

Industrial Hemp Considerations

Agricultural and Processing Issues

1. What will USDA requirements be for testing protocols?
2. Would South Dakota have additional requirements for testing?
3. What will USDA requirements be for sampling?
4. Would South Dakota have additional requirements for sampling?
5. Will USDA require any processing regulation?
6. Would South Dakota require processing regulation?
7. How much information will need to be submitted back to USDA?
8. How often will state plans need to be reviewed by USDA?
9. How will USDA ensure states have the 'resources and personnel' to run a hemp program?
10. What will initial program set-up cost?
11. What have other states' true set-up costs been?
12. How will initial program set-up be funded - license fees, general funds, other?
13. What states are running solvent programs?
14. How are those states' programs funded?
15. How long have other states provided general funds if licensing fees have not covered the program cost?
16. What is the ratio of personnel to program size (e.g. number of participants) adequate to run a hemp regulatory program?
17. How many additional inspectors will a hemp regulatory program need?
18. How many additional support resources (e.g., legal, fiscal, secretarial, law enforcement, testing, other) will a hemp regulatory program need?
19. What is the range of FTE devoted to hemp programs in other states?
20. How are those staff broken out (i.e. inspectors, lawyers, support staff, program managers, etc.)?
21. How have other states estimated program costs in order to set fees appropriately?
22. How have other states estimated program participants in order to estimate costs?
23. How will South Dakota estimate program costs and program participants in order to run a solvent program?
24. Who runs the background checks on program participants?
25. What additional resources will be needed to run those background checks?
26. Will only applicants need to submit to a background check?
27. Will any farm worker that comes into contact with the crop need a background check?
28. Will a truck driver/hauler need a background check?
29. How often will people need to submit to a background check?
30. If a renter is growing hemp on rented land will the landowner need a background check?
31. Will the state require that growers renting ground have the approval of landowners to participate?

32. What rights or obligations does a landowner have in the event that a renter is growing hemp on their land?
33. If a crop needs to be destroyed, what entity (landowner, renter, etc.) needs to be notified?
34. Will agricultural lab personnel running THC tests need have specialized training or be certified?
35. Will the agricultural lab be a state lab or private?
36. How will training or certification be paid for?
37. Will the lab running THC samples from SDDA need additional equipment?
38. Can a private agricultural lab in South Dakota run THC samples legally?
39. How much does agricultural lab equipment cost?
40. How will new agricultural lab equipment be paid for?
41. Will samples gathered by SDDA inspectors be able to be mailed to the lab?
42. If not, how will samples be delivered and chain of custody be maintained on field samples should the crop need to be destroyed?
43. What methods do other states use to destroy hemp that is above the THC threshold?
44. What process will growers have before the state destroys a crop?
45. Will samples that come back above the threshold need to be automatically retested?
46. Who pays for additional testing?
47. How soon will crops need to be destroyed when there is confirmation that a grower is in violation?
48. Who takes custody of the field or growth area once a test comes back above the threshold?
49. Does a landowner receive compensation for a destroyed crop?
50. Will crop insurance cover destruction of a crop?
51. Who will be eligible to grow hemp in South Dakota?
52. What kind of additional requirements (other than background check) will applicants need to meet?
53. What role, if any, will the SDDA play in seed variety selection?
54. How does a grower know that the seed variety purchased is a low-THC producing variety?
55. What protection or recourse does a producer have if they are sold seed that is a high-THC producing variety?
56. How are other states regulating the growth of different varieties?
57. If South Dakota were to also regulate varieties, do we have the expertise to do so?
58. If we do not have the expertise, how is that expertise developed and what is the cost?
59. Who is that resource?
60. How is it paid for?
61. What is the impact of saline soils on THC levels?
62. What is the impact of soil PH on THC levels
63. What is the impact of heat on THC levels?
64. What is the impact of moisture on THC levels?
65. What is the impact of humidity on THC levels?
66. What does regulation of hemp products once they leave the farm look like?

67. Should there be minimum number of acres per applicant?
68. Should there be maximum number of acres per applicant?
69. What are other states doing to manage acres?
70. How quickly would the agricultural lab be able to process SDDA samples?
71. What would happen if all samples come in at the same time, but samples must be analyzed in a timely manner?
72. Would it be acceptable to prioritize sampling and/or testing (e.g., not sample/test all fields)?
73. Should CBD processing be allowed in South Dakota?
74. What type of licensing will be required?
75. Who will do inspections, if anyone?
76. What do companies do with the pure THC that is a byproduct of CBD production?
77. Should some type of additional license be required in such a situation?
78. Who takes custody of the THC processed out of CBD?
79. How is it properly destroyed?
80. What is the timeline for destroying the THC?
81. What does chain of custody look like?
82. Are there permits required for possessing THC as a byproduct of CBD production?
83. How do you ensure that the state takes possession of all the THC a facility has?
84. Should companies have reporting requirements so the state knows the type of processing happening and the amount of CBD and THC produced?
85. What would those requirements look like and who administers them?
86. What kind of expertise will state employees enforcing these regulations need to have?
87. Is there training available for employees?
88. How is all of this THC regulation and destruction paid for?
89. What are other states doing with THC byproduct?
90. Would we allow only certain types of CBD processing?
91. If so, how do we decide what's ok and what's not?
92. Would we prohibit growth and processing in residential areas/areas zoned residential?
93. How would that be enforced?
94. What entity would be responsible for checking addresses against zoning areas?
95. How would residential restrictions work in areas of the state without zoning?
96. How is enforcement of residential processing restrictions paid for?
97. Will SDDA provide timely information to all law enforcement in the state on growing and processing locations?
98. If so, how will that information be provided?
99. How are other states providing information to law enforcement?
100. What kind of education or training would law enforcement need on hemp regulations?
101. How will that be funded?
102. What is the right entity to conduct law enforcement training?
103. What kind of documentation do haulers/transporters need to have with them?
104. How do we ensure documentation is not forged?
105. Will processors need to apply to the SDDA for a license?

106. Will processors be inspected?
107. Which agency, if any, would inspect processors?
108. What regulations would processors have to follow, other than hemp-specific ones?
109. For producers growing grain hemp for human consumption, what other regulations do they need to meet?
110. Who enforces those additional regulations?
111. Would there be impacts to other regulatory programs based on hemp?
112. How are those additional costs paid for?
113. How will tribes communicate with law enforcement on movement of hemp, should tribal plans be approved?
114. What should be done with the meal byproduct of both CBD processing and hemp oil processing, as it is not an approved feed?
115. Who provides advice/instruction to individuals on how to properly dispose of meal byproduct?
116. How is that resource paid for?
117. Is there a risk the meal contains CBD and/or THC?
118. If so, is testing needed on the meal before it leaves a processing facility?
119. Who conducts those tests?
120. How are they paid for?
121. If dairy cattle consume hemp or hemp byproducts, does the milk need to be dumped due to contamination?
122. If beef cattle, sheep, goats, etc. consume hemp or hemp byproducts, is there a quarantine period before they could go to slaughter?
123. If so, who is ensuring that happens?
124. What resources would that entity need to make sure that happens?
125. If livestock consumes hemp and there is a loss of product (dumped milk or slaughter delays), who, if anyone, is liable for the livestock producers' lost revenue?
126. What is the impact from wildlife consuming hemp?
127. Would a hemp field that is impacted by wildlife (e.g., deer) be eligible for animal depredation money?
128. Would we restrict growth of hemp solely to open-air operations?
129. What kind of restrictions have other states put in place?
130. How do restrictions on growth change the economics of planting hemp, such as input costs?
131. Have growers in other states been able to access credit?
132. Has growing hemp impacted growers' access to credit for other parts of their operation?
133. What policies have bankers, Farm Credit, etc. put out on lending to hemp growers and/or processors?
134. Have growers had issues in other states with purchasing seeds or plants from a banking perspective?
135. What kind of impact has the growth of hemp had on other states' pesticide regulatory programs?

136. How would increased costs to South Dakota's pesticide regulatory program due to additional hemp-related activities be covered?
137. What third party auditors exist to do THC testing and verifications for labeling of final products?
138. Are there any criteria to judge credibility among auditors?
139. How many labs in the state have the capability to do THC testing if producers and/or processors wanted to do their own testing?
140. Are there standards for running THC tests?
141. If yes, who has developed those?
142. If yes, are those standards acceptable for South Dakota?
143. If no, what are other states doing? Are they establishing their own standards?
144. If so, what do those look like?
145. How many times per year will fields and processing facilities need to be inspected?
146. How long will it take to properly inspect a field and a processing facility?
147. What sort of specialties will be needed by inspectors?
148. What sort of training would be needed?
149. How many inspectors will be needed per field?
150. How many inspectors will be needed per processing facility?
151. Will inspectors need to partner with law enforcement to conduct inspections?
152. Will there be a limit on the number of growers and processing facilities?
153. Should fees will be assessed to the growers and processing facilities through licensure, renewal, and inspection? Per product produced?
154. How much would the fees be? How will this be determined?
155. What assumptions should be used when setting fees?
156. How often would the fees need to be reevaluated and changed?
157. Will there be any other revenue streams besides fees?
158. Will hemp crops be taxed differently?
159. How will the inspection and licensure information be stored?
160. Will it require the development of a new database?
161. Will all agencies involved use the same database or will a different database be developed for each depending on use and need?
162. What type of operational costs would be involved?

Laboratory Testing

1. Will hemp-derived CBD products be routinely tested by the State to verify they have less than 0.3% THC?
2. What laboratories will perform testing on hemp and hemp-derived products?
3. Will private laboratories be allowed to conduct testing?
4. If private laboratories conduct testing, who will regulate these laboratories that perform testing on hemp and hemp-derived products?
5. Will we require certification or accreditation for laboratories to perform testing on hemp and/or hemp-derived products?
6. How are hemp and hemp-derived products submitted for laboratory testing?
7. Will there be a sampling protocol for pre-harvest THC testing?

8. What will the sampling protocol be?
9. What testing is performed on hemp and hemp-derived products?
10. What testing is performed specifically on those products intended for human use or consumption?
11. Will testing of hemp-derived products not intended for human use or consumption differ from that intended for human use?
12. If a distinction is made in the testing of hemp-derived products for human use, how do we ensure the distinction is not abused by sellers claiming a product is not for human use?
13. Will the State perform quantitative THC testing to ensure hemp and hemp-derived products comply with state and federal laws?
14. If hemp or a hemp-derived product is found to possess more than 0.3% THC, is testing repeated, or is independent confirmation testing performed?
15. Will we require hemp and/or hemp-derived products to be tested for heavy metals?
16. Will we require hemp and/or hemp-derived products to be tested for infectious disease agents such as pathogenic mold and bacteria?
17. What instrument(s) and method(s) will be used to perform testing on hemp and hemp-derived products?
18. Who receives test results, and how are those results communicated?
19. Will we have labeling requirements for hemp and hemp-derived products intended for human use or consumption?
20. Will we have a reporting process for adverse events attributed to the use of hemp or hemp-derived products?
21. How many additional lab technicians would be needed?
22. How will the additional lab technician positions be funded?
23. If with fees, what fees will be charged?
24. Will the fees be charged to another state agency or will they be part of the inspection fees?
25. What will the process be for determining the amount for the fees?
26. How often will the fees be reassessed and changed?
27. Will the fees fund all of the additional services needed in DOH?
28. What additional drug locker storage is needed?
29. What have other states done with drug locker storage?
30. How will the amount needed for drug locker space be calculated?
31. What is extraction and gas chromatography equipment?

Pharmacy / Pharmacology

1. Should the State act to regulate CBD or hemp products in advance of FDA regulations?
2. How will the State sunset rules and/or statutes if the FDA implements widespread regulations?
3. How will the State resolve discrepancies between state and federal laws?
4. Will the State be given wide rule-making authority to have some flexibility to adapt to this ever-changing market?

5. How broad or narrow does the State's rule-making authority need to be to ensure effective regulation?
6. How will the State fund the enforcement, monitoring, drafting of rules, updating regulations, software and hardware needs, staffing, registering, and other miscellaneous expenses relating to hemp, CBD, and THC ingredients in medications and food products?
7. What infection control quality control measures and testing will be put in place for hemp-based products?
8. What happens if hemp or hemp-based products are found to contain salmonella, other infectious agents, adulterants, misbranding, or other poor quality control?
9. Which entity is charged with responsibility for that testing and follow-up?
10. Who will be responsible for updating the definition of marijuana and stratifying all derivatives?
11. Will the State determine specific registration requirements for growers, manufacturers, distributors, transporters, patients, prescribers, and waste haulers?
12. Will the State determine specific qualifications for growers, manufacturers, distributors, transporters, patients, prescribers, and waste haulers?
13. Who maintains and continually updates regulations as new products become available, and/or potentially abused?
14. How will the State assess the citizens of SD for determining the ongoing appropriate usage of hemp/THC/CBD or combinations of products?
15. What are the penalties for selling, distributing, or possessing the various products if they are found to be out of compliance?
16. How do we measure and determine the impact to public health of using hemp and hemp-based products?
17. How do we fund the appropriate registration and tracking of sales of hemp-based products?
18. How do we regulate the sale of over-the-counter drugs versus approval as a legend drug, versus a legend scheduled drug?
19. Regarding the controlled substances schedules, how do we determine the scheduling language to separate CBD, CBD with THC, when it is in its natural state, or when a product is in its altered state?
20. How do we distinguish between a hemp-based product obtained from a prescription versus a similar illicit product?
21. Will we distinguish between Cannabis Indica and Cannabis Sativa, and the products thereof?
22. How will we distinguish them?
23. What authority will we use to mirror our scheduling of these substances?
24. Will we allow pharmacies to dispense CBD oil?
25. If so, will the products need to be FDA approved?
26. Will we allow prescriptions of hemp-based products that are not recognized at a federal level?
27. Will we allow seeds or hemp derivatives from Canada or another foreign country to be used by the citizens of SD?
28. Will we allow hemp-based products to be sold in nutraceutical products?

29. What products will be authorized or prohibited for use in the nursing home, assisted living, and hospital settings?
30. Will we regulate cannabidiol medications which are prescribed by a physician practicing at a university-affiliated hospital or clinic?

Controlled Substances Laws

1. Will both definitions of marijuana (SDCL 34-20B and SDCL 22-42) be amended to match?
2. If the definition of marijuana is amended to match in both the controlled substances and criminal code, what language will be used?
3. How will changing the definition of marijuana affect prosecutions of actual drug users and dealers?
4. How does industrial hemp legislation affect our possession by ingestion statute?
5. How does the federal government's statutory language defining marijuana fit into our controlled substances and criminal code?
6. Will dry weight be defined such as amount of allowed moisture in a percentage? Or will there be a different procedure used to determine percentages of different substances in a sample?
7. Will the definition of hash and hash oil be adjusted in SDCL 34-20B to further clarify its distinction from other hemp-based products? If so, will it use the term "dry weight"?
8. Will the definition of THC be adjusted in SDCL 34-20B? If so, will it use the term "dry weight"?
9. Will 0.3% by dry weight be defined as total THC or just THC (not to include THC acid)? Will it depend on whether it's a product or a plant?
10. Will seeds be only available through select companies?
11. How will those companies be selected?
12. Will a hemp grower have to show a license or other credential to purchase seeds?
13. How long will plants be allowed to be stored?

Law Enforcement

1. How will law enforcement deal with testing of CBD?
2. Is CBD testing paid for by the State, local jurisdictions, or other mechanism?
3. Where does the money come from to pay for the testing?
4. Can individuals be detained if law enforcement seizes CBD for testing?
5. If so, for how long?
6. If law enforcement seizes CBD for testing and it tests at THC levels exceeding limits, who pays for extradition of individuals back to our state when charges arise but the individual was released before testing?
7. Is it possible to be impaired through use of CBD?
8. If so, what are the ramifications of driving while impaired under CBD and how is this charged?
9. How will hemp legalization affect the flow of illegal marijuana into our communities?

10. How does law enforcement decide whether an individual is growing hemp for fiber purposes or an illegal marijuana THC plant operation?
11. How will law enforcement identify legal hemp from marijuana?
12. If complaints are filed on the legitimacy of hemp operations, who investigates those complaints at the onset?
13. If they are determined to be credible complaints, who pays for the personnel and operational costs to conduct further investigation?
14. What impact does investigating hemp-related complaints or issues have on other investigations we prioritize (e.g., meth)?
15. What constitutes reasonable suspicion and probable cause if a law enforcement officer sees a substance 1) outside an authorized field,; 2) that looks like marijuana; but 3) the possessor says is hemp?
16. If the processor or transporter has paperwork, how is it determined to be legitimate?
17. Will our police service dogs still be able to be relied upon during a sniff of a vehicle if hemp or CBD products are now legal?
18. If law enforcement needs to replace our police service dogs that indicate to hemp, who will pay for that?
19. Who will pay for training of the dog handler, in addition?
20. Will South Dakota pay for experimental THC field tests to determine levels of THC?
21. Who will pay for the testing of THC levels following a drug arrest?
22. Do we have the manpower and resources to test for THC levels following a drug arrest?
23. Are field tests sufficient to establish probable cause for an arrest in other states?
24. How will South Dakota establish experimental field tests as legally reliable?
25. What permits should regulators require for hemp and hemp products traveling through South Dakota as part of interstate commerce?
26. Who will develop those permits?
27. Who will train the approximately 1,800 law enforcement officers in the state on those new permits?
28. Will law enforcement be allowed to require special routes for hemp and hemp products traveling through South Dakota as part of interstate commerce?
29. What does regulation of hemp products once they leave the farm look like?
30. Who will train law enforcement on the details about hemp transportation and the regulations set up by the Department of Agriculture or the Federal Government?
31. How will that training on Department of Ag or federal regulations be paid for?
32. Will there be a distinction between hemp-derived products for human consumption and those which are not (in dog food for example)?
 - a. Who would regulate that?
 - b. What would the cost be for the FTE?
33. Would we have labeling requirements for hemp and hemp-derived products intended for human use or consumption?
34. Would the State routinely test hemp and CBD products sold at retailers to verify they have less than 0.3% THC?

35. If so, what agencies would conduct the testing?
36. Where will samples be analyzed?
37. Where will the sample be kept after testing?
38. If hemp or a CBD product is found to contain more than 0.3% THC, will the test be repeated or is independent confirmation testing performed?
39. What happens to samples containing more than .3% THC after they are tested?
40. Where is the evidence stored?
41. Who pays for the storage?
42. What are the additional costs to law enforcement and how is that revenue collected?
43. If the product is damaged during storage, who will pay for the damaged product if in fact it's determined to be legitimate?
44. Who is paying for the testing of the samples?
45. Would we allow samples testing at some margin greater than 0.3% THC to pass due to variability/unreliability of tests?
46. If law enforcement allows for a variability in the hemp testing, how does that impact our approach to variability in other drug or substance testing?
47. Would we have a threshold that triggers an automatic retest? If so, what would that threshold be?
48. How does law enforcement enforce this if we are allowing more than .3% THC products to pass?
49. What is the limit with THC amounts over .3%?
50. Are there techniques to estimate THC byproduct yield based on their crop size?
51. What type of seed labeling will be in place?
52. Who regulates how CBD products get delivered to the customers?
53. Who pays for replacement of plants that may be destroyed in error?
54. Could law enforcement reliably utilize aircraft to identify hemp fields?
55. If so, who would pay that cost?
56. If not, why not?
57. What happens when a person tests positive for THC on a drug test while using CBD oil and other products?
58. How will officers determine roadside whether it's legitimate hemp or marijuana since industrial hemp and marijuana cannot be distinguished by appearance and odor?
59. How many roadside testing kits would be needed to accommodate the needs for 1,800 law enforcement officers in the state?
60. While officers are detaining people roadside to determine legitimacy, how does that impact lawful detention times?
61. If someone is held based on the officers discretion and investigation and it's determined to be a legitimate load, who defends the officer and the agency when a lawsuit is filed?
62. Will this create unfavorable case law for other roadside investigations into criminal activity?
63. If so, what is the potential impact and negative consequences of that case law?

64. When law enforcement is sued for seizing an industrial product that is above the .3%THC, but has the proper documentation, who will defend the state of South Dakota, our law enforcement officers, and where will those funds come from?
65. What if someone is jailed for the wrong thing?
66. Who will defend the state of South Dakota and the law enforcement agency who makes an honest mistake?
67. How do we prevent marijuana dealers from taking advantage of the huge loopholes created by the legalization of industrial hemp prior to the proper safeguards?
68. What safeguards will be put in place to ensure this doesn't lead to more legalization of marijuana efforts?
69. How will we prevent people using a CBD farm for a front/cover for their illegal marijuana THC plant production?
70. What happens if the state invests millions of dollars to handle the issues associated with all these issues burden and the industry never materializes?
71. How many FTE for additional highway patrol troopers would be needed?
72. How many additional service dogs would be needed?
73. How often do the portable test kits need to be replaced?
74. Can the portable test kits be used multiple times?
75. Can the test kits be used year-round?
76. Can the test kits be stored within the HP vehicle?
77. Are there other supplies needed for testing? If yes, what are these supplies?
78. What is the process of testing the evidence?
79. Do troopers process the tests or are other staff required to complete the process?