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

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

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

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

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

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

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

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

~~(a) Cannabis that is the same strain, grown under the same conditions, and harvested during a specified period of time from a specified cultivation area within a cultivation facility, with the exception of trim; or~~

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

(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 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, any product eligible for repurposing under § 44:90:10:12:02 is not considered expired for purposes of this definition 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;

(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 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;

~~(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;

~~(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;

~~(36)~~(37) "Nationally recognized testing laboratory," an independent laboratory recognized by the Occupational Health and Safety Administration pursuant to 29 C.F.R. § 1910.7, (February 18, 2020);

~~(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;

~~(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;

~~(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;

~~(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.

44:90:02:07. Application to cultivate cannabis -- Patient designation of designated caregivers to cultivate cannabis. A patient, or the 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 be cultivated; and

(2) The fee 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 behalf.

Upon approval of the application, the department shall issue a ~~two-part~~ registry identification card authorizing cultivation to the 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 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.

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

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

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

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

If the change results in the addition or substitution of a designated caregiver, the qualifying patient shall submit a form pursuant to § 44:90:02:04.

If the change results in the removal of one or more designated caregivers, the 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).

Law Implemented: SDCL 34-20G-46.

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

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

If the change results in the removal of a designated caregiver to cultivate cannabis on the patient's behalf, the patient, or the 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.

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

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

Law Implemented: SDCL 34-20G-46.

44:90:02:12. Notice to no longer act as designated caregiver. A designated caregiver shall provide written notice to the patient or the 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 designated caregiver. The designated caregiver shall ~~return~~ immediately destroy the registry identification card associated with the patient immediately upon submitting such 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).

Law Implemented: SDCL 34-20G-46.

44:90:02:13. Death of qualifying patient. Upon giving notice of a patient's death pursuant to SDCL 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).

Law Implemented: SDCL 34-20G-46.

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).

44:90:02:17. Fees for registry identification cards.

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

(a) For a low-income qualifying patient, $20; and

(b) For all other applicants, $75.

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

(3) An additional $20 fee is required for the printing of a ~~two-part~~ registry identification card for patients designated to cultivate cannabis or designate a designated caregiver to cultivate cannabis.

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

All fees imposed under this section shall be nonrefundable.

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

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

Law Implemented: SDCL 34-20G-29, 34-20G-72(10).

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

(1) Is required every 12 months from date of issuance; and

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

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

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

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

44:90:03:05. Operating procedures -- Required contents -- All medical cannabis establishments. The operating procedures of any medical cannabis establishment must include:

(1) A management plan identifying the individuals who 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;

(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~~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 any requirements of this section that are not applicable to the establishment's operations that includes the rationale for why those requirements 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;

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

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

(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 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;

(c) If approved by the department, a description of how cannabis waste that has not been rendered unrecognizable or unfit for use may 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 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;

~~(b)~~(d) If the establishment chooses to compost the waste, a description of how the waste is to be 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

~~(c)~~(e) 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 a dispensary is not required to submit a wastewater plan unless the dispensary generates wastewater other than ordinary domestic wastewater as defined in chapter 74:53:01, 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 monitoring 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), 34-20G-72(4).

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 compliance with this article and SDCL chapter 34-20G, including:

(1) A policy signed by each owner 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 stating that there is 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 intends to offer and:

(a) Certification that the applicant will, within six months of licensing 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 for less than 18 months, an agreement to:

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

(ii) Comply with any department requests for confirmation testing at the cannabis testing facility's expense;

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

(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' confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results;

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

(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).

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

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

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;

(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 must be awarded to the next applicant on the waiting list, provided the next applicant currently meets all requirements under SDCL chapter 34-20G and article 44:90, and is interested in receiving the certificate. If the department awards a registration certificate to an applicant from the waiting list more than one year after the applicant submitted the initial application used to establish the waiting list, the applicant must submit a new application on a form prescribed by the department, and pay the current application fee set by § 44:90:03:17 before the department issues the registration certificate. If the

applicant is not able to provide documentation to prove compliance with all regulatory requirements, the applicant is no longer eligible, and the department will award the 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 decision as a final department action subject to the contested case procedures pursuant to SDCL chapter 1-26.

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

CHAPTER 44:90:04

ESTABLISHMENTS

Section

44:90:04:20 Separate transport manifest required.

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44:90:04:24 Health and safety standards for storage.

44:90:04:25 Scales.

44:90:04:26 Fences and gates.

44:90:04:08. Recording by security cameras -- Access by department. The video surveillance system must meet the following minimum requirements:

(1) Minimum resolution of 720 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 frames per second;

(4) Clear and accurate display of time and date;

(5) Cameras set to record 24 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

(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(5)(c).

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

44:90:04:09. Storage of camera footage. An establishment shall maintain surveillance recordings for a minimum of ~~90~~60 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).

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

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

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

(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)(c).

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

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;

(2) Contractors 18 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 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 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)(c).

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

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 the premises under § 44:90:04:13 who is not an agent of the establishment or an employee of the department that has 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 an agent of the department, no visitor shall be allowed to handle cannabis, cannabis plants, or cannabis products at any time. The establishment shall maintain a visitor log for each visitor, including the 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)(g).

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

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).

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

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 the inventory tracking system.

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

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

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

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 driver and any other agent accompanying the transport; and

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

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

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

Law Implemented: SDCL 34-20G-63.

44:90:04:20. Separate transport manifest required. A separate transport manifest shall be prepared for each medical cannabis establishment that will receive cannabis or cannabis products. The vehicle 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 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. Either a digital or physical copy of the transport manifest must be provided to the department upon request and 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.

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 inventory records after the items are returned.

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(5)(f)(j).

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

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).~~

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-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.

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

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

(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

(6) Instituting corrective action.

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

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

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

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 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 chain of custody form that documents 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)(k)(l).

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

44:90:06:07. Reporting of test results. 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 a quantitative value and whether the sample has passed or failed the test; 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).

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

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

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

(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 pursuant to 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-72(4).

44:90:08:03. Preventing unauthorized sales -- Training requirements. Before interacting with any cardholder, any employee of a dispensary shall 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;

(4) Track the amount of cannabis dispensed for a patient's use and consolidate the amounts in sales to the patient and the patient's designated caregiver~~; and~~

~~(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).

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

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(5)(d)(e).

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

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 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 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 unpackaged retail servings;

(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 to a batch containing a single strain from a single harvest date; and

(b) Cannabis trim may be assigned to a batch containing multiple strains and from 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)(d)(k)(l).

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

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

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

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

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

	Cannabis Products – Concentrated Cannabis

Batch Size Range (lbs)	Batch Size Range (kg)	Minimum Sample Amount (g)	Sample Increments Representing Total Minimum Sample Amount
0-1.00	0 - 0.453592	1.25	5
1.01-2.00	0.4581283 - 0.907185	2.00	8
2.01-5.00	0.9117207 - 2.26796	3.75	15
5.01-15.00	2.272498 - 6.80389	5.50	22
15.01-50.00	6.8084215 - 22.6796	8.25	33

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

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

5,000-10,000	22	5	3	2	2
10,000-50,000	33	7	4	2	2
50,000-70,000	43	9	5	3	3

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

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

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

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

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

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

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 establishment shall outline its processes for remediating cannabis and cannabis products in its operating procedures;

(4) An establishment shall obtain 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 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)(l).

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

44:90:10:01.01. Packaging for transfer or sale -- General requirements. All cannabis or cannabis products shall 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 bulk sale of flower or transfer thereof, are packaged in a child-resistant container that is 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)(j).

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

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).

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 stalk. Each cannabis plant must have an inventory tracking system plant tag ~~atached~~ attached once it is over twelve inches in height. The inventory record must be updated each time:

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

(2) A plant flowers for the first time;

(3) A plant is 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:

(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 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.

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).

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

(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;

(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.

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(6)(a), 34-20G-80.