are accurately depicted (and future expenses are reasonably estimated) _____
- 6. Review Housing Cost Impact Statement ([SDCL 1-26-2.3](#)), if applicable, verify:
 - a. The agency has indicated what building sectors will be impacted by the rule change. _____
 - b. A description of and explanation of necessity for each standard and requirement is included. _____
 - c. The statement includes the average estimated cost of each standard and requirement. _____
 - d. That contact and estimate information is included for three licensed contractors or building trades professionals. _____

Reviewed by Code Counsel on _____

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

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(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 of the establishment while performing work-related duties;

Commented [JG1]: Clarity - The word "establishment" and the phrase "medical cannabis establishment" are used interchangeably throughout. Recommend a convention for this, as only the latter is defined. For every definition, use the formal term first, and then each subsequent reference in the same definition can be to an "establishment." Please revise throughout this section.

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

Commented [JG2]: Clarity - An agent of whom? See the edit to the left in an attempt to address. Technically, "medical cannabis establishment agent" is the defined term, but this is a fair derivation of the use of that term.

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

Commented [AM3]: Clarity - This word is still needed for the phrasing to make sense.

(6) "Authorized transfer," the distribution of cannabis and cannabis products between medical cannabis establishments ~~that is allowable within inventory tracking system procedures under an inventory track system that complies with § 44:90:11:01;~~

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Commented [AM4]: Style/form - Generally, the singular form includes the plural as well, so there is no need to state "an analyte or analytes..." If you would like to emphasize this point, suggest the language to the left to match the existing language used in the subdivision. ARSD Drafting Manual, pg. 15.

(7) "Batch," ~~a specific quantity of:~~

Commented [AM5]: Clarity - One or the other of these two words needs to be struck.

~~(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~~

Commented [JG6]: Clarity - This phrase appears to be jargon. The phrase is only used in 44:90:11:01. If those listed procedures are effectively what are being referenced, see the edits to the left intended to provide greater clarity. Alternatively, "inventory tracking system" is defined below. Perhaps that should be used here? Regardless, the inventory tracking system procedures do not "allow" the transfer, the rule "allows" the transfer if the transfer occurs under compliant inventory tracking system procedures, no?

~~(b) Cannabis products that are produced during a specified period of time using the same extraction or manufacturing method, formulation, or recipe; a specifically identified quantity of cannabis or cannabis products assigned a batch identifier for tracking, testing, or inventory purposes;~~

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Commented [JG7]: Clarity - Isn't the quantity specifically identified by virtue of being assigned a batch identifier? If so, this language appears to be redundant.

(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 ~~that which are unused, surplus, returned, recalled, contaminated, expired, damaged, or otherwise unsuitable for sale, distribution, processing, or consumption, excluding stalks without trichomes and root balls, that have been designated for destruction however. This definition does not apply to any product eligible for repurposing under § 44:90:10:12.02 is not considered expired for purposes of this definition § 44:90:10:12.02 unless the establishment elects not to repurpose the product;~~

(15) "Certificate of analysis," a written report of the results of analytical testing, indicating whether the ~~results comply~~ cannabis or cannabis product tested complies with this article;

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

(17) "Concentrated cannabis," cannabis extract or a preparation made by using heat, temperature, or mechanical means to separate cannabinoids from cannabis;

Commented [AM8]: Clarity - Suggest comma here so the following descriptive phrase clearly applies to all items in the preceding list and not just cannabis plants.

Commented [JG9]: Clarity - What does "unused" mean in this context? Is "use" a retail conception—unsold = unused? Is it a packaging concept—once it is packaged for sale it is used?

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Commented [AM10]: Legality/clarity - In existing rule, there is a comma here instead of a semi-colon. Please be sure that existing language is accurately reflected.

Commented [AM11]: Clarity - Suggestion to make this a bit more concise.

Commented [AM12]: Clarity - "expired flower or cannabis concentrate"? It might be helpful to narrow this.

Commented [AM13]: Legality - Corrected the cross-reference.

Commented [JG14]: Clarity/Legality - Must the establishment ever formally elect to not repurpose the product? It seems that the establishment must elect/choose/act to repurpose per 44:90:10:12.02, but need not act at all to not repurpose. It must just destroy after a certain number of months from the date of the last retest. Could this all be simplified further by removing this sentence and having "expired," added above, read as "expired without the ability to repurpose under § 44:90:10:12.02,"?

This definition suggests that expired flower or concentrate that is damaged is not cannabis waste, because it can still be "repurposed" per 44:90:10:12.02. Is that the intent? If not, I think that construction can also be avoided by adding the language to "expired" as suggested above.

Commented [JG15]: Clarity - This term is only used in a handful of sections. Isn't the meaning conveyed here readily gleaned from the few substantive sections where the term is used? If so, remove this definition as redundant.

(18) "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;

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

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

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

(22) "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;

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

(24) "Harvest batch," a specifically identified quantity of cannabis of the same strain cultivated under the same conditions, harvested at the same time from the same cultivation area, and uniform in character and quality;

~~(24)~~(25) "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;

~~(25)~~(26) "Inhalable cannabis product," a cannabis product that is intended to be consumed by inhalation;

~~(26)~~(27) "Inherently hazardous substance," any solvent or chemical, other than ethanol, with a flash point at or lower than one hundred degrees Fahrenheit;

Commented [JG16]: Clarity - Just a note for future rulemaking, ARSD 44:90:12:10(1)(b) speaks to "Diversion . . . outside the regulated distribution system." This might create clarity issues with this definition. It seems that "outside the regulated distribution system" is synonymous with "transferring . . . to a non-cardholder..or an unlicensed establishment" but if that were the case, why would it need to be restated in ARSD 44:90:12:10(1)(b)?

Commented [JG17]: Clarity/Legality - This definition can be struck as redundant and conflicting with ARSD 44:90:02:16. This term is only used in two sections of rule besides this one, and it is more granularly defined in one of them (44:90:02:16), and that more granular definition is the one cross-referenced in the other section that uses the term (44:90:10:12).

Commented [AM18]: Style/form - Convention for internal cross references to subdivisions in the SDCL. ARSD DM, pg. 19.

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Commented [AM19]: Style/form - Normally, the existing subdivision (24) would be retained, and the new definition inserted after it.

Commented [AM20]: Clarity - This definition does not appear to be used in the article or the proposed changes in this packet. Definitions that aren't used shouldn't be in a definitions section. ARSD DM, pg. 10.

Commented [AM21]: Style/form - Oxford comma is used. ARSD DM, pg. 17.

(27)(28) "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 chapter 34-20G and this article;

(28)(29) "Inventory record," ~~a daily electronic record of all cannabis as described in § 44:90:11:03;~~

(29)(30) "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;

(30)(31) "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;

(31)(32) "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;

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

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

(34)(35) "Mature plant," a cannabis plant that has flowered;

(35)(36) "Multiple violations," more than one violation of SDCL chapter 34-20G or this article;

Commented [JG22]: Clarity - It seems that this term is actually defined in ARSD 44:90:11:03.

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Commented [JG23]: Clarity - This term appears to only be used in ARSD 44:90:03:07. Recommend this definition be moved from here to a new final paragraph in 44:90:03:07, which is already in this packet. "For purposes of this section, "matrix" means a component...."

Commented [AM24]: Clarity - Is this definition necessary? It seems like any specification in reference to multiple violations of law or rule could be made in the relevant section. Also, the term is used differently through the chapter--e.g., "...multiple knowing and negligent violations of this article or SDCL chapter 34-20G" in § 44:90:12:05; and "...cardholder has committed serious or multiple violations of SDCL chapter 34-20G..." in § 44:90:12:08 (which this appears to exclude rules?).

(36)(37) "Nationally recognized testing laboratory," an independent laboratory recognized by the Occupational Health and Safety Administration pursuant to 29 C.F.R. § 1910.7¹ (February 18, 2020);

Commented [AM25]: Style/form - Don't need this comma here. ARSD DM, pg. 18.

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(37)(38) "Nonusable," unfit for sale or, except for the purposes of remediation, transfer;

(38)(39) "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)(40) "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~~ a portion of cannabis or a cannabis product collected to reflect the composition, potency, quality, and characteristics of the entire batch, including the dispersion of cannabis, cannabinoids, and other components throughout the product;

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(40)(41) "Resealable," the ability to maintain child-resistant effectiveness and preserve the integrity of cannabis products contained within, until each individual serving is consumed;

Commented [JG26]: Style/Clarity - Is this listing of non-exhaustive examples (ARSD DM, pg. 12) necessary given the lead-in—why would this not be referencing the active ingredient? Also, what are "other components"? That seems vague. Recommend removing this phrasing.

(41)(42) "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;

(42)(43) "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;

(43)(44) "Serious violation," a violation of SDCL chapter 34-20G or this article that poses a substantial threat to patient health or safety;

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

Commented [JG27]: Clarity - To ensure the reader does not think that "of batch identifiers" modifies "establishment," these commas are recommended.

~~(45)~~(46) "Tetrahydrocannabinol," the primary psychoactive cannabinoid found in the Cannabis sativa plant, also known as delta-9;

~~(46)~~(47) "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;

~~(47)~~(48) "Topical cannabis product," a nonedible cannabis product that is intended to be applied externally to the skin;

~~(48)~~(49) "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;

~~(49)~~(50) "Transaction record," a daily electronic record created and maintained by a dispensary to track transactions with patients;

~~(50)~~(51) "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;

~~(51)~~(52) "Trim," trichome-containing leaves of the cannabis plant that have been intentionally removed during cultivation; and

~~(52)~~(53) "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; 52 SDR 10, effective August 4, 2025.

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*. Copies may be obtained at <https://www.iso.org/standard/66912.html>.
Cost: \$138.

Commented [JG28]: *Style* - Please reword as follows, changing the italicized language to bolded language (per ARSD DM, pg. 20 and SDCL 1-26-6.6):

Reference: ISO/IEC 17025:2017: General Requirements for the Competence of Testing and Calibration Laboratories, 2018, International Organization for Standardization & International Electrotechnical Commission. Copies may be obtained at <https://www.iso.org/standard/66912.html>. Cost: \$138.

This revision needs to be made in multiple sections, I believe.

Commented [JG29]: *Form* - Inserted a page break here to ensure that each section begins on a new page. ARSD DM, pg. 5.

Commented [AM30]: *Style/form* - I know the underscore is from the website link, but please remove for the purposes of this packet. The underscore makes this appear as new language when it is not. It also appears that the underscore was extended to the cost information, which is also existing language.

DRAFT

44:90:02:07. Application to cultivate cannabis -- Patient designation of designated caregivers to cultivate cannabis. A patient, or the ~~patient's~~ patient's designated caregiver applying to cultivate cannabis, shall submit to the department:

(1) A diagram and photographs of the enclosed, locked facility in which the cannabis ~~will is~~ to be cultivated; and

(2) The fee to cultivate cannabis required by § 44:90:02:17.

~~An age-restricted cardholder may not cultivate cannabis but may, unless a nonresident, designate a designated caregiver to cultivate cannabis on the patient's behalf. A qualifying patient who is under twenty-one years of age may not cultivate cannabis and may not designate a caregiver to cultivate cannabis on the patient's patient's behalf.~~

Upon approval of the application, the department shall issue a ~~two-part~~ registry identification card authorizing cultivation to the each patient or designated caregiver designated to cultivate cannabis. ~~One part of the registry identification card must be posted on the door of the enclosed, locked facility in which the cannabis is cultivated and the other part of the registry identification card must be carried by the patient or designated caregiver. The qualifying patient or each designated caregiver of the patient shall carry the registry identification card authorizing cultivation must be carried by the patient or designated caregiver while cultivating cannabis or otherwise exercising cultivation activities.~~

If more than one person is authorized to cultivate cannabis on behalf of a qualifying patient, each person shall receive a two-part identification card and shall post and carry the appropriate parts a registry identification card authorizing cultivation and shall carry the registry identification card while cultivating cannabis or otherwise exercising cultivation activities.

Commented [AM31]: Clarity - Should this be "qualifying patient"?

Commented [JG32]: Style - We did not catch this before, but every apostrophe and quotation mark should be straight, not smart. ARSD DM, pg. 17. Attempting to revise throughout.

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Commented [JG33]: Style - "will" is not one of the imperative words recognized in the ARSD DM (pg. 14). "Is" is, however.

Commented [JG34]: Clarity - Added to disambiguate from the other cannabis fees listed in 44:90:02:17. Alternatively, one could specify the subdivision containing this fee, but then this section may need to be revised if 44:90:02:17's subdivisions were reordered.

Commented [AM35]: Legality - Does the department have the authority to prohibit someone under 21 from cultivating cannabis?

Commented [JG36R35]: Legality - To counter that point, one could argue SDCL 34-20G-1(12) & (19)(b) and 34-20G-29(8) appear to envision the Department being able to "allow" cultivation, so it appears the Department has discretion to approve or disapprove cultivation. There are also a number of provisions in chapter 34-20G that use the 21-year-old threshold. The problem, however, is that I could find no statutory guidance on this categorical 21-year-old threshold. This speaks to the form and content of the registration application, and so there is clear General Authority for this rule. However, Law Implemented/intelligible standards supporting this content is quite weak, without more statutory authority, particularly when nothing has changed within the state statutory framework in this respect. The existing eighteen-year-old threshold was explained by SDCL 34-20G-33(c). There is nothing similar for this proposal.

Commented [AM37]: Clarity - With this and the changes suggested below, I think we can struck the entire final paragraph.

Commented [AM38]: Clarity - "qualifying patient"?

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Commented [AM39]: Clarity - Suggestion for active voice and to emphasize that each patient and caregiver authorized to cultivate shall carry the card.

Commented [AM40]: Clarity - "engaging in"?

Commented [AM41]: Clarity - With the changes suggested above, I think this paragraph can be struck as redundant. The content above requires the department to issue a card to each qualifying patient or caregiver, and then that each patient or caregiver carry it when engaging in cultivation activities.

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

General Authority: SDCL ~~34-20G-1(1)(c)~~, ~~34-20G-72(4)~~, ~~34-20G-72(5)(1)(3)~~.

Law Implemented: SDCL 34-20G-1(1)(c)(d)(13), 34-20G-29(8), ~~34-20G-95~~.

Commented [AM42]: Legality - This does not provide explicit authority to promulgate rules, i.e., "...shall promulgate rules in accordance with chapter 1-26..." Thus, it should be struck. ARSD DM, pg. 9

Commented [AM43]: Legality - This citation provides authority for the department to promulgate rules "[g]overning medical cannabis establishments to ensure the health and safety of qualifying patients...and prevent diversion and theft with imposing an undue burden..." Upon my reading, it is difficult to separate the second half of the sentence as not applying to establishments ("The department shall promulgate rules...[g]overning...and prevent diversion and theft..." Thus, it seems like the intent of this subdivision was to apply to establishments, not to home cultivation.

Commented [AM44]: Legality - Does this really relate to the content in this section? No procedures for the suspension or termination of registry identification cards is addressed here. Perhaps SDCL 34-20G-72(1)(3) is better.

Commented [JG45]: Legality - At base, this section details the requirements for an application for a registration card that allows cannabis cultivation, so subdivision (1) should work for this. Subdivision (3) is the flip side of this coin.

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Commented [JG46]: Legality - Need to specify the applicable subsections also for Law Implemented, not just subdivisions. SDCL 1-26-6.2.

Commented [JG47]: Legality - This seems like the one bit of content from this section that is applicable to this section. Need to then specify the subdivision per SDCL 1-26-6.2.

Commented [AM48]: Legality - SDCL 34-20G-42(6) may also be appropriate Law Implemented.

Commented [AM49]: Legality - This does not seem relevant to this section, especially with the proposed amendments regarding those under 21 not being able to cultivate cannabis.

Commented [JG50]: Form - Inserted a page break immediately after for reason given above.

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44:90:02:10. Change of designation of designated caregivers. A qualifying patient or the qualifying ~~patient's~~ patient's parent or legal guardian may remove, add, or substitute designated caregivers at any time in accordance with this section.

~~If the change results in the addition or substitution of~~ To add or substitute a designated caregiver, the qualifying patient shall submit ~~a form pursuant to the application required by~~ § 44:90:02:04.

~~If the change results in the removal of one or more designated caregivers~~ To remove a designated caregiver, the qualifying patient shall notify each removed designated caregiver in writing and shall certify to the department that notice has been given. The removed designated caregiver shall ~~have 15 days to~~ immediately destroy return the registry identification card associated with that patient.

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

General Authority: SDCL 34-20G-72~~(4)~~(1)(3).

Law Implemented: SDCL 34-20G-46~~(3)~~.

Commented [AM51]: Legality - ARSD 44:90:02:08 refers to the ability of two parents or legal guardians of "an age-restricted cardholder" to share the designation of cultivating cannabis on the cardholder's behalf. An "age-restricted cardholder" is defined as someone under 18 years of age. Leaving this section unchanged appears to conflict with the language proposed to prohibit any person under 21 from designating a caregiver to cultivate cannabis for the patient.

Commented [AM52]: Clarity - I'm a little confused by the substitute language—isn't one a caregiver or not? If I am substituted by someone else as a caregiver, would I not be removed and then need to destroy the caregiver card that I have?

Commented [JG53R52]: Legality - Agreed. Caregivers must be cardholders. SDCL 34-20G-1(6). Below, it is clear that even a "substitute" must be added as a cardholder going through the application process, and the previously caregiver removed as a cardholder. There doesn't seem like there is a third option here, given that.

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Commented [AM54]: Clarity - Suggestion since the ...

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Commented [AM55]: Clarity - Suggestion here to make ...

Commented [JG56R55]: Clarity - If "substitute" is ...

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Commented [AM57]: Clarity - Should the parent or ...

Commented [JG58R57]: Clarity - Also in the first ...

Commented [AM59]: Clarity - "the application required ...

Commented [JG60R59]: Clarity - This edit seems like ...

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Commented [AM61]: Clarity - If a designated caregiver ...

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Commented [AM62]: Clarity - Please strike this word ...

Commented [JG63R62]: Style - Note also that new ...

Commented [AM64]: Legality - See previous comment ...

Commented [JG65R64]: Legality - See previous ...

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Commented [AM66]: Legality - Statute specifies that a ...

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44:90:02:11. Change of designation to cultivate. A qualifying patient or the qualifying ~~patient's~~ patient's parent or legal guardian may remove, add, or ~~substitute~~ a designation to cultivate at any time in accordance with this section.

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Commented [AM67]: Clarity - Same comment here re: substituting.

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~~If the change results in the addition or substitution of an individual.~~ To add or substitute a designated caregiver to cultivate ~~medical~~ cannabis for the qualifying patient, the qualifying patient, or the qualifying ~~patient's~~ patient's parent or legal guardian, shall submit an application pursuant to § 44:90:02:07.

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Commented [AM68]: Clarity - Does this include the fee?

~~If the change results in the removal of.~~ To remove the designation of a designated caregiver to cultivate cannabis on the qualifying patient's behalf, the qualifying patient, or the ~~patient's~~ qualifying patient's parent or legal guardian, shall notify the current designated caregiver in writing and shall certify to the department that notice has been given. The designated caregiver shall, ~~within 15 days, return~~ immediately destroy the registry identification card and destroy any cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

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Commented [JG69]: Clarity - "immediately after receiving notice destroy"?

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

General Authority: SDCL 34-20G-72 ~~(4)~~ (1)(3).

Commented [AM70]: Legality - Same comment as above.

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Law Implemented: SDCL 34-20G-46 ~~(4)~~.

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44:90:02:12. Notice to no longer act as designated caregiver. A designated caregiver shall provide written notice to the qualifying patient or the ~~patient's qualifying patient's~~ parents or legal guardians and shall notify the department on a form supplied by the department if the designated caregiver no longer wishes to act as the ~~patient's qualifying patient's~~ designated caregiver. The designated caregiver shall ~~return~~ immediately destroy the registry identification card associated with the patient ~~immediately~~ upon submitting ~~such, the~~ notice and, if applicable, shall destroy any cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

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

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

Law Implemented: SDCL ~~34-20G-46(3)~~.

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Commented [JG71]: Clarity - In prior sections, both are singular. Any particular reason why plural is appropriate now?

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Commented [AM72]: Legality - Same as above.

Commented [JG73]: Legality - This section does not squarely fall under any of the subdivisions listed in SDCL 34-20G-72. Ideally, this gets addressed in bolstered statutory authority through a bill. It is a stretch, but one could argue that this is an extension of the Department's consideration of applications for/renewals of registry identification cards.

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Commented [AM74]: Legality - Technically, none of the subdivisions in SDCL 34-20G-46 address a designated caregiver no longer wanting to serve as caregiver—(2) only speaks to a caregiver's change in name or address and if the patient has died. Is there another citation that can be provided here? This may be something that could be clarified through legislation during session.

Commented [JG75R74]: Legality - I hate to say it, but the closest authority may be subdivision (3), because the designated caregiver provides notice to the qualifying patient, and thereby permits the patient to notify the Department and apply for a new designated caregiver.

44:90:02:13. Death of qualifying patient. Upon giving notice of a ~~patient's qualifying~~ patient's death pursuant to SDCL ~~subdivision~~ 34-20G-46(2), a designated caregiver shall, ~~within 15 days, return~~ immediately destroy the registry identification card associated with the patient ~~to the department~~ and, if applicable, shall destroy any cannabis plants and any cannabis and cannabis products that were produced from the allowable plants.

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

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

Law Implemented: SDCL 34-20G-46~~(2)~~.

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Commented [AM76]: Style/form - Convention for internal references to statutory subdivisions. ARSD DM, pg. 19.

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Commented [AM77]: Legality - Same comment as above.

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44:90:02:15. Nonresident registration -- Registry identification number. The department shall issue to a nonresident cardholder who has met all registration requirements a 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 practitioner certification issued in the jurisdiction

where the nonresident cardholder resides; or

- (3) One year from the date of issuance on the nonresident's practitioner certification 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; 52 SDR 10, effective August 4, 2025.

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

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

Commented [AM78]: Clarity/legality - Statute specifically mentions that a non-resident cardholder cannot designate more than two dispensaries. Is this being struck as redundant with statute? It seems preferable to keep, since the lead-in of that statute technically requires the department to promulgate rules establishing procedures for the designation of no more than two dispensaries.

44:90:02:17. Fees for registry identification cards and nonresident registration.

~~(1)~~ The base fee for initial application and yearly renewal of a patient registry identification card for a resident ~~of South Dakota~~ or registration of a nonresident ~~patient~~ is:

~~(a)(1)~~ For a low-income qualifying patient, ~~\$20, twenty dollars;~~ and

~~(b)(2)~~ For all other applicants, ~~\$75 seventy-five dollars.~~

~~(2) Qualifying patients shall submit an additional \$20. The application fee for the issuance of any, a designated caregiver registry identification card, except for the designation of a designated caregiver at the time of the initial or renewal application, is twenty dollars.~~

~~(3) An additional \$20 fee is required for the printing of a two part. The application fee for a registry identification card, for patients designated to cultivate cannabis or designate a designated caregiver to cultivate, authorizing the cultivation of cannabis is an additional twenty dollars.~~

~~(4) Nonresidents shall submit a \$75 fee with a registration application.~~

All fees imposed under this section ~~shall be~~ are nonrefundable.

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

General Authority: SDCL 34-20G-72 ~~(40)(11).~~

Law Implemented: SDCL 34-20G-29, 34-20G-72 ~~(40)(11).~~

Commented [AM79]: Clarity - See comment below. If you agree, suggest updating this catchline, which would necessitate including the chapter table of contents.

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Commented [AM80]: Style/form - All subdivision listings must have a lead-in. Suggest just striking these subdivisions and making the following standalone paragraphs. See the following suggestions for clarity. ARSD DM, pg. 14.

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Commented [AM81]: Clarity - A nonresident doesn't actually receive a registry identification card, right? SDCL 34-20G-72(11) refers to registration.

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Commented [AM82]: Style/form - Most numbers are spelled out. ARSD DM, pg. 18.

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Commented [AM83]: Legality - This statute speaks to a sliding scale of "patient application" fees based on the patient's household income. It doesn't necessarily limit the ...

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44:90:03:02. Certificate renewal -- Application. ~~A. To maintain a registration certificate, a renewal application for a registration certificate:~~

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(1) Is required every ~~12~~ twelve months from ~~the registration certificate's~~ date of issuance; and

Commented [JG84]: Clarity - Without this revision, this reads as a blanket requirement. But this is technically only a requirement for entities seeking to maintain their registration.

(2) Must include all components of an initial application, ~~except that a detailed description of~~

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~~any changes to operating procedures, or a certification that no such changes exist, may be substituted for a complete set of operating procedures unless otherwise noted in the department's renewal application checklist.~~

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

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

Commented [JG85]: Legality - This is establishing a duty in rule, enforceable as law. The triggering content cannot be outside of rule, left to an ambiguous reference. At the very least, a collateral reference note (ARSD DM pg. 20, example) is necessary and a specific URL to the resource, with the effective date of the document indicated in the rule text and in the collateral reference note. If there is a standard on which the waiver is based, however, there needs to be some reference to it in rule. That is the foundational principle behind SDCL 1-26-6.6.

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

Clarity - It is also unclear if the department gets to simply waive all components of the initial application (which would appear to negate the need to make a renewal application) or if this waiver is limited in some way to a few discrete components.

Commented [AM86]: Legality - This subdivision is not relevant, as it only addresses "[e]stablishing a system to numerically score competing medical cannabis establishments..." in local jurisdictions. Please cite different authority.

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Commented [AM87]: Legality - Not sure how this relates to the renewal process?

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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 are to 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 is to be cultivated, harvested, dried, stored, manufactured, tested, or destroyed;

(b) Indicate the types of activities that are to take place in those areas;

(c) Identify a means of legal ingress onto property from the closest maintained public right of way; and

(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~~ § 1910.132 (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, or a written

explanation identifying ~~and justifying~~ any requirements of this section that are not applicable to the establishment's establishment's operations that includes the rationale for why those requirements

and are excluded from the workplace safety plan;

(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 are to be monitored;

(7) Any additional steps to ensure the safety of patrons and the community;

Commented [JG88]: Style - Conjunction at the end of the penultimate subsection. ARSD DM, pg. 14.

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Commented [AM89]: Style/form - When amending a section of code or rule in the text, the convention is to strike and replace the entire citation instead of part of it. ARSD DM, pg. 6.

Commented [AM90]: Style/form - Oxford comma is used. ARSD DM, pg. 17.

Commented [JG91]: Legality - This is a "Part" reference, not a section, and also pertains to the National Mediation Board, which relates to labor contracts/unions, not workplace safety. I think this needs to change. In the meantime, it should be struck.

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Commented [JG92]: Clarity - One can simplify this language further.

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(8) Plans for preventing the diversion of cannabis to non-cardholders;

(9) A waste management plan for disposal of cannabis waste, including containing:

Commented [JG93]: Clarity/Style - By using this word, this reads as a non-exhaustive list of examples of what should be in the waste management plan. If the state is requiring an establishment to have certain things in their plan, those requirements should be spelled out (i.e., be exhaustive). If additional requirements need to be added, add them. Otherwise, see the edit to the left making this list exhaustive, since examples should not be used in the text of a rule. ARSD DM, pg. 12.

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(a) A description of how the cannabis waste is to be rendered unrecognizable and unfit for use no later than seven days after becoming waste or prior to leaving the establishment, whichever is ~~shorter~~ sooner, by grinding, shredding, or mulching, and then mixing the waste with at least fifty percent soil, sawdust, grease, food waste, ~~or yard waste~~, or another product approved by the department so that the cannabis waste is not easily separated or sorted;

(b) A description of how cannabis waste ~~will is to~~ be documented as waste in the inventory tracking system immediately after being identified as waste and be moved and remain in a designated, secure, waste-rendering area within the certified establishment;

Commented [AM94]: Clarity - Does the establishment have to describe how it will document this, or just the actual description of this? With the wording of this subdivision, it is a bit confusing.

Commented [AM95]: Clarity - Does this have a separate meaning other than just the regular medical cannabis establishment? If not, recommend deleting.

(c) If approved by the department, a description of how cannabis waste that has not been rendered unrecognizable or unfit for use ~~may is to~~ be transferred to another commonly owned or affiliated certified establishment, or to another department-approved location, for final rendering and disposal, and how the unrendered cannabis waste transferred under this subdivision ~~shall is to~~ be documented in the inventory tracking system, transported in a secure container, and maintained under documented chain of custody until ~~rendered unrecognizable and unfit for use and disposed of rendering and disposal~~;

Commented [JG96]: Clarity - Using the same terminology used earlier in the subsection to make this very long sentence a little more concise.

~~(b)(d)~~ (d) If the establishment chooses to compost the waste, a description of how the waste is to be ~~rendered unrecognizable and unfit for use no later than seven days after becoming waste or prior to leaving the establishment, whichever is sooner, before being moved to the composting area and being~~ composted within thirty days of becoming waste ~~and rendered unrecognizable and unfit for use no later than seven days after becoming waste or prior to leaving the establishment, whichever is sooner, before being moved to the composting area~~; and

Commented [JG97]: Clarity - This subsection could benefit from the actions being described in chronological order.

~~(e)~~(c) A description of how the rendered waste is to be hauled from the premises within thirty days of becoming waste;

(10) A wastewater plan, ~~except that for a dispensary is not required to submit a wastewater plan unless the dispensary that only generates wastewater other than ordinary domestic wastewater as defined in chapter § 74:53:01:01, 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 the permit is not 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 checks, ~~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 close monitoring of~~ all visitors; ~~and~~

~~(13) Procedures for training all establishment agents in use of the inventory tracking system prior to performing duties onsite or transporting cannabis.~~

Source: 48 SDR 40, effective October 5, 2021; 52 SDR 10, effective August 4, 2025.

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

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

Commented [AM98]: Clarity - Made a suggestion to make this a bit more concise and avoid "except" and "unless" phrasing together.

Commented [AM99]: Clarity - This isn't part of the defined term and I didn't see its use in that chapter, so seems like the defined term would suffice?

Commented [AM100]: Clarity - If the defined term of "domestic wastewater" is specifically being referenced here, recommend cross referencing the section itself.

Commented [JG101]: Clarity/Style - Note the above discussion about "including." If there are to be other required elements of the wastewater plan, specify them here. Otherwise make the subsections exhaustive of what is to be in the wastewater plan.

Commented [JG102]: Clarity/Style - Same.

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Commented [JG103]: Clarity/Style - Same.

Commented [JG104]: Style - Parallel construction.

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Commented [AM105]: Style/form - Normally we insert new content before the period, so then there is no need to strike it and insert a new period at the end.

Commented [JG106]: Legality - Need to specify the particular subsection, too. This appears to be the most relevant information under subdivision 34-20G-55(1).

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44:90:03:07. Cannabis testing facility operating procedures -- Additional requirements.

The written operating procedures for a testing facility must provide the department with sufficient detail to determine the ~~establishment's~~ facility's compliance with this article and SDCL chapter 34-20G, including and contain:

(1) A policy signed by each owner of the facility that ensures management and personnel are free from any undue internal and external commercial, financial, or other influences that may adversely affect the quality of their work or diminish confidence in its competence, impartiality, judgment, or operational integrity;

(2) A signed disclosure by each owner of the facility stating ~~that there is the owner has~~ no financial conflict with, interest in, investment in, landlord-tenant relationship with, or loan to, a ~~cannabis~~ cultivation facility, cannabis product manufacturing facility, or ~~cannabis~~ dispensary;

(3) A list of analytical tests, specifying the analyte and technology for each, the ~~applicant~~ facility intends to offer and:

(a) Certification that the applicant ~~will, shall~~, within six months of ~~licensing~~ registration and 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 ~~including all proposed analytical tests within its scope of accreditation, with a scope of accreditation that includes all analytical tests performed by the facility;~~ or

(b) If an initial application or a renewal application for a ~~cannabis~~ testing facility that has been ~~licensed, registered~~ for less than ~~18, eighteen~~ months, an agreement to:

(i) Submit quarterly reports to the department on its progress toward ISO/IEC accreditation; and

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Commented [JG107]: Clarity/Style - Same concern about the requirements for the contents of these procedures being exhaustive in rule.

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Commented [JG108]: Clarity - The pronouns used here—their and its—despite the subjects being “owner,” “management,” and “personnel,” are confusing. Instead of using these pronouns, then, one must specify the actors.

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Commented [JG109]: Clarity - So presume the “owner” is viewed as an entity here. Regardless, a literal reading of this phrasing results in vagueness. This addresses that.

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Commented [AM110]: Clarity - Technically, these are the terms defined in SDCL 34-20G-1. I know it's unfortunate that they vary in their use of “cannabis,” “medical cannabis,” etc.

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Commented [JG111]: Clarity - In keeping with the above revisions, the subject with these duties needs to be consistently referenced. Is it the applicant or is it the testing facility seeking a certificate of registration?

Commented [JG112]: Clarity - “facility”?

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Commented [AM113]: Clarity - I believe this is the accurate term.

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Commented [AM114]: Clarity - Could this be simplified down to “For a testing facility that has been registered for less than eighteen months, an agreement to:”

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(ii) Comply with any department requests for confirmation testing at the

~~cannabis testing facility's facility's~~ expense;

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(4) Standard operating procedures for all preanalytical, analytical, and post-analytical processes performed by the ~~laboratory facility~~;

Commented [JG115]: Clarity - This is the only time that the facility is described as a laboratory. Consistent reference?

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(5) Protocols for performing validation studies of all analytical tests to be performed;

(6) Protocols for proficiency testing at an interval determined by the accrediting body and documenting successful completion or corrective action, as defined by the accrediting body;

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

(8) Policies and procedures that ensure the protection of its ~~clients' clients'~~ confidential information and proprietary rights, ~~including and~~ procedures for protecting the electronic storage and transmission of results;

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Commented [JG116]: Clarity/Style - See above.

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(9) Policies and procedures for collection and receipt of samples for mandatory or other testing, ~~including as follows~~:

Commented [JG117]: Clarity/Style - See above.

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(a) Step-by-step procedures for collecting representative samples from each matrix type that are representative of the batch to be tested;

(b) Method for collection, preparation, packaging, labeling, documentation, and transport of samples from each matrix type;

(c) Size of sample to be collected for each analytical test to be performed;

(d) Safeguards against contamination, including protective garb, sanitizing of instruments, and care of sample collection containers;

(e) Labeling of sample containers; and

(f) Transport and storage conditions, including exposure to light, temperature, and humidity;

(10) Chain of custody protocols and a sample chain of custody form;

(11) Training procedures and records of training for all ~~cannabis~~ testing facility designees to be maintained on the premises; and

(12) Equipment to be used and its listing by a nationally recognized testing laboratory.

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

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

Law Implemented: SDCL 34-20G-55(1), 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*. Copies may be obtained at <https://www.iso.org/standard/66912.html>. Cost: \$138.

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Commented [JG118]: Style - Please reword as follows, changing the italicized language to bolded language (per ARSD DM, pg. 20 and SDCL 1-26-6.6):

Reference: ISO/IEC 17025:2017: General Requirements for the Competence of Testing and Calibration Laboratories, 2018, International Organization for Standardization & International Electrotechnical Commission. Copies may be obtained at <https://www.iso.org/standard/66912.html>. Cost: \$138.

This revision needs to be made in multiple sections, I believe.

Commented [AM119]: Style/form - ARSD DM, pg. 20.

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Commented [AM120]: Style/form - Please remove the underscore.

44:90:03:16. Department awarding of registration certificate -- Tiebreaking procedures

-- **Notice to unsuccessful applicants.** The department shall award a registration certificate as follows:

(1) If more establishments apply than are allowed by a local government, the department must 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 must 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 must 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; ~~and~~

(4) If applicants are tied for one or more openings in a locality, the affected applicants and interested members of the public must have the opportunity to view, in person or via videoconference, a random lottery to determine the successful applicants. The department shall rank each applicant via the lottery system to establish the order and a waiting list.

Any establishment issued a registration certificate pursuant to this section must become operational within ~~one year, defined as~~ three hundred sixty-five days, or, if a leap year, three hundred sixty-six days, of the date of issue or the certificate is deemed void ~~and, if the registration certificate is deemed void, the department must be awarded award the certificate~~ to the next applicant on the waiting list, provided the next applicant currently meets all requirements under SDCL chapter 34-20G and this article 44:90, and is interested in receiving the certificate. If the department awards a registration certificate to an next applicant from the waiting list more than one year after the applicant submitted the initial application used to establish the waiting list more than one year ago, the applicant must submit a new application on a form prescribed by the department, and pay the current

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Commented [AM121]: Clarity - Suggestion just to break up this sentence, since it gets pretty long with the new content.

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Commented [JG122]: Clarity - This section is in the article cited.

Commented [AM123]: Clarity - Suggest some rewording of this sentence, because it starts out with the department awarding the certification and ends with "before the department issues the registration certificate."

Commented [AM124]: Clarity - Is this a new form, or should an existing one be cross referenced?

application fee set by § 44:90:03:17 before the department ~~issues~~ may issue the registration certificate. If the applicant is not able to provide documentation to prove compliance with ~~all regulatory requirements SDCL chapter 34-20G and this article~~, the applicant is no longer eligible, and the department ~~will~~ must award the registration certificate to the next succeeding applicant on the waitlist, subject to the qualifications stated in this section. ~~If the establishment granted a certificate pursuant to this section cannot become operational within one year, the establishment may submit to the department, at least two weeks prior to the expiration of the certificate, written documentation of the efforts made by the establishment to meet the deadline. The written documentation must include the action taken by the establishment to secure equipment and services necessary to become operational, and the reason why the establishment is unable to meet the deadline. Upon a finding by the department that, despite the establishment's documented timely efforts to secure all equipment and services necessary to become operational, the establishment is unable to become operational by the certificate expiration date, the department may grant the establishment an extension of time by which the establishment must become operational. The department may only grant an extension for up to an additional year from the date of expiration of the certificate based upon the amount of time reasonably necessary for the establishment to become operational. 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~~ department's decision as a final department action subject to the contested case procedures pursuant to SDCL chapter 1-26.

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Source: 48 SDR 40, effective October 5, 2021; 49 SDR 47, effective November 22, 2022; 50 SDR 62, effective November 27, 2023.

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

Law Implemented: SDCL 34-20G-56, 34-20G-72(2), ~~34-20G-72(4)(a)~~.

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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~~ Video surveillance system
- ~~-- Requirements.~~
- 44:90:04:09 Storage of ~~camera footage~~ video surveillance recordings -- Access by department and law enforcement.
- 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~~ and visitor log required for authorized visitors.

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Commented [AM125]: Clarity - See comments on suggested catchlines in the sections below.

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MEDICAL CANNABIS

44:90

- 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.

Commented [JG126]: Form - Use page breaks to maintain each new section at the top of the next page, despite any revisions that may be made to the prior section/index/content.

44:90:04:08, ~~Recording by security cameras — Access by department~~ Video surveillance

~~system -- Requirements.~~ The An establishment shall have a video surveillance system, ~~must meet~~

~~with~~ the following ~~minimum requirements~~ specifications:

- (1) Minimum resolution of ~~720~~ ~~seven hundred twenty~~ pixels;
- (2) Internet protocol (IP) compatibility supporting live viewing and viewing of stored
- footage by the department over a secure internet connection;
- (3) Minimum of ~~15~~ ~~fifteen~~ frames per second;
- (4) Clear and accurate display of time and date;

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Commented [AM127]: Clarity - Suggest updating this catchline to reflect the language used and to remove the access by department language that should be in the next section.

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Commented [JG128]: Clarity - The system is what is required, and specifications below may or may not be "minimums" as specifically written.

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(5) Cameras set to record ~~24, twenty-four~~ hours a day at all establishments, ~~except cameras placed at exterior doors used by patients to enter or exit the dispensary that must be set to record only outside of the dispensary's operating hours to ensure patient privacy~~; and

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(6) A backup power source allowing for recording and transmitting video for a minimum of two hours during a power failure.

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

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

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

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44:90:04:09. Storage of ~~camera footage, video surveillance recordings~~ -- Access by ~~department and law enforcement~~. An establishment shall maintain video surveillance recordings for a minimum of ~~90~~ sixty days, ~~or for a longer period as specified by the department; if there is a pending investigation; or pending criminal, civil, administrative, or other legal proceeding,~~ either:

(1) On a surveillance system storage device secured on the premises in a lockbox, cabinet, or closet and alarmed with motion and seismic sensors to protect from employee tampering or criminal theft; or

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

All video recordings are subject to inspection by any department employee or law enforcement officer and must be copied and provided to the department or law enforcement officer upon request.

An establishment shall maintain a list of all persons with access to video surveillance recordings and maintain written procedures for controlling access to recordings.

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

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

Law Implemented: SDCL 34-20G-64, 34-20G-72 ~~(5)(4)~~.

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Commented [JG129]: Clarity - Specify what the relationship of that proceeding is to the establishment. Must it be the establishment that is facing the complaint? Or is it any complaint associated with the establishment?

Commented [AM130]: Clarity/legality - SDCL 34-20G-69 says the department can inspect an establishment during business hours. Does that need to be specified here?

Commented [JG131R130]: Clarity - Recommend that it is done by citing to the statute, not by repeating what is already contained in statute. That way, if change is made to that statute, there is no need to revise this rule section.

Commented [AM132]: Clarity - "video recordings" is used in the previous paragraph. Suggest just making the terms consistent, whichever you use.

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44:90:04:10. Alarm system. A medical cannabis establishment shall maintain an alarm system:

Commented [AM133]: Clarity - The section above uses the short form "establishment." Recommend consistent terminology again, whichever you decide to use.

(1) With monitored sensors ~~on all~~ or other professionally installed intrusion-detection devices ~~upon prior approval approved by the department, which are professionally installed, and and~~ capable of detecting unauthorized entry through exterior doors, windows, fences, and gates;

Commented [JG134]: Clarity - Presumably the "monitored sensors" need to be professionally installed also? That is not clear given where this new content is proposed. Recommend instead that the phrasing be moved so that it is clearer that it applies to monitored sensors also.

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(2) Monitored by a security company capable of contacting the establishment and, if necessary, law enforcement;

(3) That has an audible alarm capable of being disabled remotely by the security company; and

(4) That alerts the security company during a power failure and operates for a minimum of four hours on backup power.

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

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

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Law Implemented: SDCL 34-20G-64, 34-20G-72 ~~(5)(4)~~.

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44:90:04:13. Controlled access -- Verification of identity. No medical cannabis establishment may share premises with or permit access directly from any residence or business unless permitted by § 44:90:04:04. This section may not be interpreted to prohibit access from a shared parking lot, walkway, concourse, or other area generally open to the public as part of a shopping center or business park.

A medical cannabis establishment shall verify the age and identity of any person entering the premises by requiring the person to present a valid photographic identification document issued by this state, another state, tribe, or the federal government. Unless permitted by SDCL 34-20G-65 or § 44:90:08:01, no person may enter the premises other than ~~agents of the establishment, contractors 18 years of age or older hired by the establishment, employees or agents of the department, law enforcement officers, or employees or agents of other local or state agencies with regulatory authority, including fire marshals, electrical inspectors, pesticide control staff, and environmental inspectors, for the purpose of exercising such regulatory authority.~~

(1) Agents of the establishment;

Commented [AM135]: Style/form - New content has to go after stricken material, so moved this to the end of the stricken paragraph. ARSD DM, pg. 6.

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(2) Contractors ~~18~~ eighteen years of age or older hired by the establishment;

(3) Employees or agents of the department in their official capacity;

(4) Law enforcement officers in their official capacity;

(5) Employees or agents of other local or state agencies with regulatory authority, including fire marshals, electrical inspectors, pesticide control staff, and environmental inspectors, for the purpose of exercising ~~such that~~ regulatory authority;

(6) Members of the Legislature acting in an official capacity;

(7) Physicians licensed under SDCL chapter 36-4;

(8) Physician assistants licensed under SDCL chapter 36-4A;

(9) Advanced practice registered nurses licensed under SDCL chapter 36-9A; or

(10) Other individuals ~~that who~~ have received prior approval by the department.

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

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

Law Implemented: SDCL 34-20G-65, 34-20G-69, 34-20G-72~~(5)(4)~~.

Commented [AM136]: Clarity - We try to avoid using examples in the text of a rule, as it can draw concern as to why some are included and others are not. If examples are necessary to include, an "Example" note can also be used. See, ARSD DM, pgs. 12 and 21. Alternatively, you could rephrase to something like "Fire marshals, electrical inspectors, pesticide control staff, environmental inspectors, or other employees or agents of local or state agencies..."

Commented [JG137]: Style - ARSD DM, pg. 24.

Commented [AM138]: Clarity - This seems a little fuzzy—who would determine that a legislator is acting in his or her official capacity? Can a legislator simply walk in and state he or she is there in an official capacity? Perhaps it would be better to either remove this phrase or further explain--e.g., accompanied by department staff or something. Because, per SDCL 34-20G-65, wouldn't they already be allowed if accompanied by an establishment agent?

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44:90:04:14. Visitor badges to be worn by contractors performing work at a medical cannabis establishment and visitor log required for authorized visitors. A medical cannabis establishment shall issue a visitor badge to any ~~temporary contractor of the establishment whose~~ scope of work will not involve the handling of cannabis, cannabis plants or cannabis products, ~~including a carpenter, electrician, plumber, engineer, or alarm technician~~ visitor permitted to enter

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the premises under § 44:90:04:13 and who is not an agent of the establishment or an employee of the department ~~that has who possesses~~ an official state badge. ~~Such contractors~~ The visitor shall work or remain under the direct supervision of a medical cannabis establishment agent whenever ~~working present~~ in an area in which cannabis, cannabis plants, or cannabis products are present. ~~With the exception of~~ Except for an agent of the department, no visitor ~~shall may~~ be allowed to handle cannabis, cannabis plants, or cannabis products at any time. The establishment shall maintain a visitor log for each visitor, ~~including specifying the visitor's~~ visitor's name, date and time of entry and exit, badge number, reason for the visit, and the name of the establishment agent supervising the visitor.

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

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

Law Implemented: SDCL 34-20G-65, 34-20G-72 ~~(5)(4)~~.

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Commented [AM139]: Clarity - "employee" is used above with the department. Recommend consistent usage.

Commented [AM140]: Style/form - See ARSD DM, pg. 15.

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44:90:04:15. Operation of agricultural, industrial, or other heavy equipment – Training

requirements. Establishment agents, except those employed solely by a dispensary, shall:

(1) Receive thorough training in the safe operation of any heavy agricultural equipment, industrial equipment, ~~such as extraction and packaging equipment,~~ and other heavy equipment, ~~such as forklifts,~~ before operating that equipment; and

(2) Complete OSHA-approved certification courses prior to using any equipment.

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

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

Law Implemented: SDCL 34-20G-63, 34-20G-72 ~~(5)(4).~~

Commented [AM141]: Clarity - It is interesting that dispensary employees would be exempt from this, since both of the following subdivisions are requirements that must take place "before operating that equipment" and "prior to using any equipment." So, even if a dispensary employee had reason to use heavy equipment for whatever reason, they do not have to be trained?

Commented [JG142R141]: Clarity - This would only work if a dispensary would never need, or never task, its employees to operate heavy equipment.

Commented [AM143]: Clarity - This is a subjective term. It is preferable to either define what "thorough" means or strike. ARSD DM, pg. 13.

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Commented [AM144]: Style/form - It is preferable to spell out the full term of the agency.

Commented [AM145]: Clarity - Is this specific to the heavy equipment referenced above? Or what type of equipment?

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Commented [JG146]: Legality - SDCL 34-20G-72 provides General Authority, generally, as it is a list of subject areas in which rulemaking authority is authorized. Law Implemented is meant to capture intelligible standards in statute that guide the rulemaking in that subject area. The agency should consider bolstering statutory authority to inform the exercise of this authority, akin to an SDCL 34-20G-64, but for employee or client/patient safety (instead of security). Closest thing I can find to intelligible standards are in SDCL 34-20G-63, which speak to "procedures for the oversight of the medical cannabis establishment." Presumably these requirements must be documented as completed.

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44:90:04:16. Record-keeping -- Use of inventory tracking system -- Training requirements. ~~Prior to performing duties onsite or transporting cannabis, a medical cannabis establishment agent shall receive at minimum two hours of training in record keeping. The agent's training must be documented in the establishment's records.~~

~~Any establishment agent who will enter data into the inventory tracking system required by the department shall additionally receive at minimum two hours of hands on training. At least one establishment agent for each establishment shall receive at minimum four hours of training to act as an administrator of the inventory tracking system. Each establishment shall demonstrate that at least one employee currently employed by the establishment has completed a minimum of four hours of training in on the use of the inventory tracking system.~~

Commented [AM147]: Clarity - What does demonstrate mean in this context? Does the establishment have to keep a record of the training? The catchline still refers to record-keeping.

Commented [AM148]: Clarity - If one is an employee, they are currently employed, right? This seems a bit redundant.

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

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

Law Implemented: SDCL 34-20G-63, 34-20G-72~~(5)(4)~~.

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44:90:04:19. Transport manifests -- Form and content. A transport manifest is required for all authorized transfers of any amount of cannabis or cannabis products, except retail sales at a dispensary. The transport manifest must contain:

(1) The name, address, phone number, and license number of the medical cannabis establishment transporting the cannabis or cannabis products;

(2) The name, address, phone number, and license number of the establishment receiving the items;

~~(3) The phone number and web address of the department's secure verification system;~~

~~(4)~~ (3) Description and quantities, either by weight or unit, of all items, including samples, contained in each transport;

~~(5)~~ (4) Date of transport and approximate time of departure and arrival;

~~(6)~~ (5) Vehicle make, model, and license plate number;

~~(7)~~ (6) The name and signature of the driver and any other agent accompanying the transport;

and

~~(8)~~ (7) The name and signature of the person accepting the transport, upon delivery.

Commented [AM149]: Clarity - "registration certificate"?

Commented [AM150]: Clarity - Same?

Commented [AM151]: Clarity - "cannabis or cannabis products"?

Commented [AM152]: Style/form - this (3) can be retained and then there is no need to insert a new (3) below.

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Commented [AM153]: Clarity - "cannabis or cannabis products"?

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MEDICAL CANNABIS

44:90

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

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

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Law Implemented: SDCL 34-20G-63.

DRAFT

44:90:04:20. Separate transport manifest required. A separate transport manifest ~~shall~~ must be prepared for each medical cannabis establishment that ~~will~~ is to receive cannabis or cannabis products. The vehicle transporting the cannabis or cannabis products must carry ~~three copies~~ at least one physical copy of each transport manifest:

- (1) ~~One for the recipient;~~
- (2) ~~One to be returned to the originating establishment for the purposes of record keeping;~~
- and
- (3) ~~One to be provided at the request of law enforcement or an agent of the department, if the vehicle is involved in a traffic stop or collision.~~

~~The~~ If the transporting vehicle is involved in a traffic stop, collision, or is otherwise engaged by law enforcement, the driver or other agent accompanying the transport must provide a physical copy of the transport manifest ~~must be provided upon request to law enforcement during transport, including if the vehicle is involved in a traffic stop or collision, upon request.~~

~~Either~~ The driver or other agent accompanying the transport must provide a digital or physical copy of the transport manifest ~~must be provided~~ to the department upon request and to the receiving establishment. The originating establishment must also retain either a digital or physical copy of the transport manifest. The transport manifest must be signed by both the receiving and originating establishment.

Commented [AM154]: Clarity - Does this manifest have to meet the same requirements as the one above? If so, a cross reference might be helpful.

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Commented [AM155]: Clarity - Who has the duty to prepare this manifest? Active voice would be preferable.

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Commented [AM156]: Clarity - A few suggestions to clarify these requirements.

Commented [AM157]: Clarity - for how long?

Commented [AM158]: Clarity - "an agent of"?

Commented [AM159]: Clarity - Is this different than the new subdivisions (6) and (7) in the rule above? If so, it seems like a requirement that should be included in the form and contents requirements instead of this rule.

Any cannabis or cannabis products, including samples, that are refused by the intended recipient must be noted on the transport manifest and noted in the originating ~~establishment's~~ establishment's inventory records after the ~~items, cannabis or cannabis products~~ are returned.

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A transport manifest may not be altered from the originating establishment except as provided for in this section.

The transport manifest does not take the place of a chain-of-custody form that may be required of the establishment.

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

General Authority: SDCL 34-20G-72 ~~(S)(9)(i)(4)~~.

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Law Implemented: SDCL 34-20G-63, 34-20G-72 ~~(S)(4)~~.

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Commented [JG160]: Legality - It seems this same operating document requirement—relating to the oversight of medical cannabis establishments—would apply to having separate manifests as well.

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44:90:04:26. Fences and gates. Any medical cannabis establishment cultivating, processing, or storing cannabis or cannabis waste in an outdoor area or in a greenhouse or other structure that does not meet all security requirements for buildings under this article, shall secure the area or structure 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; and

(4) Meet all requirements of §§ 44:90:04:05, 44:90:04:07, and 44:90:04:10.

Source: 52 SDR 10, effective August 4, 2025.

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

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

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

Upon successful registration, a cannabis testing facility must:

(1) 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. § 1301.13 (June 28, 2021).~~

Commented [AM161]: Style/form/clarity - Please be sure to update the table of contents with this change.

Commented [JG162R161]: Form - That index should be inserted right before this section.

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Source: 48 SDR 40, effective October 5, 2021; 50 SDR 62, effective November 27, 2023; 52 SDR 10, effective August 4, 2025.

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

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

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

Commented [JG163]: Style - Need to place in ascending numerical order. ARSD DM, pg. 10.

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Commented [JG164]: Style - Please reword as follows, changing the italicized language to bolded language (per ARSD DM, pg. 20 and SDCL 1-26-6.6):

Reference: ISO/IEC 17025:2017: General Requirements for the Competence of Testing and Calibration Laboratories, 2018, International Organization for Standardization & International Electrotechnical Commission. Copies may be obtained at <https://www.iso.org/standard/66912.html>. Cost: \$138.

This revision needs to be made in multiple sections, I believe.

Commented [AM165]: Style/form - Same here with the underscore.

44:90:06:04. Field audits. ~~Field audits must be conducted. The cannabis testing facility's quality assurance staff shall conduct field audits at least quarterly annually by the cannabis testing facility's quality assurance staff annually~~ to verify that samples are being collected in accordance with the ~~cannabis testing facility's facility's~~ standard operating procedures as follows:

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

Commented [AM166]: Clarity - If the audits aren't being done quarterly anymore, should this be struck?

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

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

(4) Recording any deficiencies identified;

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

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(6) Instituting corrective action.

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

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

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Law Implemented: SDCL 34-20G-63, 34-20G-72 ~~(5)(4).~~

Commented [JG167]: Legality - As with some of the sections above, I think this section on establishment oversight and operating documents can be stretched to capture what this rule is trying to achieve.

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44:90:06:05. Chain of custody protocols. The chain of custody protocols developed by a cannabis testing facility must be approved by the department and must address:

- (1) Recording the possession of samples from the time of sampling through destruction;
- (2) Retaining, for not less than ~~90~~ ninety days, any residual samples in ~~the container in which the sample was submitted~~ the containers that were used to separate the original samples for testing;
- (3) Handling procedures during collection, transport, and testing to avoid loss, damage, diversion, contamination, or misidentification of samples; and
- (4) ~~The use of a~~ Using the chain of custody form ~~that documents to document~~ the collection, transport, receipt, testing, and destruction of samples.

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

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

Law Implemented: SDCL 34-20G-63, 34-20G-72 ~~(5)(4)~~.

Commented [JG168]: Clarity - When must they be approved? Before operation of the facility?

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Commented [JG169]: Style - Parallel construction with the other subdivisions.

Commented [JG170]: Clarity - Presumably the nature of the use is to document these things. One does not use it otherwise?

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44:90:06:07. Reporting of test results. The cannabis testing facility shall provide the results of any analytical test of cannabis or cannabis products ~~shall be provided~~ to the ~~cannabis~~ cultivation facility or cannabis product manufacturing facility in the form of a certificate of analysis.

The cannabis testing facility shall update, each day by midnight, the inventory tracking system with:

(1) All samples collected; ~~and~~

(2) The results of all voluntary and mandatory tests performed, including as applicable with a quantitative value and whether the sample has passed or failed the test, as applicable; and

(3) Any samples that have been destroyed.

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

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

Law Implemented: SDCL 34-20G-63, 34-20G-72 ~~(5)(4).~~

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Commented [JG171]: Legality - Does SDCL 34-20G-65.1 inform, in any way, the substance of this section? If so, add it here.

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

(1) Manufacture a product in the distinct shape of a human, animal, creature, vehicle, fruit, cartoon character, toy, emoji, or other artwork likely or intended to appeal to anyone under 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, which has more than ~~five~~ one hundred milligrams of tetrahydrocannabinol (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 five hundred milligrams of total THC;

(5) Manufacture any cannabis product except:

(a) Vaporizer products;

Commented [AM172]: Clarity - "cannabis"?

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- (b) Concentrated cannabis;
 - (c) Cannabis tinctures, oils, or capsules containing oil;
 - (d) Cannabis beverages;
 - (e) Other edible cannabis products; or
 - (f) Topical cannabis products;
- (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~~ failed any test required by the department ~~notwithstanding the right to remediate, except cannabis or concentrated cannabis that may be remediated~~ pursuant to this article 44:90;
- (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; 50 SDR 62, effective November 27, 2023.

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

Law Implemented: SDCL 34-20G-66, 34-20G-72(4).

Commented [JG173]: Legality - Here again, one needs to stretch to find intelligible standards to guide rulemaking in this area. Here, it is the fact that SDCL 34-20G-66 speaks to the ability to manufacture concentrates, extractions, and products, which informs what the Department must allow the manufacturers to produce.

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44:90:08:03. Preventing unauthorized sales -- Training requirements. Before interacting with any cardholder, any employee of a dispensary, ~~shall~~ must be trained to:

- (1) Determine the authenticity of registry identification cards;
- (2) Verify that the person presenting a registry identification card is the authorized cardholder with a valid photographic identification document;
- (3) Use the verification system by phone, point-of-sale software, and mobile application; and
- (4) Track the amount of cannabis dispensed for a ~~patient's~~ patient's use and consolidate the amounts in sales to the patient and the ~~patient's~~ patient's designated caregiver; ~~and~~

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Commented [JG174]: Clarity - Consolidate the amounts where?

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—— (5) Verify that the dispensary has been designated to make sales to the patient or the patient's designated caregiver.

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

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

Law Implemented: SDCL 34-20G-70, 34-20G-71, 34-20G-72~~(5)(4)~~.

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44:90:09:02. Absence of mandatory testing. The absence of mandatory testing may not be interpreted to allow:

- (1) The use of prohibited solvents or pesticides;
- (2) Agricultural or manufacturing practices that promote the growth of mold, yeast, or bacteria; ~~or~~
- (3) Soil or growing media containing unsafe levels of lead, arsenic, cadmium, or mercury; or
- (4) The decontamination or remediation of cannabis prior to initial testing.

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

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

Law Implemented: SDCL 34-20G-65.1, 34-20G-72 ~~(S)(4)(d)(e)~~.

Commented [JG175]: Legality/Clarity - How can there be an “absence of mandatory testing” when administrative rule requires an establishment to “test every batch”? So what does this absence mean? That a batch got through without testing? It’s just not often that I see law or rule requiring something, and then another law or rule assuming that the first law or rule might not be followed....

Commented [JG176]: Clarity - If these are already prohibited in other rule, why would this be a reasonable interpretation without this prohibition?

Commented [JG177]: Clarity - Is this a reference to the same level of heavy metals that result in the cannabis being unusable, per 44:90:05:10?

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Commented [JG178]: Legality - Yet another attempt to stretch a statute to provide some kind of “intelligible standards” for a rule.

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44:90:09:06. Creation of batches. A cultivation facility or cannabis product manufacturing facility shall:

(1) Divide cannabis into homogenous batches not to exceed 50, fifty pounds, and as directed by a cannabis testing facility;

(2) Divide cannabis products into homogenous batches as directed by a cannabis testing facility, and in accordance with the following size limitations:

(a) Cannabis product batches containing concentrated cannabis may not exceed 50 fifty pounds (22.7 kilograms); and

(b) Cannabis product batches containing cannabis extract or products that are infused with cannabis or cannabis extract may not exceed 70,000 seventy thousand unpackaged retail servings;

Commented [JG179]: Clarity - The definition of “batch” in 44:90:01:01 already contains the homogeneity requirement, does it not?

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(3) Assign a unique batch identifier to the cannabis or cannabis products; and

(4) When cannabis is harvested or trimmed:

(a) ~~Cannabis flower shall be assigned~~ Assign cannabis flower to a batch containing a single strain from a single harvest date; and

(b) ~~Cannabis trim may be assigned~~ Assign cannabis trim to a batch containing single ~~or~~ multiple strains and from a single trimming date ~~or~~ multiple trimming dates.

A batch may be divided into multiple containers. If a cannabis or cannabis product yield is in excess of the batch size limitations, the yield must be divided into separate batches in accordance with this section in order to be sampled. With the exception of trim, all cannabis and cannabis products in each batch must be uniform throughout.

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

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

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

Commented [JG180]: Clarity - Doesn't the harvest come before dividing cannabis into batches? Shouldn't this be subdivision (1), and all other subdivisions moved down? Indeed, couldn't the current subdivision (1) essentially become subsection (c) under this subdivision?

Commented [AM181]: Clarity - The following suggestions are so that the language better aligns with the lead-in to the section.

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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 may not alter the cannabis or cannabis product batch after sampling has occurred.

Commented [JG182]: Clarity - This is a pretty convoluted sentence. Any way to clear up?

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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

Commented [JG183]: Form - Why not make this heading span the entire table?

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	
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Commented [JG184]: Form - Same.

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

Commented [JG185]: Same.

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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)(4)~~(4).

Law Implemented: SDCL 34-20G-65.1, 34-20G-72~~(5)~~(4).

Commented [AM186]: Clarity - Think this should be deleted?

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44:90:09:11. Remediation of nonusable batches. A cultivation facility or cannabis product manufacturing facility may elect to remediate a batch of cannabis or cannabis products that failed testing, provided that:

(1) Cannabis and cannabis products that fail tests for metals or pesticides may not be remediated;

(2) Cannabis and cannabis products that fail tests for prohibited solvents may not be remediated;

(3) ~~An~~ The establishment ~~shall outline~~ outlines its processes for remediating cannabis and cannabis products in its operating procedures;

(4) ~~An~~ The establishment ~~shall obtain~~ obtains department permission before remediating a batch of cannabis or cannabis products; ~~and~~

(5) Any cannabis or cannabis products must be retested and must pass all required tests after remediation; ~~and~~

(6) Cannabis and cannabis products ~~shall may~~ not be subjected to any type of decontamination or pretreatment prior to initial testing under § 44:90:09:01 or research and development testing.

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

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

Law Implemented: SDCL 34-20G-63, 34-20G-72 ~~(5)(4)~~.

Commented [AM187]: Clarity - Minor suggestions so that this language makes better sense with the lead-in.

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Commented [AM188]: Clarity - I think this subdivision would fit better after this listing, since it is technically a requirement after remediation, right?

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Commented [JG189]: Legality - Reference to operating procedures.

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44:90:10:01.01. Packaging for transfer or sale -- General requirements. All cannabis or cannabis products ~~shall~~ must be packaged for transfer or sale in containers that:

- (1) Are fully enclosable;
- (2) Are tamper-proof;
- (3) Are resealable;
- (4) Protect the packaged item from contamination;
- (5) Do not impart any toxic or deleterious substance to the packaged item; and
- (6) Except for the bulk sale of flower or transfer thereof, are ~~packaged in a~~ child-resistant

~~container that is~~ and ready for sale to the patient or designated caregiver.

Shipping containers of flower are limited to ~~ten~~ twenty-five pounds or less.

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

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

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

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Commented [AM190]: Clarity - Redundant with the lead-in.

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Commented [JG191]: Legality - Here, too, more intelligible standards would be ideal in statute.

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44:90:10:04. Packaging of cannabis tinctures and oils for retail sale. Cannabis tinctures or oils may not contain more than five thousand milligrams of tetrahydrocannabinol per container and must 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.

For the purposes of this ~~session section~~, ~~the term~~ "measuring device" means a dosing syringe, measuring cap, or dropper but does not mean hash marks on the bottle or package.

Source: 48 SDR 40, effective October 5, 2021; 52 SDR 10, effective August 4, 2025.

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

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

Commented [AM192]: Style/form - (we dropped the convention of using this since the definition is now in quote marks.)

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Commented [JG193]: Legality - Same.

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

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Commented [JG194]: Clarity - This does not align with the definition of immature plant, which envisions a 12-in. measurement from the base of the stalk to the furthest end of a stem or branch of the plant. If this is to effectively distinguish seedlings from the immature/mature plant, why not simply use the defined terms instead?

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 manicured 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; 50 SDR 62, effective November 27, 2023.

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

Law Implemented: SDCL 34-20G-63, 34-20G-72(4)(b)(j).

Cross Reference: Packaging, labeling, and advertising, chapter 44:90:10.

44:90:12:03. Corrective action plan. Upon the discovery of a suspected violation of this article or SDCL chapter 34-20G, the department may order the establishment to ~~comply with a corrective action plan that may include:~~ submit a corrective action plan for department review and approval. The establishment shall comply with the corrective action plan as approved by the department. The department may inspect, review records, or otherwise verify implementation of the approved corrective action plan. Failure to submit, implement, or comply with an approved corrective action plan may result in a monetary penalty or other enforcement action authorized under this article or SDCL chapter 34-20G. A corrective action plan may include:

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Commented [AM195]: Clarity - "fine"?

Commented [JG196R195]: See SDCL 34-20G-72(6)(a).

- (1) Modifying operating procedures to comply with this article and SDCL chapter 34-20G;
- (2) Halting the 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 shall provide notice of the order to destroy a batch of cannabis or cannabis product found to violate any provision of SDCL chapter 34-20G or this article to an establishment. The department does not need to demonstrate that the presence of contaminants or the unsafe condition of the cannabis or cannabis product was due to the action or inaction of an establishment. The order must identify the department's decision as a final department action subject to judicial review pursuant to SDCL chapter 1-26. An establishment must destroy the cannabis or cannabis product within ten business days of receipt of the order of destruction from the department.

Nothing in this section prohibits an establishment from initiating corrective action, including voluntarily recalling cannabis or cannabis products. Nothing in this section ~~prevents prohibits~~ the department from imposing a fine as provided in §§ 44:90:12:10 and 44:90:12:11 in addition to requiring an establishment to provide and comply with a corrective action plan.

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Source: 48 SDR 40, effective October 5, 2021; 52 SDR 10, effective August 4, 2025.

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

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

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44:90:12:11. Schedule of fines and corrective action. The department may assess the following fines or corrective action for violations described in § 44:90:12:10:

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Commented [AM197]: Clarity - This is needed since the corrective action plan language below is not a fine. Please update the table of contents as necessary.

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(1) Category 1 violation:

- (a) First offense, five thousand dollars;
- (b) Second offense, seven thousand dollars; and
- (c) Third or subsequent offense, ten thousand dollars;

(2) Category 2 violation:

- (a) First offense, three thousand dollars;
- (b) Second offense, four thousand dollars; and
- (c) Third or subsequent offense, five thousand dollars;

(3) Category 3 violation:

- (a) First offense, one thousand five hundred dollars; and
- (b) Second or subsequent offense, two thousand five hundred dollars;

(4) Category 4 violation, ~~one thousand dollars; and~~

- (a) First offense, Corrective Action Plan to be submitted and approved; and
- (b) Second or subsequent offense, one thousand dollars; and

Commented [AM198]: Style/form - This should be lowercase.

(5) Category 5 violation, ~~five hundred dollars;~~

- (a) First offense, Corrective Action Plan to be submitted and approved; and
- (b) Second or subsequent offense, five hundred dollars.

Commented [AM199]: Same.

The department may not use a violation that occurred more than five years before the date of the new violation when determining if the new violation is a second, third, or subsequent offense.

Source: 52 SDR 10, effective August 4, 2025.

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

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

DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

Rules Review Meeting Schedule for the 2026 Interim: The Interim Rules Review Committee will meet April 21, May 5, June 9, July 14, August 18, September 9, and October 14. Meeting notices will be posted on the LRC website and at the Capitol.

A. Committee: The following materials must be served on the Committee at least seven calendar days before the committee meeting via first-class mail, e-mail, or both:

1. Form 12 – Affidavit and all its referenced documents (for final rules, please three-hole punch and number by page the final rules):
 - a. Form 10 – Minutes of Public Hearing;
 - b. A record of written comments;
 - c. Form 14 – Regulatory Impact Analysis;
 - d. Form 5 – Fiscal Note;
 - e. For any rules that increase a fee, per SDCL 1-26-4.8, a completed Form 17;
 - f. For any rules prescribing new standards or requirements for building or remodeling a residential structure based on a model code, the Form 16 – Housing Cost Impact Statement; and
 - g. The final rules as adopted;
2. Form 15 – Rules Presentation Format;
3. First draft of proposed rules containing LRC recommendations for style, form, clarity, and legality; and
4. Letter from the LRC to the agency.

B. Legislative Research Council: The following materials must be submitted to the LRC at least seven calendar days before the committee meeting:

1. Final draft of adopted rules, double-spaced and containing only amended, repealed, or adopted rules, and showing overstrikes and underscores;
2. Original Form 11; and
3. Copies of:
 - a. Form 10 – Minutes of Public Hearing
 - b. A record of written comments;
 - c. Form 12 – Affidavit of Service;
 - d. Form 14 – Regulatory Impact Analysis;
 - e. Form 15 – Rules Presentation Format; and
 - f. Form 17 – Agency Financial Resources, if applicable.

C. Office of the Secretary of State: Following Committee hearing, each agency must complete and sign all documents before filing:

1. Form 13 – Certificate of rule completion;
2. Final draft of the adopted rules; and
3. Form 11 (per Secretary's request).

FORM 15

Rules Presentation Format

Department/Board/Commission Name _____

Please complete these questions to show that the SDCL 1-26 rule-making process is complete.

Use this format to organize your presentation to the Committee.

- Approval to proceed? Yes _____ No _____ Date _____
- Date of public hearing _____
- Date proposed rules and supporting documents submitted to the LRC and the Bureau of Finance and Management _____
- Date and name of newspapers in which the notice of public hearing was published:
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
- Summary of how, when, and number of interested persons, if any, were contacted.

- Page numbers in the minutes where the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action.

- For any rule implementing a bill from a preceding session, the number of the bill:

- Date final rules and supporting documents submitted to the LRC and the Committee
