
Questions Submitted for the Record

South Dakota Legislature · Medical Marijuana Oversight Committee

To: Chair Josephine Garcia, Vice-Chair John Carley, and Members of the Committee

Re: Federal–state implementation questions following the April 28, 2026 Schedule III order

Hearing: Tuesday, October 13, 2026 · Room 362, State Capitol, Pierre

Request: Place this document in the official packet and Hearing Documents.

A. The label versus the card

1. Who is “the patient” under 21 U.S.C. § 825(c) when 21 C.F.R. § 1301.13(k)(1)(iii) lets a registered dispenser dispense to a person South Dakota law authorizes to possess medical marijuana for another patient’s use?
2. After the original dispense, does the federal warning required by 21 U.S.C. § 825(c) — that it is a crime to transfer the drug to any person other than the patient — attach to a later no-value gift from one cardholder to another under SDCL § 34-20G-2(6)? Those are two different transactions. The first is the dispensary sale. The second is a later cardholder-to-cardholder transfer the South Dakota statute still protects when its conditions are met.
3. Will the Department of Health tell dispensaries, in writing, whether a designated caregiver may still acquire, transport, and hold product for a patient once the § 825(c) warning is on the package “where applicable”?
4. Will the Attorney General issue a written opinion on these federal–state implementation questions, or does the Office anticipate litigation that would make interim guidance infeasible the same way agencies like DEA sometimes withhold advice once a case is expected?

B. Schedule I is still on the books

5. After the April 28, 2026 federal order placing qualifying state-licensed medical marijuana in Schedule III, does tetrahydrocannabinol still meet SDCL § 34-20B-11 (“no accepted medical use in the United States”)?
6. Has the Department of Health confirmed receipt of the pending petition I filed asking whether the Department is required to review — or elects to review — South Dakota’s Schedule I treatment of tetrahydrocannabinol, now that federal law treats qualifying medical marijuana as having accepted medical use and has placed that product in Schedule III? If receipt is confirmed, has the Department granted the petition, denied it in writing with reasons, or initiated proceedings under SDCL § 1-26-13?
7. Why did the South Dakota Legislature enact a trigger that moves FDA-approved crystalline polymorph psilocybin to Schedule IV the day that product exists, and still leave tetrahydrocannabinol subject to South Dakota’s Schedule I statute after the State has licensed marijuana as medicine for years? House Bill 1099, signed March 10, 2026, amended SDCL § 34-20B-14 and placed that approved psilocybin product on Schedule IV. It does not legalize mushrooms. It is a scheduling trigger. Tetrahydrocannabinol still has no equivalent scheduling answer from the South Dakota Legislature.
8. SDCL § 34-20B-11 still requires a Schedule I substance to have “no accepted medical use in the United States,” while § 34-20B-27 requires the Department of Health to recommend rescheduling when it determines that a substance has a different potential for abuse. After the federal government moved qualifying medical marijuana to Schedule III, has DOH reviewed whether tetrahydrocannabinols still satisfy South Dakota’s Schedule I criteria and whether § 34-20B-27 requires a recommendation to the Legislature? If not, will MMOC ask DOH to conduct that review?

C. Federal license versus four state certificates

9. South Dakota issues four establishment certificates under chapter 34-20G. 21 C.F.R. § 1301.13(k) builds federal registrations around three activities — manufacture, distribution, and dispensing. Which of the four state certificates is the federal “qualifying state-issued license,” and where does the fourth state class sit when the federal rule only names three?
10. If a state certificate is suspended, 21 C.F.R. § 1301.13(k) tethers the federal registration. Has DOH mapped that automatic consequence for cultivation, manufacturing, dispensary, and testing certificates?
11. South Dakota already requires testing laboratories to deal with the Drug Enforcement Administration. 21 C.F.R. § 1301.13(k) — the special-registration provision added for marijuana activities under a qualifying state-issued medical marijuana license — does not name a testing-facility class. Who registers the South Dakota testing facility, and under which paragraph of 21 C.F.R. § 1301.13(k) does that registration sit?

D. Certification is not automatically a complete federal document

12. Does South Dakota’s chapter 34-20G written certification contain every element required by 21 C.F.R. § 1301.13(k)(5), including the user’s full name and address and the practitioner’s name, address, and state license number?
13. If South Dakota’s existing certification does not contain every federal element, which agency will change the form or process — and under what authority?
14. After April 28, which South Dakota desk handles the state controlled-substance registration consequences for an establishment that obtains a federal registration under 21 C.F.R. § 1301.13(k)?

E. Home cultivation and the 38-rule package

15. Legislative Research Council flagged the under-21 cultivation restriction as weak statutory authority. Will MMOC treat that mark as a constraint that has to be answered before Interim Rules Review on October 14?
16. The April order creates a federal registration framework around state-licensed manufacture, distribution, and dispensing. Where does South Dakota-authorized patient cultivation fit? If home cultivation remains protected by state law, how does patient-grown marijuana interact with 21 U.S.C. § 825(c)’s warning for marijuana “dispensed to or for” a patient and 21 C.F.R. § 1301.13(k)’s registered-establishment framework?
17. Written comments on the 38-rule package closed October 3. What unanswered federal-crosswalk comments will MMOC forward to Rules Review the next day?

F. Security, testing, jobs, custody, ADA

18. 21 C.F.R. Part 1301 defers security to state law. Article 44:90 never cites Part 1301. After a shop takes a registration under 21 C.F.R. § 1301.13(k), which inspection manual controls?
19. Federal transportation testing and Pierre DOT testing sit on two desks. Schedule III moved neither. Will MMOC ask whether a cardholder CDL or safety-sensitive job is any different after April 28?
20. Does the Legislature’s later edit of the custody protection still let a court treat a valid card as a parenting defect after federal accepted-medical-use language exists?
21. Will DOH and DSS reexamine nursing-facility and recovery-housing bans now that the federal Controlled Substances Act treats qualifying medical marijuana as Schedule III, not Schedule I?

G. The waiver Pierre has not requested

22. Has the State sought, or will MMOC recommend seeking, a 21 U.S.C. § 822(d) public-interest waiver so patient and caregiver activity is not left on the unregistered side of the CSA?
23. If the answer is no, who owns that refusal in writing — DOH, the Attorney General, or the Governor?

H. Process so the answers stick

24. Will the Attorney General attend October 13 or send a written opinion on A–C so the committee is not taking legal advice from staff silence?
 25. Will MMOC put the two caregiver/transfer questions and the § 34-20B-11 question into the official packet and ask for a dated written response?
 26. A petition is on file at the Department of Health asking whether South Dakota’s Schedule I treatment of tetrahydrocannabinol still fits state law after federal recognition of accepted medical use. Will MMOC ask how the State would defend the continued application of South Dakota’s Schedule I tetrahydrocannabinol provisions if a defendant argues that the criteria in SDCL § 34-20B-11 are no longer met?
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Respectfully submitted,

Jason Karimi