

**REVISED
FORM 10**
MINUTES OF PUBLIC HEARING
Department of Health

The Department of Health convened at 1:00 pm on June 21, 2022, at 600 East Capitol Avenue, Pierre South Dakota.

The purpose of the meeting was to conduct a public hearing on the proposed rules of the Department of Health numbered §§ 44:90:01:01, 44:90:02:01 through 44:90:02:03, 44:90:02:05, 44:90:02:06, 44:90:02:08, 44:90:03:07, 44:90:04:13, 44:90:04:16, 44:90:04:19 through 44:90:04:24, 44:90:06:03, 44:90:06:05 through 44:90:06:07, 44:90:08:03, 44:90:09:01, 44:90:09:03 through 44:90:09:12, 44:90:11:01 through 44:90:11:13, and 44:90:12:07 through 44:90:12:08.

Hearing Officer: Ali Tornow

Others in Attendance: Geno Adams, Jeremiah Murphy, Kittrick Jeffries, Jacob Parsons, Matt Jorgenson, Ned Horsted, Lia Pak, Katie Zenisek, Lauren Lansing, Emmett Reistroffer

Oral Testimony

In-person testimony:

- Jacob Parsons
 - Representing SDAHO
 - Proponent
 - Expressed support of the department and appreciation for the direction of the program. Stated that he was interested in seeing the bona-fide patient and practitioner relationship be emphasized.
 - Agency Discussion in Response: Many changes to the statutes emphasized the practitioner and patient relationship, reflected in the rules.
 - Agency Action Taken in Response: No action taken, rules already address and emphasize.

- Jeremiah Murphy
 - Representing Cannabis Industry of South Dakota (CIASD)
 - Opponent
 - 44:90:13:02 and 44:90:03:16
 - Stated that CIASD was not an 'opponent' but did want to address some concerns. Requested DOH remove subdivision 44:90:13:02(2) which limits recognition of qualifying debilitating conditions to only those for which current treatments are either ineffective or produce harmful side effects." Described requirements in rule for the addition of an approved medical condition as more burdensome than statutory requirements. Second, the requirement for establishments who are certified pursuant to a DOH lottery should be given more than one year to begin operations. Significant supply chain issues are causing problems for many establishments facing this deadline.
 - Provided written testimony.
 - Agency Discussion in Response: Agency discussed that the rules subject to this testimony were not included in the notice for this rules package, and therefore

cannot be amended currently. As to comment regarding 44:90:03:16, agency also discussed possibility of addressing deadline to become operational in subsequent rule package.

- Agency Action Taken in Response: No action taken at this time.
- Kitt Jeffries
 - Representing Dakota Cannabis Consulting
 - Opponent
 - 44:90:03:16 and 44:90:11:01
 - The one-year deadline to become operational in 44:90:03:16 is causing problems for his operations. Required building materials are backordered due to supply chain issues beyond a year. Additionally, cultivators take time to become operational and begin production, which also delays the operational date of his business (a dispensary). Additionally, requested clarification on what will happen when the state prescribed seed-to-sale tracking system is live, especially for product already in inventory.
 - Agency Discussion in Response: Agency discussed that the rule 44:90:03:16 subject to this testimony was not included in the notice for this rules package, and therefore cannot be amended currently. As to comment regarding 44:90:03:16, agency also discussed possibility of addressing deadline to become operational in subsequent rule package. Allowance proposed in rule 44:90:11:01 for establishments to become compliant with seed-to-sale system, including existing product to be entered into the online inventory.
 - Agency Action Taken in Response: Amended 44:90:11:01 to allow more time for establishments to become compliant with seed-to-sale tracking requirements and provided clarification on what is required to become compliant.
- Emmet Reistroffer
 - Representing Genesis Farms
 - Opponent
 - 44:90:07:08
 - Requests modification to rule addressing extraction with harmful substance to allow un-odorized butane to be allowed with use of a closed-loop system. States that other states allow this, and there are national fire codes that would allow use of this product. Also requested a moratorium on new establishment certificates.
 - Written testimony also provided.
 - Agency Discussion in Response: Agency discussed that the use of butane is used in other states and appears to be safe when compliant with national fire codes. Agency discussed that the rule 44:90:07:08 subject to this testimony was not included in the notice for this rules package, and therefore cannot be amended currently. Discussed that the statutory authority for limitations on the number of establishments is placed with local governments, and not the department.
 - Agency Action Taken in Response: No action taken at this time.
- Ned Horsted
 - Representing CIASD
 - Opponent
 - 44:90:03:16 and 44:90:11:01
 - States that the one-year deadline to become operational is not reasonable because dispensaries cannot become operational unless the rest of the supply

chain (cultivators, manufacturers, and labs) are operational. Requests flexibility. Also requests that the state bear the costs associated with the seed-to-sale tracking system.

- Agency Discussion in Response: Agency discussed that the rule 44:90:03:16 subject to this testimony was not included in the notice for this rules package, and therefore cannot be amended currently. As to comment regarding 44:90:03:16, agency also discussed possibility of addressing deadline to become operational in subsequent rule package. Discussed that it is industry practice for states to select a seed-to-sale tracking system and for establishments to pay for tags and monthly use costs associated as a cost of doing business. It is imperative for the public health and safety of South Dakota that a reliable tracking system be used by regulators and industry.
- Agency Action Taken in Response: No action taken at this time.

Remote testimony:

- Valerie Sandidge
 - No affiliation
 - Opponent
 - 44:90:03:16
 - One-year timeline to become operational is a problem for small businesses. Also says that legislature repealing the extended plant count will create consequences for rural patients. Notes that products are not yet available. Also states that there is large burden on patients as practitioners are not published.
 - Agency Discussion in Response: Agency discussed that the rule 44:90:03:16 subject to this testimony was not included in the notice for this rules package, and therefore cannot be amended currently. As to comment regarding 44:90:03:16, agency also discussed possibility of addressing deadline to become operational in subsequent rule package. Agency cannot allow extended plant count; it was removed by the legislature. Statutes also require that the department keep all information confidential, including practitioner information.
 - Agency Action Taken in Response: No action at this time.

Written Testimony

- Will Canaday
 - No affiliation
 - Received 5/26/22
 - No Rule Testified To
 - Expresses concern over restrictions placed on growers in the state.
 - Agency Discussion in Response: Comment too vague to meaningfully discuss.
 - Agency Action Taken in Response: No action taken at this time.
- Emmett Reistroffer
 - Genesis Farms
 - Received 6/20/22
 - 44:90:07:08
 - Requests allowance for the use of butane in extraction of cannabis.
 - Agency Discussion in Response: Agency discussed that the rule 44:90:07:08 subject to this testimony was not included in the notice for this rules package, and therefore cannot be amended currently.

- Agency Action Taken in Response: No action taken at this time.
- Jeremiah Murphy
 - CIASD
 - Received 6/21/22
 - 44:90:13:02
 - Requests removal of certain requirements of the petition process to add a qualifying debilitating medical condition to the approved list.
 - Agency Discussion in Response: Agency discussed that the rule 44:90:13:02 subject to this testimony was not included in the notice for this rules package, and therefore cannot be amended currently.
 - Agency Action Taken in Response: No action taken at this time.
- Jill Ellsworth
 - Willow Industries
 - Received 6/29/22
 - Rules Testified To: 44:90:09:01, 44:90:09:07, 44:90:09:07.01
 - Support expressed for 44:90:09:01, allowing transfers prior to testing. Support expressed for 44:90:09:07, requiring lab personnel to collect samples. Support expressed for 44:90:09:07.01, the tables stating the requirements for sample sizes and increments.
 - Agency Discussion in Response: No agency discussion in response.
 - Agency Action Taken in Response: No action taken at this time.
- Ned Horsted
 - CIASD
 - Received 7/1/22
 - 44:90:03:16, 44:90:04:09, 44:90:07:08, 44:90:11:01, 44:90:13:02
 - Request extension to one-year deadline to become operational. Reduce security footage storage requirement from 90 to 45 days. Replace requirement for odorization of flammable gas. Grant licensees 45 rather than 15 days to become compliant with electronic seed-to-sale tracking system. Remove requirement that proposed qualifying conditions be approved if, "Treatments currently available for the proposed condition are either ineffective or produce harmful side effects."
 - Agency Discussion in Response: As to comment regarding 44:90:03:16, agency discussed possibility of addressing deadline to become operational in subsequent rule package. Agency discussed that the rules 44:90:03:16, 44:90:04:09, 44:90:07:08, and 44:90:13:02 subject to this testimony were not included in the notice for this rules package, and therefore cannot be amended currently. Agency discussed industry norm of use and fees associated with a regulated seed-to-sale tracking system. Agency discussed extending the time specified by which establishments must become compliant with seed-to-sale tracking system requirements with clarification of what is required to become compliant.
 - Agency Action Taken in Response: Amended 44:90:11:01 to allow more time for establishments to become compliant with seed-to-sale tracking requirements and provided clarification on what is required to become compliant.
- Jesse Callahan
 - SMP Security Services
 - Received 7/1/22

- Rules Testified To: 44:90:04:09
- Suggested that video storage for security camera requirements be reduced to a lower number of days. Video storage for up to 180 days is incredibly expensive. Stated that many establishment owners are selecting high quality cameras at a high price, and therefore have fewer cameras due to cost of video storage.
- Agency Discussion in Response: Agency discussed that the rule 44:90:04:09, subject to this testimony was not included in the notice for this rules package, and therefore cannot be amended currently.
- Agency Action Taken in Response: No action taken at this time.

Summary of Changes to Proposed Rules on Account of the Public Hearing

- 44:90:11:01
 - Extended the time specified by which establishments must become compliant with seed-to-sale tracking system requirements and provided clarification of is required to become compliant.
 - Changed because it was a reasonable request for more time based on industry knowledge of seed-to-sale system requirements, and reasonable to provide further clarification.

Adjournment: 1:30 pm

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ali Tornow". The signature is written in a cursive, flowing style.

Ali Tornow
Staff Attorney
Department of Health