FORM 10

MINUTES OF PUBLIC HEARING
Department of Health

The South Dakota Department of Health convened at 10:00 AM Central on September 23, 2026 in the Joe Foss Building at 523 E Capitol Ave Pierre, SD 57501.

The purpose of the meeting was to conduct a public hearing on the proposed rules of Department of Health Office of Medical Cannabis numbered: 44:90:01:01; 44:90:02:07; 44:90:02:10; 44:90:02:11; 44:90:02:12; 44:90:02:13; 44:90:02:15; 44:90:02:17; 44:90:03:02; 44:90:03:05; 44:90:03:07; 44:90:03:16; 44:90:04:08;44:90:04:09; 44:90:04:10; 44:90:04:13; 44:90:04:14; 44:90:04:15;44:90:04:16; 44:90:04:19; 44:90:04:20; 44:90:04:26; 44:90:06:01; 44:90:06:04; 44:90:06:05; 44:90:06:07; 44:90:07:04; 44:90:08:03; 44:90:09:02; 44:90:09:06; 44:90:09:07.01; 44:90:09:11; 44:90:10:01.01;44:90:10:04;44:90:11:06; 44:90:12:03; 44:90:12:11; adopted under the authority of SDCL 34-20G-72.

Hearing Officer: Whitney Brunner, SD Department of Health

Members of the Department of Health in Attendance: Melissa Johnson, RN, Teresa Campbell

Others in Attendance: Nichole Lafrentz, Melissa Mentele, Ned Horsted, Liz Tiger, Kasey Entwisle, Mitch Richter, Yasmine Montgomery, Rob Krogstad, Adria Johnson, Eben Von Ranson, Stephen Garvin, Terra Larsen, Cash Anderson, Bill Van Camp, Kittrick Jeffries, Brian Rubin, Janice Rubin, Greg Rubin, Katelyn Cameron, Ronnie Jordan, Jason Nunufy, Dan Lederman

Written Testimony:

- Jason Karimi (Exhibit A)
    - Opponent
    - Sioux Falls, SD
    - September 11, 2026 and September 14, 2026
    - *Rules Testified To and Summary of Comments:*
        - 44:90:12:03- Question to consider an order to comply mechanism
        - 44:90:12:11- question to consider amending this rule without writing the corrective action plan process
    - *Agency Discussion and Action:*
        - 44:90:12:03- The changes made to this rule align the rule language with the current process. No changes made.
        - 44:90:12:11- The change made to this rule does not rewrite the corrective action plan process. No changes made.
- Emmett Reistroffer (Exhibit B)
    - Neutral
    - September 22, 2026
    - *Rules Testified To and Summary of Comments:*

        - 44:90:02:07- Proposed amendment to require patients and designated caregivers authorized to cultivate cannabis to document a monitored alarm system for the enclosed, locked cultivation space to provide a reasonable safeguard against unauthorized access and theft.
    - *Agency Discussion and Action:*
        - 44:90:02:07-Home cultivators submit documentation of a lock on the door. The Department believes this to be sufficient at this time. No change made.

- Kittrick Jeffries, Dakota Cannabis Consulting, LLC (Exhibit C)
    - Opponent
    - Rapid City, SD
    - September 23, 2026
    - *Rules Testified To and Summary of Comments:*
        - 44:90:02:15- This rule was listed in the written comments, but no written comment was provided in regards to this rule.
        - 44:90:03:17- Proposed reducing the annual application fee from $9000 to $5000.
        - 44:90:04:08- This rule turns our security systems into unrestricted government surveillance systems. Even Colorado doesn't allow the opportunity for the government to watch video footage without probable cause and due process. Viewing of stored footage is a warrantless inspection. The proposed change violates the 4th amendment of the constitution.
        - 44:90:04:09-Suggests the data package should have the opportunity to be stored on a portable hard drive as it is very large. A portable hard drive is not exactly defined as a third-party server.
        - 44:90:09:07.01- The cannabis used in pre-rolls has already passed testing and rolling it doesn't change the underlying cannabis material. This change creates unnecessary duplication of testing.
        - 44:90:09:02 and 44:90:09:11-Our facility goes through rigorous quality control to reduce mold, mildew and other contaminants. Once we finish trimming, we decontaminate everything. Pre-treating prevents mold spores from forming during storage. If this rule passes, we will have to test everything twice to ensure contaminants are brought down to zero.

    - *Agency Discussion and Action:*
        - 44:90:02:15-No comment provided. No change made.
        - 44:90:03:17-This rule is not in the proposed rules package. No change made.
        - 44:90:04:08- The Department agrees that live access to stored camera footage is not necessary when this footage can already be requested. Removed addition of live viewing of stored footage from subsection (2). Retained strikeout of subsection (5).
        - 44:90:04:09- The proposed changes in this rules package do not include a change to subsection (2) in this rule and a third party server is broadly interpreted. No changes made.
        - 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a certificate of analysis. This section of the rule has been removed from the rules package.

        - 44:90:09:02 and 44:90:09:11- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of 44:90:09:02 has been struck. The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.

- Adria Johnson, Cannabis ChemLab (Exhibit D)
    - Opponent
    - Flandreau, SD
    - September 29, 2026
    - *Rules Testified To and Summary of Comments*
        - 44:90:04:13-The laboratory serves a wide range of clients beyond the medical cannabis program. Because many of these clients regularly deliver samples or conduct official business on-site, requiring Department of Health approval for each visit would be impractical. The facility already uses controlled-access areas to secure samples and restrict visitor access to sensitive laboratory spaces. The requested language should acknowledge normal laboratory operations and avoid expanding the Department's authority beyond the medical cannabis program.
        - 44:90:04:20- Concern this change creates unnecessary burden on receiving establishment. The proposed change would require the receiving party to print manifests in order to obtain required signatures. The seed to sale system already records the transfer, date and time it was received, and the individual accepting it.
        - 44:90:06:01- Unclear as to why this change was suggested. DEA registration remains relevant to laboratories handling controlled substances and provides an additional level of accountability.
        - 44:90:09:02- Concern this will result in unnecessary testing and retesting costs that will increase the cost of medical cannabis for patients. Suggests an alternative of requiring disclosure or labeling when cannabis has undergone decontamination or remediation prior to testing.
        - 44:90:09:07.01- Opposed due to duplicative testing. The cannabis flower in the pre-roll has already passed testing and if the paper it is rolled in comes with a supporting Certificate of Analysis (COA), then there is no additional benefit to further testing.
        - 44:90:09:11- Question as to why the decontamination requirement appears in this rule when it is also in 44:90:09:02. Requests separate definitions for decontamination, remediation, and pretreatment. There are a lot of decontamination tactics used in the industry that could be interpreted in different ways.
        - 44:90:12:03- An establishment should be able to comply with a Department directive while preserving its right to challenge the underlying finding. Requests the rule specifically state that submitting

or implementing a corrective action plan does not constitute an admission of a violation and does not waive any administrative or judicial appeal rights.

- *Agency Discussion and Action:*
  - 44:90:04:13- The Department agrees that the option to request permission from the Department for visitors is burdensome. Removed language that permission must be obtained by the Department. The current list of visitors in the proposed rules allows for more visitors than the original language in the rule.
  - 44:90:04:20-The proposed language allows for a minimum of one copy of the manifest to be printed by the originating establishment. This copy can be signed by the receiving establishment and emailed back to the originating establishment as this rule also allows the originating establishment to retain a digital copy. No changes made.
  - 44:90:06:01- The Department agrees with comments regarding the importance of registration with the Drug Enforcement Agency. Removed strikeout of language regarding registering with the Drug Enforcement Agency. Retained updated references from Legislative Research Council.
  - 44:90:09:02- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of 44:90:09:02 has been struck.
  - 44:90:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a certificate of analysis. This section of the rule has been removed from the rules package.
  - 44:90:09:11- The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.
  - 44:90:12:03-The proposed updates to this rule ensure the rule language aligns with the process already in place. No changes made.

- Randall Querry, American Association for Laboratory Accreditation (Exhibit E)
  - Opponent
  - Frederick, Maryland
  - September 29, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:01:01 (31)- recommends changing references to "accreditation board" to "accreditation body" and adding language that the body is a signatory to the Global Accreditation Cooperation Incorporated Multilateral Recognition Arrangement (Global ACI MRA). Also recommends any additional accreditation body accepted under the definition to be a signatory Global ACI MRA.
    - 44:90:03:07 (3)(a), 44:90:03:07 (6), 44:90:06:01 (1)- update "accreditation board" to "accreditation body." This would align the terminology with the term commonly used for organizations that perform accreditation.

- *Agency Discussion and Action:*
  - 44:90:01:01 (31)- Other than renumbering this definition to (29), this definition is not considered in this rules package. No changes made.
  - 44:90:03:07 (3)(a), 44:90:03:07 (6), 44:90:06:01 (1)- No changes made to these sections as this would require updating the definition.

- Joe Stavig, Dakota Herb (Exhibit F)
  - Opponent
  - Sioux Falls, SD
  - October 2, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:09:02 (4) and 44:90:09:11 (6)- Requests these rule changes be struck or revised to allow preventative microbial control technologies before initial testing. The rules as written increase costs of testing for establishments. Proposed several alternatives.
  - *Agency Discussion and Action*
    - 44:90:09:02 (4) and 44:90:09:11 (6)- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of 44:90:09:02 has been struck. The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.

- Janice Rubin, Clean Budz at Dakota Herb (Exhibit G)
  - Opponent
  - Brandon, SD
  - October 2, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:09:02 and 44:90:09:11(6)- Operates an irradiation decontamination facility. There is a clear distinction between chemical remediation and biological irradiation. Our specialized equipment targets only naturally occurring biological contaminants and cannot mask non-naturally occurring contaminants. The proposed changes will have an economic trickle down effect on small cultivators and patients.
  - *Agency Discussion and Action*
    - 44:90:09:02 (4)- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of 44:90:09:02 has been struck.
    - 44:90:09:11(6)- The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.

- William Van Camp, Olinger Law Firm (Exhibit H)
  - Opponent

- Pierre, SD
- October 2, 2026
- *Rules Testified To and Summary of Comments*
  - 44:90:03:16- This rule is being amended for the third time since implementation and the current revisions still don't solve the longstanding problems with this rule. Suggests second paragraph be struck and nothing put in its place. Questions how this rule fits with statute.
- *Agency Discussion and Action*
  - 44:90:03:16- The Department made the decision to no longer pursue changes to this rule. Rule has been removed from this rules package.

- Terra Larson, Cannabis Industry Association South Dakota (Exhibit I)
  - Opponent
  - Pierre, SD
  - October 2, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:09:07.01-The cannabis portion of the pre-roll undergoes compliance testing. Understands Department concern about non-cannabis components of the pre-roll and offers a compromise where establishments would submit the Certificate of Analysis to the Department for all non-cannabis parts of the pre-roll.
    - 44:90:04:08- Suggested alternative language to this rule.
    - 44:90:04:09-Concerned whether this rule violates an establishment's constitutional right and suggests additional language to 44:90:04:08 to satisfy this concern.
    - 44:90:09:02 and 44:90:09:11- The updates as written would increase the cost of testing for establishments. Understand the concern is transparency to patients and proposes that establishments label products that have been decontaminated or pretreated prior to initial testing. Provided suggested revisions to 44:90:09:11.
  - *Agency Discussion and Action*
    - 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a certificate of analysis. This section of the rule has been removed from the rules package.
    - 44:90:04:08- The Department agrees that live access to stored camera footage is not necessary when this footage can already be requested. Removed addition of live viewing of stored footage from subsection (2). Retained strikeout of subsection (5).
    - 44:90:04:09- The proposed changes to this rule resulted from a request from stakeholders to reduce the amount of stored footage they are required to retain. No changes made to this section of rule.
    - 44:90:09:02 and 44:90:09:11- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of 44:90:09:02 has been struck. The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated

language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.

- Ned Horsted, 605 Cannabis (Exhibit J)
  - Opponent
  - Worthing, SD
  - October 3, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:01:01(10)- Suggested rewording the definition of cannabis beverage to remove the per ounce concentration limit to allow the existing serving and package limits to control potency while allowing manufacturers to make beverages in reasonable serving sizes.
    - 44:90:04:22- Requests allowance of two additional options during transport- an overnight layover at a licensed establishment and a handoff between approved drivers and vehicles
    - 44:90:10:12.01- suggests changing "for medical use by qualifying patients only" to with "Caution: the federal law prohibits transfer of this drug to any person other than the patient for whom it was prescribed" to reduce any overlapping state and federal requirements on the label.
  - *Agency Discussion and Action*
    - 44:90:01:01(10)- This definition is not included in this rules package. No changes made.
    - 44:90:04:22- This rule is not included in this rules package. No changes made.
    - 44:90:10:12.01- This rule is not included in this rules package. No changes made.
- Amanda Rubin (Exhibit K)
  - Opponent
  - Brandon, SD
  - October 2, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:01:01- Suggests adding this definition: Microbial decontamination," a process applied to cannabis to reduce microbial contaminants subject to testing under article 44:90, without adding a prohibited pesticide, prohibited solvent, or other prohibited chemical decontaminating agent to the cannabis.
    - 44:90:09:02(4)- Suggested rewording to: (4)The decontamination or remediation of cannabis prior to initial testing, except for microbial decontamination of an entire identified batch permitted under § 44:90:09:11(6).
    - 44:90:09:11(6)- Requests amendment to prohibit manipulation of a compliance sample while allowing microbial decontamination of an entire identified batch before official sampling subject to safeguards.
  - *Agency Discussion and Action*
    - 44:90:01:01- The Department is not adding additional definitions to this rules package, but would consider this definition for a future rules package. No changes made.
    - 44:90:09:02(4)- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection 4 of 44:90:09:02 has been struck from this rules package.

        - 44:90:09:11(6)- The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.
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- Tyler Koehne (Exhibit L)
    - Opponent
    - Rapid City, SD
    - October 3, 2026
    - *Rules Testified To and Summary of Comments*
        - 44:90:04:08- This just simply seems unconstitutional, and legal experts and even the DEA seem to agree. The department should not have unrestricted access like this outside of confirmations during inspection and specific requests made for investigatory purposes.
        - 44:90:09:02- Testing of the final product prior to transfer to a licensed dispensary should remain as the only testing requirement to ensure patient safety. Lack of clear definition of decontamination could lead to compliance issues.
        - 44:90:09:07.01- Testing flower and paper together would skew analytical results because the weight of the paper would be included in the test. This is especially unhelpful to the patient when trying to dose their medicine. Suggested establishments submit a Certificate of Analysis for the paper used in the pre-roll.
    - *Agency Discussion and Action*
        - 44:90:04:08- The Department agrees that live access to stored camera footage is not necessary when this footage can already be requested. Removed addition of live viewing of stored footage from subsection (2). Retained strikeout of subsection (5).
        - 44:90:09:02- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection 4 of 44:90:09:02 has been struck from this rules package.
        - 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a certificate of analysis. This section of the rule has been removed from the rules package.

- Amanda Johnson, Happy Flower Healing (Exhibit M)
    - Opponent
    - Yankton, SD
    - October 3, 2026
    - *Rules Testified To and Summary of Comments*
        - 44:90:12:11-Pleased to see fines were removed from category 4 and 5 first offenses, opposed to higher category offenses not being addressed in this rules package. The fines are extreme and leave no room for discretion.

- *Agency Discussion and Action*
  - 44:90:12:11- The Department believes the fines assigned to the higher category violations are reasonable given the identified violation. No changes made.

- Liz Tiger (Exhibit N)
  - Opponent
  - Spearfish, SD
  - October 3, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:02:07- Asks the Department to remove the home cultivation restrictions for individuals under age 21. Home cultivation allows for a plant profile that may work for the patient but is not available commercially.
    - 44:90:02:13- Asks the Department to keep a short period of time for the caregiver or family to safely dispose of the remaining cannabis, plants, and cannabis products, especially after a patient death.
  - *Agency Discussion and Action*
    - 44:90:02:07- The Department made the decision to strike sections restricting home cultivation for individuals under age 21.
    - 44:90:02:13- The Department updated this wording from "return" to "immediately destroy" as returning cards is not part of the process. Cards should be destroyed immediately to avoid theft or unauthorized use. No changes made.

- Mitch Richter, Genesis Farms (Exhibit O)
  - Neutral
  - Rapid City, SD
  - September 27, 2026
  - *Rules Testified To and Summary of Comments*
    - 44:90:09:02 and 44:90:09:11- Supporting documents submitted. No comment provided.
  - *Agency Discussion and Action*
    - Based on previously submitted comments, 44:90:09:02(4)- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection 4 of 44:90:09:02 has been struck from this rules package. 44:90:09:11(6)- The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.

Oral Testimony

- Ned Horsted, 605 Cannabis
  - Proponent and Opponent
  - Worthing, SD
  - *Rules Testified To and Summary of Comments:*

        - 44:90:01:01 (10)- Proposed tightening the beverage definition and wants to address the consistency or allowable THC per serving rather than the amount of liquid in the container. Definition does not align with the 100mg rule that is being updated.
        - 44:90:04:22- Requested to add a fifth section to allow a transporter an overnight stay with product if the product stays in a secure vehicle and is documented. He also requested the ability to do a handoff. This would allow an establishment representative to meet at another establishment representative at a licensed establishment under cameras to hand off products to be distributed.
    - *Agency Discussion and Action:*
        - 44:90:01:01 (10)- This definition is not in the proposed rules package. No change made.
        - 44:90:04:22- This rule is not in the proposed rules package. No change made.
- Kittrick Jeffries, Puffy's
    - Proponent and Opponent
    - Rapid City, SD
    - *Rules Testified To and Summary of Comments:*
        - 44:90:03:02- Neutral to the proposed changes and wants to see the registration process become better than it currently is.
        - 44:90:03:17- He would like to see application fees go back down to $5000.
        - 44:90:04:08- Proponent of the decrease in camera storage to 60 days. Opponent of allowing the Department access to stored footage. This is unreasonable as the Department can access it by requesting it from the establishment.
        - 44:90:09:07.01- The proposed change will duplicate testing and ultimately will increase the cost passed onto patients. The flower has already passed required testing and making pre-rolls does not change the underlying cannabis material and does not affect the safety of the product.
        - 44:90:09:02 and 44:90:09:11- Administrative rule includes the allowable amount of mold and the FDA has an allowable amount of fecal matter that can be in food and that number is not zero. These rules don't eliminate testing standards.
    - *Agency Discussion and Action:*
        - 44:90:03:02- No changes made.
        - 44:90:03:17- This rule is not in the proposed rules package. No change made.
        - 44:90:04:08- The Department agrees that live access to stored camera footage is not necessary when this footage can already be requested. Removed addition of live viewing of stored footage from subsection (2).
        - 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll

undergoes compliance testing and the paper used comes with a certificate of analysis. Removed this section of the rule from the rules package.

- 44:90:09:02 and 44:90:09:11- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of 44:90:09:02 has been struck.
  The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.

- Terra Larson, Cannabis Industry Association South Dakota
  - Opponent
  - Pierre, SD
  - *Rules Testified To and Summary of Comments:*
    - 44:90:02:10- Typo as it reads that a designated caregiver shall immediately destroy return card. Suggested determining whether it should say destroy or return.
    - 44:90:02:11- Same typo- determine whether it should say immediately destroy or return.
    - 44:90:04:08 and 44:90:04:09- Concerned with both the existing and proposed wording of these rules. The Department having access to camera footage is a violation of the establishments' 4th amendment rights. Suggested language be added regarding probable cause.
    - 44:90:09:02- Decontamination prior to testing is not allowed. It is done to get to zero contamination. Suggested this should be indicated in labeling. There is a cost with testing and that cost will be passed to consumers.
    - 44:90:09:07.01- Pre-rolls shouldn't require testing after being rolled, only prior testing of the flower is necessary.
    - 44:90:09:11- It is very common to allow cannabis pre-treatment prior to testing. A threshold needs to be determined for mold, but it shouldn't be zero. Recommended requiring a label to identify that the cannabis has been decontaminated.
  - *Agency Discussion and Action:*
    - 44:90:02:10-This typo has been corrected.
    - 44:90:02:11-This typo has been corrected.
    - 44:90:04:08 -The Department agrees that live access to stored camera footage is not necessary when this footage can already be requested. Removed addition of live viewing of stored footage from subsection (2).
    - 44:90:04:09-The proposed changes to this rule resulted from a request from stakeholders to reduce the amount of stored footage they are required to retain. No changes made to this section of rule.

        - 44:90:09:02- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) has been removed from this rule.

        - 44:90:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a certificate of analysis. Removed this section of the rule from the rules package.
        - 44:90:09:11- The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.
- The following individuals raised their hands in agreement with the concerns and statements made by Kittrick Jeffries and Terra Larson regarding ARSD 44:90:04:08, 44:90:04:09, 44:90:09:02, 44:90:09:07.01, and 44:90:09:11
    - Adria Johnson, Cannabis ChemLab, Flandreau, SD
    - Rob Krogstad, Bad River Cannabis, Ft. Pierre, SD
    - Janice Rubin, Clean Budz, Brandon, SD
    - Yasmine Montgomery, Groovy Treez, Yankton, SD
    - Nichole Lafrentz, Deadwood Growhouse, Deadwood, SD
    - Dan Lederman, Dakota Health and Wellness, North Sioux City, SD
    - Melissa Mentele, New Approach South Dakota, Sioux Falls, SD
    - Liz Tiger, 605 Cannabis, Spearfish, SD
    - Ned Horsted, 605 Cannabis, Worthing, SD
    - Stephen Garvin, Genesis Farms, Rapid City, SD
    - Eben VonRanson, Genesis Farms, Rapid City, Rapid City, SD
    - Jason Nunufy, Rad Source, Portland, OR
    - Mitch Richter, Genesis Farms, Rapid City, SD
    - *Agency Discussion and Action:*
        - 44:90:04:08- The Department agrees that live access to stored camera footage is not necessary when this footage can already be requested. Removed addition of live viewing of stored footage from subsection (2).
        - 44:90:04:09- The proposed changes to this rule resulted from a request from stakeholders to reduce the amount of stored footage they are required to retain. No changes made to this section of rule.
        - 44:90:09:02- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) was removed from the rules package.
        - 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a

certificate of analysis. Removed this section of the rule from the rules package.
        - 44:90:09:11- The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.
- Adria Johnson, Cannabis ChemLab
    - Opponent
    - Flandreau, SD
    - *Rules Testified To and Summary of Comments:*
        - 44:90:04:13- Concerned this change will require the laboratory to obtain permission from the Department frequently as they receive samples from a variety of entities. Reiterated the laboratory operates differently from other establishments. Requested the laboratory be excluded from this requirement.
        - 44:90:04:20- Requested keeping the rule as currently written to avoid duplicate printing of manifests.
        - 44:90:06:01- Requested clarification to the changes made to this real as it is unclear.
        - 44:90:09:07.01- If this change goes through, the laboratory will need time to make adjustment if testing paper will be required.
        - 44:90:09:02 and 44:90:09:11- The laboratory has recently lowered their prices to help the industry. If these rules go into effect, the industry is out a lot of money. They would like to see more transparency in labeling.
        - 44:90:12:03- Requested language be added to be able to submit a Corrective Action Plan without admitting guilt. Requested right to appeal after a Corrective Action Plan has been submitted.
    - *Agency Discussion and Action:*
        - 44:90:04:13- The Department agrees that the option to request permission from the Department for visitors is burdensome. Removed language that permission must be obtained from the Department for visitors outside of the list of approved visitors. The current list of visitors in the proposed rules allows for more visitors than the original language in the rule.
        - 44:90:04:20- The proposed language allows for a minimum of one copy of the manifest to be printed by the originating establishment. This copy can be signed by the receiving establishment and emailed back to the originating establishment as this rule also allows the originating establishment to retain a digital copy. No changes made.
        - 44:90:06:01- The Department agrees with comments regarding the importance of registration with the Drug Enforcement Agency. Removed strikeout of language regarding registering with the Drug Enforcement Agency.

        - 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a certificate of analysis. Removed this section of the rule from the rules package.
        - 44:90:09:02 and 44:90:09:11- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) has been removed from this rule. The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.
        - 44:90:12:03- The proposed updates to this rule ensure the rule language aligns with the process already in place. No changes made.
- Bill VanKamp, Legal Representation for Puffy's
    - Opponent
    - Pierre, SD
    - *Rules Testified To and Summary of Comments:*
        - 44:90:03:16- This rule only applies to Puffy's and is not supported by statute. Requests second paragraph to be repealed as the Department is creating a whole subsection without statutory authority. Requested a definition for the word "operational".
    - *Agency Discussion and Action:*
        - 44:90:03:16- The Department made the decision to no longer pursue changes to this rule. Rule has been removed from this rules package.

- Mitch Richter, Genesis Farms
    - Proponent and Opponent
    - Rapid City, SD
    - *Rules Testified To and Summary of Comments:*
        - 44:90:04:09- Proponent of decreasing camera footage storage to 60 days.
        - 44:90:04:10 and 44:90:04:26- Opponent of alarms and sensors on fences and gates. This will lead to false alarms.
    - *Agency Discussion and Action:*
        - 44:90:04:09- The proposed changes to this rule resulted from a request from stakeholders to reduce the amount of stored footage they are required to retain. No changes made to this section of rule.
        - 44:90:04:10 and 44:90:04:26-The proposed changes are meant to improve clarity and align these two rules. No changes made.

- Kasey Entwisle, Patient Advocate
    - Opponent
    - Canistota, SD

- *Rules Testified To and Summary of Comments:*
  - 44:90:02:15- Non-residents should have safe access to products. Other states allow patients to self-certify at dispensaries. The Department may need to change language as rescheduling happens and referred to ADA 504.
- *Agency Discussion and Action:*
  - 44:90:02:15- The Department made the decision to no longer pursue changes to this rule. Rule has been removed from this rules package.

- Rob Krogstad, Bad River Cannabis
  - Opponent
  - Ft. Pierre, SD
  - *Rules Testified To and Summary of Comments:*
    - 44:90:02:15- The original intent of the law was that all cards could be accepted. In the beginning, dispensaries could accept cards from out of state and even tribal cards.
  - *Agency Discussion and Action:*
    - 44:90:02:15- The Department made the decision to no longer pursue changes to this rule. Rule has been removed from this rules package.

- Jason Nunufy, Rad Source
  - Opponent
  - Portland, OR
  - *Rules Testified To and Summary of Comments:*
    - 44:90:09:02 and 44:90:09:11- Most states don't require labeling when product has been through the RAD source. Decontamination is needed to get to zero, and radiation is the preferred kill step. Once the product is radiated no further testing is required.
  - *Agency Discussion and Action:*
    - 44:90:09:02 and 44:90:09:11- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of this rule has been removed from the rules package. The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.
- Eben VanRanson, Genesis Farms
  - Opponent
  - Rapid City, SD
  - *Rules Testified To and Summary of Comments:*
    - 44:90:01:01 (36)- A representative sample isn't one half of an ounce, and it should be required of all of it.
  - *Agency Discussion and Action:*

        - 44:90:01:01 (36)- This rule was updated as a result of a stakeholder request. No changes made.

- Katelyn Cameron, Clean Budz
    - Opponent
    - Brandon, SD
    - *Rules Testified To and Summary of Comments:*
        - 44:90:09:02 and 44:90:09:11- If these rules pass, it will put them out of business.
    - *Agency Discussion and Action:*
        - 44:90:09:02 and 44:90:09:11- The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) has been removed from this rule. The Department agrees with comments on 44:90:09:11 and has updated the language to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.
        -
- Liz Tiger, 605 Cannabis
    - Opponent
    - Spearfish, SD
    - *Rules Testified To and Summary of Comments:*
        - 44:90:02:10 and 44:90:02:11- Consider changing the word "immediately", as destruction of caregiver cards is often difficult because people are dealing with the death of a loved one and need time to grieve. Suggested inviting patients to a work meeting so their voice is heard.
    - *Agency Discussion and Action:*
        - 44:90:02:10 and 44:90:02:11-The Department updated this wording from "return" to "immediately destroy" as returning cards is not part of the process. Cards should be destroyed immediately to avoid theft or unauthorized use. No changes made.

- Dan Lederman, Dakota Health and Wellness
    - Opponent
    - North Sioux City, SD
    - *Rules Testified To and Summary of Comments:*
        - 44:90:09:07.01- This rule change will increase the cost of pre-rolls, and that increased cost gets passed on to patients. The paper they use for their pre-rolls comes with a Certificate of Analysis. As a small business, they have invested a lot of money in pre-rolls.
    - *Agency Discussion and Action:*
        - 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll

undergoes compliance testing and the paper used comes with a certificate of analysis. Removed this section of the rule from the rules package.

Summary of Changes to Proposed Rules Because of the Public Hearing or Comment

- 44:90:04:08- The Department agrees that live access to stored camera footage is not necessary when this footage can already be requested. Removed addition of live viewing of stored footage from subsection (2).
- 44:90:04:13-The Department agrees that the option to request permission from the Department for visitors is burdensome. Removed language that permission must be obtained from the Department for visitors outside of the list of approved visitors. The current list of visitors in the proposed rules allows for more visitors than the original language in the rule.
- 44:90:06:01- The Department agrees with comments regarding the importance of registration with the Drug Enforcement Agency. Removed strikeout of language regarding registering with the Drug Enforcement Agency.
- 44:90:09:02-The Department agrees with comments that the edits made to Subsection (4) of this rule are redundant with the edits made to 44:90:09:11. Subsection (4) of 44:90:09:02 has been struck.
- 44:90:09:07.01- The Department agrees that this rule creates duplicative testing requirements as the cannabis in the pre-roll undergoes compliance testing and the paper used comes with a certificate of analysis. This section of the rule was removed from the rules package.
- 44:90:09:11- The proposed edits to 44:90:09:11 were meant to address transparency concerns for patients when pretreating or decontamination are done prior to initial testing. The Department inquired with the medical cannabis testing facility on a proposed solution and updated the language of this rule to require disclosure on the certificate of analysis that decontamination or pretreatment took place prior to initial testing. For consistency, the updated language also includes added disclosure on the certificate of analysis of remediation that took place after initial testing.

Adjournment: 11:05 AM CT

Respectfully submitted,

Whitney Brunner

Whitney Brunner
Medical Cannabis Program Administrator
SD Department of Health

WEEDPRESS: THE PAPER TRAIL

38 Rules, 19,821 Patients, 108 Licensed Establishments: South Dakota Rewrites Its Medical Cannabis Program

Jason Karimi | September 9, 2026 | https://weedpress.org/2026/09/09/38-rules-19821-patients-108-licensed-establishments-south-dakota-rewrites-its-medical-cannabis-program/

September 23, 2026: South Dakota medical cannabis rules get 38 proposed changes. Hang on to your hats.

The Department of Health filed proposed amendments to Article 44:90 with the Legislative Research Council on August 21, 2026.[1] The South Dakota Register published that notice on August 31.[2] The public hearing is September 23, 2026, at 10:00 a.m. Central Time at the Floyd Matthew Training Center, Foss Building, 523 East Capitol Avenue, Pierre.[3] Written comments are due October 3. The Interim Rules Review Committee is scheduled to take the package on October 14.[4]

The Department's hearing notice enumerates 38 proposed amendments across Article 44:90, spanning 44:90:01:01 to 44:90:12:11.[5] Article 44:90 is where patient cards, establishment registration, cameras, testing, packaging, recordkeeping, enforcement, and the proposed fine schedule actually live.[6] Initiated Measure 26 became SDCL chapter 34-20G.[7] The statute establishes the program's legal framework. The rules determine many of the operational requirements, costs, timelines, and enforcement mechanisms that patients and establishments actually encounter. That is why the rulemaking record matters.

Two official trend lines now run in opposite directions. They should be in the same hearing record.

Trend one – Patients keep arriving. The Department's September 2, 2026 update lists 19,821 approved patient cards, 211 providers, and 620 caregivers.[8] August was 19,530 patients. January 2026 was 18,114. July 2025 was 13,489.[9] More than seventy percent of cardholders report severe, debilitating pain.[10] Home-cultivation licenses rose from 61 in fiscal year 2022 to 715 in fiscal year 2026.[11] The Department has already told the Medical Marijuana Oversight Committee that the homegrow increase is a regulatory concern.[12]

Trend 2 – Licensed establishments keep leaving. The Department reported 139 certified establishments in state fiscal year 2023, including 79 dispensaries.[13] By the August 27, 2026 public list, the Department of Health listed 108 licensed establishments: 62 dispensaries, 31 cultivation facilities, 14 manufacturing facilities, and one testing facility—31 fewer establishments than the SFY 2023 peak, a decline of about 22.3 percent.[14] The annual registration fee for an establishment is $9,000.[15] Small operators have already told lawmakers that modest fines force them to reshuffle payroll.[16]

A rules package that tightens operations, security, sampling, packaging, and enforcement deserves to be read alongside the economic condition of the market it regulates. South Dakota's regulatory-impact requirements make that question harder to ignore.[17] The hearing should not pretend otherwise.

The September 23 package is amending Article 44:90, and 12:11 is in the enumerated range. The live question is whether the Department is changing the dollar amounts, the categories, the lookback, or the cap per inspection.

What 44:90 actually controls

Chapter 34-20G authorizes four establishment types: cultivator, manufacturer, dispensary, and testing facility.[18] Article 44:90 then fills in the machinery: applications and local-government Form E

certifications;[19] management, site, safety, and security plans;[20] camera placement and storage;[21] inventory tracking and Metrc training;[22] batch size, sampling, and certificates of analysis;[23] child-resistant and opaque exit packaging;[24] how the Department scores a "serious violation";[25] and, in this package, proposed § 44:90:12:11 on the schedule of fines.[26] The Department's own inspection reports show the same chapters cited again and again: inventory-tracking training, recordkeeping, camera placement, certificates of analysis, transport manifests, daily inventory, and batch size.[27]

Those are the 38 proposed amendments identified in the Department's public-hearing notice: patient registry cards, business registration, establishment operations and security, testing facilities, product manufacturing, dispensaries, sampling and testing, packaging, recordkeeping, and enforcement.[28] Until each proposed line is read against current text, no one should claim to know whether a given establishment's next inspection gets easier or harder. The relevant question is where cost and paperwork move. In a market that has already lost roughly one in five licensed establishments, cost is policy.

Federal Schedule III does not write these rules. It does change the question Pierre has to answer.

In April 2026, federal authorities placed specified state-licensed medical marijuana products and certain FDA-approved marijuana drugs in Schedule III. Adult-use cannabis remains in Schedule I.[29] The National Conference of State Legislatures told the Medical Marijuana Oversight Committee on August 17 that the change is limited and that tax and interstate guidance is still missing.[30] Program Administrator Whitney Brunner told the same committee the state still lacks federal answers on implementation.[31] Department slides put program revenue near $2.6 million, most of it from cardholder fees—not from a mature industrial tax base.[32]

South Dakota also has its own scheduling statute. SDCL 34-20B-27 does not silently rewrite chapter 34-20B when Washington moves. It tells the Department when a determination triggers a recommendation to the Legislature.[33] WeedPress has already laid out that sequence.[34] The September 23 hearing is not that determination. Treating 44:90 as if federal Schedule III has already settled state law would be a category error. Treating 44:90 as if federal law is irrelevant would be the opposite error. The comments should force the Department to say, in the record, which proposed sections are responses to federal rescheduling and which are ordinary inspection cleanup.

What patients and remaining shops should put on paper

A comment that only says "protect patients" will be filed and forgotten. A comment that cites a numbered section and a Department number has to be answered.

Patients should ask whether card, photo, renewal, and caregiver rules add delay to a registry that already takes days to review and more days to mail a plastic card.[35] They should ask whether home cultivation—715 licenses in fiscal year 2026, two flowering plants and two non-flowering plants under statute—is being regulated in 44:90 by inspection language written for commercial rooms.[36] They should ask whether digital cards, which the Department has discussed publicly, appear in this draft or remain a press line.[37]

Establishments should ask the only question that matches the license chart: does this package reduce the violations the Department already cites most often, or does it add new predicates for the same cameras, logs, and SOPs that already generate findings?[38] A serious-violation rule that lists gravity, willfulness, harm, prior history, duration, and likelihood of recurrence is already on the books.[39] Adding more "shalls," including a new fine schedule at proposed § 44:90:12:11, without publicly addressing the economic effect on a market that has already fallen to 108 licensed establishments is how a medical program becomes a program with cards and nowhere to buy.

The Administrative Procedures Act still applies. Chapter 1-26 requires notice, a hearing, and a path to the Interim Rules Review Committee.[40] The committee can declare the rulemaking complete, revert the package to an earlier step, or move to suspend the proposed rule.[41] Silence by October 3 leaves the Department's proposed text standing without a written objection in the record.

This hearing is the record

The documentary chain is now tight: August 21 filing, August 31 Register, September 23 hearing, October 3 written-comment deadline, October 14 Rules Review Committee.[42] Patient counts are the success slide. Licensed-establishment counts are the contraction slide. Home cultivation is the trend the Department has already identified as a regulatory concern—and the one lawmakers may be forced to confront next. Federal Schedule III is the slide no one in Pierre can finish because Washington has not issued the guidance the states asked for.

WeedPress will treat the official proposed text at rules.sd.gov and doh.sd.gov/News as the document that matters—not the hearing headline. Comments should do the same. Quote the section. Attach the patient table. Attach the establishment decline. Ask the Department to put both numbers in the same finding of fact before October 14.

The program voters passed was a medical access statute. The program that emerges from 44:90 will determine what the remaining licensed establishments can still afford to operate. Those are not the same sentence. September 23 is when the file has to say so.

Footnotes

1. S.D. Legislative Research Council, South Dakota Register, Vol. 53 (Aug. 31, 2026) (Department of Health filing dated Aug. 21, 2026; proposed amendments to S.D. Admin. R. art. 44:90), https://mylrc.sdlegislature.gov/api/Documents/Register/307532.pdf?Year=2026.

2. Id.

3. Id. (hearing Sept. 23, 2026, 10:00 a.m. CT, Floyd Matthew Training Center, Foss Building, 523 East Capitol Avenue, Pierre).

4. Id. (written comments due Oct. 3, 2026; Interim Rules Review Committee Oct. 14, 2026).

5. Id. (notice enumerating 38 proposed amendments across S.D. Admin. R. art. 44:90, spanning 44:90:01:01 to 44:90:12:11).

6. S.D. Admin. R. art. 44:90, https://sdlegislature.gov/Rules/Administrative/44:90.

7. Initiated Measure 26 (approved Nov. 3, 2020), codified at S.D. Codified Laws ch. 34-20G, https://sdlegislature.gov/Statutes/34-20G.

8. S.D. Dep't of Health, Medical Cannabis Data (updated Sept. 2, 2026) (August 2026: 19,821 patients, 620 caregivers, 211 providers), https://doh.sd.gov/programs/medical-cannabis/med-cannabis-data/.

9. Id.

10. S.D. Dep't of Health, June 2026 Medical Cannabis Data, https://doh.sd.gov/media/dgvj4cqm/mc-june-data.pdf.

11. Makenzie Huber, South Dakota Sees Surge In Patients Growing Medical Marijuana At Home, Marijuana Moment (Aug. 18, 2026), https://www.marijuanamoment.net/south-dakota-sees-surge-in-patients-growing-medical-marijuana-at-home/.

12. Id.; KCCR, Department Of Health Concerned With Rapid Increase In Home Medical Marijuana Cultivator Licenses (Aug. 31, 2026), https://www.kccrradio.com/2026/08/31/department-of-health-concerned-with-rapid-increase-in-home-medical-marijuana-cultivator-licenses/.

13. S.D. Dep't of Health, SFY 2023 Medical Cannabis Annual Report 5 (Nov. 29, 2023), https://doh.sd.gov/media/dlenc2n1/sfy-2023-medical-cannabis-annual-report.pdf.

14. S.D. Dep't of Health, Medical Cannabis Establishments List (updated Aug. 27, 2026) (62 dispensaries, 31 cultivation facilities, 14 manufacturing facilities, and 1 testing facility), https://doh.sd.gov/programs/medical-cannabis/med-cannabis-establishments/establishments-list/; see also Jason Karimi, Why South Dakota's Medical Cannabis Businesses Are Disappearing: The Pressures Behind a 24.5% License Decline, WeedPress (Aug. 1, 2026) (July 14, 2026 public-list count of 105 establishments), https://weedpress.org/2026/08/01/why-south-dakotas-medical-cannabis-businesses-are-disappearing-the-pressures-behind-a-24-5-license-decline/.

15. S.D. Dep't of Health, Med Cannabis Establishments, https://doh.sd.gov/programs/medical-cannabis/med-cannabis-establishments/.

16. Grant Green, SD Lawmakers Discuss How Medical Cannabis Program Can Improve, Dakota News Now (Aug. 17, 2026), https://www.dakotanewsnow.com/2026/08/17/sd-lawmakers-discuss-how-medical-cannabis-program-can-improve/.

17. S.D. Codified Laws § 1-26-4.11 (regulatory impact analysis for proposed permanent rules), https://sdlegislature.gov/Statutes/1-26-4.11.

18. S.D. Codified Laws ch. 34-20G, https://sdlegislature.gov/Statutes/34-20G.

19. S.D. Admin. R. 44:90:03:01; S.D. Codified Laws § 34-20G-55, https://sdlegislature.gov/Statutes/34-20G-55.

20. S.D. Admin. R. 44:90:03:05.

21. S.D. Admin. R. 44:90:04:07 to 44:90:04:09.

22. S.D. Admin. R. 44:90:04:16; 44:90:09:04.

23. S.D. Admin. R. ch. 44:90:09.

24. S.D. Admin. R. 44:90:10:01 to 44:90:10:06.

25. S.D. Admin. R. 44:90:12:09, https://sdlegislature.gov/Rules/Administrative/44:90:12:09.

26. S.D. Legislative Research Council, supra note 1 (proposed S.D. Admin. R. 44:90:12:11).

27. S.D. Dep't of Health, SFY 2024 Medical Cannabis Annual Report 10, https://doh.sd.gov/media/4ndgp2h3/fy2024_med-cannabis-annual-report.pdf; S.D. Dep't of Health, February 2026 Medical Cannabis Data, https://doh.sd.gov/media/4jwdmzsj/february-med-cannabis-data.pdf.

28. S.D. Legislative Research Council, supra note 1; see also Marijuana Herald, South Dakota Sets September 23 Hearing on Medical Marijuana Rule Changes as Patient Count Nears 20,000 (Sept. 7, 2026), https://themarijuanaherald.com/2026/09/south-dakota-sets-september-23-hearing-on-medical-marijuana-rule-changes-as-patient-count-nears-20000/.

29. C.J. Keene, How Federal Cannabis Scheduling Shakeup Impacts South Dakota Medical Marijuana Policy, SDPB (Aug. 18, 2026), https://www.sdpb.org/politics/2026-08-18/how-federal-cannabis-scheduling-shakeup-impacts-south-dakota-medical-marijuana-policy.

30. Id.

31. Id.; Marijuana Moment, Feds Aren't Answering States' Questions on Marijuana Rescheduling Process, South Dakota Official Says, https://www.marijuanamoment.net/feds-arent-answering-states-questions-on-marijuana-rescheduling-process-south-dakota-official-says/.

32. Keene, supra note 29.

33. S.D. Codified Laws § 34-20B-27, https://sdlegislature.gov/Statutes/34-20B-27.

34. Jason Karimi, South Dakota's Schedule I Statute Requires a Department Determination Before the Legislature Gets a Rescheduling Recommendation, WeedPress (Sept. 5, 2026), https://weedpress.org/2026/09/05/south-dakotas-schedule-i-statute-requires-a-department-determination-before-the-legislature-gets-a-rescheduling-recommendation/.

35. S.D. Dep't of Health, Patients, Caregivers & Practitioners, https://doh.sd.gov/programs/medical-cannabis/patients-cargivers-practitioners/.

36. Huber, supra note 11, https://www.marijuanamoment.net/south-dakota-sees-surge-in-patients-growing-medical-marijuana-at-home/.

37. Green, supra note 16, https://www.dakotanewsnow.com/2026/08/17/sd-lawmakers-discuss-how-medical-cannabis-program-can-improve/.

38. SFY 2024 Annual Report, supra note 27, https://doh.sd.gov/media/4ndgp2h3/fy2024_med-cannabis-annual-report.pdf.

39. S.D. Admin. R. 44:90:12:09, https://sdlegislature.gov/Rules/Administrative/44:90:12:09.

40. S.D. Codified Laws ch. 1-26, https://sdlegislature.gov/Statutes/1-26.

41. S.D. Codified Laws §§ 1-26-4.7, 1-26-4 to 1-26-8, https://sdlegislature.gov/Statutes/1-26-4.7.

42. S.D. Legislative Research Council, supra note 1.

September 14, 2026

Whitney Brunner

Medical Cannabis Program Administrator

South Dakota Department of Health

600 East Capitol Avenue

Pierre, SD 57501

MCQuestions@state.sd.us

Re: Supplemental written comments on proposed amendments to S.D. Admin. R. art. 44:90

Public hearing: September 23, 2026; written comments due October 3, 2026

Subject: Proposed 44:90:12:03 and 44:90:12:11; Form 14 items 8, 9, and 13

Dear Ms. Brunner:

Please place this letter in the official written-comment record under SDCL chapter 1-26 for the Department's August 21, 2026 filing of proposed amendments to Article 44:90.

I submitted written comments on September 10, 2026. After completing a line-by-line review of the Department's 54-page proposed-rule draft and accompanying Form 14, I submit this supplemental comment concerning specific enforcement provisions, documentation requirements, and the regulatory-impact analysis.

This supplemental comment does not object to the fact that the Department opened 38 sections. South Dakota has opened more. The June 2022 package listed 47 discrete sections. The useful questions here are what proposed 44:90:12:11 and 44:90:12:03 change, how those two provisions operate together, and whether Form 14 explains those changes.

I. What proposed 44:90:12:11 changes

Current 44:90:12:11, adopted in 52 SDR 10 and effective August 4, 2025, sets first-offense Category 4 at $1,000 and Category 5 at $500, with a five-year lookback.

The June 26, 2026 draft leaves Categories 1 through 3 substantially unchanged. It divides Categories 4 and 5 between first and subsequent offenses. A first offense becomes “Corrective Action Plan to be submitted and approved.” A second or subsequent Category 4 violation remains $1,000. A second or subsequent Category 5 violation remains $500. The five-year lookback remains.

The Department is therefore revising an enforcement schedule adopted approximately one year ago. It is not creating a new fine schedule.

II. Corrective-action plans under 44:90:12:03 are not new

Current 44:90:12:03 already exists. Its source line is 48 SDR 40, effective October 5, 2021, and 52 SDR 10, effective August 4, 2025. The current text already authorizes the Department, upon discovery of a suspected violation, to order an establishment to comply with a corrective-action plan that may include:

(1) modifying operating procedures;

(2) halting transfer of mislabeled product or product that otherwise poses a threat to public health; and

(3) destroying or remediating product that poses a threat to public health.

The current section also contains the destroy-order provisions, the sentence addressing fault for contamination or unsafe conditions, chapter 1-26 judicial-review language, the ten-business-day destruction period, and the provision preserving voluntary corrective action and recall.

The June 26 draft does not create corrective-action plans. It changes the process by which a plan is created, approved, and enforced.

Under the proposal:

- the Department may order an establishment to submit a corrective-action plan for Department review and approval;
- the establishment must comply with the plan as approved by the Department;
- the Department may inspect, review records, or otherwise verify implementation;
- failure to submit, implement, or comply with an approved plan may result in a monetary penalty or other authorized enforcement action; and
- the proposal expressly states that nothing in the section prevents imposition of a fine under 44:90:12:10 and 44:90:12:11 in addition to requiring a corrective-action plan.

The three numbered substantive contents of a plan, the destroy-order provisions, and the voluntary-corrective-action provision remain.

A separate rule, 44:90:04:02, already requires establishments to maintain internal corrective-and-preventive-action procedures. That chapter 4 requirement is not the same regulatory instrument as a Department-ordered corrective-action plan under chapter 12. This comment addresses the latter.

III. Questions the Department should answer in the rulemaking record

1. First-offense corrective-action plans and monetary penalties.

Is a corrective-action plan under proposed 44:90:12:11 the exclusive scheduled response to a first Category 4 or Category 5 violation, or may the Department also impose a monetary fine for that same first violation?

If a monetary fine may accompany the first-offense corrective-action plan, please identify the provision establishing the amount of that fine after proposed 44:90:12:11 replaces the first-offense Category 4 and Category 5 dollar amounts with corrective-action plans.

The proposed sentence in 44:90:12:03 preserving a fine “in addition to” a corrective-action plan makes this question material to the operation of the proposed rules.

2. Submission, approval, implementation, and verification.

How will a first-offense corrective-action plan be submitted, approved, timed, and verified?

What deadline will apply to submission? What occurs if the Department does not approve, reject, or request modification of a submitted plan within a specified period? What records or other evidence may the Department require to verify implementation? Are those matters governed by written standards outside the proposed rule?

3. Regulatory-impact analysis and the zero-cost determination.

How did the Department determine in Form 14, dated August 19, 2026, that the proposed submit-review-approve-implement-and-verify process in 44:90:12:03 creates no implementation cost, compliance cost, administrative cost, opportunity cost, or new reporting or recordkeeping requirement?

Form 14 item 8 identifies a savings from replacing first-offense Category 4 and Category 5 fines with corrective-action plans. Item 9 states there is no cost associated with the rule changes. Those conclusions should be explained together.

A first-offense monetary fine may be more or less costly than preparing, submitting, obtaining approval of, implementing, documenting, and permitting verification of a corrective-action plan. Form 14 does not disclose which analysis was used.

If the Department's zero-cost conclusion depends on excluding costs incurred only by establishments subject to enforcement, please identify that assumption and its basis as part of the key assumptions and sources of uncertainty addressed by SDCL 1-26-4.11.

The same Form 14 representation should also address other new documentation duties in the June 26 draft. The draft's waste-management operating-procedure language requires cannabis waste to be documented immediately in the inventory-tracking system, held in a designated secure waste-rendering area, and, if unrendered waste is transferred, moved only with Department approval, inventory-tracking documentation, a secure container, and a documented chain of custody. That text appears to impose recordkeeping requirements independent of the corrective-action-plan provisions and, in the transfer option, a Department-approval requirement. Form 14's statement that the amendments create no new reporting or recordkeeping requirement should explain that language as well as proposed 44:90:12:03 and 44:90:12:11.

4. Small-business population.

Form 14 item 13 selects a range of 100-499 affected small businesses and states that there is no unique small-business impact because medical-cannabis businesses are already complying.

Please identify the factual basis for selecting the 100-499 range and state whether the population being counted consists of licensed establishments, unique legal entities, applicants, or another universe.

The Department's August 27, 2026 public establishment list contained 108 licensed establishments. If licenses and businesses are not the same unit for purposes of Form 14, identifying the denominator would make the analysis reproducible.

5. Alternatives considered.

Form 14 states: “No alternative exists.”

Please identify what alternatives the Department considered before reaching that conclusion, including whether it considered:

(a) retaining the existing first-offense Category 4 and Category 5 dollar amounts;

(b) retaining existing 44:90:12:03 as an order-to-comply mechanism;

(c) amending 44:90:12:11 without rewriting the corrective-action-plan process;

(d) amending 44:90:12:03 without changing the first-offense fine schedule; or

(e) expressly stating whether a first-offense Category 4 or Category 5 corrective-action plan may be accompanied by a monetary fine.

This question does not assume that any of those alternatives is preferable. It asks what the Department considered before concluding that no alternative exists.

6. October 2025 stakeholder process.

Please place in the rulemaking file any written materials, presentations, agendas, minutes, summaries, recommendations, enforcement data, or other written materials from the October 2025 industry stakeholder meeting identified in Form 14 as part of the basis for this package.

If no such written materials exist, please state that in the record.

IV. What this supplemental comment is not

This supplemental comment does not ask the Department to restore the $500 and $1,000 first-offense fines as a policy preference. Converting a specified first-offense monetary penalty into a corrective-action process can constitute regulatory relief, additional compliance process, or both. The rulemaking record should identify which result the Department intends and whether the corrective-action plan may be stacked with a monetary fine for the underlying first offense.

This supplemental comment does not treat the Article 44:90 rulemaking as the determination contemplated by SDCL 34-20B-27. They are separate proceedings.

This supplemental comment does not object to “38” as a headline. The number of amended sections is not the issue presented here. The issue is leaving the interaction between proposed 44:90:12:03 and 44:90:12:11 unexplained, and leaving the draft's new waste-documentation duties unaddressed in the cost analysis, while Form 14 states that there is no cost and no new reporting or recordkeeping associated with the rule changes.

V. Request

Please include this letter in the complete record of written comments required by SDCL 1-26-4.

Please address the six matters identified above in the Department's rulemaking record and, where appropriate, in an updated regulatory-impact analysis under SDCL 1-26-4.11 before the Department presents the proposed rules to the Interim Rules Review Committee.

In addition, pursuant to SDCL 1-26-7.1, I hereby request the Department's written, concise statement of the principal reasons for and against adoption of the proposed amendments addressed in this comment and, if the Department adopts those amendments without resolving the considerations raised above, its reasons for overruling those considerations.

Please serve that statement as required by SDCL 1-26-7.1.

Respectfully submitted,

Jason Karimi

WeedPress

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Submitted for the record
September 29, 2026

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?

Respectfully submitted,

Jason Karimi

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Submitted for the record
September 30, 2026

Cover Letter

South Dakota Legislature · Medical Marijuana Oversight Committee

To: Chair Josephine Garcia, Vice-Chair John Carley, and Members of the Committee
Re: Written questions submitted for the October 13, 2026 record
Hearing: Tuesday, October 13, 2026 · Room 362, State Capitol, Pierre
Enclosure: Questions Submitted for the Record (26 items, three pages)

I am a Sioux Falls qualifying patient. I publish federal–state cannabis analysis at WeedPress. I have already filed written comments in the Department of Health's Article 44:90 docket. I am submitting the enclosed twenty-six questions for the official packet and Hearing Documents of this Committee.

The questions concern implementation after the April 28, 2026 order placing qualifying state-licensed medical marijuana in Schedule III. They identify the federal noun, the South Dakota noun, and the desk that owns the crosswalk. They do not ask this Committee to adopt rules, rewrite the Controlled Substances Act, or announce that federal law has already commanded a particular amendment of chapter 34-20G.

Medical Marijuana Oversight Committee duties under SDCL § 34-20G-93 are to evaluate the program and recommend. That is the use I am requesting. Place the enclosed document in the record. Direct the questions that belong to the Department of Health, the Attorney General, and the Legislature to those desks, and ask for a dated written response where the Committee finds that useful.

I request time to address the Committee briefly and will not read the twenty-six items aloud. Five of them are the ones I will speak: the § 825(c) warning and caregiver/transfer seam; the four state certificates against the three federal activities; whether the Department has confirmed receipt of the pending tetrahydrocannabinol scheduling petition; and how the State would defend continued application of SDCL § 34-20B-11 if that statute is raised in a criminal case.

Respectfully submitted,

Jason Karimi
Sioux Falls, South Dakota



SFY 2023 MEDICAL CANNABIS ANNUAL REPORT

July 1, 2022 – June 30, 2023

Annual Legislative Repot

November 29, 2023

SOUTH DAKOTA DEPARTMENT OF HEALTH

HISTORY OF MEDICAL CANNABIS IN SOUTH DAKOTA

On November 3, 2020, voters in South Dakota passed Initiated Measure (IM) 26 establishing a medical cannabis program in South Dakota for individuals with debilitating medical conditions. IM26 made medical cannabis legal in South Dakota effective July 1, 2021.

To provide a complete perspective on the history to date of Medical Cannabis in South Dakota, in addition to providing a summary of SFY 2023 activities, this report includes a timeline of program development and implementation during SFY2021 and SFY2022. The report also contains updated patient, practitioner, and certified establishment numbers, as well as legislative changes through June 30, 2023.

JANUARY 2021

The Department of Health began planning for the implementation of IM 26. We contracted with Cannabis Public Policy Consulting (CPPC) to advise the state on the implementation of a medical cannabis program.

FEBRUARY-MARCH 2021

The Department of Health met with members of the State Legislature to begin discussions on the implementation of a medical cannabis program. Also began discussion with key stakeholders.

APRIL 2021

The Departments of Health and Revenue jointly issued an RFP to identify and select vendors for establishment and patient registration electronic tracking systems.

MAY 2021

The legislative Marijuana Interim Summer Study Committee convened to discuss the administrative rulemaking and implementation process for medical cannabis in South Dakota. At the meeting both the Department of Health and the Department of Revenue testified on issues related to implementation.

JUNE 2021

The Department of Health released draft rules for the medical cannabis program. Throughout the month Department of Health staff met with several stakeholder groups to share information about the program as well as to seek input on the draft rules. There were two tele-town halls and four Zoom sessions that were well attended by multiple stakeholders including those who were interested in operating medical cannabis establishments, law enforcement representatives, local municipalities, patients, and health care providers. The Department of Health also met with the South Dakota State Medical Association, the South Dakota County Commissioners Association, the South Dakota Municipal League, and the South Dakota Association of Health Care Organizations to provide information and seek input.

During this month, Departments of Health and Revenue staff traveled to North Dakota to meet with their counterparts and discuss best practices, lessons learned, and challenges faced during the implementation of North Dakota's medical cannabis program.

JULY 2021

The Departments of Health and Revenue jointly issued an RFP to identify and select a vendor for a seed-to-sale tracking system.

AUGUST 2021

The Department of Health appeared before the legislative Marijuana Summer Study Committee and presented an overview of the proposed Administrative Rules.

The Department of Health, the Department of Education, and the South Dakota High School Activities Association presented at the joint Associated School Board of South Dakota and School Administrators of South Dakota conference. During this conference, input was sought on the proposed Department of Education administrative rules focused on medical cannabis in schools.

The Department of Health presented to the Sioux Falls Chamber of Commerce Issues Management Council seeking input on the draft rules and providing information on the medical cannabis program.

The Department of Health held an in-person/virtual public hearing on the adoption and amendment of proposed administrative rules for the medical cannabis program.

SEPTEMBER 2021

Accela was awarded the RFP for the establishment system and patient registration card system.

The Department of Health presented its proposed Medical Cannabis Program rules to the Legislature's

Interim Rules Review Committee. The Committee approved 143 of the 149 proposed rules.

OCTOBER 2021

METRC was awarded the contract for the seed-to-sale inventory tracking system.

The Department issued guidance on medical cannabis establishment applications, including municipality or county ordinances providing licensure of establishments.

The Department released updated drafts of some of the reverted rules. The Interim Rules Review Committee approved the revised rules.

The Department released the Medical Cannabis Establishment application form.

NOVEMBER 2021

Practitioners (physicians) began certifying patients in the online patient registry system. The first patient cards were issued to patients.

JANUARY 2022

The first medical cannabis establishment registration certificates were issued to dispensaries in Watertown and Keystone.

The first lottery drawing to determine successful applicants for dispensary certification in Yankton was held. The South Dakota Lottery Office operated the drawing. There was a total of five slots.

MARCH 2022

A lottery drawing was held in Rapid City to determine successful applicants for dispensary certification. There was a total of 47 applicants and 15 were selected.

APRIL 2022

A third lottery drawing was conducted to determine successful applicants for cultivation, manufacturing, and dispensary establishment certifications in North Sioux City . There were two manufacturers, two cultivators, and 4 dispensaries for a total of eight slots.

JUNE 2022

Medical Cannabis Program staff attended the Cannabis Regulators Association (CANNRA) conference.

METRC held " road shows" across the state and provided training to establishment staff on the seed-to-sale tracking system, and specifically how to tag plants and enter product into the system.

The first testing laboratory was certified.

The South Dakota Public Health Laboratory was certified and is able to conduct confirmatory testing .

The first cannabis plants were harvested.

JULY 2022

The first dispensary opened.

The FY 2022 legislative changes took effect. One of the most significant changes was SB 26 which revised the definition of "practitioner" to include Physician's Assistants and Advanced Practice Registered Nurses for the purposes of providing a written certification to patients for the use of medical cannabis.

Other changes included SB 23 which amended the definition of a bona fide practitioner-patient relationship to include a consulting or referring practitioner and SB 24 which established limits on the maximum number of cannabis plants that may be cultivated by a medical cannabis cardholder.

AUGUST 2022

The Medical Cannabis Program initiated site visits to several establishments providing technical assistance and ensuring program compliance.

METRC, the state's seed-to-sale inventory management system, went live.

OCTOBER 2022

The Department held a public hearing on proposed changes to its administrative rules. Many of the changes were the result of stakeholder feedback.

Program staff attended and presented information to the Medical Cannabis Oversight Committee.

NOVEMBER 2022

The Interim Rules Review Committee approved the proposed rule changes.

MARCH 2023

METRC provided additional training to Medical Cannabis and Department of Public Safety (DPS) staff.

MAY 2023

South Dakota reached 10,000 patients. This exceeded the Department's original projection of 6,000 patients within three years.

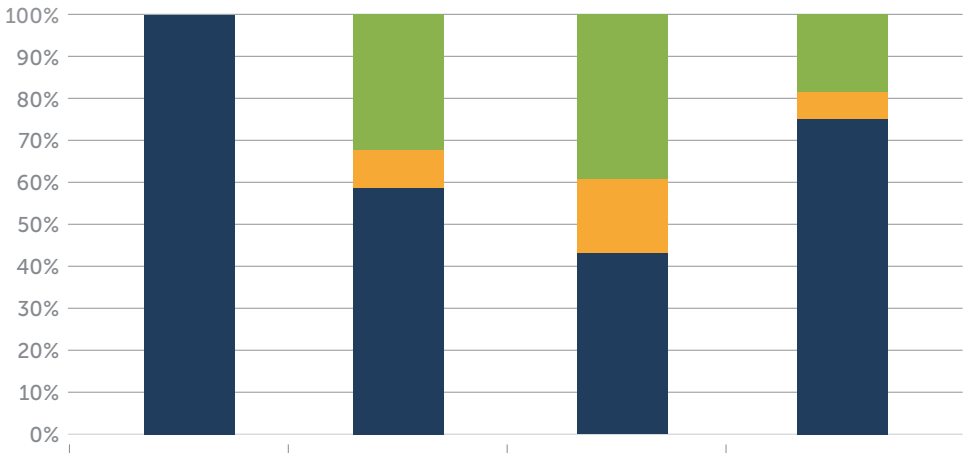
JULY 2023

SB 1 which was introduced by the Medical Marijuana Oversight Committee took effect. SB 1 added a list of qualifying conditions to the definition of a "debilitating medical condition."

PROGRAM SPECIFIC DATA

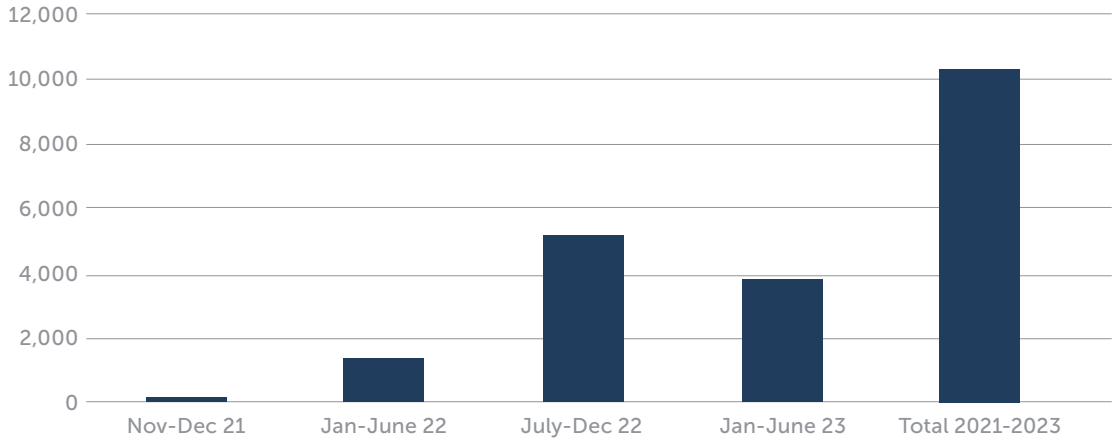
As of 6/26/23, a total of 11,004 patient applications and 471 caregiver cards had been processed with only one revocation. The charts below depict the number and type of certified practitioners and establishments and shows the overall progression of approved patients.

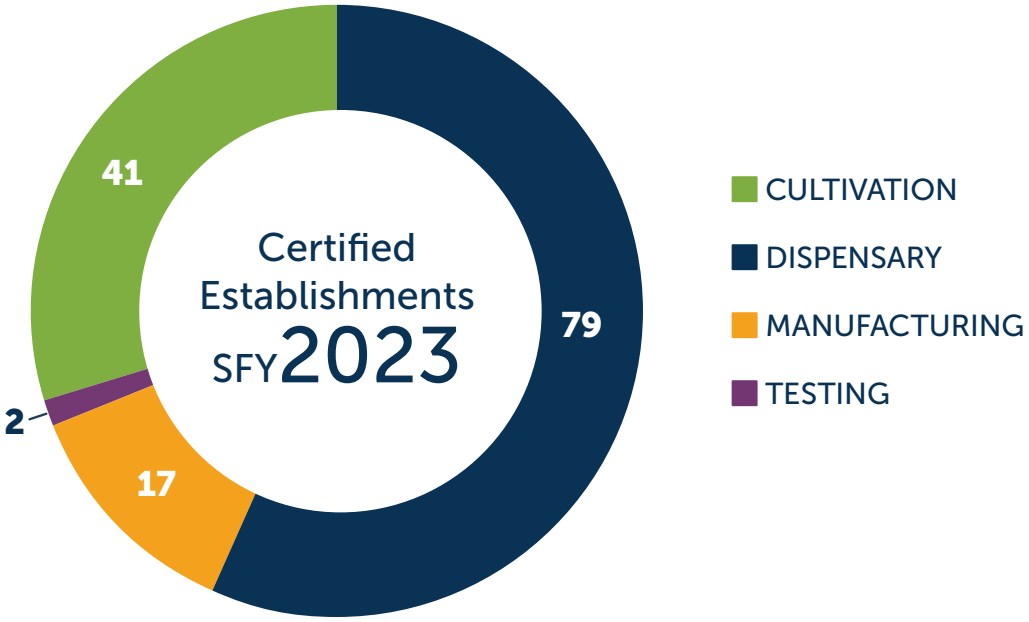
TOTAL APPROVED PRACTITIONERS



	NOV 21-JUN 22	JUL-DEC 22	JAN-JUN 23	TOTAL
Advanced Practice RN	0	33	9	42
Physician Assistants	0	9	4	13
Physician	100	60	10	170

APPROVED PATIENTS





INSPECTIONS

The following table represents the number of inspections completed between February and June 2023, broken out by type of establishment.

Dispensaries	15
Cultivation	11
Manufacturer	8
Testing Facilities	0

The 10 most common rule violations cited during an inspection:

1. **44:90:04:16.** Record-keeping – Use of inventory tracking system – Training requirements
2. **44:90:04:07.** Placement of security cameras
3. **44:90:10:01 (07-14).** Labeling
4. **44:90:03:05 (9).** Operating procedures – Required contents – All medical cannabis establishments
5. **44:90:11:01.** Inventory tracking – Requirements and procedures
6. **44:90:04:11.** Agent identification badges to be provided by establishments
7. **44:90:03:05 (2).** Operating procedures – Required contents – All medical cannabis establishments
8. **44:90:11:09.** Dispensary inventory records –Additional requirements
9. **44:90:04:19.** Transport manifests – Form and content
10. **44:90:05:02.** Packaging and labeling cannabis for retail sale

REVENUES & EXPENSES

During the 2021 legislative session, SB 35 appropriated $4.2 M for the implementation of provisions concerning the legalization, regulation, and taxation of marijuana. The Department of Health received approximately $2.1M of the $4.2M special appropriation to implement the Medical Cannabis Program. In addition, fees are being collected as follows:

Establishments (new application and annual renewals	$5,000
Patient card	$75
Low-income patient card	$20
Caregiver	$20
Lost/stolen card	$20
Home cultivation application	$20

PATIENT CARDHOLDERS BY MEDICAL CONDITION

THE NUMBER OF PATIENT CARDHOLDERS BY MEDICAL CONDITION

When initially passed, the law did not identify a set of specific conditions that constituted a "debilitating medical condition", rather it described a set of symptoms. Practitioners were not required to identify the specific conditions, rather a practitioner certified a debilitating medical condition. Because the definition didn't identify conditions, data as to specific medical conditions was challenging to collect.

The following ICD-10 codes were the most commonly used by practitioners between July 2022 and June 2023:

1. Cancer (various types)
2. Chronic pain
3. Seizures
4. Multiple Sclerosis
5. Severe muscle spasms

Starting July 1, 2023, with the legislative changes as a result of SB 1 identifying specific conditions that constitute a "debilitating medical condition", the department will be able to collect and report on specific medical conditions that qualify patients for medical cannabis use.

IMPACT OF MEDICAL CANNABIS

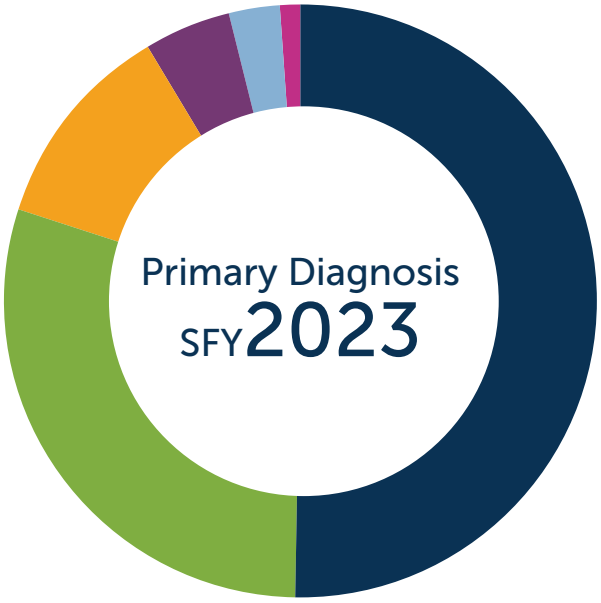
Pursuant to SDCL §34-20G-94, the Department must annually report to the Legislature on the impact of medical cannabis on public safety, public health, and behavioral health services; any other information regarding the effects of medical cannabis.

In the past 10 years (2013-2022), no deaths have included the primary cause of death being marijuana-use related. However, thirty five (35) deaths in South Dakota during this time period have been identified as having marijuana use as a significant condition/ contributing factor.

The top causes of death in South Dakota where marijuana use was a contributing factor included:

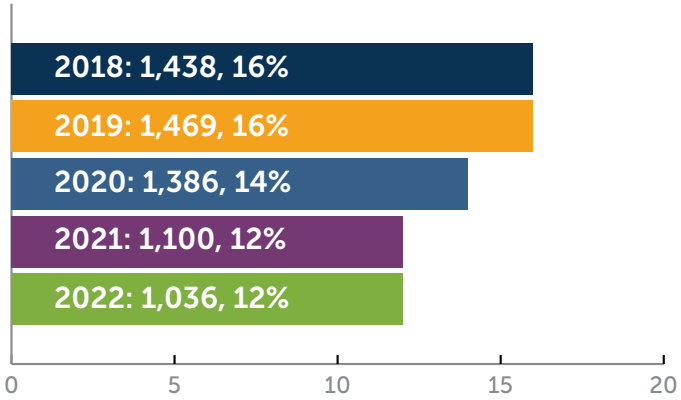
1. Motor Vehicle Accidents
2. Suicide
3. Heart Disease
4. Accidental drug overdose

The Department of Social Services, Division of Behavioral Health, monitors and tracks data for publicly funded behavioral health services. This tracking occurs through the Division of Behavioral Health's information management system, STARS, or State Treatment and Activity Reporting System. According to FY22 statistics published by the Division of Behavioral Health, 8,636 adults and children received publicly funded behavioral health services. Of those, 12% of adults and children, or an estimated 1,036 had a cannabis use disorder as a primary diagnosis.



- Alcohol Use Disorder (53%)
- Amphetamine Use Disorder (31%)
- Cannabis Use Disorder (12%)
- No Diagnosis/Deferred (5%)
- Opioid Use Disorder (3%)
- Other Use Disorder (1%)

The Division of Behavioral Health has trended this data over five years (2018-2022), with the results showing that the number of individuals with cannabis use disorders receiving public services has decreased from 16% in 2018 but remained fairly stable at approximately 12% since FY21.



With implementation of the Medical Cannabis Program occurring in SFY21, the Department will continue to work with the Division of Behavioral Health in sharing and interpreting the data trends for individuals receiving public services with a primary Cannabis Use Diagnosis. Monitoring and trending of this data will assist the Department potential impact of Medical Cannabis for both adults and children across the state.

Beginning July 1, 2023, the Department began tracking important markers related to the impact of medical cannabis in South Dakota. These include:

- Marijuana use by age and race/ethnicity.
- Marijuana use and mental health conditions.

RECOMMENDATIONS

Medical Cannabis was a new industry and a new program in South Dakota. Stakeholders, including the Medical Marijuana Oversight Committee, should continue to closely follow the development, trends, and growth of the industry and make changes as needed to support a responsible and safe medical cannabis program, including a review of applicable statutes and administrative rules.

Monitor the program's staffing and budget areas to ensure adequate staff and revenues to support a safe and effective program. It is anticipated that registration fees will need to be looked at as currently, the fees charged are at the statutory cap.

09/22/2026 **EXHIBIT B**

Dear Department of Health,

Please consider the enclosed amendment to ARSD 44:90:02:07. It would require patients and designated caregivers authorized to cultivate cannabis to document a monitored alarm system for the enclosed, locked cultivation space.

Home cultivation should include a reasonable safeguard against unauthorized access and theft. The proposal follows the approach used for licensed facilities while limiting the alarm requirement to the cultivation space, rather than every door and window of a patient's home. Requiring proof with an application and renewal would give the Department a way to verify that monitoring is in place.

Thank you for considering this amendment.

Sincerely,

Emmett Reistroffer

Ereistroffer27@gmail.com

(605) 906-3291

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) Documentation demonstrating that the enclosed, locked facility is protected by an alarm system:

(a) With monitored sensors or other professionally installed intrusion-detection devices capable of detecting unauthorized entry into the enclosed, locked facility;

(b) Monitored by a security company capable of contacting the patient or designated caregiver and, if necessary, law enforcement; and

(c) For which the patient or designated caregiver has provided a current monitoring agreement, service statement, invoice, or other documentation acceptable to the department demonstrating that the alarm system is installed and actively monitored; and

~~and (2)~~(3) The fee required by § 44:90:02:17.

The alarm system required by subdivision (2) must be maintained in operating condition while cannabis is cultivated in the enclosed, locked facility. Documentation demonstrating active monitoring must be submitted with each application or renewal application authorizing cultivation.

~~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.

9/23/26 Rules Package Comments

- **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.
- This rule has already been discussed and decided it was a bad idea.
- **The cannabis has already passed required safety testing.**
- **Rolling pre-rolls does not inherently change the underlying cannabis material and does not impact the public health and safety of the product.**
- **Avoids unnecessary duplication of testing.**
    - Forcing a dispensary to use already-tested flower could avoid situations where essentially the same cannabis is subjected to additional regulatory steps simply because its physical form changed. This would make the cost of pre-rolls increase by an unaffordable amount.
- **Creates more flexibility for patients and businesses**
    - Pre-rolls are simply another way of consuming flower. Allowing dispensaries to prepare pre-rolls from tested flower could let dispensaries respond to patient demand without requiring every pre-roll format to be manufactured and tested separately.
- **The existing rules can still provide safeguards.**
    - The proposal doesn't have to be “no pre-rolls.” A rule could require dispensaries to:
    - use only flower from a **passed testing batch**;
    - maintain the original batch/lot identifier;
    - document exactly how much flower was transferred into pre-roll production;
    - maintain inventory reconciliation;
    - use sanitary equipment and procedures;
    - prevent combining of different tested batches unless specifically permitted;
    - package and label the finished pre-rolls according to applicable requirements; and
    - maintain records sufficient for a recall or investigation.

- **44:90:09:02. Absence of mandatory testing.** The absence of mandatory testing may not be interpreted to allow: (4) The decontamination or remediation of cannabis prior to initial testing.
    - AND
- **44:90:09:11. Remediation of nonusable batches.**
    - The purpose of decontamination is to create a product that goes to the slogan of what the Department of Health stands for. “The Department of Health strives to promote, protect, and improve the health of all South Dakotan’s”
    - The Department has in rule that the allowable amount of mold, mildew, BTGN, aspergillus among many other contaminates that can make you sick at a limit of 10,000 CFU.
    - I am not saying that is a bad thing. That is nationally the recognized standard for the allowable amount in not just in cannabis, but in our food as well. I always like to bring to light that the FDA has an allowable amount of poop that can be in our food, and that number also isn’t zero.
    - But when we are talking about my business and my opportunity to make a product as safe as we possibly can, I take that opportunity.
    - We go through rigorous quality control at our facility. We visibly inspect every single plant, every day. Once those plants are harvested, we keep inspecting the dry room. When the plants are to be bucked and placed into totes prior to the trimming process we inspect every bud that goes into those totes. Then the trimmers inspect every single bud again while they are trimming it. This goes on for hundreds of pounds a month and thousands of pounds a year. Once we have completed trimming the material then we decontaminate every single flower with RAD Source Technology. Rad Source, Willow and a lot of these other decontamination machines eliminate the possibility of human error.
    - Even after all of that, if mold spores are allowed to stay active while the buds are being stored then it leaves an opportunity for the mold to spread. You can eliminate that risk by pre-treating

cannabis.

- That opportunity is great for businesses who are also trying to minimize crop failure. Crop failure can cost hundreds of thousands of dollars on a single harvest.
- The FDA and the SD Med Cannabis rules might have a tolerance, but our company does not. We want the cleanest product making it to the shelves for patients possible while reserving the right to only test that product one time.
- With the passage of this rule this eliminates that possibility. It will create a burden of cost on operators that gets passed down to our patients for having to test every single batch of cannabis twice. We will have to test it twice because while there is still a tolerance for the allowable amount of harmful microorganisms to exist in rule, our tolerance will still be zero when we are talking about those who are medically qualifying patients in South Dakota.
- This rule isn't eliminating testing standards, it's eliminating a normal practice that promotes the health, safety and wellbeing of patients.
- Both of these rules should be struck.

- **44:90:04:08. Recording by security cameras -- Access by department.**
  - (2) Internet protocol (IP) compatibility supporting live viewing and viewing of stored footage by the department over a secure internet connection;
  - This rule wants to turn our security systems into unrestricted government surveillance systems. Even Colorado doesn't allow the opportunity for the government to watch video footage without probable cause and due process. See link page 111- https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=12351&fileName=1%20CCR%20212-3
  - Viewing of stored video footage is a warrantless inspection and is unreasonable unless there are underlying reasons as to why that should happen. The Department of Health can already request access to stored video, impose fines if the footage is not

delivered properly and accurately or even suspend and revoke a license.

- I don't think any cannabis operator here is in support of a rule that allows the department the opportunity to go back in time and review footage of a business that allows the Department the opportunity to fine, suspend or revoke a license because the government found something from two months ago that doesn't have complete information just based on the video footage.
- When doing our DEA inspection, the DEA admitted to us that it was a constitutional issue to view stored footage, but to view live streams as well.
- This proposed change should be struck out of the package as it violates constitutional rights under the 4th amendment.

- **44:90:04:09. Storage of camera footage.** An establishment shall maintain surveillance recordings for a minimum of ~~9060~~ 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:
  - My only suggestion is that the data package is very large and should have the opportunity to be stored on a portable hard drive. A portable hard drive is not exactly defined as a third party server.

- **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.

~~(4) 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.~~

Not Addressed Rules Package Comments

- **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.
  - Please strike sub section (4)
- **44:90:03:17. Fees for registration certificates -- Application and renewal.** The department shall collect a non-refundable fee for an initial or renewal application for an establishment registration certificate of ~~nine thousand dollars~~ five thousand dollars.

From: Adria Johnson <adria.j@cannabischemlab.com> **EXHIBIT D**
Sent: Tuesday, September 29, 2026 3:03 PM
To: DOH MC Establishments <MCEstablishments@state.sd.us>; Brunner, Whitney <Whitney.Brunner@state.sd.us>; Campbell, Teresa <Teresa.Campbell@state.sd.us>
Subject: [EXT] Written commentary

Good afternoon,
Thank you again for the chance to speak at last week's hearing. Unfortunately, I suffer a muscle disease that makes public speaking difficult for me. I am unable to catch my breath when I feel stressed or nervous, so I did not present as well as I would have liked. So, here's what I was trying to say!

44:90:04:13

Our concern is that a testing laboratory operates differently from other medical cannabis establishments. We have entities within the medical cannabis program that need to physically bring samples into our building, and we also have patients who bring samples to the laboratory for testing. If we would have to reach out to Department of Health for approval for all these clients, you would receive emails from us 5 days a week, several times a day. Medical cannabis, however, is only one of several avenues of testing that we perform.
We also have clients and official business outside of the medical cannabis program, including Tribal entities, Industrial Hemp Program producers and sample collectors, State's Attorneys, law enforcement, government officials, and other clients who may bring samples to the laboratory, meet with us, or tour the facility. Because we perform testing across multiple programs and industries, we naturally have a broader range of people coming to the laboratory for legitimate business purposes.
That is also why our facility is designed with controlled-access areas, including our Vault. Samples can be received and secured in a controlled area without giving visitors access to the analytical portions of the laboratory or to medical cannabis samples outside of their authorized purpose.
We support identification, security, and documented access, but we do not believe legitimate sample drop-offs, patient testing, or other official business should require prior Department approval, particularly when those activities fall outside of the medical cannabis program.
We would ask that the language recognize the normal operation of a testing laboratory and allow laboratories to conduct legitimate business with patients, clients, and agencies both within and outside of the medical cannabis program without unnecessarily expanding the Department's authority beyond the scope of that program.

44:90:04:20
Our concern is that the proposed language creates an unnecessary burden on the receiving establishment.

Under the current rule, the originating establishment is responsible for preparing and carrying the required transport manifests. The proposed change would effectively require the receiving party to print manifests in order to obtain the required signatures.
Metrc already records the transfer, the date and time it was received, and the individual who accepted it. We would ask the Department to reconsider whether those existing Metrc capabilities can satisfy the intent of this requirement.
If the Department does not intend to rely on Metrc for that documentation, then we wo for the receiving establishment.

44:90:06:01
We are unclear on the reasoning for removing the DEA registration requirement for testing facilities, unless this is intended to address changes occurring at the federal level regarding cannabis scheduling.
We would ask the Department to clarify the reasoning behind this change. DEA registration remains relevant to laboratories handling controlled substances, and USDA continues to require DEA registration for hemp compliance testing. USDA has delayed enforcement of that requirement through December 31, 2026, but it has not eliminated it.
From a laboratory standpoint, DEA registration provides an additional level of accountability and demonstrates that a facility has met federal requirements for handling controlled substances. Before removing this requirement, we believe it is important to understand what regulatory purpose the change is intended to serve and how it aligns with the direction of other federal testing programs.

44:90:09:02
We strongly oppose the proposed prohibition on decontamination or remediation prior to initial testing.
Our concern is that this will result in unnecessary testing and retesting costs that will ultimately increase the cost of medical cannabis for patients. If a cultivator knows that a batch requires a preventative decontamination step, requiring them to test it first simply to establish a failure before they can address the issue creates expense without improving the safety of the final product.
The product still has to undergo mandatory compliance testing before it can be sold to a patient.
If the Department's concern is transparency, we believe a better approach would be to require disclosure or labeling when cannabis has undergone decontamination or remediation prior to testing. That gives patients transparency without requiring unnecessary testing solely to document a failure.
We would ask the Department to reconsider and address transparency directly rather than prohibiting pre-testing treatment.

44:90:09:07.1

We oppose removing the existing pre-roll exception.
When the cannabis flower used to manufacture the pre-roll has already passed the required compliance testing, and the rolling papers have supporting COAs, requiring the finished pre-roll to go through another round of compliance sampling and testing creates duplicative testing without a clear additional benefit to patient safety.
This adds additional sampling, testing, product, and labor costs for cultivators, manufacturers, and laboratories, and ultimately those costs are passed on to patients.
We would ask the Department to retain the existing pre-roll exception. This issue was also considered previously in South Dakota.

44:90:09:11
We have a few concerns with this section.
First, we are unclear why the prohibition on decontamination or pretreatment is being placed here when essentially the same prohibition is also being added to § 44:90:09:02.
We would ask the Department to clarify why this requirement needs to appear in two separate rules.
We would also like to see a discussion on what the definition of decontamination/remediation/pretreatment is. There are a lot of decontamination tactics used in the industry that could easily be interpreted in many ways.
Second, we would like clarification regarding subsection (5). Historically, the Department has allowed a remediated batch to be retested for the analyte that originally failed rather than requiring the entire compliance panel to be repeated.
If the Department now intends “all required tests” to mean that every compliance test must be repeated following remediation, that would create a significant additional testing expense that ultimately gets passed on to patients.
We would prefer the rule clearly allow retesting of the failed analyte, along with any additional analytes that could reasonably be affected by the remediation process, rather than automatically requiring an entirely new compliance panel.

44:90:12:03
Our concern is how this language interacts with an establishment's right to dispute or appeal an alleged violation.
The rule would require an establishment to submit and implement a corrective action plan upon a suspected violation. If the establishment disagrees with the Department's finding and intends to appeal, we do not want the submission or implementation of that corrective action plan to later be treated as an admission that the violation occurred.
An establishment should be able to comply with a Department directive while preserving its right to challenge the underlying finding.
We would ask that the rule specifically state that submitting or implementing a corrective action plan does not constitute an admission of a violation and does not waive any administrative or judicial appeal rights.

Adria Johnson
Chief Executive Officer
Cannabis ChemLab SD and MN
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Cannabis
ChemLab

EXHIBIT E

September 29, 2026

South Dakota Department of Health
Office of Medical Cannabis
600 East Capitol Avenue
Pierre, South Dakota 57501

RE: **Feedback on Proposed Amendments to Article 44:90 Medical Cannabis**

Dear Department Members,

The American Association for Laboratory Accreditation (A2LA) appreciates the opportunity to provide comments to the South Dakota Department of Health, Office of Medical Cannabis, regarding the proposed amendments to Article 44:90 governing the state's medical cannabis program.

A2LA is currently recognized by the Department to provide accreditation services and accredits more than 4,500 organizations worldwide. For more than 40 years, A2LA has supported federal and state agencies and industry through accreditation of testing and calibration laboratories, inspection bodies, product certification bodies, and other conformity assessment organizations.

A2LA supports the continued requirement that cannabis testing facilities in South Dakota be accredited to ISO/IEC 17025. Maintaining this accreditation requirement helps provide confidence in the accuracy and reliability of laboratory testing used to protect consumers and support the Department's regulatory mission.

A2LA also appreciates the Department's continued recognition of A2LA within the definition of "ISO/IEC 17025 accreditation." A2LA respectfully recommends a limited revision to that definition to provide greater consistency with terminology used throughout Article 44:90 and to establish an internationally recognized qualification for any additional accreditation body accepted under the rule.

44:90:01:01(~~30~~)(31) – Definition of "ISO/IEC 17025 Accreditation"

A2LA recommends the following revisions, with additions shown in **bold** and deletions shown in ~~strikethrough~~:

> "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~~ **body that is a signatory to the Global Accreditation Cooperation Incorporated Multilateral Recognition Arrangement (Global ACI MRA) and** that the testing facility meets G*eneral 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;"

A2LA also recommends replacing the term "accreditation board" with "accreditation body." The term "accreditation body" is used elsewhere throughout Article 44:90, including §§ 44:90:03:07(3)(a), 44:90:03:07(6), and 44:90:06:01(1), but is not separately defined in the definitions section. Using "accreditation body" in the definition of "ISO/IEC 17025 accreditation" would therefore improve

5202 Presidents Court, Suite 220 | Frederick, MD 21703-8515 | Phone: 301 644 3248 | Fax: 240 454 9449 | www.A2LA.org

consistency throughout the rule and align the terminology with the term commonly used for organizations that perform accreditation.

Global ACI MRA Recognition

A2LA also recommends requiring any additional accreditation body accepted under the definition to be a signatory to the Global Accreditation Cooperation Incorporated Multilateral Recognition Arrangement (Global ACI MRA).

Effective January 1, 2026, Global Accreditation Cooperation Incorporated (Global ACI) assumed the roles previously carried out by the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF) and began operating a single international Multilateral Recognition Arrangement. The Global ACI MRA provides the current international framework for recognition among accreditation bodies.

Although Article 44:90 did not previously reference the ILAC MRA, adding the Global ACI MRA criterion would provide an objective and internationally recognized qualification for any accreditation body accepted under the rule beyond those specifically named. Participation in the Global ACI MRA demonstrates that an accreditation body operates within the international peer-evaluation framework applicable to its recognized scope and helps provide confidence in the competence and consistent operation of the accreditation bodies relied upon by regulators.

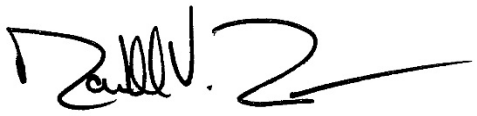
This change would not alter the Department's existing recognition of A2LA, IAS, or ANAB, nor would it change the current operational practices of accreditation bodies or accredited laboratories. It would simply clarify the qualifications expected of any additional accreditation body recognized by the Department.

Conclusion

A2LA appreciates the opportunity to provide these comments and would welcome the opportunity to provide additional information regarding ISO/IEC 17025 accreditation or the Global ACI MRA.

If you have any questions or need additional information, please feel free to contact me directly at rquerry@A2LA.org.

Respectfully submitted,



Randall Querry
Director of Government Relations
American Association for Laboratory Accreditation (A2LA)

EXHIBIT F

Public Comment on Proposed §§ 44:90:09:02(4) and 44:90:09:11(6)

Preventive Decontamination Prior to Initial Testing

Submitted by Dakota Herb

Dakota Herb respectfully requests that proposed §§ 44:90:09:02(4) and 44:90:09:11(6) be struck or revised to permit Department-approved preventive microbial-control technologies before initial testing. The proposed language treats preventive decontamination the same as remediation after a failed test, even though those are materially different activities.

Preventive Treatment Is Not Failed-Batch Remediation

A preventive treatment occurs before a batch has failed testing. Technologies such as X-ray and other validated non-thermal microbial-control systems can be incorporated into normal production as an added safety step before compliance sampling. The purpose is not to conceal a failure; it is to reduce microbial risk before the product reaches a patient.

The treated product would still be required to undergo all applicable South Dakota compliance testing before retail transfer. Allowing preventive treatment therefore does not eliminate testing or lower the State's standards. It simply allows an operator to complete a documented production safety step before the final product is tested.

The Rule Should Encourage Cleaner Product, Not Merely Compliance at the Limit

Microbial limits are maximum tolerances, not production targets. Even facilities with strong sanitation, environmental controls, employee hygiene practices, drying and curing procedures, and visual inspection cannot eliminate every naturally occurring spore or contamination risk. Preventive microbial-control treatment provides an additional safeguard, which is particularly important in a medical cannabis program serving patients who may be more vulnerable to microbial exposure.

A More Targeted Regulatory Approach Already Exists

Other regulated cannabis markets address this issue through controls and disclosure rather than a blanket prohibition. Colorado, for example, permits approved microbial decontamination and microbial-control methods, including X-ray irradiation, while requiring uniform treatment of the entire batch, written procedures, inventory tracking, and regulatory oversight. This directly addresses the risk of selective treatment or sample manipulation without prohibiting legitimate preventive safety practices.

The Proposed Rule Creates Unnecessary Cost Without Improving Final-Product Testing

Under the proposed language, an operator that wants to retain preventive treatment may be forced to test the batch before treatment and then test it again afterward. That creates additional laboratory expense, product hold time, and administrative burden. Those costs ultimately become part of the cost of medical cannabis for patients.

The more relevant regulatory question is whether the final product, after all normal production and preventive safety steps are complete, passes South Dakota's required compliance testing. If it does, the integrity of the testing program remains intact.

Recommended Safeguards

If the Department is concerned that pretreatment could mask poor cultivation practices or be used to manipulate testing, Dakota Herb recommends allowing preventive decontamination only when the following safeguards are met:

- The technology or method is approved or otherwise accepted by the Department.
- The entire harvest batch or production batch is treated uniformly before compliance sampling.
- No testing sample or portion of a batch is treated differently from the remainder of the batch.
- The treatment process is included in the establishment's written operating procedures.
- Each treatment is documented in the State inventory tracking system, including the batch, date, method, and responsible agent.
- The treatment is disclosed to the testing laboratory and identified on or associated with the certificate of analysis.
- The treated product remains subject to all applicable final-form compliance testing before retail transfer.

Requested Revision

Dakota Herb respectfully requests that §§ 44:90:09:02(4) and 44:90:09:11(6) be struck. If the Department prefers to retain a restriction, we recommend replacing the blanket prohibition with language substantially similar to the following:

Proposed Replacement Language

Preventive microbial control prior to testing. A cultivation facility or cannabis product manufacturing facility may subject cannabis or cannabis products to a Department-approved microbial decontamination or microbial-control process before initial testing, provided that: (1) the entire applicable batch is treated before collection of the testing sample; (2) no testing sample or portion of a batch is treated differently from the remainder of the batch; (3) the establishment maintains written procedures describing the process; (4) the treatment is recorded in the inventory tracking system; (5) the treatment is disclosed to the testing facility and identified on or associated with the certificate of analysis; and (6) the cannabis or cannabis product satisfies all testing requirements applicable to the product in its final form before retail transfer.

Preserve a Clear Distinction Between Prevention and Remediation

Category	Meaning
Preventive microbial control	Performed before compliance sampling as part of normal production and quality assurance.
Remediation	Performed after a batch has failed compliance testing and remains subject to the Department's remediation, retesting, and disposition requirements.

Conclusion:

Dakota Herb supports strong testing standards, full disclosure, and meaningful Department oversight. Our concern is that the proposed language would prohibit an additional safety step even though the treated final product must still pass the same independent compliance testing required of every other product sold to South Dakota patients. Documentation, uniform batch treatment, inventory tracking, disclosure, Department approval, and final-form testing can address the Department's concerns without banning preventive technologies that may reduce microbial risk.

For these reasons, Dakota Herb respectfully requests that proposed §§ 44:90:09:02(4) and 44:90:09:11(6) be struck or revised consistent with the safeguards above.

Reference note: Colorado's microbial-control framework permits approved decontamination methods, including X-ray irradiation, subject to batch-wide treatment, documentation, and regulatory controls. Relevant South Dakota provisions should be reviewed against the final proposed rule text before submission.

Janice Rubin
CleanBudz at Dakota Herb
EXHIBIT G
October 2, 2026

To the Members of the South Dakota Cannabis Administrative Board,

RE: Opposition to Proposed Rule Changes Regarding Pre-Testing Decontamination Restrictions

Dear Members of the Board,

My name is Janice, and I operate a family-owned irradiation decontamination facility, utilizing RadSource technology servicing South Dakota's licensed medical cannabis industry. Our business provides a critical safety layer for South Dakota's supply chain. I am writing to formally log my opposition to the proposed rule changes that seek to prohibit any product decontamination prior to an initial laboratory test (44:90:09:02 and 44:90:09:11(6)).

Specifically, our primary concerns center on three critical areas: **Scope of Decontamination and the benefits of biological irradiation**, **Safety Standards and the lack of additional protections for patients**, and **Economic Trickle-Down Effect on Small Cultivators and Patients**.

1. Scope of Decontamination
The proposed rule treats all decontamination as an attempt to mask broader cultivation failures. However, a clear distinction should be made between chemical remediation (such as ozone use and pesticides/herbicides) and biological irradiation (such as RadSource technology). Our specialized equipment targets only naturally occurring biological contaminants, including aerobic bacteria, yeast, mold, Aspergillus, and bile-tolerant gram-negative bacteria.

Irradiation does not—and scientifically cannot—alter, degrade, or mask non-naturally occurring contaminants. If a crop is contaminated with heavy metals, chemical pesticides, or unauthorized residual solvents, our process leaves those chemical markers completely untouched. South Dakota's final compliance testing will still identify them. Therefore, pre-treatment poses zero risk of "hiding" dangerous chemical safety failures from regulators.

It is important to know irradiation is widely accepted in the medical field because it is a safe, effective and proven method for treating disease and preventing infection. Irradiation is used in medical facilities across South Dakota for sterilizing medical devices, pharmaceuticals and biological materials. Irradiation is an essential tool in modern medicine and should be accepted in South Dakota to target biological contaminants for the licensed medical cannabis industry.

2. Safety Standards
We should evaluate: *what additional patient safety protection is created by requiring a batch to test or fail first?* The final product must meet the state's strict safety standards regardless. Forcing an extra primary test simply adds significant logistical delays and doubles laboratory

testing fees for cultivators; especially for those who decontaminate their product regardless of passing, simply to provide the safest product they can.

3. Economic Trickle-Down Effect on Small Cultivators and Patients
The financial consequences of this rule change will ripple negatively through the entire South Dakota medical cannabis ecosystem:

- **For Patients:** Cultivators cannot absorb doubled testing fees and extended operational timelines. These added costs will inevitably be passed directly to vulnerable medical patients who rely on affordable access to their medicine.
- **For Small Cultivators:** South Dakota's independent, small-scale growers operate on incredibly thin margins. A single failed batch can jeopardize their entire operation. Pre-test decontamination allows them to proactively ensure safety in their business and in the product.
- **For Small Businesses:** As a small, family-owned business, we rely on a steady flow of proactive safety treatments to remain operational. If we are restricted to only treating batches that have already gone through a failure cycle, our business will become unsustainable and will close nearly immediately.

If our facility is forced to close, the safety net disappears entirely. We will not be around to assist growers proactively, nor will we be here to help small cultivators remediate failed batches to save their harvests. This will be detrimental to the industry.

Conclusion and Regulatory Alternative

Prohibiting pre-treatment does not protect South Dakota patients; it merely penalizes proactive safety, duplicates testing costs, and eliminates independent South Dakota businesses. Rather than enforcing an outright ban, **we ask the DOH to regulate pretreatment rather than prohibit it.** Disclosures for pre-treated batches would allow the state to maintain total transparency without destroying the industry's safety net.

We respectfully urge the board to reject the proposed rule change in its current form (44:90:09:02 and 44:90:09:11(6)). Thank you for your time, consideration, and dedication to South Dakota's medical cannabis program. Attached to this letter is additional information regarding the RadSource Technology. Please do not hesitate to reach out if you have any questions or we can be of assistance in any capacity.

Sincerely,

Janice Rubin
CleanBudz at Dakota Herb

(sent via email to: Whitney.Brunner@state.sd.us)

MILE HIGH REMEDIES LLC
QUALITY DECONTAMINATION

Shelf-Life Study

NOVEMBER 1, 2024

STEPHEN WEICHENTHAL / LEVI POEHLEIN/DARCY HANSEN

Executive Summary

Mile High Remedies LLC is conducting a shelf-life study to be compliant with MED direction/regulation regarding sales of marijuana. Three strains chosen for this study were harvested/dried/cured/irradiated/packaged in accordance with MHR Standard Operating Procedures (SOP). Subsequently tested for microbial, potency, terpene content, and water activity.

1. Microbial testing results show consistent Not Detectable, with one data point exception (still within limits). Demonstrates absolute efficacy of this treatment to mitigate/eliminate microbial risk.

2. Potency results are likely lab vari3ability (slight) with no degradation noted. No significant trending shown to date.

3. Terpene content may be showing slight decrease over time for two of the samples. Subsequent testing may demonstrate that trend better.

4. Water Activity results indicate slight variability over time, all within limits required. Variability likely due to sampling/testing environment.

Test samples have demonstrated shelf life of 17, 21, and 25 months, so the mean value taken is 21 months shelf life.

Test results indicate that following the MHR SOP provides for an extended shelf-life of 21 months.

Mile High Remedies LLC / Quality Decontamination

Shelf-Life Study Report

1. **Introduction**

There arises a critical need to ensure the quality and safety of cannabis products throughout their lifecycle. One essential aspect of product quality management is understanding the shelf-life of flower marijuana—how its potency, flavor, and safety characteristics change over time under various storage conditions.

The shelf-life of marijuana refers to the period during which the product retains its desired quality attributes, including cannabinoid content, terpene profiles, and absence of harmful contaminants, while remaining safe for consumption. Understanding the factors that influence shelf-life is paramount for cultivators, distributors, regulators, and consumers alike. Factors such as storage conditions, packaging methods, cannabinoid degradation, and microbial contamination can significantly impact the shelf-life of marijuana.

This report is Mile High Remedies LLC's attempt to demonstrate compliance with MED *INDUSTRY BULLETIN: 23-08 RE: Use-By Dates - Labeling Requirements Guidance - Effective January 1, 2024. Particularly, Rule 3-1015(2)(a.5), which requires: "Effective January 1, 2024, a product use-by date, upon which the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product will no longer be fit for consumption, or upon which Page 1 of 5the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product will no longer be optimally fresh. Once a label with a use-by date has been affixed to a Container containing Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product and any Marketing Layer, a Licensee shall not alter that use-by date or affix a new label with a later use-by date. The use-by date shall not be longer than nine months from the harvest or production date, unless shelf stability testing, including but not limited to potency, microbial, and water activity testing, supports a longer shelf life. All use-by dates must be entered into the Inventory Tracking System prior to Transfer. Prior to Transfer to a patient or consumer, a Regulated Marijuana Store or Accelerator Store must inform the patient or consumer if the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product is past its use-by date."*

We intend to show the efficacy of it's processes, ensuring the safety and shelf-life of the products. Utilizing the processes established and documented in our Standard Operating Procedures (SOP) will effectively extend the current shelf-life of our products to 18 months. The study is ongoing and results updated every three months to establish new shelf-life values. It is our goal to possibly allow our customers, using our SOP and irradiation process, to extend their shelf life also.

2. Background

There exists a gap in scientific literature regarding comprehensive shelf-life studies, particularly focusing on marijuana. Existing research often lacks standardized methodologies and comprehensive analyses to provide robust insights into the shelf-life dynamics of cannabis.

Therefore, this study aims to address this gap by systematically investigating the shelf-life of marijuana under controlled conditions. By employing rigorous experimental design and analytical techniques, we seek to elucidate the effects of storage conditions, packaging methods, irradiation levels, and time on the quality, potency, and safety of marijuana. The findings of this study are expected to provide valuable insights for industry stakeholders, regulators, and consumers, enabling informed decisions regarding storage, handling, and labeling practices to optimize the shelf-life of indoor marijuana and ensure product quality and safety. The results of this study form the basis for a shelf-life extension for products utilizing the referenced Standard Operating Procedures (SOP).

3. Pertinent Factors

a. **Cannabinoid Degradation:** Cannabinoids, such as THC (tetrahydrocannabinol) and CBD (cannabidiol), are the primary bioactive compounds in marijuana and play a crucial role in its therapeutic and psychoactive effects. Several studies have investigated the degradation kinetics of cannabinoids under different storage conditions. For instance, McPartland and Pruitt (1999) (ref 1) reported that THC degradation is accelerated under exposure to light, heat, and oxygen. Similarly, other studies have shown that CBD can also degrade over time, albeit at a slower rate compared to THC (Andre et al., 2016) (ref 2). These findings emphasize the importance of controlling environmental factors to preserve cannabinoid potency during storage.

b. **Terpene Profile Changes:** Terpenes are volatile compounds responsible for the distinct aroma and flavor of marijuana strains. Research suggests that terpenes can degrade over time, leading to changes in the aroma and taste of cannabis products. A study by Ross and ElSohly (1996) (ref 3) found that terpene content decreased significantly after **six months of storage**, with variations depending on factors such as temperature and humidity. Understanding the kinetics of terpene degradation is crucial for maintaining the organoleptic properties of marijuana during storage.

c. **Microbial Contamination:** Microbial contamination poses a significant risk to the safety and quality of marijuana products, particularly if stored under improper conditions. Mold, bacteria, and yeast can proliferate in moist environments, leading to product spoilage and potential health hazards for consumers. Numerous studies have highlighted the importance of proper storage conditions, including temperature, humidity control and adequate ventilation, to mitigate microbial

growth (et al., 2015; Sexton et al., 2019) (ref 4). Furthermore, regulatory standards such as those set by the American Herbal Pharmacopoeia (AHP) (ref 5) provide guidelines for microbial limits in cannabis products, underscoring the importance of microbial testing in assessing shelf-life. For this study, we utilize MED's established limit for microbial content at 10,000 ppm.

d. **Water Activity:** Water activity is widely recognized for the safety it provides to food because of its control of microbial growth and it is considered a critical control point for preventing microbial contamination. Water activity provides this same determination of safety in cannabis and consequently is already a part of cannabis regulations in many states. Harvested cannabis must be sufficiently dry to allow for storage and transport. Water activity determines if molds, yeasts, or bacteria will be able to grow on biomass during storage. While the growth of pathogenic bacteria would pose the greatest risk at the typical water activity of biomass, the more likely contamination source will be molds. All molds except a few rare xerophilic species stop growing at water activities less than 0.70. In Colorado, the threshold for water activity is .65 while we consider .5 to .55 AW to be an ideal water activity. As shown in our findings, newly dried samples are typically in that range.

e. **Packaging Considerations:** The choice of packaging materials and methods can significantly impact the shelf-life of marijuana products. Oxygen, light, temperature, and moisture are known to accelerate degradation processes, necessitating the use of opaque, airtight containers to minimize exposure to these factors. Studies have shown that packaging materials such as glass jars and mylar bags offer superior protection against environmental degradation compared to plastic containers (Chan et al., 2018) (ref 6). Additionally, vacuum-sealing methods can help extend shelf-life by reducing oxygen levels within the packaging. Our SOP establishes a vacuum-sealed plastic bag, including mylar, as the preferred storage container.

f. **Irradiation Procedure:** Critical to our SOP is the use of irradiation for preventative treatment of product for microbial infestation and accordingly, the extension of shelf-life. We utilize Quality Decontamination with the Rad Source 420XL machine for preventative (and decontamination) of product, including flower, trim, and other. The established level of radiation exposure is 3,200 grays, regardless of the quality of the product.

g. **Conclusion:** In conclusion, the existing literature provides valuable insights into the factors influencing the shelf-life of marijuana, including cannabinoid degradation, terpene profile changes, microbial contamination, water content, and packaging considerations. This study provides standardized protocols for shelf-life extensions, documented in our SOP.

4. Procedures

a. **Sample Collection:** Samples are collected in accordance with MED regulations, specifically, Department of Revenue Marijuana Enforcement Division Colorado Marijuana Rules 1 CCR 212-3 Section 4-110 – Regulated Marijuana Testing Program: Sampling Procedures. Sufficient quantities were collected and set aside to allow for multiple tests comprising this study. Storage of this control sample mimics the normal storage conditions at our grow.

b. **Selection of representative marijuana strains**. Three strains were selected because of their relative popularity. Recognizing this is not statistically significant, we believe results from these strains should be representative of most other. All our strains were grown and processed under identical conditions.

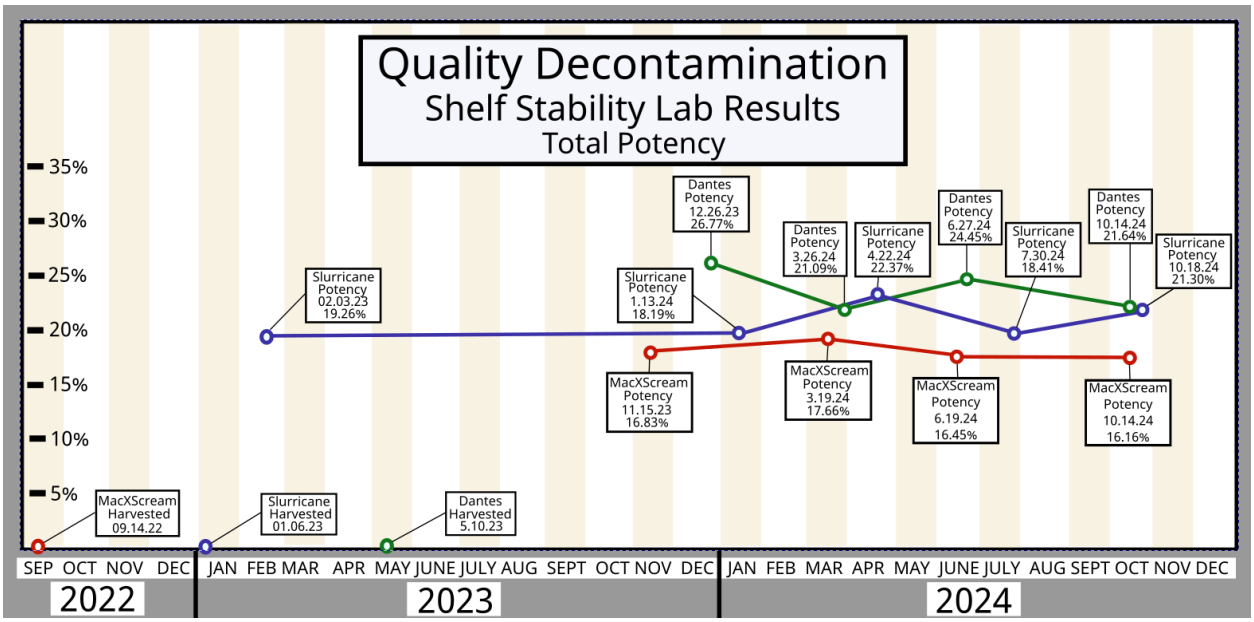
c. **Consideration of storage conditions and intervals for analysis**. The SOP outlines storage conditions of vacuum-sealed plastic bags maintained in controlled humidity/temperature profiles (50-70% RH/50-70 deg F). It should be noted that colder temperatures have not been shown to promote bacterial growth so the lower limit of temperature should not be considered limiting.

d. **Selection of appropriate analytical methods to assess cannabinoid content, terpene profiles, microbial presence, and other quality parameters**. At appropriate intervals, samples are sent to MED-approved laboratories for full-panel analysis. Specifically, plate-analysis is required for aspergillus testing to avoid erroneous detection.

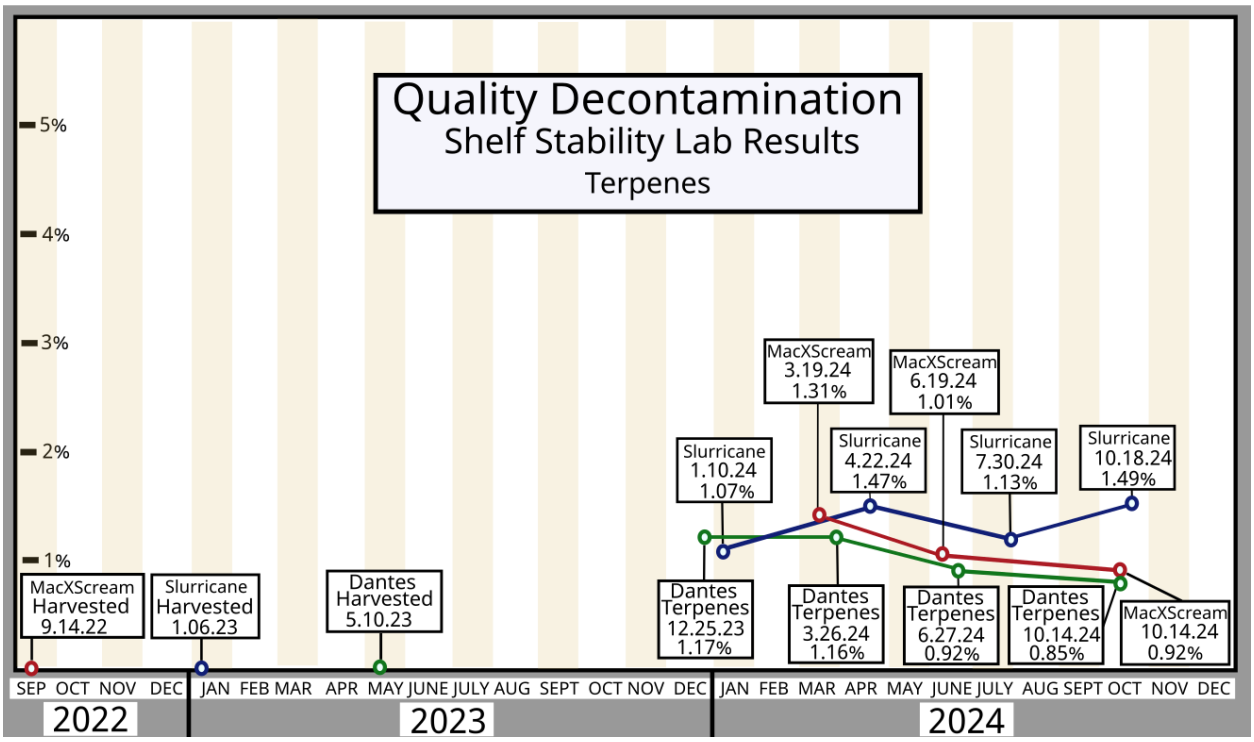
e. **Irradiation process**: After completion of curing/drying, the product is undergoes the irradiation process which takes approximately 10 hours and exposure is 3,200 grays. Post-irradiation, the product is sampled for testing.

5. Analysis and Results

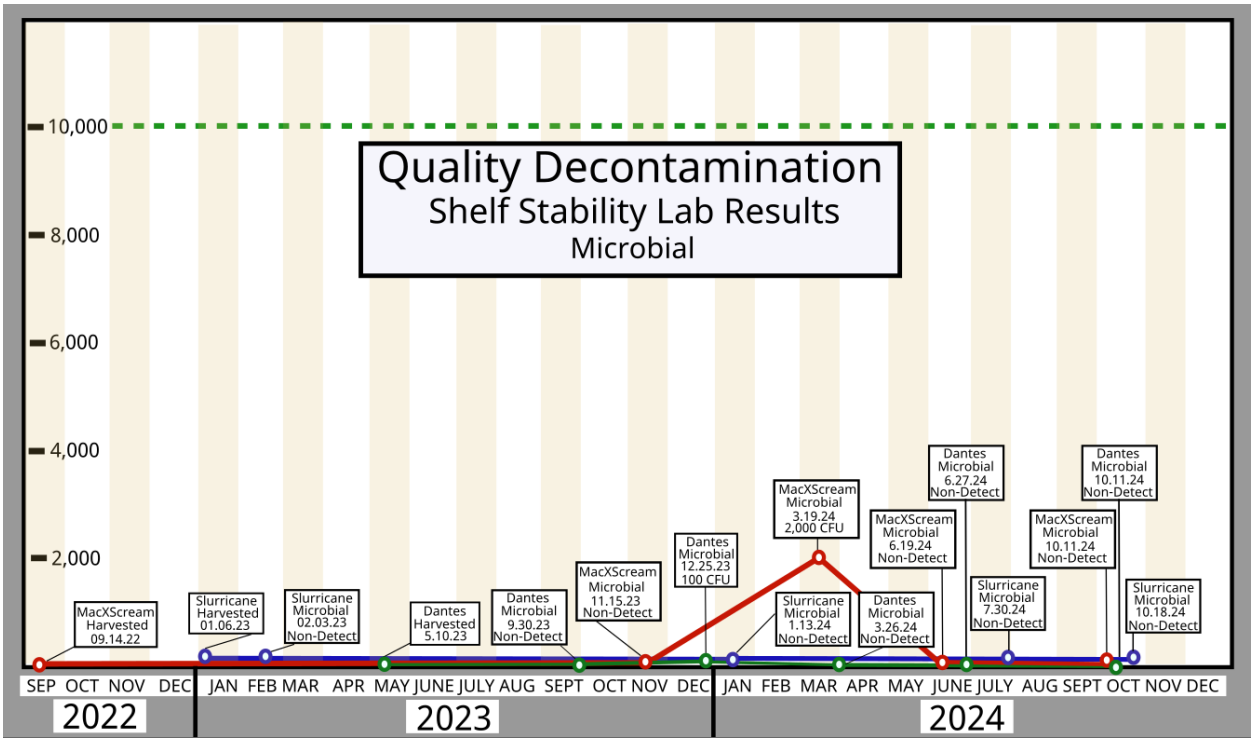
a. **Quantitative analysis of cannabinoid content (THC, CBD, etc.) over time**. Graph 5-1 represents potency results over time for content. As evident in the graph, statistically insignificant amount of degradation has taken place over the 18-month period.



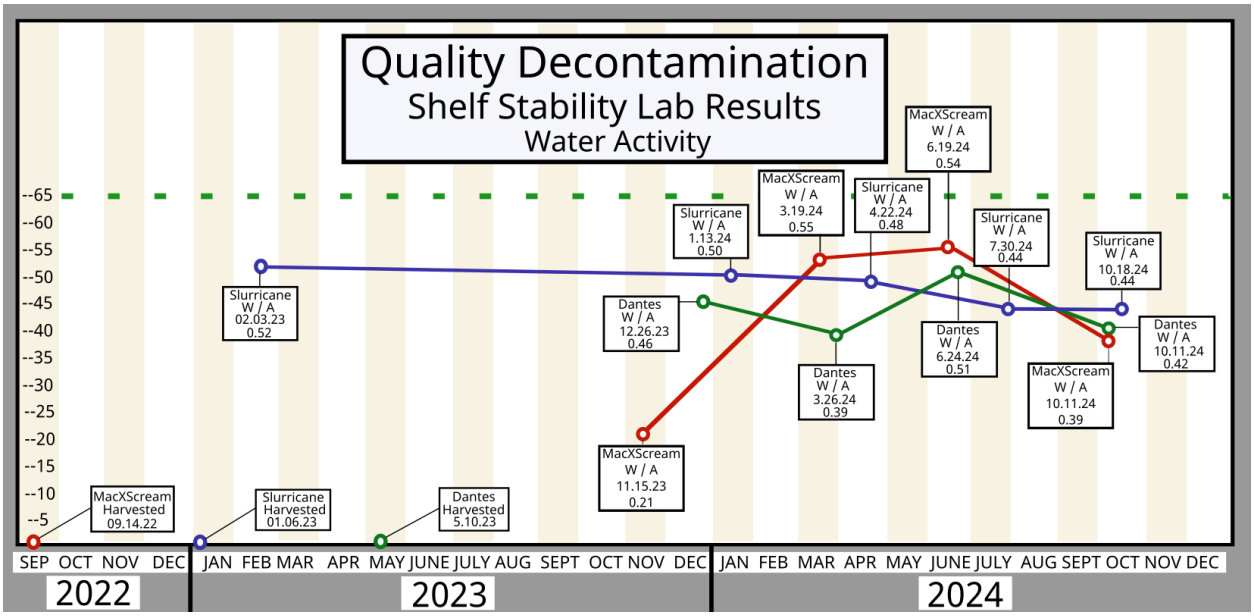
b. **Assessment of terpene profiles and changes**. Total terpene content has shown slight degradation of terpene profiles over time. Subsequent tests will demonstrate trending better.



c. **Microbiological analysis for microbial contamination**. After preventative treatment by irradiation all samples of product should indicate “Not Detectable”. As anecdotal evidence, we have two years of ND after irradiation treatment in our grow. As shown in Graph 5-2, we have seen NO GROWTH in microbial content two samples, and a very small growth of microbial presence to a 2,000 PPM level in one sample, well below the state-established level of 10,000 PPM.



d. **Water Activity**. Small variations in Water Activity measurements are insignificant and do not pose a risk to our products. The values have been stabilized and within regulatory limits.



e. **Statistical analysis of data to identify trends and significant changes**. The test program will continue for extended periods to demonstrate the continued effectiveness of our SOP.

6. Discussion

a. **Interpretation of results in relation to the objectives**. Results indicate the effectiveness of utilizing our SOP in overall extension of shelf-life, primarily ensuring the safety of the product via microbial mitigation.

b. **Identification of critical factors influencing shelf-life**. Obviously, the study shows the importance of decontamination processing, combined with vacuum-sealed storage under controlled environments. These are the significant controlling variables for our SOP.

7. Conclusion

a. **Summary of key findings**. From the data shown, it is obvious that irradiation, vacuum-sealed packages, and correct storage conditions provide an extended shelf life while maintaining all quality indicators for marijuana. The SOP outlines storage conditions of vacuum-sealed plastic bags maintained in controlled humidity/temperature profiles (50-70% RH/50-70 deg F).

8. References

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Considerations of using Ozone and Reactive Oxygen for Decontamination or Remediation

Using ozone (O_3) in cannabis cultivation or processing facilities can react with plant-emitted volatile organic compounds (VOCs) to create hazardous formaldehyde and other secondary pollutants. [1, 2]

The Chemical Reaction

Cannabis plants naturally release high amounts of volatile organic compounds (VOCs), particularly monoterpenes like alpha-pinene and beta-pinene. When machine-generated ozone—often used for odor control, mold remediation, or room sterilization—is introduced into these indoor environments, it reacts directly with these airborne terpenes. This oxidation process does not just neutralize odors; it creates secondary organic aerosols, ultrafine particulate matter, and harmful chemical byproducts including **formaldehyde** and acrolein. [1, 2, 3]

Health and Safety Risks

- **Occupational Exposure:** Cultivators and facility workers risk inhaling elevated levels of formaldehyde and ultra-fine particulates if ozone generators run in poorly ventilated grow rooms or processing areas. Formaldehyde is a known human carcinogen and respiratory irritant that can trigger asthma, bronchitis, and cellular damage. [1, 2, 3, 4]
- **Consumer Concerns:** Because formaldehyde and other reactive compounds can settle or remain in plant cellulose materials, improper high-concentration ozone "bombing" or remediation treatments risk leaving harmful residues on consumable cannabis flower. [1, 2]
- **Plant Damage:** High levels of ozone are also phytotoxic, meaning they destroy healthy plant cells, damage leaves, and inhibit chlorophyll production necessary for photosynthesis. [1]

Industry Standards and Regulation

Many indoor cultivation operations use ozone equipment because it has a history of successful use in water treatment and agricultural sanitation. However, because the cannabis sector lacks uniform federal manufacturing standards and routine indoor air quality (IAQ) testing for aldehydes, the improper or unregulated use of high-output ozone remediation remains a hidden occupational and consumer safety hazard. Safe application requires strict containment, adherence to OSHA permissible exposure limits (PEL) of 0.1

ppm over an 8-hour period, and robust ventilation before workers re-enter treated spaces. [1, 2, 3]

Other Health Concerns over Ozone

Worker safety:

Tess Ediem, PhD "Using ozone in cannabis indoor cultivation spaces likely results in similar ozone-generated harmful byproducts, like formaldehyde. However, little attention has been paid to how ozone may impact IAQ in the context of cannabis worker occupational safety. Ozone reacts with monoterpenes, producing formaldehyde, sub-micron particulate matter, and other secondary organic aerosols. These ozone-generated products pose unique health concerns for those who breathe them in."

Dominant volatile organic compounds (VOCs) measured at four *Cannabis* growing facilities: Pilot study results

Vera Samburova[1], Mark McDaniel[1], Dave Campbell[1], Michael Wolf[2], William R Stockwell[3], Andrey Khlystov[1]

Affiliations Expand

- PMID: 31498732
- DOI: 10.1080/10962247.2019.1654038

Free article

Abstract

In recent years, sale of recreational marijuana products has been permitted in several states and countries resulting in rapid growth of the commercial cannabis cultivation and processing industry. As previous research has shown, biogenic volatile organic compounds (BVOCs) emitted from plants can react with other urban air constituents (e.g., NOx, HO radical) and thus negatively affect regional air quality. In this pilot study, BVOC emissions from *Cannabis* plants were analyzed at four grow facilities. The concentrations of measured BVOCs inside the facilities were between 110 and 5,500 μg m^{-3}. One adult *Cannabis* plant emits hundreds of micrograms of BVOCs per day and thus can trigger the formation of tropospheric ozone (approximately 2.6 g day^{-1} $plant^{-1}$) and other toxic air pollutants. In addition, high concentrations of butane (1,080- 43,000 μg m^{-3}), another reactive VOC, were observed at the facilities equipped with *Cannabis* oil extraction stations. *Implications*: High concentrations of VOCs emitted from *Cannabis* grow facilities

can lead to the formation of ozone, secondary VOCs (e.g., formaldehyde and acrolein), and particulate matter. Our results highlight that further assessment of VOC emissions from *Cannabis* facilities is needed, and this assessment is one of the key factors for developing policies for optimal air pollution control.

Use of X-ray irradiation for inactivation of Aspergillus in cannabis flower



Scientific Prospects for Cannabis-Microbiome Research to Ensure Quality and Safety of Products

California cannabis regulations require testing for four pathogenic species of Aspergillus–A. niger, A. flavus, A. fumigatus and A. terreus in cannabis flower and cannabis inhalable products. These four pathogenic species of Aspergillus are important human pathogens and their presence in cannabis flower and cannabis products may pose a threat to human health. In this study, we examined the potential of X-ray irradiation for inactivation of cannabis flower contaminated with any of the four pathogenic species of Aspergillus.

We determined that X-ray irradiation at a dose of 2.5 kGy is capable of rendering Aspergillus cells non-viable at low (102 spores/g dried flower), medium (103 spores/g dried flower) and high (104 spores/g dried flower) levels of inoculation.

Scan to see study

We also showed that X-ray treatment of cannabis flower did not significantly alter the cannabinoid or the terpene profiles of the flower samples. Therefore, X-ray irradiation may be a feasible method for Aspergillus decontamination of cannabis flower.

Key takeaway: Samples treated with a dose of 2.5 kGy of X-ray irradiation to inactivate any naturally occurring Aspergillus. X-ray irradiation was applied using a Rad Source 420M which was operated according to manufacturer's instructions. This dosage rendered the Aspergillus cells non-viable & the treatment of cannabis flower did not significantly alter the cannabinoid or the terpene profiles of the flower samples.

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Evaluating the Effects of Gamma-Irradiation for Decontamination of Medicinal Cannabis



In several countries with a national medicinal cannabis program, pharmaceutical regulations specify that herbal cannabis products must adhere to strict safety standards regarding microbial contamination. Treatment by gamma irradiation currently seems the only method available to meet these requirements. We evaluated the effects of irradiation treatment of four different cannabis varieties covering different chemical compositions.

Samples were compared before and after standard gamma-irradiation treatment by performing quantitative UPLC analysis of major cannabinoids, as well as qualitative GC analysis of full cannabinoid and terpene profiles. In addition, water content and microscopic appearance of the cannabis flowers was evaluated.

Scan to see study

This study found that treatment did not cause changes in the content of THC and CBD, generally considered as the most important therapeutically active components of medicinal cannabis. Likewise, the water content and the microscopic structure of the dried cannabis flowers were not altered by standard irradiation protocol in the cannabis varieties studied. The effect of gamma-irradiation was limited to a reduction of some terpenes present in the cannabis, but keeping the terpene profile qualitatively the same. Based on the results presented in this report, gamma irradiation of herbal cannabis remains the recommended method of decontamination, at least until other more generally accepted methods have been developed and validated.

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Guidance Bulletin: Implementation Timeline for Total Yeast & Mold Count Testing, Preventative Measures, and Sterilization/Remediation Options for Licensees



The Mississippi Medical Cannabis Program (MMCP) is providing the following guidance regarding the necessity of Total Yeast & Mold Count (TYMC) testing requirements for medical cannabis.

Medical cannabis can harbor harmful microorganisms like yeasts and molds, posing significant risks, especially to immunocompromised consumers. TYMC testing ensures that products are free from harmful levels of these contaminants, which can lead to infections and other health complications. Compliance with TYMC testing is essential to meet regulatory safety standards and to protect public health.

Scan to see study

Key takeaway: The following methods may be utilized by licensed medical cannabis establishments for purposes of sterilization/remediation of medical cannabis and/or medical cannabis products:
Ionizing Irradiation - This method is explicitly included in the current regulations as a remediation option.
Pros: Highly effective at sterilizing cannabis and is widely accepted in various industries.
Cons: Consumer resistance due to misconceptions about radioactivity.

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Scientific Prospects for Cannabis-Microbiome Research to Ensure Quality and Safety of Products



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Key takeaway: Gamma irradiation, where material is exposed to a high-powered gamma radiation source, is another approved method by Health Canada (https://www.canada.ca/) for decontamination which does not cause changes in the content of THC and CBD but does alter terpene quality.

Scan to see study

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Microbial Decontamination

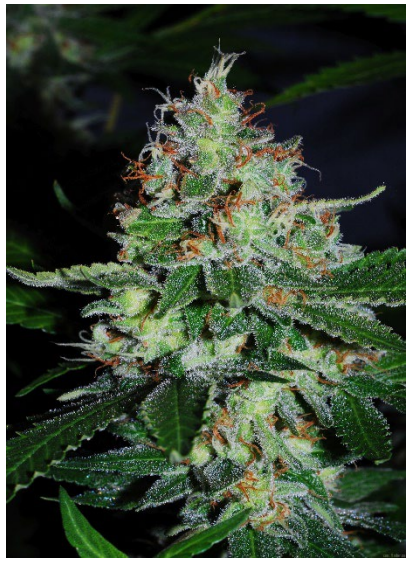
Presented by:

Jason Nunley



About the Presenter





Jason Nunley
jnunley@radsource.com

- Worked in cannabis since 2014
- Medical cultivator since 2001
- Experienced dispensary Manager
- Member OCA/ORCA
- Former ACF Certified Chef
- Passionate about clean cannabis
- Advocate of standardized lab testing and sampling methods



I. Cannabis Market

About the market



Why Irradiate Cannabis?

- Cannabis Plant are subject to a variety of pathogens
- Irradiation helps eliminate pathogens
- Irradiated cannabis is safe to use

Cannabis Irradiation

- Ionizing radiation has been successfully used to remediate cannabis for over 10 years in Canada & Netherlands
- Unlike alternative methods, ionizing radiation is a Cold Technology does not pre-activate the decarboxylation of THC-A
- Proven reliable and safe for cannabis with minimal terpene and potency loss
- Proven reliable and safe for the public

Market Data

- 70% of the US population lives in states that have legalized cannabis
- US Testing Market: $12.0B in 2018 to $24.3B by 2025, (15% CAGR
- Global Testing Market: $1.4B in 2021 @11.5% CAGR
- Cannabis companies raised $13.8M in investment in 2018

Market Trends

The Cannabis Market can be divided into number of sectors:

- Cannabis cultivation and growing and production of marijuana plants.
- Extraction, processing and packaging of the plant.
- Analytical testing of cannabis plant and products.
- Distribution and sales of cannabis products.
- Drug development of cannabis-related compounds.

	2017	2018	2019	2024	CAGR (2019-2024)
Global cannabis market based on end-user sales	$ 10,000	$ 16,000	$23,000	$70,000	24.9%
Global cultivation cannabis market	$300	$600	$ 1,500	$4,500	24.6%
Global market for cannabis testing: equipment and services	$550	$650	$800	$2,150	21.9%
Global extraction cannabis market: equipment and services	$70	$100	$200	$ 600	24.6%
Drug development cannabis market	$15	$30	$120	$300	20.1%
Total	$ 10,935	$ 17,380	$25,620	$77,550	24.8%

Global Cannabis Market (2019-2024)

- $25.6B (2019) - to - $77.6B (2024)
- CAGR of 24.8%

Global Cultivation Market (2019-2024)

- $1.5B (2019) - to - $4.5B (2024)
- CAGR of 24.6%

* This most likely does not include the irradiation market

Legality of Cannabis

Why Cannabis to Irradiate?

- **Varies by countries**
- **Regulated by three United Nations treaties:**
  - **1961 Singe Convention on Narcotic Drugs**
  - **1971 Convention on Psychotropic Substances**
  - **1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

Recreational Use

- *Canada*
- *Georgia*
- *Malta*
- *Mexico*
- *South Africa*
- *Thailand*
- *United states (Legalized in 19 states)*
- *Uruguay*

Medical Use

- *Argentina*
- *Australia*
- *Barbados*
- *Bermuda*
- *Brazil*
- *Canada*
- *Chile*
- *Colombia*
- *Costa Rica*
- *Croatia*
- *Cyprus*
- *Czech Republic*
- *Denmark*
- *Ecuador*
- *Finland*
- *Georgia*
- *Germany*
- *Greece*
- *Ireland*
- *Israel*
- *Italy*
- *Jamaica*
- *Lebanon*
- *Lithuania*
- *Luxembourg*
- *Malawi*
- *Malta*
- *Mexico*
- *Morocco*
- *Netherlands*
- *New Zealand*
- *North Macedonia*
- *Norway*
- *Panama*
- *Peru*
- *Poland*
- *Portugal*
- *Rwanda*
- *Saint Vincent and Grenadines*
- *San Marino*
- *South Africa*
- *Sri Lanka*
- *Sweden*
- *Switzerland*
- *Thailand*
- *United Kingdom*
- *United States (Legalized in 37 states)*
- *Uruguay*
- *Vanuatu*
- *Zambia*
- *Zimbabwe*

The list of countries where the use of cannabis is fully legal. Please click on this link to see the whole list of countries: https://en.wikipedia.org/wiki/Legality_of_cannabis

Microbial Testing

GROWING YEARLY

Overview and Current Perspectives

Testing is Growing

Testing is essential to ensure that cannabis users are not being exposed to harmful contaminants.

It has been reported that the amount of **testing is increasing yearly** at **12% CAGR** and the value of the testing market is expected to reach **$2B by 2024**.

In 2018, the Cannabis Industry Association one recreational state reported that just **5% of the cannabis products for sale** were tested for safety.

Nearly **20% of marijuana products failed tests** for potency and purity.

The biggest challenge is the **lack of standardized testing**.



Growth in the cannabis testing market is primarily driven by

- **legalization of medical cannabis**
- **growing number of cannabis testing laboratories**
- **growing adoption of LIMS in cannabis testing labs**
- **rising awareness of the medical use of cannabis through conferences, symposia, and workshops**
- **Increasing availability of analytical testing instruments and software**

RAD SOURCE

Market Challenges

Microbial Contamination – It Affects the Entire Industry

When we create ideal conditions for growing cannabis, we also create the best environment for bacteria and fungi, including yeast and molds, to thrive.

Microbials can be wreak havoc on your crop, business, revenue potential:

virus

bacteria

fungi

yeast



How microbials travel:

air

clothing

tools

fertilizer

water

containers

Conditions microbials thrive:

humidity

soil

plant

Everything you need to know about aspergillus



1-Year Survival

59%

Among solid organ transplant recipients

1-Year Survival

25%

Among stem cell transplant

ASPERGILLUS MORTALITY RATE

40% to 90%

In immunocompromised individuals

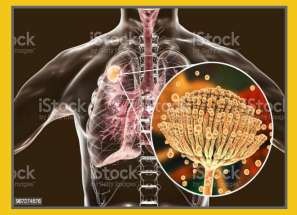
This is important to know..

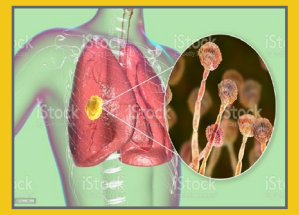
"Fatal aspergillosis associated with smoking contaminated marijuana, in a marrow transplant recipient"

"Invasive pulmonary aspergillosis associated with marijuana use in a man with colorectal cancer"

"Early invasive pulmonary aspergillosis in a leukemia patient linked to aspergillus contaminated marijuana smoking"

" Fatal Early - Onset Invasive Aspergillosis in a Recipient Receiving Lungs from a Marijuana - Smoking Donor "





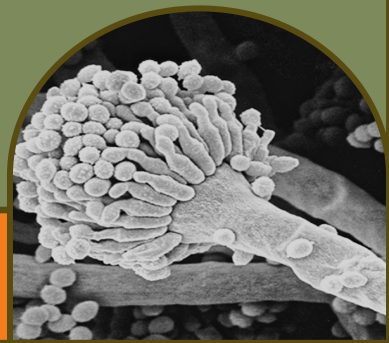
The Challenge of Organic Farming

- Time is Critical (requires up to 35% more time)
- Difficult to maintain chemical free pest management practices
- Lost of production & Money
- Additional Cost & Labor



Why to choose Photonic Decontamination By RAD SOURCE?

- World's most advanced X-Ray Technology
- Does not heat flower which causes premature decarboxylation of THC A
- Safe, Clean, Efficient
- Does not saturate flower with disinfectants or leave potential residuals



RAD SOURCE

POWERED BY QUASTAR

CHOOSE WISELY!

More about Mold, Salmonella, E-coli and Aspergillus

U.S. NEWS JAN. 13, 2020 / 6:21 PM

Michigan recalls marijuana contaminated by dangerous fungicide

By Jessie Higgins



Michigan officials recalled a batch of marijuana Friday after they discovered it was contaminated by a dangerous fungicide. Photo by Atomazul/Shutterstock.

Westword SUPPORT US *The Independent voice of Denver since 1977*

[No Title]



Jacqueline Collins

In Random Mold Tests at 25 Denver Dispensaries, 80 Percent Fail

THOMAS MITCHELL | OCTOBER 30, 2019 | 10:07AM

Denver recently conducted random tests of more than two dozen local



VIEWPOINTS

Beware moldy cannabis that poses a health risk

BY KATHLEEN GEORGE
POSTED ON MARCH 5, 2019



II. Remediation Technology

Prevention and Remediation Types

Pre and Post Options

Prevention

Grow Technology Preventative

Extraction Save What You Can!

Remediation

Chemical

- Ozone
- Chlorine Dioxide
- Ethylene Oxide

Electromagnetic

- RF
- Microwave
- Ultraviolet
- X-ray
- Gamma

Choosing the Right Technology



RF (Radio Frequency)

- Moisture dependence
- Uses heat
- Burns product



Ozone

- Chemicals
- Limited to surface
- Altered flower integrity



H2O2

- Surface treatment only
- Human health hazard
- Expensive

Electromagnetic Treatment

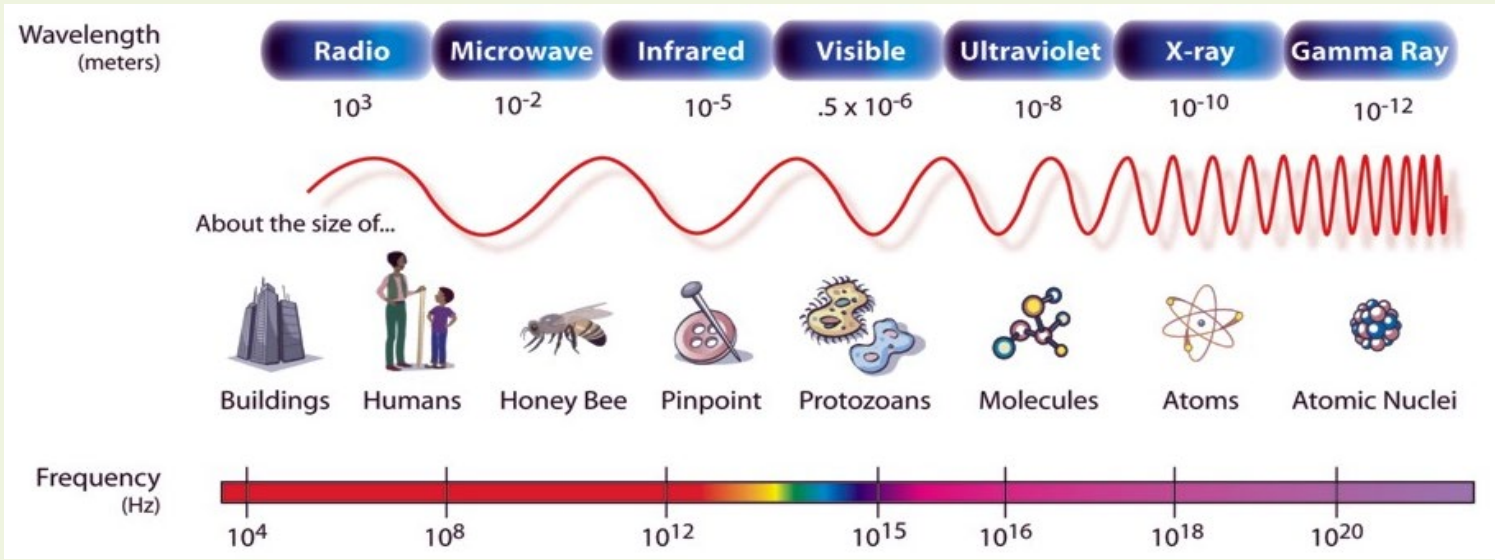
REMEDIATION

The Electromagnetic Spectrum

Ultraviolet (UV)

The UV-C light (ionizing radiation) emitted from ultraviolet lamps attacks the very core of mold spores and bacteria, preventing them from replicating, and turning the microorganisms into harmless, microscopic dust.

PROS:	CONS:
• inexpensive • readily available	• time consuming, difficult to scale, efficacy issues • does not work well on mold spores and has limitations to some microbials. (botrytis) • it only treats the surface where light can reach • if photolysis occurs near the UV lamp, it will cause oxidation and terpene loss



The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/

RAD SOURCE

Electromagnetic Treatment

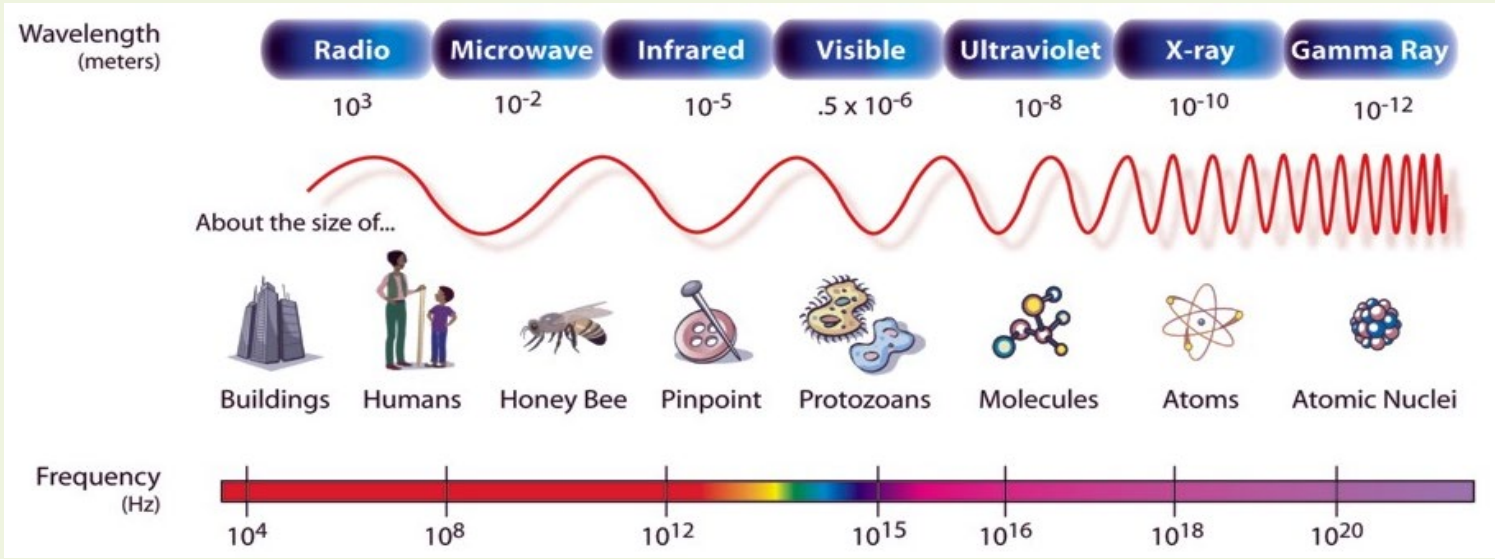
REMEDIATION

The Electromagnetic Spectrum

X-ray

The use of ionizing radiation to kill microbial life on the nuclear level by destroying its DNA.

PROS:	CONS:
• very effective, fast and scalable • undetected terpene loss • cold - no pre-mature de-carboxylation • potency unaffected • very fast pay-back period • non-nuclear	• Initial investment in instrumentation



The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/

RAD SOURCE

Electromagnetic Treatment

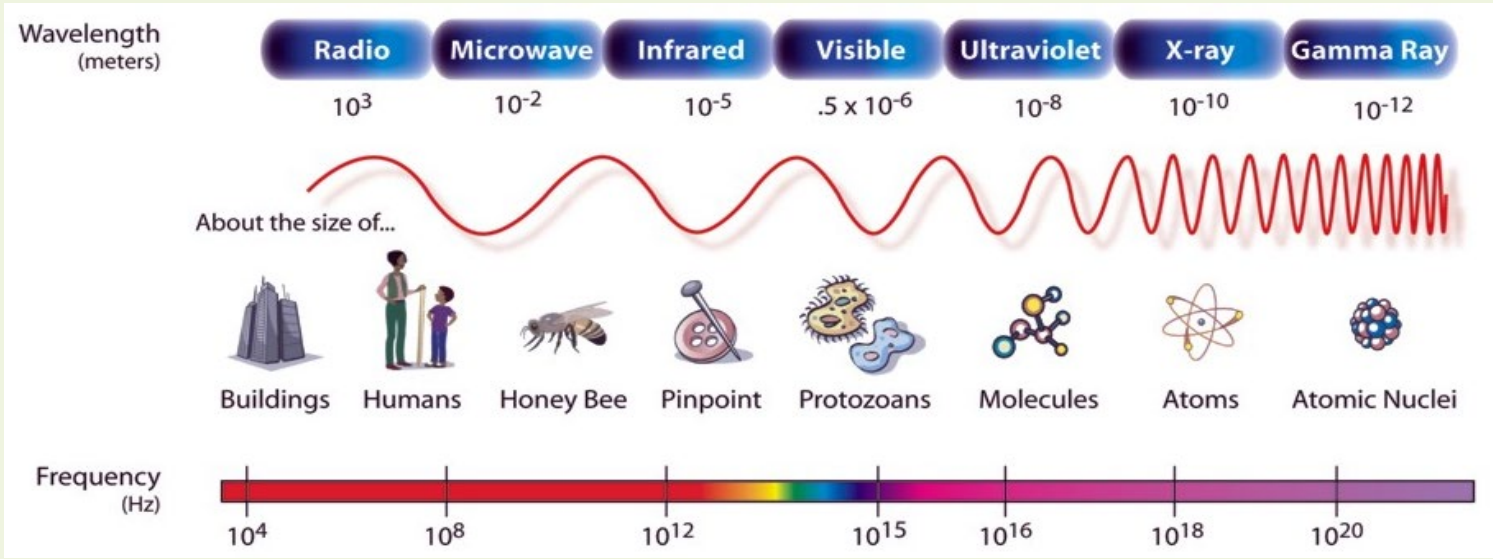
REMEDIATION

The Electromagnetic Spectrum – Gamma Ray

Gamma Ray

The use of ionizing radiation to kill microbial life on the nuclear level by destroying its DNA.

PROS:	CONS:
• very effective, fast and scalable • undetected terpene loss • cold - no pre-mature de-carboxylation • potency unaffected • very fast pay-back period	• cost of regulatory compliance • cost of security • cost of employee safety • terrorism and environ-mental concerns • loss of product control • one size fits all, can't customization to specific application



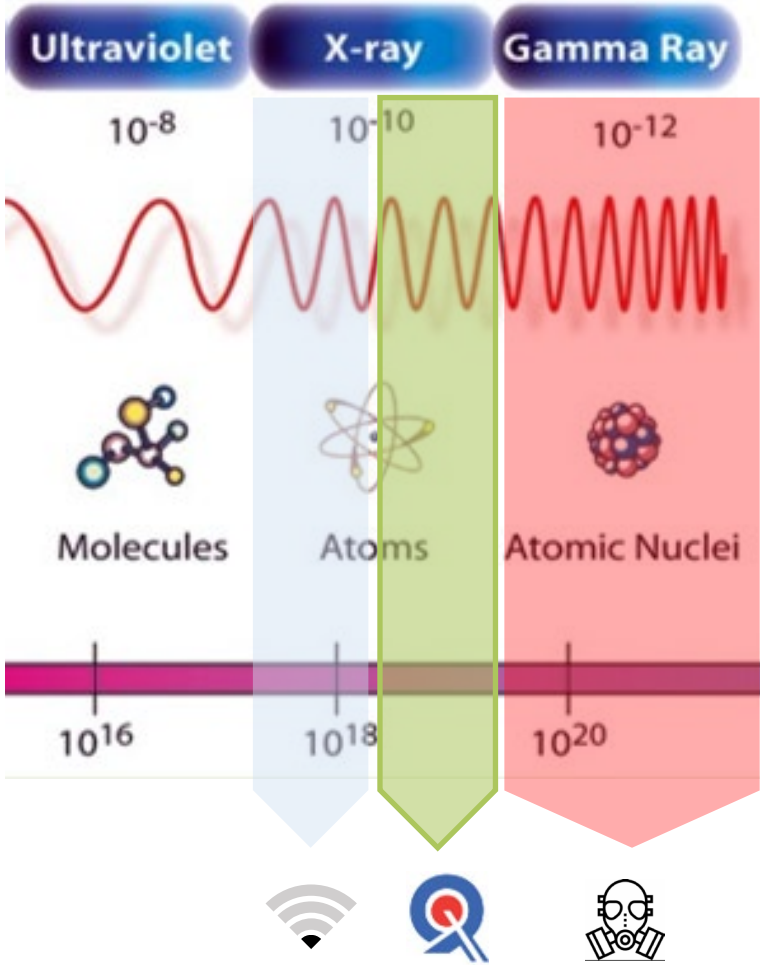
The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/

RAD SOURCE

Unrivaled x-ray Technology

UNRIVALED X-RAY TECHNOLOGY

- X-ray Re-invented
- Worlds most advanced x-ray technology
- Patented emitter design
- Produces efficient and high-quality photons
- Started in blood, cancer research, sterile insect technology
- Treated by regulators like a standard dental x-ray machine
- Compliant with 21 CFR 1020.4 for **cabinet** x-ray device.



The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/
Gas mask icon curtesy of free education icons

Photonic Cloud





The typical X-Ray emitters create a direct light where Rad Source Quastar emitters creates a photonic cloud of high-quality photons!



Rad Source’s Offerings

The 420 Series for Cannabis Decontamination

Pass State Mandated Testing Levels Every Time

Reduce or Eliminate Product Loss

Cold Technology	Does not heat flower which cause premature decarboxylation of THC A
Chemical and Residual Free	Does not saturate flower with disinfectants or leave potential residuals
Safe	Uses short wavelength Electromagnetic energy, clean and efficient
Unparalleled Technology	World's Most Advanced X-ray Technology
Proven Experience	Same Technology as Canada & Netherlands
Multiple Options	3 models to suit your operational needs



RS 420 M



RS 420 Q



RS 420 XL

RAD SOURCE

QUASTAR®

CANNABIS DECONTAMINATORS Treats yeast, mold, harmful insects and other pathogens.

	RS 420 M	RS 420 Q	RS 420 XL
Process Volume	~1-2 lbs. / Cycle (3 hrs. based on product density & 2000 Gy dose)	Up to 5 lbs. / Cycle (3 hrs. based on product density & 2000 Gy dose)	Up to 50lbs. / Cycle (5-7 hrs. based on product density & 2000 Gy dose)
Unparalleled Technology	Patented Single QUASTAR® X-ray Emitters	Patented Single QUASTAR® X-ray Emitters	Patented Dual QUASTAR® X-ray Emitters
Chamber Design	Single Chamber Design – ease of use for smaller quantity volumes	Patented Rotator Technology – holds up to (5) canisters during operation	Patented Rotator Technology – holds up to (5) canisters during operation
Safe and Secure Operation	Self shielded unit with NO radioactive source	Self shielded unit with NO radioactive source	Self shielded unit with NO radioactive source
Unit dimensions	30 x 36 x 64" | (76.2 x 91.44 x 162.56 cm)	72 x 47 x 64" | 182.88 x 119.38 x 162.56 cm)	72 x 47 x 77“ | 182.88 x 119.38 x 195.58 cm)
Weight	1350 lbs. | 612.35 kg.	2450 lbs. | 979.76 kg	6,300 lbs. | 2858 kg
Remote access	Set programs, add/remove users, retrieve processing data, email notifications	Set programs, add/remove users, retrieve processing data, email notifications	Set programs, add/remove users, retrieve processing data, email notifications
Warranty	The lesser of 12 months or 2400 hours of operation, parts, labor, and travel (US and Canada only)	The lesser: 12 months or 2400 hours of operation, parts, labor, and travel (US and Canada only)	The lesser: 12 months or 2400 hours of operation, parts, labor, and travel (US and Canada only)
Mitigates	Total yeast and mold (cfu/g) Total aerobic plate count Entero (cfu/g) Coliform (cfu/g) Powdery Mildew Aspergillus	Total yeast and mold (cfu/g) Total aerobic plate count Entero (cfu/g) Coliform (cfu/g) Powdery Mildew Aspergillus	Total yeast and mold (cfu/g) Total aerobic plate count Entero (cfu/g) Coliform (cfu/g) Powdery Mildew Aspergillus







The CFU and How it Affects You

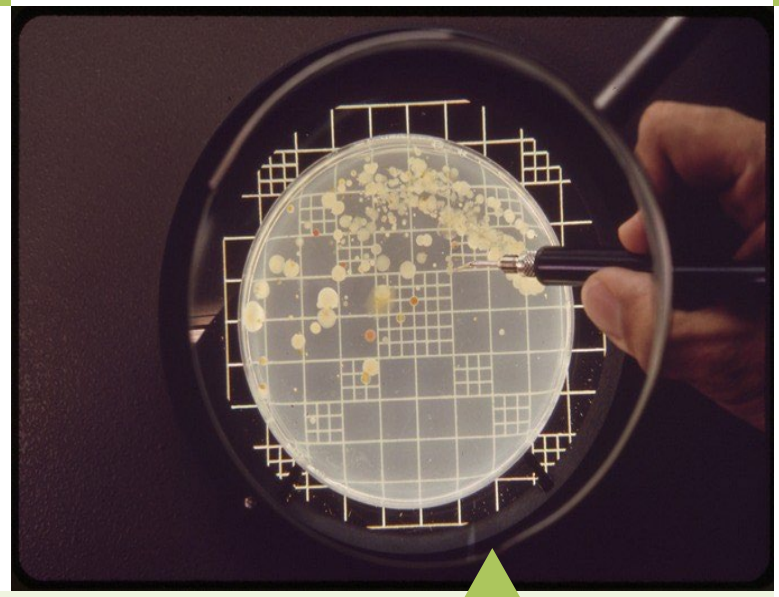
NEED TO KNOW

The more you know the better the prevention



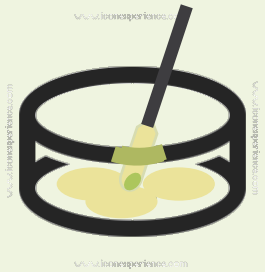
CFU | Colony Forming Units

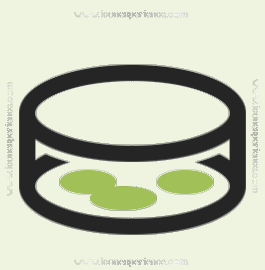
- A measurement of the number of viable organisms on a sample, which is proportional to the number of colonies on a plate.
- ***Some microbial colonies double every 20 minutes** (**36x/day – 1080/month**)!
  - Consider time to dispensary and shelf time to sale
- It is critical to understand the **risks associated with re-growth of supposedly "cleaned product".**

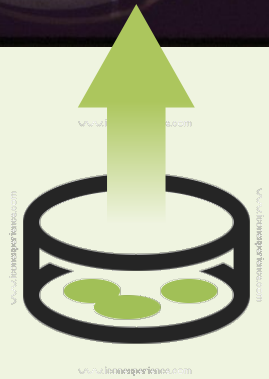


The Process (visualization)









1. COLLECT
2. APPLY
3. GROW
4. COUNT



Installation

Installation Process

We Send Out Site Readiness Form

- The form provides all the details regarding the delivery and installation.
- The machine is usually connected to a standard wall mount disconnect box, but a plug/receptacle combination can also be used
- Your facility is responsible for both male/female sides to avoid compatibility issues

Shipment Of Unit

Delivery Of Unit

Your electrician connects the unit to the power

Installation w/our technician

- Dose map
- Survey the unit

In-Service Training



R&D Studies

White Paper – RS's 3 Year Study

Purpose

Purpose	Address the efficacy and safety of photonic decontamination utilizing x-ray conducted by Rad Source's 420 customers
Customers	5 Studies conducted by customers in 5 different states and 1 independent Testing Lab
Public Health and Safety Concerns	Cannabis is subject to a wide range of potential contaminants including yeast, mold, insects, etc.
Studies	Nevada Study, Nevada Independent Testing Lab, Colorado Study, Ohio Study, California Study, Florida Study



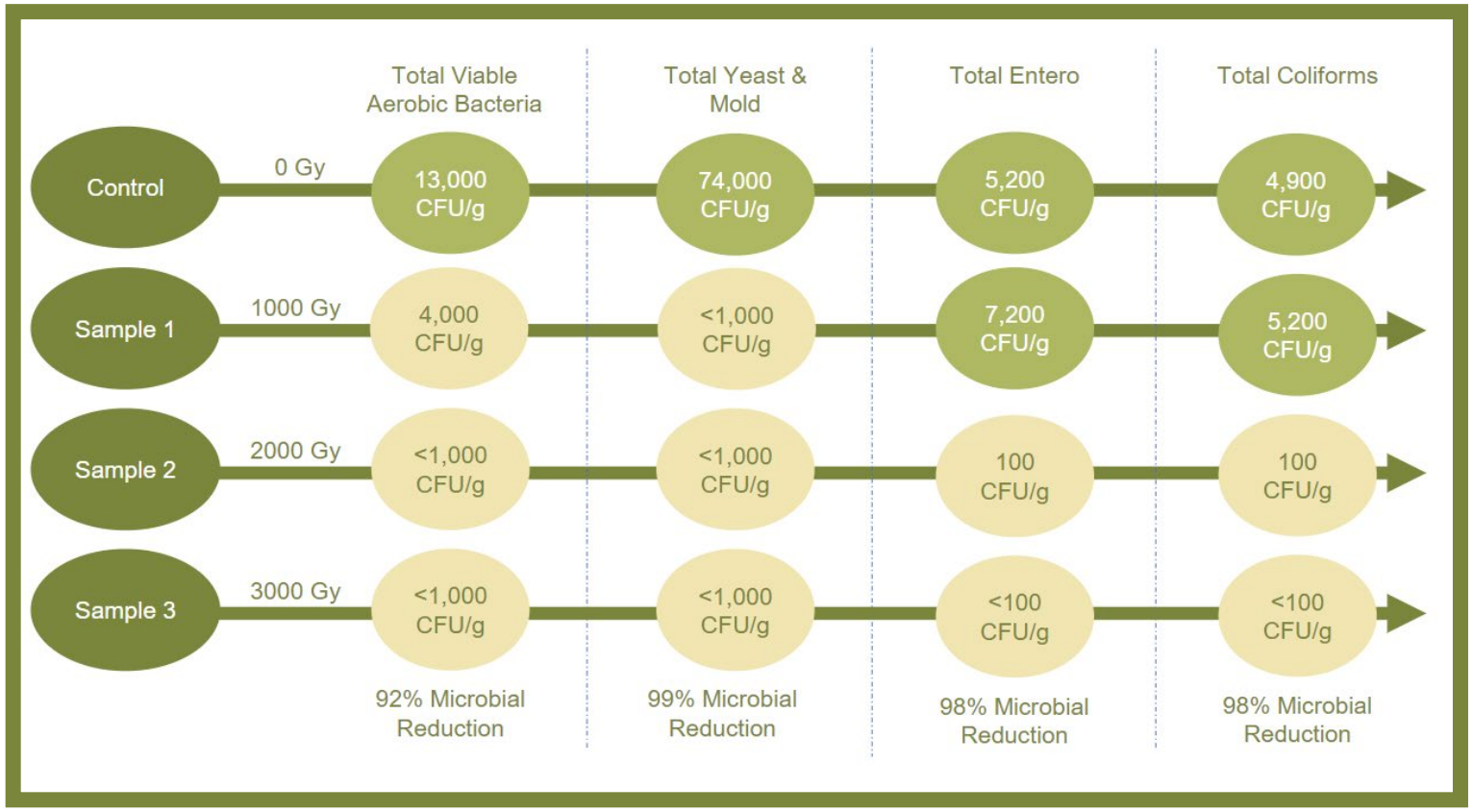
RS 420 Series Cannabis Decontamination System Types

System	Power	Dose Uniformity Ratio	Processing Volume
420 M	4 kW	3 - 3.5	~1-2 lbs. / 3-4 hr. /cycle (based on product density & 2000 Gy dose)
420 Q	4 kW	1.8	Up to 5 lbs. / 4-5 hr. /cycle (based on product density & 2000 Gy dose)
420 XL	8 kW	1.6	Up to 50 lbs. / 7-8 hr. /cycle (based on product density & 2000 Gy dose)

RAD SOURCE

White Paper – RS's 3 Year Study

Nevada Study: February 2017



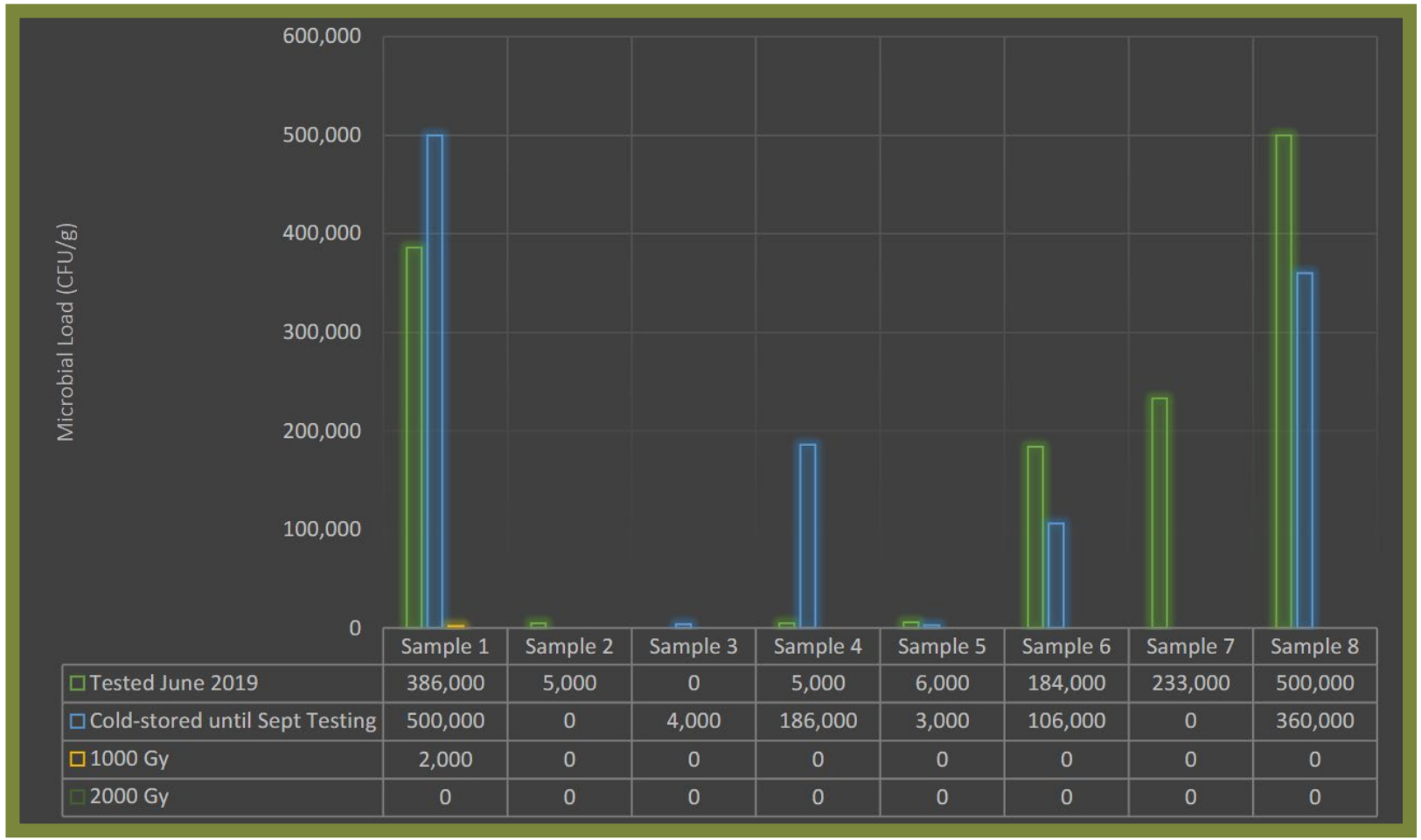
Microbial Reduction across varying dose exposures.

Note: Light green color signifies failure, light yellow signifies pass.

- Higher microbial load in entero (BTGN) and coliforms after being subjected to 1000 Gy exposure treatment than that of the control
- Not the exact same sample was treated multiple times (1000 Gy, 2000 Gy) to derive the CFU/g.
- The control and sample 1 may have had a longer duration between testing each sample, and the batch may have had increased microbial levels before exposure at 1000 Gy.

RAD SOURCE

Nevada Independent Testing Lab: September 2019



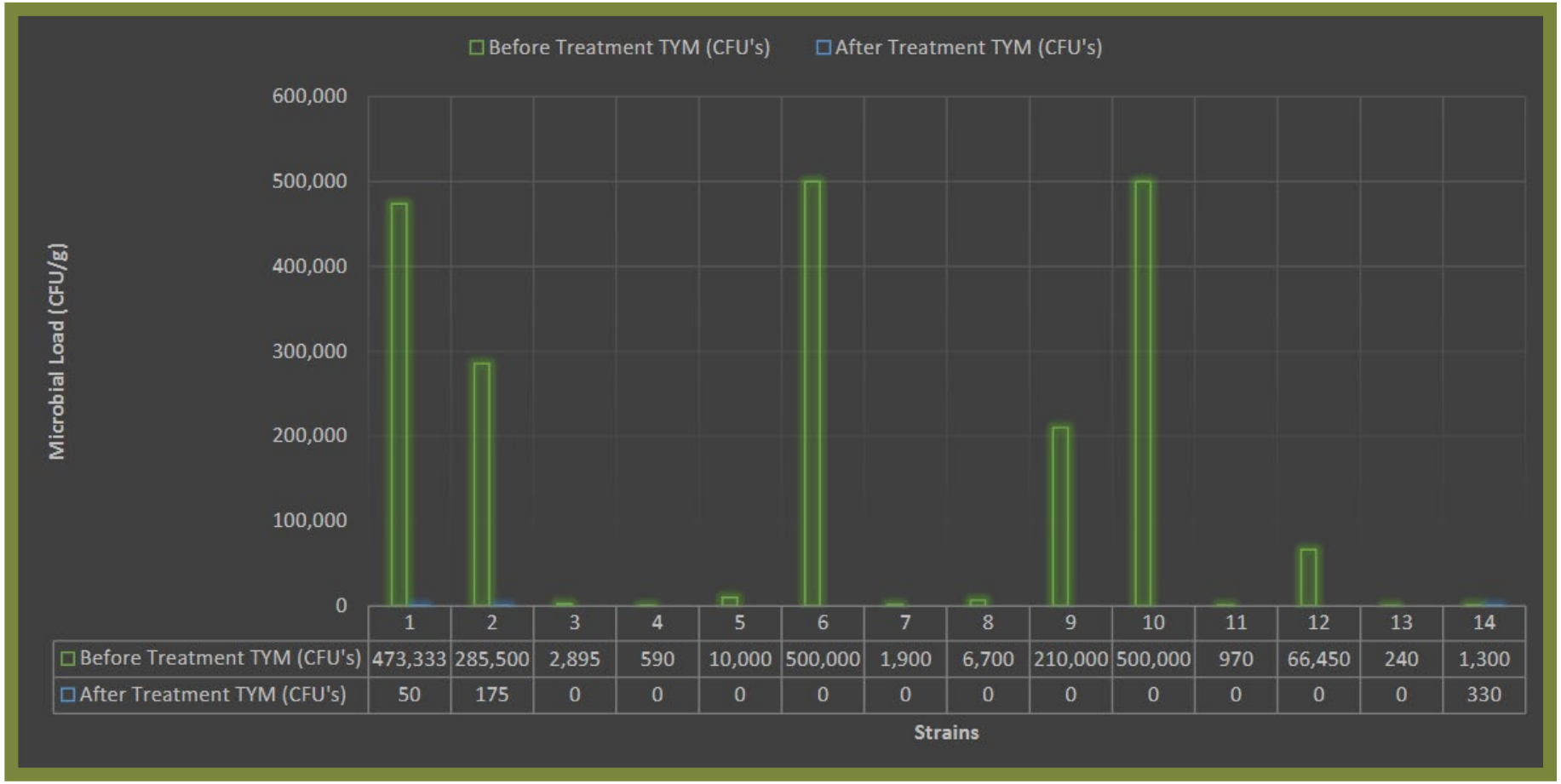
	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5	Sample 6	Sample 7	Sample 8
Tested June 2019	386,000	5,000	0	5,000	6,000	184,000	233,000	500,000
Cold-stored until Sept Testing	500,000	0	4,000	186,000	3,000	106,000	0	360,000
1000 Gy	2,000	0	0	0	0	0	0	0
2000 Gy	0	0	0	0	0	0	0	0

Treatment at 1000 and 2000 Gy (Total Yeast and Mold).

RAD SOURCE

White Paper – RS's 3 Year Study

Colorado Study: October 2019



	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Before Treatment TYM (CFU's)	473,333	285,500	2,895	590	10,000	500,000	1,900	6,700	210,000	500,000	970	66,450	240	1,300
After Treatment TYM (CFU's)	50	175	0	0	0	0	0	0	0	0	0	0	0	330

Strain	# of Samples
Strain 1	3
Strain 2	2
Strain 3	2
Strain 4	2
Strain 5	1
Strain 6	2
Strain 7	3
Strain 8	2
Strain 9	1
Strain 10	1
Strain 11	1
Strain 12	2
Strain 13	1
Strain 14	1
Total	24

Experimental Set Up

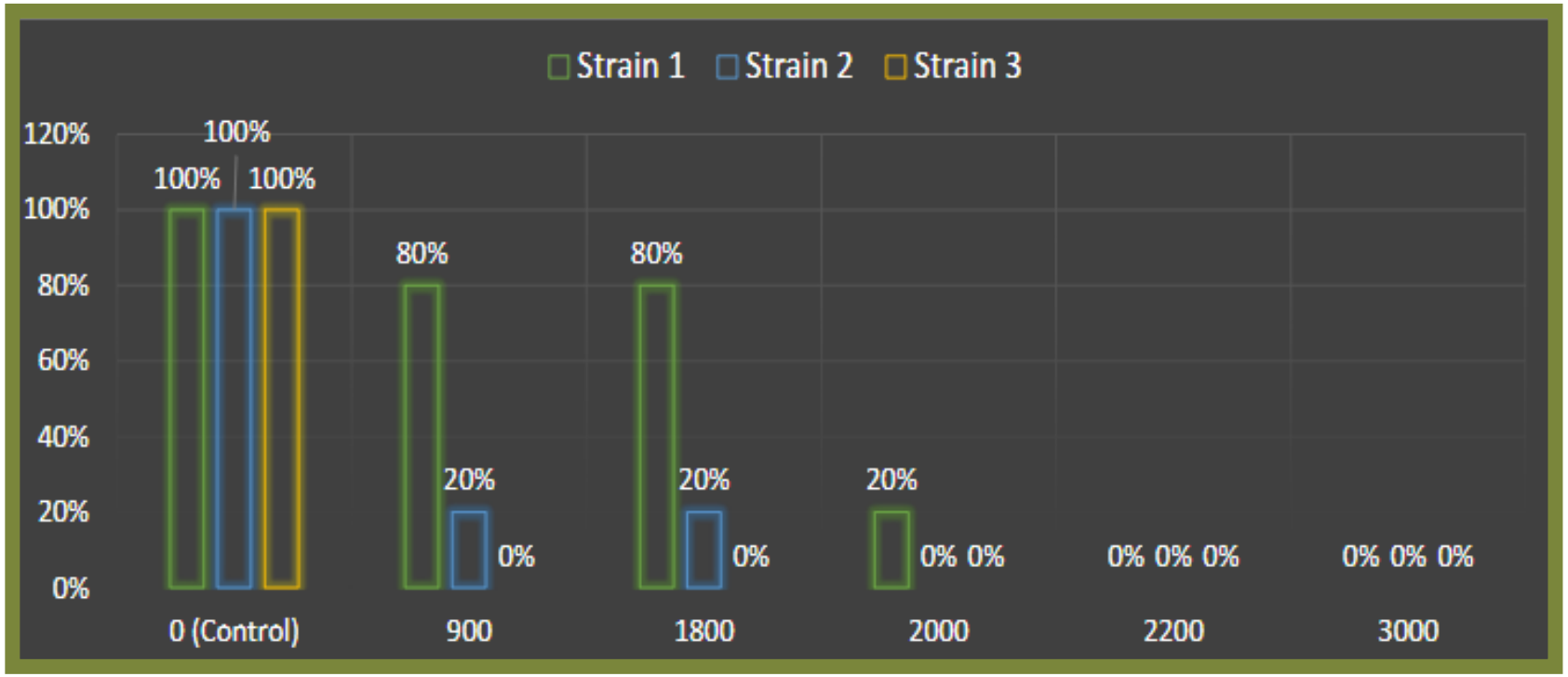
Total Yeast and Mold before and after photonic decontamination.

Note: Samples 3-13 are shown as "0" but the microbial count is <LOQ.

RAD SOURCE

White Paper – RS's 3 Year Study

Ohio Study: April 2020



Strains that failed testing over a range of doses.

Experimental Setup			
	Strain 1	Strain 2	Strain 3
Control	5 samples	5 samples	4 samples
900 Gy	5 samples	5 samples	4 samples
1800 Gy	5 samples	5 samples	4 samples
2000 Gy	5 samples	5 samples	4 samples
2200 Gy		5 samples	4 samples
3000 Gy		5 samples	4 samples
Total	20 samples	30 samples	24 samples

Experimental Set Up

RAD SOURCE

White Paper – RS's 3 Year Study

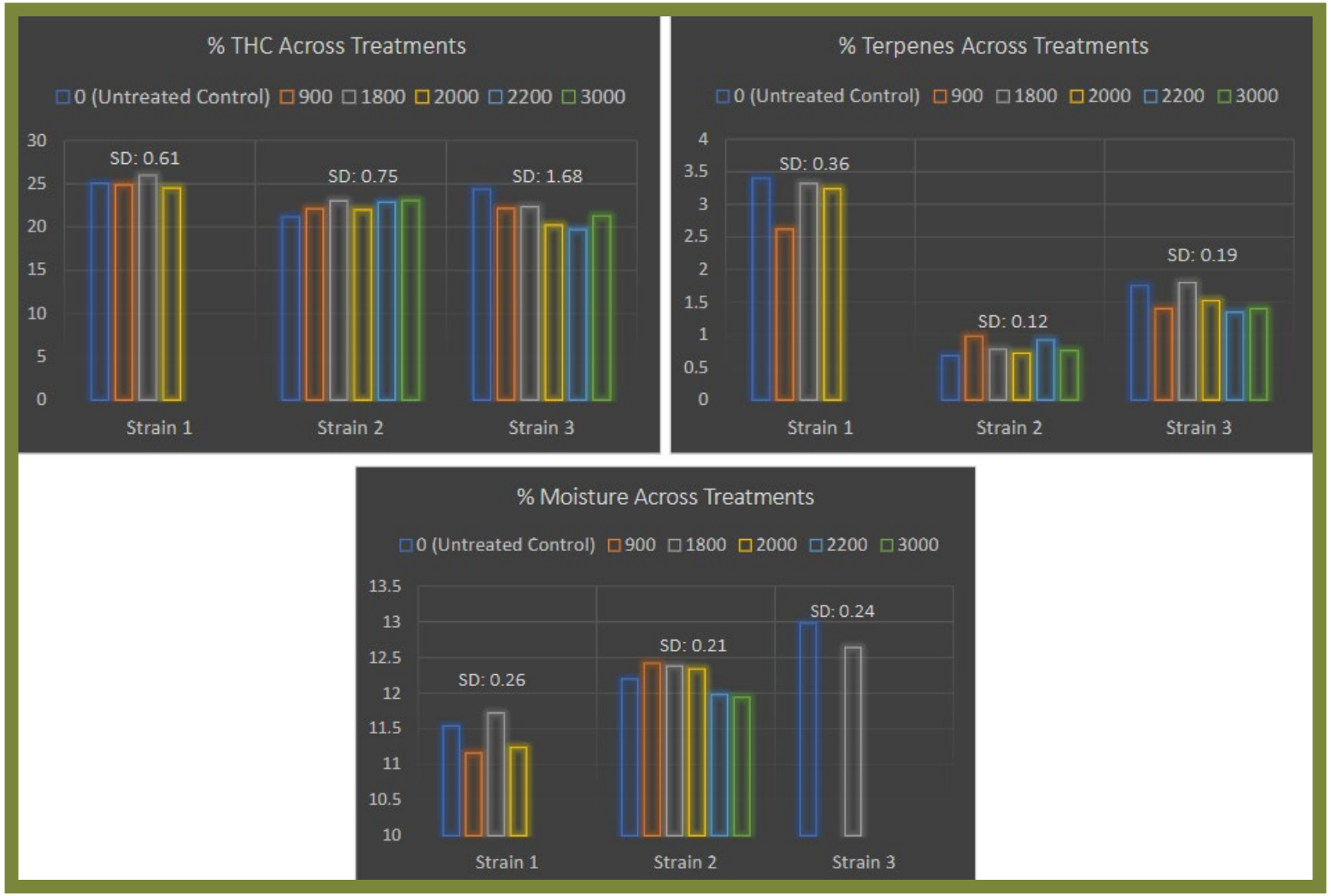
Ohio Study: April 2020



Microbial Reduction by Strain and Treatment Exposures.

White Paper – RS's 3 Year Study

Ohio Study: April 2020



Cannabinoid and Terpene Profiles in pre-treated and post-treated samples.

White Paper – RS's 3 Year Study

Ohio Study: April 2020



Visual Appearance of pre-treated and post-treated flower.

RAD SOURCE

White Paper – RS's 3 Year Study

California Study: 2020

Contaminated cannabis flower was weighed out (1g/sample) and pretreated with 2.5kGy of X-rays

↓

Samples were inoculated with known amount of Aspergillus spores 100, 1000 or 10,000 (3x). One set of samples was then treated with x-rays again while the second set served as untreated controls.

↓

All samples were then processed according to CTS Aspergillus in flower detection method. Enrichments were also plated on PDA plates to determine viability.

Experimental Design.

Aspergillus strain type	Cannabis flower weight (grams)	Initial treatment dosage (grays)	Aspergillus detection via qPCR of naturally contaminated Cannabis flower treated with 2500 grays of x-rays	Aspergillus viability/growth on PDA plates post enrichment (2500 grays)	Aspergillus detection via PCR of spiked Cannabis flower treated with 2000 grays of x-rays	Aspergillus viability/growth on PDA plates post enrichment (2000 grays)	Aspergillus detection via qPCR of spiked Cannabis flower treated with 5000 grays of x-rays	Aspergillus viability/growth on PDA plates post enrichment (5000 grays)
Aspergillus niger	1 g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Not Detected	Detected	Not Detected
Aspergillus flavus	1 g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Detected	Detected	Not Detected
Aspergillus terreus	1g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Not detected	Detected	Not Detected
Aspergillus fumigatus	1 g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Detected	Detected	Not Detected

Results of Aspergillus detection of 2000, 2500 and 5000 Gy for qPCR and PDA plating.

RAD SOURCE

Reviews

Customer Testimonials

"We have run this machine through the gauntlet and it 100% performs as advertised!"
- Large Grower, Colorado

The Magic Bullet

"After working in the growing legal Cannabis Market for over 5 years, I can attest that of all the treatment methods and services offered for microbial decontamination, this is the magic bullet."
- Large Grower, Colorado

Flower Integrity

"0% impact to product!
100% pass rate!"
- Medium Sized Grower, Michigan

You Get What You Pay For

"No adverse effect on the terpene or cannabinoid profiles and guaranteed to remediate any yeast and mold growth you may be experiencing to non-detectable levels. You get what you pay for, and x-ray decontamination is the way to go."
- Large Grower, Colorado

Peace of Mind

"The Rad Source gives me Peace-of-Mind that no change in operating procedures or any other piece of technology has given me."
- Medium Sized Grower

RAD SOURCE

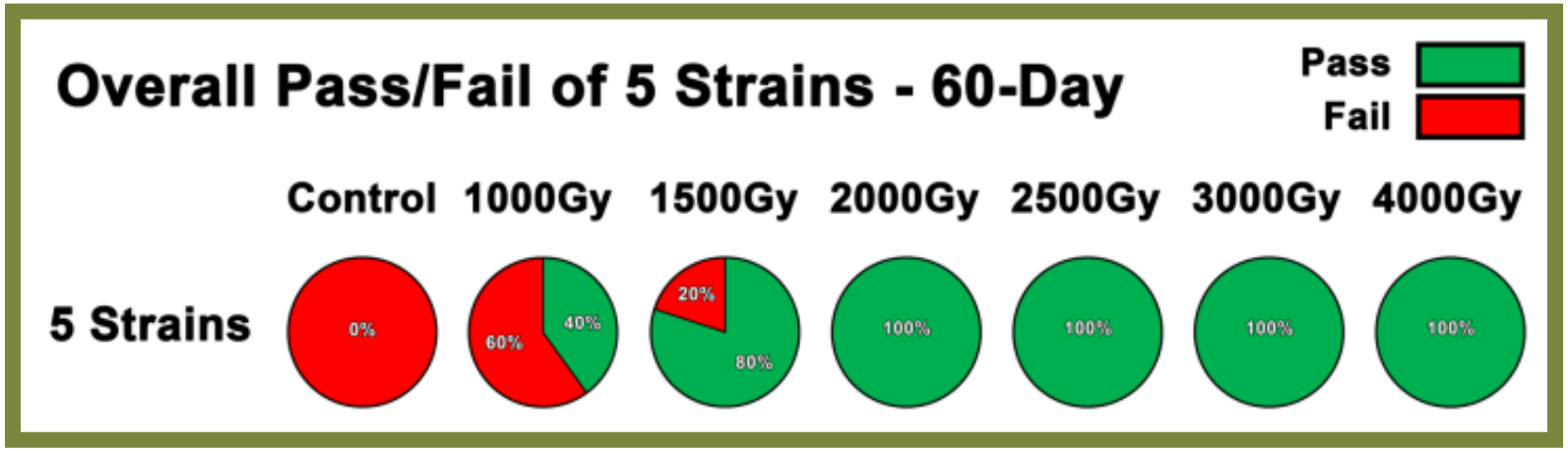
Canndelta Study

Overview

Objective 1	Quantify the change in microbial content observed in samples treated with the Equipment from the Original Report 60 days after initial treatment.
Objective 2	Assess whether after 60 days the microbial levels of treated cannabis continue to meet the current Health Canada-approved microbial testing limits for dried cannabis.
Objective 3	Assess whether after 60 days the microbial levels of treated cannabis do not show a significant increase from the results obtained immediately after treatment in the Original Report.
Selected Analytical Tests	TAMC, TYMC, BTGN, *Pseudomonas aeruginosa*
Timing of Testing	60 days post-treatment
Selected cannabis lots	Strain 1, Strain 2, Strain 3, Strain 4, Strain 5
Treatment Groups	1000 Gy; 1500 Gy; 2000 Gy; 2500 Gy; 3000 Gy; 4000 Gy

RAD SOURCE

Overall Results



Overall Compliance Results from 60-day Dose Escalation Test.

Strain	Treatment	Count Pass	Count Fail	Percent Pass (%)	Percent Fail (%)
5 Strains	0 Gy (Control)	0	5	0	100
	1,000 Gy	2	3	40	60
	1,500 Gy	4	1	80	20
	2,000 Gy	5	0	100	0
	2,500 Gy	5	0	100	0
	3,000 Gy	5	0	100	0
	4,000 Gy	5	0	100	0

Overall Compliance Results from 60 –day Dose Escalation Test (tabulated)

Strain	Treatment	Percent Pass Original (%)	Percent Pass 60-day (%)	Percent Pass Difference (%)	Overall Pass/Fail 60-day
5 Strains	0 Gy (Control)	–	–	–	–
	1,000 Gy	20	40	20	Fail
	1,500 Gy	80	80	0	Fail
	2,000 Gy	80	100	20	Pass
	2,500 Gy	100	100	0	Pass
	3,000 Gy	100	100	0	Pass
	4,000 Gy	100	100	0	Pass

Overall Compliance Results comparison between Original and 60 –day Dose Escalation Test (tabulated)

Top 10 FAQ from Customers

1. Do all the canisters need to be fully filled or can I run one or two canisters or half canisters?
2. Can I put different strains at once?
3. Can I run 24/7?
4. Is RS approved for remediation?
5. Why should we believe you that your products work?
6. What is the reliability of the Quastar emitter?
7. Is your equipment safe to be around?
8. Why should I buy your RS 420 and not one of your competitors' units?
9. What happens if power to the unit fails (brown out) does it hurt the unit? Will it restart and finish the cycle automatically or do I have to dispose of the animals?
10. What kind of maintenance is required for your unit?


The End

OLINGER LAW FIRM

EXHIBIT H

WWW.OLINGERLAW.NET

LEE C. "KIT" McCAHREN
WILLIAM M. VAN CAMP

RONALD D. OLINGER - Retired
JOHN S. LOVALD - Retired

TELEPHONE: 605-224-8851
FAX: 605-224-8269
TOLL-FREE: 877-225-5548

October 2, 2026

Hand delivered

South Dakota Department of Health
Office of Medical Cannabis
600 East Capitol Ave.
Pierre, South Dakota 57501



Re: DOH Hearing date 09.23.2026
Written Testimony on behalf of Puffy's, LLC

Dear Sir/Madam:

Please consider this the written testimony submitted on behalf of Puffy's, LLC. This supplements and supports the testimony provided on September 23, 2026. This testimony is limited to the proposed rule change to SD Administrative Rule 44:90:03:16.

As you know, Puffy's and the Department have been involved in litigation on five locations in Rapid City for approximately 3.5 years because of this rule. The rule change removes the operation extension request procedure in the event that a medical cannabis establishment cannot be operational within the first year of receiving a state certificate.

At this point in the program, the administrative rule only applies to Puffy's. This will be the third proposed change to this portion of the rule since adopted in October 2021. This makes it one of the most amended rules in the medical cannabis program. I'd like to suggest to you that it has to be amended because it is not working, and it is not working because it does not fit within the statutory framework for the medical cannabis program. Indeed, a primary purpose of this proposed rule change is to correct issues with the rule that the Supreme Court laid bare in Puffy's, LLC v. the Department of Health.[1]

Our position is that this entire second paragraph of the rule should be repealed and nothing should be put in there to replace it. I am not sure what the intent of this rule was when it was adopted, but it clearly has not worked.

If the purpose of striking this operational extension request text is an effort to avoid this type of litigation in the future, I question if this rule change accomplishes that. If an establishment loses a certificate for not being operational, they would be entitled to a contested case proceeding as an unsuccessful applicant under this section, or alternatively, under the South Dakota administrative procedures act. Second, it is not clear to me how this then works with the renewal process, which notably does not require that an applicant demonstrate that they are operational when they seek their renewal.

[1] See, Puffy's, LLC v. SD Department of Health, 2025 S.D. 10, attached and marked as Exhibit 1.

This rule change does not solve the biggest problem with the second paragraph of Administrative Rule 44:90:03:16. Operational is an undefined and too subjective standard for the Department of Health to apply. In our litigation, Puffy's asked the Department to define operational. The Department responded as follows: "the term 'operational' is defined by lexicographers and its definition depends on the context in which it is used. Nobody actually defines the term, they just apply the term to the application of the rule." If the term depends on the "context" and the Department cannot define the term within this context, the term is not a set or guiding standard for the Department or for the establishments affected by this administrative rule, which by the way is only Puffy's. See, Department of Health's Answers to Interrogatories, Requests for Admissions and Production of Documents, attached and marked as Exhibit 2.

We also discovered that the Department utilized a checklist to review operational extension requests. First, the Department only provided a blank version of it. After we had to go to the hearing examiner to ask the Department to produce the completed versions, we discovered that the primary reviewer Cody Shippy determined that we met the three criteria under the operational extension request checklist. Then, the Department, in a black box process that was not explained, deviated from its findings in that checklist, and it was never completed.

Cody, in her deposition, indicated that the Department did not have a definition of operational at the time the Department conducted this review. Shippy Dep. 84:7-12, attached hereto and marked as Exhibit 3. She further testified that the term "'operational' can mean so many things to so many different people, and I don't know that it is truly defined." Shippy Dep. 84:4-6.

South Dakota advertises itself as being a great place for business in part because of our minimal government regulations, and further, when we have regulations, they are clear, concise, and simple. This rule and what we discovered in our litigation violates both of those bedrock principals of South Dakota governance.

In addition to being undefined, this part of the administrative rule does not have any legal authority.

The legislature mandates that all administrative agencies must submit the general authority and law implemented as part of a proposed rules. SDCL § 1-26-6.2. For this administrative rule, the Department presently cites SDCL §§ 34-20G-56, 34-20G-72(2) as the general authority or laws implemented. Clearly, an administrative rule cannot adopt a requirement that expands upon the statute it purports to implement. See, In Re Luft Exploration Co., 864 N.W.2d 4 at 8, (SD 2015)

SDCL § 34-20G-56 states, "If a local government has enacted a numerical limit on the number of medical cannabis establishments in the locality and a greater number of applicants seek registration, the Department shall solicit and consider input from the local government as to its preference for registration." Nothing in S.D. Admin. R. § 44:90:03:16 relates to how the Department will solicit or consider input from a local government as to its preferences for registrants. The statute further does not authorize the Department to impose operational requirements when there is no local input. The Department's operational requirement has no tangential relationship to local preference for registrants.

Further, Rapid City actually granted Puffy's a local operational extension request. If this rule was really about seeking input, the Department would have deferred to the determination of the boots on the ground local government.

But can SDCL §§ 34-20G-72(2) justify the operational requirement and operational extension request? SDCL 34-20G-72(2) is the process for scoring competing medical cannabis applicants during the application process *before* a certificate is issued.

This cited authority clearly justifies the first half of the administrative rule, but does not authorize the subsequent creation of an operational requirement. Whether a certificate holder becomes operational *after* the Department has issued the state certificates does not relate the system to numerically score competing applicants of SDCL § 34-20G-72(2).

The SD Supreme Court declined to address this analysis in Puffy's v. Department of Health, but in not addressing it, the problem remains. Neither of these statutes authorizes the operational requirement. In fact, the rule conflicts with SDCL § 34-20G-57, which requires renewal within 45 days of receipt of the renewal application and renewal fee. Importantly here, the renewal application under SD Admin Rules 44:90:03:01 and 44:90:03:02 does not require any sort of showing that a certificate is operational. This conflict in creating an operational requirement was identified by the LRC itself in 2022. See, LRC report to Department of Health dated September 27, 2022, attached and marked hereto as Exhibit 4.

In fact, Puffy's has a dispensary in Meade County and the Department told Puffy's it did not have to submit an operational extension request because only the renewal law applied. If renewals *shall* be issued upon the review and approval of the renewal application and the renewal application does not require a showing of operational, then logically, you should conclude that the Puffy's operational rule has no authority and in fact conflicts with the law.

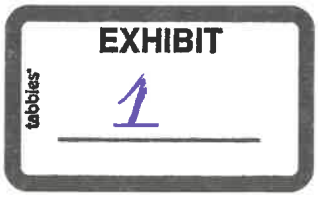
Litigation results when rules are not clear and concise. This administrative rule has required Department representatives to be in a 3.5 year ongoing litigation with Puffy's and taken staff away from the Program's primary focus of public safety and patient well-being. It has spurred additional litigation between Puffy's and Rapid City.

The rule has no authority and has not worked even as intended frankly because its ambiguous. Instead of tweaking this rule for the 3rd time, I encourage you to strike the second paragraph entirely and remove this "Puffy's must be operational" requirement.

Sincerely,

WILLIAM M. VAN CAMP
Attorney at Law

WVC:tj
Enclosures
cc: Client



#30554, #30567-a-PJD
2025 S.D. 10

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

PUFFY'S, LLC, a South Dakota
Limited Liability Company, Applicant and Appellee,

v.

STATE OF SOUTH DAKOTA,
DEPARTMENT OF HEALTH, Respondent and Appellant.

* * * *

APPEAL FROM THE CIRCUIT COURT OF
THE SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

* * * *

THE HONORABLE JOSHUA HENDRICKSON
Judge

* * * *

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* * * *

ARGUED
OCTOBER 1, 2024
OPINION FILED **02/19/25**

#30554, #30567

DEVANEY, Justice

[¶1.] Puffy's, LLC was first in line on a waiting list to receive a state registration certificate from the South Dakota Department of Health (Department). The certificate was required in order to operate a medical cannabis dispensary in Rapid City (City). After the Department failed to issue the certificate, Puffy's brought a mandamus action in circuit court seeking an order compelling the Department to issue the certificate to Puffy's. The circuit court granted the writ of mandamus. The Department appeals, claiming the court lacked jurisdiction, or in the alternative, abused its discretion in granting the writ. We affirm.

Factual and Procedural Background

[¶2.] In 2020, South Dakota voters approved an initiated measure creating a state medical cannabis program. The measure, codified as SDCL chapter 34-20G, became effective July 1, 2021. The program is administered by the South Dakota Department of Health. Under the law, the Department is tasked with registering medical cannabis establishments, including dispensaries where authorized individuals may obtain cannabis and cannabis products for medical use. To operate, all medical cannabis establishments must obtain a state registration certificate from the Department upon application and payment of an application fee.[1] SDCL 34-20G-55.

1. In 2021, the Department set a non-refundable fee for an initial or renewal application at $5,000. *See* ARSD 44:90:03:17. The Department amended the rule in November 2023 to increase the fee to $5,310, and in 2024 raised it to the current amount of $9,000. *Id.*

[¶3.] The law permits municipalities and counties to limit the number of medical cannabis establishments within their jurisdictions. In 2021, the City passed an ordinance that resulted in a limit of fifteen dispensaries that could operate in 2022. However, the City received applications for forty-seven dispensaries.

[¶4.] The Department's administrative rules provide a process that addresses the situation where more medical cannabis establishments apply for a state registration certificate than are allowed by a particular local jurisdiction. In that event, the Department applies a scoring system to the applicants seeking to operate in the local jurisdiction. ARSD 44:90:03:15. If all the applicants receive equal scores, then under the Department's "tie-breaker" rule, ARSD 44:90:03:16, the Department conducts a random lottery drawing to determine the successful applicants that will be awarded the state registration certificate, and the remainder are put on a waiting list in the order determined by the lottery drawing. Under this rule, a successful state registration certificate recipient has one year to become operational "or the certificate is deemed void and must be awarded to the next applicant on the waiting list."[2] *Id.*

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2. ARSD 44:90:03:16, promulgated in 2021, has been amended. The version relevant to this appeal, with an effective date of November 22, 2022, reads, in part:

> Any establishment granted a certificate pursuant to this section must become operational within one year of the date of award or the certificate is deemed void and must be awarded to the next applicant on the waiting list. If the establishment granted a certificate pursuant to this section cannot become operational within one year, the establishment may submit to the
>
> (continued . . .)

[¶5.] All forty-seven of the Rapid City applicants also filed applications requesting state registration certificates from the Department.[3] The applicants included Puffy's, a company seeking to operate medical cannabis dispensaries at various locations in Rapid City, including one at 3308 Campbell Street. As required for this location, Puffy's filed an initial application for a state registration certificate and paid the $5,000 application fee to the Department.

[¶6.] The Department applied the scoring system in ARSD 44:90:03:15 and all forty-seven applicants received identical scores. On March 9, 2022, the

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(. . . continued)

> 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 one additional year from the date of expiration of the certificate. 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.

3. As part of the Department's initial application process, applicants must submit information, including certification from the local jurisdiction that the applicant is in compliance with any local zoning requirements and has obtained any necessary local licenses or permits. SDCL 34-20G-55; ARSD 44:90:03:01; ARSD 44:90:03:10; ARSD 44:90:03:11.

Department held a lottery drawing to determine which applicants would receive the fifteen state registration certificates for dispensaries in Rapid City. Puffy's was awarded several of the fifteen certificates and was also drawn as the first alternate position on the waiting list for its location at 3308 Campbell Street. Another applicant, Greenlight Dispensary, received three of the fifteen registration certificates.

[¶7.] In March 2023, Greenlight failed to meet the one-year operational requirement for one of its locations. The Department denied Greenlight's request for an extension on April 23, 2023, and Greenlight did not appeal the Department's final decision by way of a contested case pursuant to SDCL chapter 1-26. As a result, under ARSD 44:90:03:16, Greenlight's state registration certificate then became available. The Department did not, however, issue the certificate to Puffy's as the first alternate on the lottery drawing waiting list.

[¶8.] According to Puffy's, it made several requests for the certificate to be issued but received no response from the Department. On July 19, 2023, Puffy's filed a verified application for an alternative writ of mandamus in circuit court. The application requested a writ compelling the Department to issue a dispensary registration certificate for its location at 3308 Campbell Street. On July 26, 2023, the circuit court entered an alternative writ of mandamus ordering the Department to either issue the certificate to Puffy's or file an answer showing cause why it had not done so.

[¶9.] On August 18, 2023, the Department sent a letter to Puffy's stating that it "may proceed with the application process for a lottery dispensary certificate"

that was available, due to its position as first alternate from the lottery drawing. The letter asked Puffy's to notify the Department if it was "interested in moving forward with the process of certification" for the dispensary establishment at 3308 Campbell Street.

[¶10.] Puffy's still desired the available certificate and engaged in discussions with the Department, but the parties' attempts to resolve the matter were unsuccessful. The sticking point was two-fold: the Department expected Puffy's to (1) pay another application fee; and (2) submit additional information to update its initial application, including a new form from the City certifying that the location proposed by Puffy's was in compliance with local zoning ordinances and that Puffy's had obtained any required local permits, licenses, or registrations.[4]

[¶11.] On September 5, 2023, the Department filed a motion to dismiss or, in the alternative, a motion to quash the writ, as well as a brief in support that contained attached documents. The Department's counsel filed a notice of special appearance for the sole purpose of contesting subject matter jurisdiction. In response, Puffy's filed a brief with attached documents. The circuit court held a hearing on the motion on November 6, 2023, where it heard arguments from

4. Local jurisdictions may enact their own ordinances governing medical cannabis establishments. SDCL 34-20G-58. At the time of the discussions, the parties understood that the City would not have a local license available until January 1, 2024. The Department attaches to its initial brief a copy of the certification form issued to Puffy's by the City on March 6, 2024. Similarly, Puffy's attaches to its brief municipal ordinances regarding medical cannabis establishments, including the City's. These documents are not, however, part of the settled record and therefore we do not consider them. *Toben v. Jeske*, 2006 S.D. 57, ¶ 11, 718 N.W.2d 32, 35–36.

counsel and received into evidence some of the same documents that were attached to the prehearing briefs.

[¶12.] The Department's primary claim was that the circuit court lacked subject matter jurisdiction because Puffy's failed to exhaust administrative remedies before seeking mandamus relief. Citing SDCL 1-26-30, the Department asserted that a circuit court only acquires jurisdiction after a final decision in a contested case. It argued there had been no contested case initiated and completed, nor had Puffy's been aggrieved by a final decision. In a related argument, the Department claimed that under the separation of powers doctrine, the Department should be allowed to conclude an administrative process before the judicial branch becomes involved.

[¶13.] Addressing the merits of the request for mandamus relief, the Department argued that the existence of an administrative process in SDCL chapter 1-26 provided Puffy's with a plain, speedy, and adequate remedy and therefore mandamus relief was not warranted. It also took the position that there was nothing left to compel the Department to do, as it had already notified Puffy's of the right to proceed with the application process. According to the Department, it was waiting for updated information from Puffy's, including an updated certification from the City. The Department asserted the entire matter was moot and there was no real controversy because it had notified Puffy's that it could move forward with the application process.

[¶14.] Puffy's countered that the matter was not moot, as the Department had still not issued the state registration certificate to Puffy's. According to Puffy's,

the clear and unambiguous language of ARSD 44:90:03:16 required the Department to issue the registration certificate once the Department determined that Greenlight failed to become operational and Greenlight did not appeal that decision. Puffy's contended there was nothing further it should have to do, as it had already met the requirements for obtaining the certificate when the initial application was submitted and the lottery drawing occurred. Puffy's argued that the rule says nothing about an applicant re-submitting information or re-applying in the event a certificate becomes available to the applicant as a lottery drawing alternate.

[¶15.] Regarding the exhaustion issue, Puffy's argued there was no administrative remedy available, as the rule did not give an applicant in a situation like Puffy's the right to invoke contested case procedures where no final action had occurred. It further contended that exhaustion of administrative remedies is not required where an agency fails to act. According to Puffy's, it was entitled to mandamus relief because it had shown that there was no other plain, speedy, and adequate remedy, and that the Department had an obligation under the rule to issue the registration certificate.

[¶16.] As a separate matter, Puffy's challenged the validity of ARSD 44:90:03:16, specifically the one-year operational requirement imposed on applicants who receive the state registration certificate. It contended the Department, when promulgating the rule, exceeded its implementation authority granted by the Legislature in the statutes.

[¶17.] Thereafter, on November 17, 2023, the court issued its written decision and order denying the Department's motion to dismiss and ordering the

Department to issue a state medical cannabis dispensary certificate to Puffy's for its location at 3308 Campbell Street. The court entered a peremptory writ of mandamus on November 30, 2023.

[¶18.] In its decision, the circuit court concluded that it had jurisdiction to issue the writ. The court recognized the general principle that failure to exhaust available administrative remedies is a jurisdictional defect that precludes a party from obtaining judicial relief. The court determined, however, that exhaustion was not required in this case because Puffy's met an exception to the exhaustion requirement where an agency fails to act. The court found the Department had failed to act here.

[¶19.] The court also ruled against the Department on the mootness issue. It rejected the Department's claim that the Department's August 18 letter telling Puffy's it "may proceed with the application process" removed any controversy between the parties. The court ruled that because Puffy's took the position that no further application process was necessary and it did not receive the state certificate, a controversy still existed.

[¶20.] On the merits, the court concluded that Puffy's was entitled to a writ of mandamus. It first ruled that the Department had a clear, mandatory duty to act. The court found that Greenlight's certificate was determined to be void by the Department on April 20, 2023, after Greenlight failed to become operational within one year, as required by ARSD 44:90:03:16. The court concluded that under the rule, when an entity holding a registration certificate fails to become operational within one year, "the certificate is deemed void and *must* be awarded to the next

applicant on the waiting list." The court determined the "must" language was clear, certain, and unambiguous.

[¶21.] Additionally, the court further held that "[r]eapplication is not contemplated by ARSD 44:90:03:16. The language of the rule does not suggest any additional action by a waitlisted applicant before the Department 'must' issue the registration certificate." The court thus concluded, "the Department had a mandatory duty to issue the registration certificate to Puffy's after voiding Greenlight's certificate."

[¶22.] Addressing the additional requirement for mandamus relief, the court concluded that Puffy's had no other plain, speedy, and adequate remedy. Because the Department had failed to act, the court determined that "[t]here is no Department action for which Puffy's can seek agency review," and that "Puffy's has no other recourse but to seek relief from this [c]ourt in a writ." The court ultimately concluded, "Puffy's is entitled to such relief. The Department must grant Puffy's the registration certificate."

[¶23.] The circuit court then ruled on the alternative argument Puffy's presented. It held the one-year operational requirement in ARSD 44:90:03:16 was valid and did not exceed the authority granted to the Department by the Legislature.

[¶24.] The Department appeals and raises the following issues, which we restate:

1. Whether the circuit court erred in not granting the Department's motion to dismiss for lack of jurisdiction.

2. Whether the circuit court abused its discretion when it granted the peremptory writ of mandamus.

3. Whether the circuit court abused its discretion when it ruled on the merits of whether a writ of mandamus should be granted, without first allowing an opportunity for an evidentiary hearing.

[¶25.] Puffy's filed a notice of review, raising the following issue:

Whether ARSD 44:90:03:16 is unconstitutional and exceeds the statutory authority granted to the Department.

Standard of Review

[¶26.] This Court reviews the denial of a motion to dismiss for lack of jurisdiction "as a 'question of law under the de novo standard of review.'" *Bingham Farms Trust v. City of Belle Fourche*, 2019 S.D. 50, ¶ 11, 932 N.W.2d 916, 919 (quoting *Upell v. Dewey Cnty. Comm'n.*, 2016 S.D. 42, ¶ 9, 880 N.W.2d 69, 72); *see Engel v. Geary*, 2023 S.D. 69, ¶ 16, 1 N.W.3d 644, 649 (issues regarding jurisdiction are questions of law). A circuit court's decision to grant a writ of mandamus is reviewed for an abuse of discretion. *Krsnak v. S.D. Dep't of Env't & Nat. Res.*, 2012 S.D. 89, ¶ 8, 824 N.W.2d 429, 433. "An abuse of discretion refers to a discretion exercised to an end or purpose not justified by, and clearly against reason and evidence." *Id.* (quoting *Argus Leader v. Hagen*, 2007 S.D. 96, ¶ 7, 739 N.W.2d 475, 478). "A [circuit] court abuses its discretion when it makes an error of law." *Blair-Arch v. Arch*, 2014 S.D. 94, ¶ 10, 857 N.W.2d 874, 877 (alteration in original) (citation omitted). "Underlying questions of statutory interpretation and application in the mandamus action 'are questions of law that we review de novo.'" *Bohn v. Bueno*, 2024 S.D. 6, ¶ 12, 3 N.W.3d 441, 447 (quoting *Krsnak*, 2012 S.D. 89, ¶ 8, 824 N.W.2d at 433); *see also Westmed Rehab, Inc. v. Dep't of Soc. Servs.*, 2004

S.D. 104, ¶ 5, 687 N.W.2d 516, 518 (applying de novo review to interpretation of administrative rules).

Analysis and Decision

1. Whether the circuit court erred in not granting the Department's motion to dismiss for lack of jurisdiction.

[¶27.] We first consider the Department's claim that the circuit court lacked jurisdiction to issue the writ because Puffy's failed to exhaust all administrative remedies prior to seeking a writ of mandamus.[5] Exhaustion of administrative remedies is a fundamental principle that requires "the withholding of judicial relief on a claim or dispute cognizable by an administrative agency until the administrative process has run its course." *S.D. Bd. of Regents v. Heege*, 428 N.W.2d 535, 539 (S.D. 1988) (quoting *Johnson v. Kolman*, 412 N.W.2d 109, 111 (S.D. 1987)). The Department relies on this principle to assert that the circuit court lacked jurisdiction to enter the writ of mandamus, but given the circumstances in this case, the exhaustion requirement is inapplicable.

[¶28.] The exhaustion principle provides that "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Reynolds v. Douglas Sch. Dist. No. 51-1*, 2004 S.D. 129, ¶ 10, 690 N.W.2d 655, 657 (quoting *Small v. State*, 2003 S.D. 29, ¶ 16, 659

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5. The Department presented its motion to dismiss as a challenge to the subject matter jurisdiction of the circuit court. This type of motion goes to the "statutory or constitutional power to adjudicate the case." *State v. Bettelyoun*, 2022 S.D. 14, ¶ 19, 972 N.W.2d 124, 129 (quoting *United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct. 1781, 1785, 152 L. Ed. 2d 860 (2002) (cleaned up)). There is no question that the circuit court had the statutory power to grant a writ of mandamus. SDCL 16-6-15.

N.W.2d 15, 18–19. This presupposes, however, that there is a prescribed administrative remedy available to pursue.

[¶29.] The Department contends Puffy's had an available remedy through the administrative contested case procedures in SDCL chapter 1-26, and it specifically cites SDCL 1-26-30, SDCL 34-1-26, and ARSD 44:90:03:16. Under SDCL 1-26-30, "[a] person who has exhausted all administrative remedies available within any agency or a party who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter." SDCL 34-1-26 provides that "[a]ny person feeling aggrieved by any action of the Department of Health shall have the right to appeal pursuant to chapter 1-26." ARSD 44:90:03:16 includes language stating that "[t]he 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."

[¶30.] While the chapter 1-26 administrative appeal process provides a remedy in many cases, it does not resolve the question presented here. The language in ARSD 44:90:03:16 references the notice the Department must provide to *unsuccessful* applicants when the Department has made a *final* decision. This case presents neither situation. The Department acknowledges that there was no final action by the Department adverse to Puffy's in this case. Indeed, Puffy's had already successfully met the eligibility requirements for the lottery drawing through its initial application and the Department's scoring process. Once Greenlight's registration certificate became available, the Department rightfully turned to Puffy's, as the first in line from the lottery drawing, to determine if it still

desired the certificate. However, rather than issuing the certificate after learning that Puffy's did desire it, the Department told Puffy's it could "proceed with the application process."

[¶31.] The Department fails to identify what specific administrative remedies were available to Puffy's in this situation. Certainly, the Department's August 18 letter did not provide such notification. When pressed by the circuit court, the Department suggested that Puffy's should have "filed something administratively," without specifying what Department statute or rule authorized, or provided a basis, for Puffy's to do so. This case is therefore distinguishable from the cases cited by the Department such as *Dollar Loan Ctr. of S.D., LLC, v. S.D. Dep't of Lab. & Regul.*, 2018 S.D. 77, 920 N.W.2d 321 and *McElhaney v. Anderson*, 1999 S.D. 78, 598 N.W.2d 203, as they involved situations where specific administrative remedies existed, and were in fact still pending, but the parties attempted to bypass them.

[¶32.] The Department admitted to the circuit court that there had been no departmental action taken that would have triggered a chapter 1-26 administrative process. This point is dispositive. As such, Puffy's was not required to exhaust an administrative remedy that did not exist under the circumstances of this case. For similar reasons, the circuit court did not err when concluding that exhaustion of administrative remedies was not required because the Department had failed to act. *See Heege*, 428 N.W.2d at 539 (citing *Weltz v. Bd. of Educ. of Scotland Sch. Dist.*, 329 N.W.2d 131, 132 n.1 (S.D. 1983)). "When a [governmental body's] failure to act forecloses an aggrieved party's ability to appeal under [the appeal statute], the aggrieved party is free to pursue other remedies such as mandamus." *Rosander v.*

Bd. of Cnty. Comm'rs of Butte Cnty., 336 N.W.2d 160, 161 (S.D. 1983) (citing *State ex rel. Peterson v. Scott*, 56 S.D. 144, 227 N.W. 572 (1929)).

[¶33.] While the Department argues it did act by sending the August 18 letter, that is not the act at issue. It is the Department's continuing failure to issue the registration certificate, absent an updated application and additional fee, that forms the basis for the mandamus relief requested by Puffy's. For this reason, the Department's mootness claim fails as well, as an actual controversy still exists between the parties regarding the issuance of the certificate to Puffy's. *See Skjonsberg v. Menard, Inc.*, 2019 S.D. 6, ¶ 14, 922 N.W.2d 784, 788–89.[6]

[¶34.] For these reasons, we conclude that the circuit court had jurisdiction to hear the case and to issue the writ of mandamus. It did not, therefore, err when it denied the Department's motion to dismiss for lack of jurisdiction.

2. Whether the circuit court abused its discretion when it granted the peremptory writ of mandamus.

[¶35.] As to the issue whether the court abused its discretion when it granted the writ of mandamus, our guiding principles are well-settled:

> "A writ of mandamus is an extraordinary remedy that will issue only when the duty to act is clear." [*Krsnak*, 2012 S.D. 89,] ¶ 9, 824 N.W.2d at 434 (quoting *Woodruff v. Bd. of Comm'rs for Hand Cnty.*, 2007 S.D. 113, ¶ 3, 741 N.W.2d 746, 747). "A writ of mandamus 'commands the fulfillment of an existing legal duty, but creates no duty itself, and' does not act 'upon . . . doubtful or unsettled law.'" *Id.* (omission in original) (quoting

6. We need not address the Department's additional arguments that the circuit court's ruling violated constitutional separation of powers and that the application for writ of mandamus should have been dismissed under SDCL 15-6-12(b)(5) for failure to state a claim for which relief could be granted. Both arguments are simply attempts to recast the misplaced exhaustion and mootness claims.

> *Woodruff*, 2007 S.D. 113, ¶ 3, 741 N.W.2d at 747). "To prevail on a writ of mandamus or prohibition, Petitioners must show 'a clear legal right to performance of the specific duty sought to be compelled and the [respondent] must have a definite legal obligation to perform that duty.'" *Id.* (alteration in original) (quoting *Cheyenne River Sioux Tribe v. Davis*, 2012 S.D. 69, ¶ 13, 822 N.W.2d 62, 66). "The writ of mandamus must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." SDCL 21-29-2.

Bohn, 2024 S.D. 6, ¶ 13, 3 N.W.3d at 447–48.

[¶36.] Puffy's contends that once Greenlight's previously issued registration certificate became void—because Greenlight failed to become operational within the time required by ARSD 44:90:03:16—the Department had a clear and affirmative duty to issue the registration certificate to Puffy's as the first in line on the lottery drawing waiting list. According to Puffy's, the certificate must be awarded without it being required to do anything further.

[¶37.] The Department, on the other hand, argues that it had no legal obligation to issue the certificate but could first require Puffy's to submit updated information, including certification from the City, as well as an additional application fee. And even then, the Department contends, it would not be required to automatically issue the certificate but is allowed to conduct a vetting process to determine whether Puffy's is eligible to receive it. The Department claims its duty was already performed when it sent the August 18 letter telling Puffy's of its right to "proceed with the application process." However, as noted above, the subject of the writ of mandamus is the actual issuance of the registration certificate to Puffy's. The request for mandamus relief must be analyzed with this focus.

[¶38.] The resolution of this issue requires an interpretation of ARSD 44:90:03:16. When interpreting statutes, or in this case, administrative rules, we "adhere to two primary rules of statutory construction. The first rule is that the language expressed in the statute is the paramount consideration. The second rule is that if the words and phrases in the statute have plain meaning and effect, we should simply declare their meaning and not resort to statutory construction." *Olson v. Butte Cnty. Comm'n*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681); *see Westmed Rehab, Inc.*, 2004 S.D. 104, ¶ 8, 687 N.W.2d at 518 (recognizing that "[a]dministrative regulations are subject to the same rules of construction as are statutes"). Indeed, "[w]hen the language of a statute is clear, certain, and unambiguous, there is no reason for construction, and this Court's only function is to declare the meaning of the statute as clearly expressed." *In re Implicated Individual*, 2021 S.D. 61, ¶ 16, 966 N.W.2d 578, 583.

[¶39.] It is with these principles in mind that we examine the relevant language in ARSD 44:90:03:16, which provides: "Any establishment granted a certificate pursuant to this section must become operational within one year of the date of the award or *the certificate* is deemed void and *must be awarded to the next applicant on the waiting list.*" (Emphasis added.) There is no dispute that Greenlight's certificate was void and that Puffy's was the first in line on the waiting list. The only question is whether the certificate "must be awarded" to Puffy's and under what conditions, if any.

[¶40.] Words in a statute "are to be understood in their ordinary sense." SDCL 2-14-1. When used in legislation, the word "must" has a mandatory or imperative connotation. *United Bank, Inc. v. Stone Gate Homeowners Ass'n, Inc.*, 647 S.E.2d 811, 816 (W. Va. 2007); *see* South Dakota Legislative Research Council, *Drafting Manual: Administrative Rules of South Dakota* 14–15 (rev. Jan. 2025), https://mylrc.sdlegislature.gov/api/Documents/72140.pdf. The Department does not suggest otherwise, and the phrase "must be awarded" is clear and unambiguous.

[¶41.] To adopt the Department's interpretation of the rule, we would have to conclude the rule implies that the award of the certificate to an applicant on the waitlist occurs, if at all, only after an additional process in which such applicant submits an updated application, pays another application fee, and the Department considers and approves the submissions. However, there is nothing in the rule that says these things are required before the certificate is issued to the next applicant on the waitlist, and we cannot rewrite laws to add language that simply is not there. *See Olson*, 2019 S.D. 13, ¶ 13, 925 N.W.2d at 466–67; *Rowley v. S.D. Bd. of Pardons & Paroles*, 2013 S.D. 6, ¶ 18, 826 N.W.2d 360, 366; *Bettelyoun*, 2022 S.D. 14, ¶ 36, 972 N.W.2d at 135 (noting the Court "must accept what the legislature has said—and has not said"). Rather, we must apply "the cardinal rule of statutory interpretation—simply read the text and apply it." *Implicated Individual*, 2021 S.D. 61, ¶ 28, 966 N.W.2d at 586.

[¶42.] The Department argues, however, that policy reasons support its reading of the rule. It contends the vetting process is a necessary part of its regulatory duties regarding the medical cannabis industry, and it is important for

the Department to ensure alternate waitlist applicants are still fully compliant before being awarded the certificate. While the Department acknowledges that no express language provides for this or permits the Department to require a waitlist applicant to pay another application fee, it suggests that waitlist applicants are akin to certificate holders who seek renewal. The Department contends the rule must be read in context with other rules, including ARSD 44:90:03:02, which requires applicants who have already been issued a certificate to annually *renew* their certificate by submitting updated application information and paying a *renewal* application fee. Notably, ARSD 44:90:03:02 requires that a renewal application for a registration certificate be submitted "every 12 months from *date of issuance*[,]" something that has not yet occurred for Puffy's at the 3308 Campbell Street location. (Emphasis added.)

[¶43.] It is obvious that this rule and other rules and statutes that make up the Department's administrative scheme refer only to entities who submit initial applications or renewal applications. A medical cannabis establishment on a lottery drawing waitlist pursuant to ARSD 44:90:03:16 fits into neither category. It is no longer an initial applicant because that step has passed. It is not a renewal applicant because it has yet to be issued a certificate and thus has nothing to renew. Perhaps this is an unintended anomaly. If so, any remedy lies with the Department through rulemaking or with the Legislature; it is not for this Court to judicially revise the language of a rule as written. *Olson*, 2019 S.D. 13, ¶ 13, 925 N.W.2d at 466–67. "We have consistently recognized that our constitutional role prohibits judicial ambition to amend or modify plain and unambiguous text in favor of a

different rule[.]" *Bettelyoun*, 2022 S.D. 14, ¶ 33, 972 N.W.2d at 134 (quoting *Abdulrazzak v. S.D. Bd. of Pardons & Paroles*, 2020 S.D. 10, ¶ 17, 940 N.W.2d 672, 677). Moreover, as noted above, the Department's arguments speak to the wisdom or policy considerations for having an updated application and vetting process, which are not part of our analysis in this case. *Bettelyoun*, 2022 S.D. 14, ¶ 38, 972 N.W.2d at 135.

[¶44.] We conclude that the text of ARSD 44:90:03:16 obligated the Department to issue the registration certificate to Puffy's, and Puffy's had a clear legal right to receive it. And because Puffy's had no other plain, speedy, and adequate remedy by way of an administrative appeal or otherwise, the circuit court did not abuse its discretion in granting the writ of mandamus.

3. Whether the circuit court abused its discretion when it ruled on the merits of whether a writ of mandamus should be granted, without first allowing an opportunity for an evidentiary hearing.

[¶45.] The Department contends the circuit court should not have issued the peremptory writ of mandamus without first giving the parties an opportunity for a hearing at which evidence could be presented. According to the Department, it should have been allowed to present evidence concerning its certification process and examples of situations where the Department's vetting process revealed applicants' ineligibility to become or remain registered with the Department.

[¶46.] In order to address this claim, we must consider how the Department chose to proceed below. After the circuit court entered the alternative writ of mandamus, the Department elected to file, as its responsive pleading, a motion to dismiss challenging the jurisdiction of the court. In the alternative, the Department

pled, in its filing, a motion to quash the alternative writ. Both parties filed pre-hearing briefs with attached documents. In both their briefing, and at the hearing, the parties presented arguments on the merits of their respective positions which were clearly not limited to the issue of the court's jurisdiction. Importantly, the Department did not request that the circuit court restrict the scope of the hearing. Also, when the court said it would take the matter under advisement, the Department did not ask that an evidentiary hearing be held if the court ruled against the Department on the jurisdictional issue. In any event, this case turns on questions of law and the interpretation of the administrative rules, the analysis of which is not dependent on the type of evidence the Department now identifies. Therefore, the circuit court did not abuse its discretion by issuing the writ of mandamus without holding an evidentiary hearing.

Notice of Review

Whether ARSD 44:90:03:16 is unconstitutional and exceeds the statutory authority granted to the Department.

[¶47.] Before considering whether to address this issue, we take note of relevant background information present in the record for this appeal, which illuminates the reason why Puffy's seeks such a ruling from this Court. After the round of initial applications and the lottery drawing, Puffy's was awarded state registration certificates for several of its locations in Rapid City. Puffy's was unable to become operational within one year at several of these locations as required by ARSD 44:90:03:16, and therefore requested extensions under that rule. After the Department denied the extensions, Puffy's appealed the final decisions under SDCL

chapter 1-26, and that administrative appeal was pending before the South Dakota Office of Hearing Examiners.

[¶48.] Additionally, during the same period, a dispute arose over the Department's denial of an extension regarding another location belonging to Puffy's in Rapid City. Instead of pursuing a chapter 1-26 appeal of the Department's decision, Puffy's filed an action in circuit court seeking a writ of prohibition against the Department to prevent it from enforcing the operational requirements in ARSD 44:90:03:16. As part of its arguments seeking the writ of prohibition, Puffy's claimed ARSD 44:90:03:16 was invalid with respect to the one-year operational requirement because, according to Puffy's, the Department exceeded its rulemaking authority granted by the general authority and implementation statutes. The circuit judge in the present case also presided over that matter. At an October 2, 2023 hearing in that case, the court denied the writ of prohibition and granted the Department's motion to dismiss, ruling that Puffy's had available administrative appeal remedies that were not exhausted.

[¶49.] In the case currently before us in this appeal, Puffy's asks this Court to interpret and apply ARSD 44:90:03:16 in its favor. Yet, despite the fact that its request for mandamus relief is dependent on the application of this rule, Puffy's asks, in its notice of review, that we invalidate the one-year operational requirement which ultimately resulted in Puffy's being entitled to a certificate as the first applicant on the waitlist.

[¶50.] We decline to address the merits of this issue, as it is not properly before us. Puffy's stated in its application for a writ of mandamus that its request

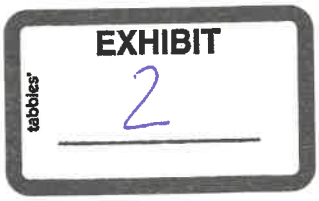
"stems from the [Department's] failure to promptly issue a . . . state certificate to Puffy's LLC *after one became available* in Rapid City pursuant to [ARSD] 44:90:03:16." (Emphasis added.) In seeking affirmative mandamus relief, Puffy's did not, and could not, challenge the underlying basis for why *Greenlight's* certificate was deemed void and became available—a matter that implicates the one-year operational requirement and extension process for *Greenlight.*[7] Thus, the only issue in this appeal involves the Department's obligation to award the certificate once that availability occurred.

[¶51.] We affirm.

[¶52.] JENSEN, Chief Justice, and KERN, SALTER, and MYREN, Justices, concur.

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7. It is apparent that the notice of review claim presented by Puffy's is an attempted end-around the circuit court's decision in the writ of prohibition case in which the court refused to consider the challenge to the one-year operational requirement because of the failure by Puffy's to exhaust administrative remedies.



SOUTH DAKOTA DEPARTMENT OF HEALTH
through the
OFFICE OF HEARING EXAMINERS
BUREAU OF ADMINISTRATION
Pierre, South Dakota

IN THE MATTER OF THE DENIAL OF THE REOUEST FOR EXTENSION OF PUFFY'S REGISTRATION CERTIFICATIONS	DOH 23 - 08, 09, 10, 11, & 12 DEPARTMENT OF HEALTH'S ANSWERS TO PUFFY'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. State the full name, present address, phone number, and occupation of all persons who answered or assisted in answering these Interrogatories, Requests for Admission, and Requests for Production.

ANSWER:

Tamara Lee
Attorney for Department of Health
600 E. Capitol Ave.
Pierre, SD 57501
(605) 773-3361

Cody Shippy
700 Governors Dr.
Pierre, SD 57501
Social Services Program Specialist I

2. Identify all persons whom you believe to have knowledge concerning the issues in Puffy's extension requests for certificate 22ESTC5635, 22ESTC9436, 22ESTC6030, 22ESTC5788, and 22ESTC0916.

ANSWER: Objection. This interrogatory is overly broad. Subject to and without waiving said objection, the Department responds as follows: Kittrick Jeffries, Ryan Cwach, Bailey Sahnow, Chris Qualm, Melissa Johnson, Cody Shippy, Emily Raad, Jen Seale, Tamara Lee, Lynne Valenti.

3. What date was the South Dakota Medical Cannabis Program established within the South Dakota Department of Health?

ANSWER: Objection. This interrogatory seeks information that is equally available to the requesting party. Subject to and without waiving said objection, the Department responds as follows: see SDCL Chapter 34-20G

4. Since the establishment of the Medical Cannabis Program, please identify each person who has served as a program administrator, including the person's name, address, phone number, and length of service.

SOUTH DAKOTA DEPARTMENT OF HEALTH
through the
OFFICE OF HEARING EXAMINERS
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3. What date was the South Dakota Medical Cannabis Program established within the South Dakota Department of Health?

   ANSWER: Objection. This interrogatory seeks information that is equally available to the requesting party. Subject to and without waiving said objection, the Department responds as follows: see SDCL Chapter 34-20G

4. Since the establishment of the Medical Cannabis Program, please identify each person who has served as a program administrator, including the person's name, address, phone number, and length of service.

ANSWER: Objection. This interrogatory is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objection, the Department responds as follows:

Geno Adams, 600 E. Capitol Ave., Pierre, SD 57501; (605) 773-3361; 07/24/21 – 08/23/22.

Chris Qualm, 2900 W. 11th St., Sioux Falls, SD 57104: (605) 773-3361; 10/09/22 – 02/23/23.

Jennifer Seale, 600 E. Capitol Ave., Pierre, SD 57501; (605) 773-3361; 03/21/23 – present.

5. Since the establishment of the Medical Cannabis Program, please identify each person who has served as a Secretary of Health, including the person's name, address, phone number, and length of service.

ANSWER: Objection. This interrogatory is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objection, the Department responds as follows:

Kim Malsam-Rysdon, Department of Health, Pierre, SD 57501; 01/24/2015 – 01/07/2022
Joan Adam, Department of Health, Pierre, SD 57501; 03/24/2022 -12/23/2022
Melissa Magstadt, Department of Health, Pierre, SD 57501; 12/29/2022 -present

6. Did any of the persons identified in Interrogatory No. 4 and Interrogatory No. 5 have any prior experience or training for administering a medical cannabis program? If so, please identify each person and describe the prior experience or training.

ANSWER: Objection. This interrogatory is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objection, the Department responds as follows: Geno Adams and Chris Qualm received training through CANNRA and METRC, and guidance from CCPC. It is unknown what other experience or training they, or any of the others listed above, had.

7. Did the Department review any of Puffy's initial applications for certificate registrations when reviewing any of Puffy's written documentation for any of its operational extension requests. If the Department's answer is yes, identify which material from the initial applications were considered.

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks and does not want to provide an answer based on a guess in determining what the requesting party is asking here.

8. Identify the persons in the Department who scored each medical cannabis establishment application for a dispensary only medical cannabis establishment certificate for the City of Rapid City jurisdiction.

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: Geno Adam, Ali Schaefbauer, Cody Shippy, Sakura Rohleder, and Morgan Maier.

9. What were the final scores for each of the 47 applications submitted for a dispensary only medical cannabis establishment certificate for the City of Rapid City jurisdiction?

ANSWER: All applicants received the same score under the scoring system established in ARSD 44:90:03:15.

10. Identify each medical cannabis establishment dispensary only certificate that was not operational by the certificate's one year anniversary regardless if S.D. Admin. R. 44:90:03:16 applied to such certificate.

ANSWER: Objection. This interrogatory requests information that is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

11. Identify each medical cannabis establishment dispensary only certificate that was not operational by the certificates one year anniversary but was granted an extension by the Department under S.D. Admin. R. 44:90:03:16.

ANSWER: Objection. This interrogatory requests information that is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

12. Identify all persons in the Department who have defined the term "operational."

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: The term "operational" is defined by lexicographers and its definition depends on the context in which it is used. Nobody in the Department actually defines the term, they just apply the term to the application of the rule.

13. Identify all of the Department's past definitions and interpretations of operational?

ANSWER: See answer to Interrogatory No. 12.

14. What is the Department's current definition and interpretation of operational?

ANSWER: See answer to Interrogatory No. 12.

15. Did the Department provide the Department's definition and interpretation of operational in Interrogatory No. 14 to medical cannabis establishments? If yes, please identify when and how the definition and interpretation was provided to medical cannabis establishments?

ANSWER: See answer to Interrogatory No. 12. Subject to and without waiving the objection to this Interrogatory, the Department responds as follows: The Department disseminated information

about extension requests as a mass communication to all establishments that was sent via Accela. See, Exhibit 1.

16. Explain the Department's process for reviewing an operational extension request?

ANSWER: The Department reviews the application and any written documentation submitted with it.

a. Who reviewed the extension request?

ANSWER: Primarily, Cody Shippy reviewed the extensions requests and sometimes the Medical Cannabis Program team would review an extension request.

b. Who was the ultimate person responsible for denying Puffy's Operation Extension Request for certificate 22ESTC5635, 22ESTC9436, 22ESTC6030, 22ESTC5788, and 22ESTC0916?

ANSWER: There was not an "ultimate person". It was a team decision.

c. What, if any, criteria, check lists or rubrics were utilized when conducting a review for certificate 22ESTC5635, 22ESTC9436, 22ESTC6030, 22ESTC5788, and 22ESTC0916??

ANSWER: A checklist was utilized in reviewing all extension requests.

d. What, if any, facts is the Department looking for?

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: The Department is looking for facts that would determine if the criteria set out in ARSD 44:90:03:16 are satisfied.

17. What, if any, weight was given to the shortage of skilled workers, contractors, and subcontractors in the City of Rapid City?

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: all information submitted with an extension request was evaluated. In this particular situation, Puffy's made a business decision to focus on their cultivation and manufacturing establishments rather than their dispensaries.

18. How does the Department define secure?

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: The term "secure" is defined by lexicographers and its definition depends on the context in which it is used. Nobody in the Department actually defines the term, they just apply the term to the application of the rule.

19. Please provide the authority that the Department may only review the applicant's efforts after March 10, 2022.

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: the applicable rule states that an establishment has one year from the date of issuance of the registration certification to become operational. An establishment does not have any obligation to prove any progress towards becoming operational until their registration certification has been awarded; therefore, all action taken as of that date is what becomes relevant. If the establishment is in a stage of preparedness prior to being awarded its registration certification, by default that stage of preparedness will be factored in because it requires a lesser amount of work the establishment needs to do to become operational.

20. Please explain the difference between a site plan and a floor plan. See April 20, 2023 Operation Extension Request Denial Letter for No. 22ESTC5635, ¶4.

ANSWER: Objection. This interrogatory is vague and ambiguous. Subject to and without waiving said objection, the Department responds as follows: generally speaking, a site plan or a plot plan is a type of drawing used by architects, landscape architects, urban planners, and engineers which shows existing and proposed conditions for a given area, typically a parcel of land which is to be modified. And a floor plan is a technical drawing to scale, showing a view from above, of the relationships between rooms, spaces, traffic patterns, and other physical features at one level of a structure.

21. Does S.D. Admin. R. 44:90:03:16 require written documentation showing an estimated date of opening?

ANSWER: Objection. This interrogatory is argumentative. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not specify, nor does it limit, the written documentation that must be submitted, reviewed, or requested when considering a request for extension.

22. Please explain how a photo constitutes written documentation under S.D. Admin. R. 44:90:03:16?

ANSWER: See answer to Interrogatory No. 21.

23. Identify all equipment and services that the Department contends are necessary to become operational under S.D. Admin. R. 44:90:03:16.

ANSWER: Objection. This interrogatory is argumentative. Subject to and without waiving said objection, the Department responds as follows: There is not a one-size-fits-all answer to this question, as it depends on the type of establishment involved and the status of the building structure that the establishment plans on operating from.

REQUESTS FOR ADMISSIONS

1. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC5635

RESPONSE: Admit

2. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC9436.

RESPONSE: Admit

3. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC6030.

RESPONSE: Admit

4. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC5788.

RESPONSE: Admit

5. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC0916.

RESPONSE: Admit

6. Admit that Puffy's provided a detailed timeline of its actions.

RESPONSE: Objection. This admission request is vague, ambiguous, and argumentative. It is unclear which of the Puffy's locations this question is referring to.

7. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC5635.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

8. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC9436.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

9. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC6030.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

10. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC5788.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

11. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC0916.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

12. Admit that the Department reviewed each of Puffy's operation extension requests individually, without regard to the fact that Puffy's has seven dispensary only medical cannabis establishment certificates in Rapid City and three dispensary only medical cannabis establishment certificates in other local jurisdictions.

RESPONSE: Admit, in part, and deny, in part. The Department treats each registration certificate as its own stand-alone establishment. In reviewing the extension requests, the Department was aware of the fact that Puffy's has multiple registration certificates.

13. Admit that the demand for contractors in the City of Rapid City and greater Black Hills region is greater than the supply.

RESPONSE: Objection. This admission request is irrelevant and argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

14. Admit that equipment, supplies, and services that are readily available are considered secured by the Department.

RESPONSE: Deny.

15. Admit that all Department issued dispensary only medical cannabis establishment certificates are alike in form and provide the same rights to each holder thereof.

RESPONSE: Objection. This admission request is vague and ambiguous. Subject to and without waiving said objection, the Department responds as follows: Admit.

16. Admit that there is no statute or administrative rule that defines the term "operational" in S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "operational".

17. Admit that there is no statute or administrative rule that defines the term "timely efforts" in S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "timely efforts".

18. Admit that there is no statute or administrative rule that defines the term "secure" in S.D. Admin. R. § 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "secure".

19. Admit that there is no statute or administrative rule that defines the term "equipment" in S.D. Admin. R.44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "equipment".

20. Admit that there is no statute or administrative rule that defines the term "services" in S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "services".

21. Admit that it is a poor business decision to purchase or acquire certain necessary services and equipment when other certain necessary services and equipment cannot be purchased or acquired.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

22. Admit that labor for construction activities is a necessary service to be operational under S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

23. Admit that the delivery of cannabis or cannabis products is a necessary service to be operational under S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

24. Admit that the Department does not have the requisite expertise to determine which equipment and services are necessary to be an operational dispensary.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

25. Admit that S.D. Admin. R. 44:90:03:16 does not require the submission of a site plan.

RESPONSE: Objection. This interrogatory is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit, in part, and deny, in part. ARSD 44:90:03:16 does not specify, nor does it limit, the written documentation that must be submitted, reviewed, or requested when considering a request for extension.

26. For each location involved in this action, admit that Puffy's provided a site plan that was in compliance with S.D. Admin R. 44:90:03:05(2).

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit, in part, and deny, in part. Admit that an acceptable site plan was received at the time of the submission of the initial application. However, ARSD 44:90:03:05(2) applies to initial applications for registration certificates and ARSD 44:90:03:16 applies to requests for extension.

27. Admit that Puffy's has an operational dispensary in Sturgis and Meade County.

RESPONSE: Objection. This admission request is irrelevant and immaterial and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit, in part, and deny, in part. It appears from the information that is available to the Department that Puffy's has a dispensary in Sturgis, SD and one in Meade County, SD, and that both are open and operating. However, the Department has not inspected either of those physical locations, so it cannot say with certainty that either one is operational.

28. Admit that an affidavit is a form of written documentation.

RESPONSE: Objection. This admission request is irrelevant, immaterial, and argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit that an affidavit is typically in the form of a written documentation.

29. Admit that South Dakota law allows for oral contracts and agreements.

RESPONSE: Objection. This admission request asks for a legal conclusion to be made by a lay person.

30. Admit that Puffy's had oral contracts with contractors, subcontractors, and suppliers to provide equipment and services necessary to become operational for all dispensary locations.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: The Department does not have sufficient evidence to be able to state that there are such contracts. Furthermore, not all of Puffy's dispensary locations are part of this litigation.

31. Admit that Puffy's contractors, subcontractors, and suppliers indicated to Puffy's that it was not possible to fully construct ten dispensaries simultaneously during Puffy's first certificate license year. See Attachments 2 & 3.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

32. Admit that a lack of cannabis and cannabis product caused delays in the construction timeline for Puffy's multiple dispensary only licenses. See Attachment 1.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

33. Admit that Puffy's has taken appropriate steps to secure sufficient quantities of cannabis and cannabis products for 10 dispensary locations. See Attachment 1.

RESPONSE: Objection. This admission request is irrelevant, immaterial, and argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

34. Admit that wait times for security-grade windows was 12-14 weeks. See Attachment 1.

RESPONSE: Objection. This admission request is irrelevant, immaterial, argumentative, vague, and ambiguous. It is unclear what is meant by the term "security-grade".

35. Admit that the wait times for packaging materials was approximately 14 weeks. See Attachment 1.

RESPONSE: Objection. This admission request is irrelevant, immaterial, argumentative, vague, and ambiguous. It is unclear what is meant by the term "packaging materials".

36. Admit the wait times for some of the critical path components was 50-60 weeks. See Attachment 2.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor asserts that the wait times for some of the critical path components was 50-60 weeks.

37. Admit that construction industry delays made forecasting specific project milestones difficult. See Attachment 2.

RESPONSE: Objection. This admission request is irrelevant, immaterial, and argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department does not know what the requestor's meaning of "construction industry delays" is.

38. Admit that blueprints were being developed for Puffy's dispensary at 910 W. Main St. as of March 15, 2023. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor asserts that blueprints for Puffy's were worked on.

39. Admit that completing blueprints and attempting to construct seven dispensaries simultaneously is not practical. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department is not an engineer or architect.

40. Admit that the engineering for medical marijuana facilities in particular takes a long time. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department is not an engineer or architect.

41. Admit that conducting the engineering for projects in parallel would create more complications than working on one or two at a time. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department is not an engineer or architect.

42. Admit that there is a lack of available trades people in the Black Hills region. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends there is a lack of trades people in the Black Hills area.

43. Admit that the failure of the state electrical inspector to timely inspect Puffy's Sturgis location prevented Puffy's contractor from starting work on other Puffy's dispensaries. See Attachment 4. See also Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends the state electrical inspector's failure to timely inspect Puffy's Sturgis location prevented the Puffy's contractor from starting work on other Puffy's dispensaries.

44. Admit that material purchase orders were ready but were not placed because final blueprints were not completed. See Attachment 4.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that material purchase orders were ready but were not placed because final blueprints were not completed.

45. Admit that there were delays for hot water heaters, glass, and electrical supplies. See Attachment 4.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends there were delays for hot water heaters, glass, and electrical supplies.

46. Admit that weather caused delays to Puffy's projects and expanded timelines. See Attachment 4.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that the weather caused delays to Puffy's projects and expanded timelines.

47. Admit that Puffy's contractors experienced delays and difficulties securing supplies for Puffy's projects. See Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that Puffy's contractors experienced delays and difficulties securing supplies.

48. Admit that a labor shortage in the Black Hills prevented subcontractors from being able to quickly complete work on Puffy's projects. See Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that a labor shortage in the Black Hills prevented subcontractors from being able to quickly complete work on Puffy's projects.

49. Admit that many of Puffy's subcontractors have re-scheduled because of delays such subcontractors were experiencing on other jobs. See Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that many of Puffy's subcontractors have re-scheduled because of delays they were experiencing on other jobs.

50. Admit that Puffy's projects experience delays in local government approvals dues to the nature of Puffy's projects. See Attachment 5.

RESPONSE: Objection. This admission request is convoluted and disjunctive in nature. The Department can neither admit nor deny this request because the Department does not understand what the request is stating.

51. Admit that Puffy's has engaged, either by written contract or oral contract, the 43 contractors, subcontractors, or other service providers, listed on Attachment 6 for all of its certificates.

RESPONSE: Objection. This admission request is argumentative and requires speculation. At the time of the request for extension, Puffy's did not provide the Department with documentation of written or oral contracts with all of the contractors listed on the referenced attachment, despite multiple requests to produce all relevant documentation of efforts.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce any and all documents identified in your answers to the above interrogatories or reviewed or relied upon in answering the above interrogatories.

ANSWER: Other than the Department's mass communication to establishments and checklist for extension requests, which are attached hereto as Exhibit 1 and Exhibit 2, all documents referred to in the answers have already been provided to Puffy's pursuant to the previous disclosure of evidence.

2. Please produce an organization charter for the Department's medical cannabis program.

ANSWER: Objection. This request is irrelevant and immaterial and is not likely to lead to the discovery of admissible evidence. Subject to and without waiving said objection, an organization chart is attached hereto as Exhibit 3.

3. Please provide a copy of each of the 47 applications submitted for a dispensary only medical cannabis establishment certificate in Rapid City.

ANSWER: Objection. This request for production is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

4. Please provide any and all documents and communications surrounding the review of all Puffy extension requests.

ANSWER: Objection to the extent this requests attorney-client privileged documentation or communication. Without waiving said objection, the Department has provided all documents and communications to Ryan Cwach as part of the administrative discovery deadline.

5. Please provide any and all copies of operation extension requests applications and supporting documentation that were granted to other medical cannabis establishment certificate holders.

ANSWER: Objection. This request for production is vague, ambiguous, irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

The Department expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses or objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

Dated this 28th day of July, 2023.

The ~~undersigned~~ hereby signs these answers and responses for the purposes of any objections made herein.

Tamara Lee

Tamara Lee
Attorney for the Department of Health, Medical Cannabis Program

Dated this 31 day of July, 2023.

I, Cody Shippy, certify under penalty of perjury that I have read the Responses to Interrogatories, Requests for Admissions, and Requests for Production herein and that the facts as therein contained are true and correct to the best of my knowledge.

Cody Shippy

Cody Shippy

Subscribed and sworn to before me this 31 day of July, 2023.

Patricia Reiss

(SEAL)
My Commission Expires:

Notary Public

PATRICIA REISS
NOTARY PUBLIC
SOUTH DAKOTA

SOUTH DAKOTA
MEDICAL CANNABIS PROGRAM
600 EAST CAPITOL AVENUE
PIERRE, SD 57501-2536

PHONE: 605.773.3361 | **EMAIL:** MCQuestions@state.sd.us | **WEB:** medcannabis.sd.gov

Operational Extension Request

Pursuant to ***ARSD 44:90:03:16. Department awarding of certification – Tiebreaking procedures – Notice,*** an establishment, chosen through the lottery system, that is unable to become operational within one year of becoming certified, may request the Department to allow an extension of time for it to become operational.

If an establishment elects to submit a request for an extension to the South Dakota Medical Cannabis Program (SDMCP), such request must be submitted at least two weeks prior to the expiration of the certificate, along with 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. The written documentation should include, but is not limited to:

- Timelines that include dates that services and supplies were procured
- A letter from contractor(s), on letterhead, to support any delays in construction
- Copies of any receipts for items purchased

If, after reviewing all submitted documents it has been determined 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, an extension may be granted, at the discretion of the Department. The establishment will receive notice of the final decision from the SDMCP.

The Department may grant one extension of time by which the establishment must become operational. The extension cannot exceed one additional year from the date of the expiration of the certificate. No further extensions may be granted. Establishments must comply with the requirements for renewal in 44:90:03:02, regardless of whether the request for extension is granted.

Please submit extension requests, with documentation, to Cody Shippy at Cody.Shippy@state.sd.us.

Melissa Johnson

Melissa Johnson
Director | Division of Licensure and Safety

03/06/23

Exhibit 1

Operational Extension Request

The following information should be submitted by the establishment, along with any additional documentation, to Cody Shippy at Cody.Shippy@state.sd.us.

List establishment's legal name:

List establishment's DBA name:

List certificate # for establishment:

List certificate expiration date:

Is this request at least two weeks prior to certificate expiration date?

List main contact in case additional information is needed regarding this extension:

List current phone number for main contact:

List current email for main contact:

Provide additional information regarding why you are requesting the Operational Extension

SOUTH DAKOTA
MEDICAL CANNABIS PROGRAM
600 EAST CAPITOL AVENUE
PIERRE, SD 57501-2536

PHONE: 605.773.3361 | **EMAIL:** MCQuestions@state.sd.us | **WEB:** medcannabis.sd.gov

Operational Extension Request

Recent change to Administrative Rule ***44:90:03:16. Department awarding of certification -- Tiebreaking procedures – Notice*** allows an extension for an establishment, chosen through the lottery system, that is unable to become operational within one year of becoming certified.

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. The notification of any unsuccessful applicants must identify the department's decision as a final decision. All extension requests will receive an approval or denial notification from the department.

What is your establishment Legal Name?
Click or tap here to enter text.

What is your establishment DBA Name?
Click or tap here to enter text.

What is your certificate # for your establishment?
Click or tap here to enter text.

When does your certificate expire?
Click or tap to enter a date.

Is this request two weeks prior to your certificate expiring? ☐ YES ☐ NO

Who is the main contact in case the department would need additional information or to contact someone regarding questions about the requested extension?
Click or tap here to enter text.

Please list the current phone #
Click or tap here to enter text.

Current email contact address
Click or tap here to enter text.

Why are you requesting an operational deadline extension? (examples – supply chain issues, back orders, build delays) You will need to provide supporting documentation for these issues.
Click or tap here to enter text.

What steps have you taken to secure the necessary items to open your establishment in a timely manner?
Click or tap here to enter text.

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 one additional year from the date of expiration of the certificate. No further extensions may be granted. **Establishments must comply with the requirements for renewal in 44:90:03:02 regardless of the extension.**

Please submit extension requests with documentation to Cody Shippy at email cody.shippy@state.sd.us.

Chris Qualm
Medical Cannabis Administrator | *Division of Licensure and Accreditation*
605.773.3361



SOUTH DAKOTA
MEDICAL CANNABIS PROGRAM
600 EAST CAPITOL AVENUE
PIERRE, SD 57501-2536

Operational Extension Request Checklist

Legal Name of the Establishment		
Establishment DBA Name		
Certificate # for Establishment		
Certificate expiration date		
		Comments
Did the establishment submit the request at least two weeks prior to the expiration of the certificate?	Y/N	
Did the establishment submit written documentation of the efforts made to meet the deadline?	Y/N	
• Timeline of events received?		
• Earliest date of supply order		
Did the establishment submit documentation of the efforts made to secure needed equipment and services necessary to become operational?	Y/N	
• Letter received from contractor?		
• Receipts received to show supplies ordered?		
• Were there construction delays?		
• Were there shipment or supply delays?		
Summary:		

Reviewed by: (Staff Signature) _____ **Date:** _____

Extension Granted: Yes ___ **No** ___

SDMCP Administrator Signature: _____ **Date:** _____

Exhibit 2

BOX TYPES

- Executive
- [redacted]
- Manager

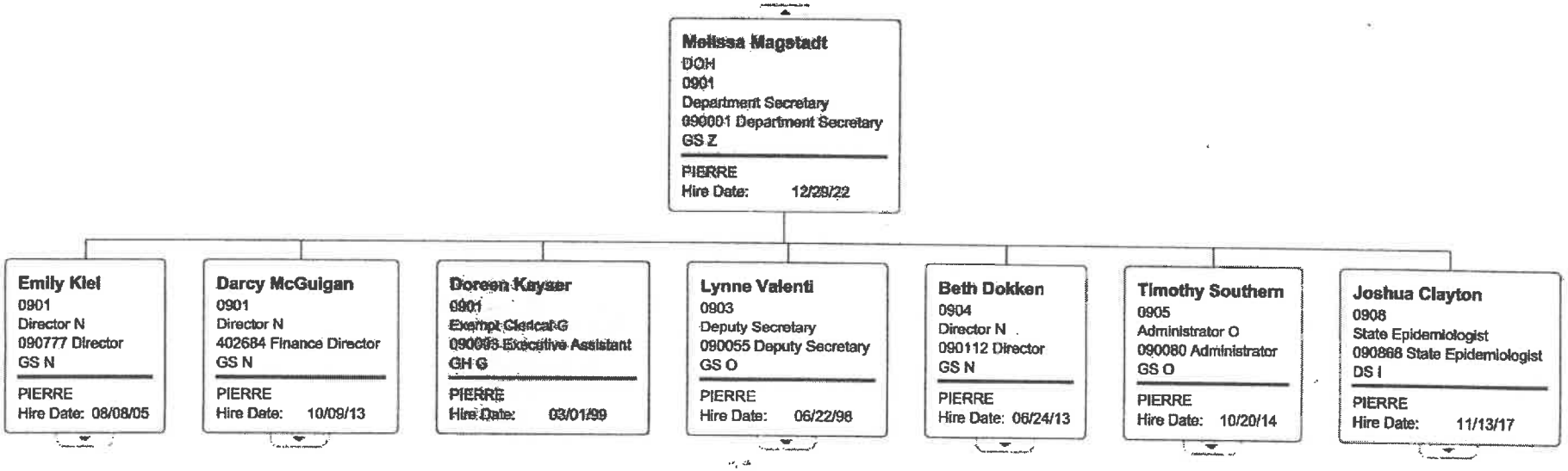


Exhibit 3

ANSWER: Objection. This interrogatory is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objection, the Department responds as follows:

Geno Adams, 600 E. Capitol Ave., Pierre, SD 57501; (605) 773-3361; 07/24/21 – 08/23/22.

Chris Qualm, 2900 W. 11th St., Sioux Falls, SD 57104: (605) 773-3361; 10/09/22 – 02/23/23.

Jennifer Seale, 600 E. Capitol Ave., Pierre, SD 57501; (605) 773-3361; 03/21/23 – present.

5. Since the establishment of the Medical Cannabis Program, please identify each person who has served as a Secretary of Health, including the person's name, address, phone number, and length of service.

ANSWER: Objection. This interrogatory is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objection, the Department responds as follows:

Kim Malsam-Rysdon, Department of Health, Pierre, SD 57501; 01/24/2015 – 01/07/2022
Joan Adam, Department of Health, Pierre, SD 57501; 03/24/2022 -12/23/2022
Melissa Magstadt, Department of Health, Pierre, SD 57501; 12/29/2022 -present

6. Did any of the persons identified in Interrogatory No. 4 and Interrogatory No. 5 have any prior experience or training for administering a medical cannabis program? If so, please identify each person and describe the prior experience or training.

ANSWER: Objection. This interrogatory is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objection, the Department responds as follows: Geno Adams and Chris Qualm received training through CANNRA and METRC, and guidance from CCPC. It is unknown what other experience or training they, or any of the others listed above, had.

7. Did the Department review any of Puffy's initial applications for certificate registrations when reviewing any of Puffy's written documentation for any of its operational extension requests. If the Department's answer is yes, identify which material from the initial applications were considered.

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks and does not want to provide an answer based on a guess in determining what the requesting party is asking here.

8. Identify the persons in the Department who scored each medical cannabis establishment application for a dispensary only medical cannabis establishment certificate for the City of Rapid City jurisdiction.

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: Geno Adam, Ali Schaefbauer, Cody Shippy, Sakura Rohleder, and Morgan Maier.

9. What were the final scores for each of the 47 applications submitted for a dispensary only medical cannabis establishment certificate for the City of Rapid City jurisdiction?

ANSWER: All applicants received the same score under the scoring system established in ARSD 44:90:03:15.

10. Identify each medical cannabis establishment dispensary only certificate that was not operational by the certificate's one year anniversary regardless if S.D. Admin. R. 44:90:03:16 applied to such certificate.

ANSWER: Objection. This interrogatory requests information that is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

11. Identify each medical cannabis establishment dispensary only certificate that was not operational by the certificates one year anniversary but was granted an extension by the Department under S.D. Admin. R. 44:90:03:16.

ANSWER: Objection. This interrogatory requests information that is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

12. Identify all persons in the Department who have defined the term "operational."

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: The term "operational" is defined by lexicographers and its definition depends on the context in which it is used. Nobody in the Department actually defines the term, they just apply the term to the application of the rule.

13. Identify all of the Department's past definitions and interpretations of operational?

ANSWER: See answer to Interrogatory No. 12.

14. What is the Department's current definition and interpretation of operational?

ANSWER: See answer to Interrogatory No. 12.

15. Did the Department provide the Department's definition and interpretation of operational in Interrogatory No. 14 to medical cannabis establishments? If yes, please identify when and how the definition and interpretation was provided to medical cannabis establishments?

ANSWER: See answer to Interrogatory No. 12. Subject to and without waiving the objection to this Interrogatory, the Department responds as follows: The Department disseminated information

about extension requests as a mass communication to all establishments that was sent via Accela. See, Exhibit 1.

16. Explain the Department's process for reviewing an operational extension request?

ANSWER: The Department reviews the application and any written documentation submitted with it.

a. Who reviewed the extension request?

ANSWER: Primarily, Cody Shippy reviewed the extensions requests and sometimes the Medical Cannabis Program team would review an extension request.

b. Who was the ultimate person responsible for denying Puffy's Operation Extension Request for certificate 22ESTC5635, 22ESTC9436, 22ESTC6030, 22ESTC5788, and 22ESTC0916?

ANSWER: There was not an "ultimate person". It was a team decision.

c. What, if any, criteria, check lists or rubrics were utilized when conducting a review for certificate 22ESTC5635, 22ESTC9436, 22ESTC6030, 22ESTC5788, and 22ESTC0916??

ANSWER: A checklist was utilized in reviewing all extension requests.

d. What, if any, facts is the Department looking for?

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: The Department is looking for facts that would determine if the criteria set out in ARSD 44:90:03:16 are satisfied.

17. What, if any, weight was given to the shortage of skilled workers, contractors, and subcontractors in the City of Rapid City?

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: all information submitted with an extension request was evaluated. In this particular situation, Puffy's made a business decision to focus on their cultivation and manufacturing establishments rather than their dispensaries.

18. How does the Department define secure?

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: The term "secure" is defined by lexicographers and its definition depends on the context in which it is used. Nobody in the Department actually defines the term, they just apply the term to the application of the rule.

19. Please provide the authority that the Department may only review the applicant's efforts after March 10, 2022.

ANSWER: Objection. This interrogatory is vague and ambiguous. The Department is uncertain what information the requesting party seeks. Subject to and without waiving said objection, the Department responds as follows: the applicable rule states that an establishment has one year from the date of issuance of the registration certification to become operational. An establishment does not have any obligation to prove any progress towards becoming operational until their registration certification has been awarded; therefore, all action taken as of that date is what becomes relevant. If the establishment is in a stage of preparedness prior to being awarded its registration certification, by default that stage of preparedness will be factored in because it requires a lesser amount of work the establishment needs to do to become operational.

20. Please explain the difference between a site plan and a floor plan. See April 20, 2023 Operation Extension Request Denial Letter for No. 22ESTC5635, ¶4.

ANSWER: Objection. This interrogatory is vague and ambiguous. Subject to and without waiving said objection, the Department responds as follows: generally speaking, a site plan or a plot plan is a type of drawing used by architects, landscape architects, urban planners, and engineers which shows existing and proposed conditions for a given area, typically a parcel of land which is to be modified. And a floor plan is a technical drawing to scale, showing a view from above, of the relationships between rooms, spaces, traffic patterns, and other physical features at one level of a structure.

21. Does S.D. Admin. R. 44:90:03:16 require written documentation showing an estimated date of opening?

ANSWER: Objection. This interrogatory is argumentative. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not specify, nor does it limit, the written documentation that must be submitted, reviewed, or requested when considering a request for extension.

22. Please explain how a photo constitutes written documentation under S.D. Admin. R. 44:90:03:16?

ANSWER: See answer to Interrogatory No. 21.

23. Identify all equipment and services that the Department contends are necessary to become operational under S.D. Admin. R. 44:90:03:16.

ANSWER: Objection. This interrogatory is argumentative. Subject to and without waiving said objection, the Department responds as follows: There is not a one-size-fits-all answer to this question, as it depends on the type of establishment involved and the status of the building structure that the establishment plans on operating from.

REQUESTS FOR ADMISSIONS

1. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC5635

RESPONSE: Admit

2. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC9436.

RESPONSE: Admit

3. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC6030.

RESPONSE: Admit

4. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC5788.

RESPONSE: Admit

5. Admit that Puffy's timely submitted an operation extension request for certificate No. 22ESTC0916.

RESPONSE: Admit

6. Admit that Puffy's provided a detailed timeline of its actions.

RESPONSE: Objection. This admission request is vague, ambiguous, and argumentative. It is unclear which of the Puffy's locations this question is referring to.

7. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC5635.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

8. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC9436.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

9. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC6030.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

10. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC5788.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

11. Admit that Puffy's written documentation shows Puffy's could not secure all necessary equipment and services before the deadline to become operational for certificate no. 22ESTC0916.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

12. Admit that the Department reviewed each of Puffy's operation extension requests individually, without regard to the fact that Puffy's has seven dispensary only medical cannabis establishment certificates in Rapid City and three dispensary only medical cannabis establishment certificates in other local jurisdictions.

RESPONSE: Admit, in part, and deny, in part. The Department treats each registration certificate as its own stand-alone establishment. In reviewing the extension requests, the Department was aware of the fact that Puffy's has multiple registration certificates.

13. Admit that the demand for contractors in the City of Rapid City and greater Black Hills region is greater than the supply.

RESPONSE: Objection. This admission request is irrelevant and argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

14. Admit that equipment, supplies, and services that are readily available are considered secured by the Department.

RESPONSE: Deny.

15. Admit that all Department issued dispensary only medical cannabis establishment certificates are alike in form and provide the same rights to each holder thereof.

RESPONSE: Objection. This admission request is vague and ambiguous. Subject to and without waiving said objection, the Department responds as follows: Admit.

16. Admit that there is no statute or administrative rule that defines the term "operational" in S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "operational".

17. Admit that there is no statute or administrative rule that defines the term "timely efforts" in S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "timely efforts".

18. Admit that there is no statute or administrative rule that defines the term "secure" in S.D. Admin. R. § 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "secure".

19. Admit that there is no statute or administrative rule that defines the term "equipment" in S.D. Admin. R.44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "equipment".

20. Admit that there is no statute or administrative rule that defines the term "services" in S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative and disjunctive in that it asks if there is a statute within a rule. Subject to and without waiving said objection, the Department responds as follows: ARSD 44:90:03:16 does not define the term "services".

21. Admit that it is a poor business decision to purchase or acquire certain necessary services and equipment when other certain necessary services and equipment cannot be purchased or acquired.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

22. Admit that labor for construction activities is a necessary service to be operational under S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

23. Admit that the delivery of cannabis or cannabis products is a necessary service to be operational under S.D. Admin. R. 44:90:03:16.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

24. Admit that the Department does not have the requisite expertise to determine which equipment and services are necessary to be an operational dispensary.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

25. Admit that S.D. Admin. R. 44:90:03:16 does not require the submission of a site plan.

RESPONSE: Objection. This interrogatory is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit, in part, and deny, in part. ARSD 44:90:03:16 does not specify, nor does it limit, the written documentation that must be submitted, reviewed, or requested when considering a request for extension.

26. For each location involved in this action, admit that Puffy's provided a site plan that was in compliance with S.D. Admin R. 44:90:03:05(2).

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit, in part, and deny, in part. Admit that an acceptable site plan was received at the time of the submission of the initial application. However, ARSD 44:90:03:05(2) applies to initial applications for registration certificates and ARSD 44:90:03:16 applies to requests for extension.

27. Admit that Puffy's has an operational dispensary in Sturgis and Meade County.

RESPONSE: Objection. This admission request is irrelevant and immaterial and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit, in part, and deny, in part. It appears from the information that is available to the Department that Puffy's has a dispensary in Sturgis, SD and one in Meade County, SD, and that both are open and operating. However, the Department has not inspected either of those physical locations, so it cannot say with certainty that either one is operational.

28. Admit that an affidavit is a form of written documentation.

RESPONSE: Objection. This admission request is irrelevant, immaterial, and argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit that an affidavit is typically in the form of a written documentation.

29. Admit that South Dakota law allows for oral contracts and agreements.

RESPONSE: Objection. This admission request asks for a legal conclusion to be made by a lay person.

30. Admit that Puffy's had oral contracts with contractors, subcontractors, and suppliers to provide equipment and services necessary to become operational for all dispensary locations.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: The Department does not have sufficient evidence to be able to state that there are such contracts. Furthermore, not all of Puffy's dispensary locations are part of this litigation.

31. Admit that Puffy's contractors, subcontractors, and suppliers indicated to Puffy's that it was not possible to fully construct ten dispensaries simultaneously during Puffy's first certificate license year. See Attachments 2 & 3.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

32. Admit that a lack of cannabis and cannabis product caused delays in the construction timeline for Puffy's multiple dispensary only licenses. See Attachment 1.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

33. Admit that Puffy's has taken appropriate steps to secure sufficient quantities of cannabis and cannabis products for 10 dispensary locations. See Attachment 1.

RESPONSE: Objection. This admission request is irrelevant, immaterial, and argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny.

34. Admit that wait times for security-grade windows was 12-14 weeks. See Attachment 1.

RESPONSE: Objection. This admission request is irrelevant, immaterial, argumentative, vague, and ambiguous. It is unclear what is meant by the term "security-grade".

35. Admit that the wait times for packaging materials was approximately 14 weeks. See Attachment 1.

RESPONSE: Objection. This admission request is irrelevant, immaterial, argumentative, vague, and ambiguous. It is unclear what is meant by the term "packaging materials".

36. Admit the wait times for some of the critical path components was 50-60 weeks. See Attachment 2.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor asserts that the wait times for some of the critical path components was 50-60 weeks.

37. Admit that construction industry delays made forecasting specific project milestones difficult. See Attachment 2.

RESPONSE: Objection. This admission request is irrelevant, immaterial, and argumentative. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department does not know what the requestor's meaning of "construction industry delays" is.

38. Admit that blueprints were being developed for Puffy's dispensary at 910 W. Main St. as of March 15, 2023. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor asserts that blueprints for Puffy's were worked on.

39. Admit that completing blueprints and attempting to construct seven dispensaries simultaneously is not practical. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department is not an engineer or architect.

40. Admit that the engineering for medical marijuana facilities in particular takes a long time. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department is not an engineer or architect.

41. Admit that conducting the engineering for projects in parallel would create more complications than working on one or two at a time. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Deny; the Department is not an engineer or architect.

42. Admit that there is a lack of available trades people in the Black Hills region. See Attachment 3.

RESPONSE: Objection. This admission request is argumentative and requests a lay person to give a professional opinion. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends there is a lack of trades people in the Black Hills area.

43. Admit that the failure of the state electrical inspector to timely inspect Puffy's Sturgis location prevented Puffy's contractor from starting work on other Puffy's dispensaries. See Attachment 4. See also Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends the state electrical inspector's failure to timely inspect Puffy's Sturgis location prevented the Puffy's contractor from starting work on other Puffy's dispensaries.

44. Admit that material purchase orders were ready but were not placed because final blueprints were not completed. See Attachment 4.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that material purchase orders were ready but were not placed because final blueprints were not completed.

45. Admit that there were delays for hot water heaters, glass, and electrical supplies. See Attachment 4.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends there were delays for hot water heaters, glass, and electrical supplies.

46. Admit that weather caused delays to Puffy's projects and expanded timelines. See Attachment 4.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that the weather caused delays to Puffy's projects and expanded timelines.

47. Admit that Puffy's contractors experienced delays and difficulties securing supplies for Puffy's projects. See Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that Puffy's contractors experienced delays and difficulties securing supplies.

48. Admit that a labor shortage in the Black Hills prevented subcontractors from being able to quickly complete work on Puffy's projects. See Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that a labor shortage in the Black Hills prevented subcontractors from being able to quickly complete work on Puffy's projects.

49. Admit that many of Puffy's subcontractors have re-scheduled because of delays such subcontractors were experiencing on other jobs. See Attachment 5.

RESPONSE: Objection. This admission request is argumentative and requires speculation. Subject to and without waiving said objection, the Department responds as follows: Admit only that the requestor contends that many of Puffy's subcontractors have re-scheduled because of delays they were experiencing on other jobs.

50. Admit that Puffy's projects experience delays in local government approvals dues to the nature of Puffy's projects. See Attachment 5.

RESPONSE: Objection. This admission request is convoluted and disjunctive in nature. The Department can neither admit nor deny this request because the Department does not understand what the request is stating.

51. Admit that Puffy's has engaged, either by written contract or oral contract, the 43 contractors, subcontractors, or other service providers, listed on Attachment 6 for all of its certificates.

RESPONSE: Objection. This admission request is argumentative and requires speculation. At the time of the request for extension, Puffy's did not provide the Department with documentation of written or oral contracts with all of the contractors listed on the referenced attachment, despite multiple requests to produce all relevant documentation of efforts.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce any and all documents identified in your answers to the above interrogatories or reviewed or relied upon in answering the above interrogatories.

ANSWER: Other than the Department's mass communication to establishments and checklist for extension requests, which are attached hereto as Exhibit 1 and Exhibit 2, all documents referred to in the answers have already been provided to Puffy's pursuant to the previous disclosure of evidence.

2. Please produce an organization charter for the Department's medical cannabis program.

ANSWER: Objection. This request is irrelevant and immaterial and is not likely to lead to the discovery of admissible evidence. Subject to and without waiving said objection, an organization chart is attached hereto as Exhibit 3.

3. Please provide a copy of each of the 47 applications submitted for a dispensary only medical cannabis establishment certificate in Rapid City.

ANSWER: Objection. This request for production is irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

4. Please provide any and all documents and communications surrounding the review of all Puffy extension requests.

ANSWER: Objection to the extent this requests attorney-client privileged documentation or communication. Without waiving said objection, the Department has provided all documents and communications to Ryan Cwach as part of the administrative discovery deadline.

5. Please provide any and all copies of operation extension requests applications and supporting documentation that were granted to other medical cannabis establishment certificate holders.

ANSWER: Objection. This request for production is vague, ambiguous, irrelevant and immaterial to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The question also asks for information deemed confidential under SDCL 34-20G-79, 34-20G-86, 34-20G-88.

The Department expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses or objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

Dated this 28th day of July, 2023.

The ~~undersigned~~ hereby signs these answers and responses for the purposes of any objections made herein.

Tamara Lee

Tamara Lee
Attorney for the Department of Health, Medical Cannabis Program

Dated this 31 day of July, 2023.

I, Cody Shippy, certify under penalty of perjury that I have read the Responses to Interrogatories, Requests for Admissions, and Requests for Production herein and that the facts as therein contained are true and correct to the best of my knowledge.

Cody Shippy

Cody Shippy

Subscribed and sworn to before me this 31 day of July, 2023.

Patricia Reiss

(SEAL)
Notary Public
My Commission Expires:

PATRICIA REISS
NOTARY PUBLIC
SOUTH DAKOTA

SOUTH DAKOTA
MEDICAL CANNABIS PROGRAM
600 EAST CAPITOL AVENUE
PIERRE, SD 57501-2536

PHONE: 605.773.3361 | **EMAIL:** MCQuestions@state.sd.us | **WEB:** medcannabis.sd.gov

Operational Extension Request

Pursuant to ***ARSD 44:90:03:16. Department awarding of certification – Tiebreaking procedures – Notice,*** an establishment, chosen through the lottery system, that is unable to become operational within one year of becoming certified, may request the Department to allow an extension of time for it to become operational.

If an establishment elects to submit a request for an extension to the South Dakota Medical Cannabis Program (SDMCP), such request must be submitted at least two weeks prior to the expiration of the certificate, along with 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. The written documentation should include, but is not limited to:

- Timelines that include dates that services and supplies were procured
- A letter from contractor(s), on letterhead, to support any delays in construction
- Copies of any receipts for items purchased

If, after reviewing all submitted documents it has been determined 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, an extension may be granted, at the discretion of the Department. The establishment will receive notice of the final decision from the SDMCP.

The Department may grant one extension of time by which the establishment must become operational. The extension cannot exceed one additional year from the date of the expiration of the certificate. No further extensions may be granted. Establishments must comply with the requirements for renewal in 44:90:03:02, regardless of whether the request for extension is granted.

Please submit extension requests, with documentation, to Cody Shippy at Cody.Shippy@state.sd.us.

Melissa Johnson

Melissa Johnson
Director | Division of Licensure and Safety

03/06/23

Exhibit 1

Operational Extension Request

The following information should be submitted by the establishment, along with any additional documentation, to Cody Shippy at Cody.Shippy@state.sd.us.

List establishment's legal name:

List establishment's DBA name:

List certificate # for establishment:

List certificate expiration date:

Is this request at least two weeks prior to certificate expiration date?

List main contact in case additional information is needed regarding this extension:

List current phone number for main contact:

List current email for main contact:

Provide additional information regarding why you are requesting the Operational Extension

SOUTH DAKOTA
MEDICAL CANNABIS PROGRAM
600 EAST CAPITOL AVENUE
PIERRE, SD 57501-2536

PHONE: 605.773.3361 | **EMAIL:** MCQuestions@state.sd.us | **WEB:** medcannabis.sd.gov

Operational Extension Request

Recent change to Administrative Rule ***44:90:03:16. Department awarding of certification -- Tiebreaking procedures – Notice*** allows an extension for an establishment, chosen through the lottery system, that is unable to become operational within one year of becoming certified.

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. The notification of any unsuccessful applicants must identify the department's decision as a final decision. All extension requests will receive an approval or denial notification from the department.

What is your establishment Legal Name?
Click or tap here to enter text.

What is your establishment DBA Name?
Click or tap here to enter text.

What is your certificate # for your establishment?
Click or tap here to enter text.

When does your certificate expire?
Click or tap to enter a date.

Is this request two weeks prior to your certificate expiring? ☐ YES ☐ NO

Who is the main contact in case the department would need additional information or to contact someone regarding questions about the requested extension?
Click or tap here to enter text.

Please list the current phone #
Click or tap here to enter text.

Current email contact address
Click or tap here to enter text.

Why are you requesting an operational deadline extension? (examples – supply chain issues, back orders, build delays) You will need to provide supporting documentation for these issues.
Click or tap here to enter text.

What steps have you taken to secure the necessary items to open your establishment in a timely manner?
Click or tap here to enter text.

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 one additional year from the date of expiration of the certificate. No further extensions may be granted. **Establishments must comply with the requirements for renewal in 44:90:03:02 regardless of the extension.**

Please submit extension requests with documentation to Cody Shippy at email cody.shippy@state.sd.us.

Chris Qualm
Medical Cannabis Administrator | *Division of Licensure and Accreditation*
605.773.3361

SOUTH DAKOTA
MEDICAL CANNABIS PROGRAM
600 EAST CAPITOL AVENUE
PIERRE, SD 57501-2536

Operational Extension Request Checklist

Legal Name of the Establishment		
Establishment DBA Name		
Certificate # for Establishment		
Certificate expiration date		
		Comments
Did the establishment submit the request at least two weeks prior to the expiration of the certificate?	Y/N	
Did the establishment submit written documentation of the efforts made to meet the deadline?	Y/N	
• Timeline of events received?		
• Earliest date of supply order		
Did the establishment submit documentation of the efforts made to secure needed equipment and services necessary to become operational?	Y/N	
• Letter received from contractor?		
• Receipts received to show supplies ordered?		
• Were there construction delays?		
• Were there shipment or supply delays?		
Summary:		

Reviewed by: (Staff Signature) _____ **Date:** _____

Extension Granted: Yes ___ **No** ___

SDMCP Administrator Signature: _____ **Date:** _____

Exhibit 2

BOX TYPES

- Executive
- Assistant
- Manager

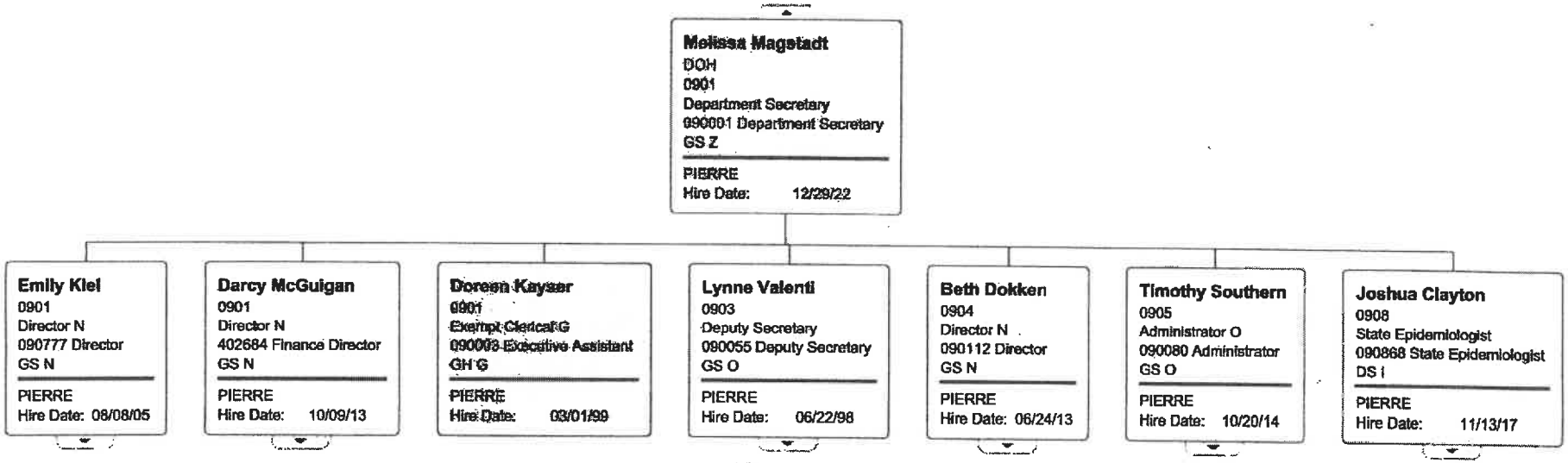


Exhibit 3

EXHIBIT
tabbies
3

SOUTH DAKOTA DEPARTMENT OF HEALTH
through the
OFFICE OF HEARING EXAMINERS
BUREAU OF ADMINISTRATION
Pierre, South Dakota

= =

IN THE MATTER OF THE DENIAL OF THE REQUEST FOR EXTENSION OF PUFFY'S REGISTRATION CERTIFICATIONS — DOH 23-08,09,10,11,12

= =

Deposition of Cody Shippy
April 24, 2025
9:20 a.m.

= =

A P P E A R A N C E S

TAMARA LEE,
SOUTH DAKOTA DEPARTMENT OF HEALTH
600 Capitol Avenue, Pierre, South Dakota 57501
appearing on behalf of the Department

RYAN CWACH
BIRMINGHAM & CWACH LAW OFFICES, PROF. LLC
202 West Second Street, Yankton, South Dakota 57078
appearing on behalf of Puffy's, LLC

Reported by Cheri M. Wittler, RPR, CRR, Precision Reporting, Onida, SD

S T I P U L A T I O N

It is stipulated and agreed by and between the above-named parties, through their attorneys of record, whose appearances have been hereinabove noted, that the deposition of Cody Shippy may be taken at this time and place, that is, at the South Dakota State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota, on April 24, 2025, commencing at the hour of 9:20 a.m.; said deposition taken before Cheri McComsey Wittler, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within and for the State of South Dakota.

The reading and signing of the transcript by the witness is reserved, and the original is filed with Attorney Ryan Cwach.

I N D E X

EXAMINATION	PAGE
By Mr. Cwach	4

EXHIBIT NOS.	PAGE
1 - Department's Answers to Interrogatories	8
2 - Checklist	9
3 - Operational Extension Request	19
4 - Timeline	25
5 - Affidavit of Sean Casey	44
6 - Affidavit of Daniel King	47
7 - Affidavit of James Cerone	52
8 - Affidavit of Lee Kruse	60

Cody Shippy,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

MR. CWACH: For the record, before we begin, prior to starting, Ms. Lee, the attorney for the Department, and I stipulated that all objections will be reserved while we take this deposition.

EXAMINATION

BY MR. CWACH:

Q. Cody, good morning. My name's Ryan Cwach. And do you understand that I represent Puffy's LLC in an administrative hearing concerning five of its state licenses for medical cannabis dispensaries?

A. I received the subpoena that stated it was in regard to the extension.

Q. Extension request, yes.

A. Okay.

Q. You understand I represent Puffy's?

A. Okay. Yes.

Q. Thanks.

And do you understand that you're under the same oath today as if you were in a courtroom?

A. Yes.

Q. Okay. And then I'm going to assume that you understood the questions that I asked unless you tell me

that you don't understand them.
Is that fair?
A. Yes.
Q. Okay. Is there anything that would prevent you from thinking clearly or testifying truthfully today?
A. No.
Q. Okay. If at any time you need to take a break, just let me know and we'll gladly give you a break.
Have you ever been deposed before?
A. Not for several years.
Q. Okay. Could you tell me about the last time you were deposed?
A. It was in regard to a previous position with another department, and I had to testify in regard to Child Protection Services.
Q. Okay. Was that in like a family dispute of some sort?
A. No. I worked for the Department of Social Services in child protection.
Q. All right. And so I'm sure in that deposition they told you this, and I'll just remind you too, but just one thing. It's very hard to do and we'll both slip up here, but if you would just wait until I've asked my question entirely before you answer and then I'll do my best to let you finish your answer before I start with my next

question. Okay?
A. Uh-huh.
Q. Great.
You're no longer employed with the Department of Health; correct?
A. Correct.
Q. Okay. Where are you currently employed?
A. The Department of Social Services.
Q. Okay. And where do you work there?
A. I work in medical services.
Q. Okay. How long have you -- how long have you been employed by the Department of Social Services?
A. With this time or --
Q. Yes.
A. Okay. So I have been employed with them for almost two years.
Q. Okay. And when did you -- so you left the medical cannabis program at the Department of Health about two years ago?
A. Correct.
Q. What was your reason for leaving?
A. I transferred over to the Department of Social Services and Medical Services.
Q. Okay. Was there anything within the Department that made you want to leave?

A. No.
Q. Okay. Did you have any reprimands or warnings at the Department of Health?
A. No.
Q. Okay. And then after leaving, though, you still answered interrogatories on behalf of the Department; correct?
A. No. I have not met with the Department of Health nor anyone from the Department of Health since my departure.
Q. Okay. I'm going to -- I have a binder here with some documents. If you'd put that in front of you. If you could turn to, it's going to be tab 25.
One more tab.
MR. CWACH: And then, Tamara, I believe these were sent to you by my secretary. They don't have the tab so this would be page 105. It's the answers to the interrogatories from the Department.
MS. LEE: I just want you to know I did not get that. I got pages 1 through 104 that were sent this morning.
MR. CWACH: Okay. I apologize then. That might have been something I added in a rush that I didn't see on there.
We are looking at the interrogatories that the

Department answered. Do you have those, though, Tamara?
MS. LEE: No.
MR. CWACH: No. Okay. I can email it to you real quick if you'd like.
MS. LEE: Yes.
(Exhibit 1 is marked for identification.)
(Discussion off the record.)
Q. (BY MR. CWACH) Cody, I put a document that's been marked as Exhibit 1 in front of you. Ms. Shippy. I apologize.
Do you see there under Interrogatory 1 where it's asked who answered these and your name is there?
A. Yes.
Q. And then if we turn to the last page of answers, page 117 in our binder here, it's seen here where you swore -- you signed this under penalty of perjury on July 31, 2023?
A. Oh, yes. So I did meet one time after I left the Department. My apologies.
Q. Okay. Thank you for clarifying.
And then explain what went into your efforts to answer these interrogatories.
A. I met with the DOH attorney, Tamara, and she asked questions and I gave the answers.
Q. Okay. And then I don't want to know about any

conversations you had with Tamara because that's privileged and I'm not trying to invade that at all, but did you -- after you met with her, did you review these before you signed it?

A. **I would honestly have to tell you I honestly don't know. I don't recall because this is almost two years ago. I don't recall if I answered these on one day and then we had the response. I'm guessing, from the way this is dated, it could be, but I honestly cannot answer that.**

Q. Okay. But these answers were based on your personal knowledge of what occurred?

A. **Correct.**

Q. Okay.

I want to have you turn to exhibit -- or page 122, which is Exhibit 2 to these interrogatory answers. And I'd actually like to go ahead and mark this as an exhibit separate.

(Exhibit 2 is marked for identification.)

Q. (BY MR. CWACH) So, returning Exhibit 2 to you, this is an Operation Extension Request Checklist for the South Dakota Medical Cannabis Program that is blank. Have you seen this before?

A. **Yes.**

Q. Okay. When did you last see this document?

A. **Over two years ago.**

Q. Okay. Did you use this document in your employment at the Department of Health?

A. **Yes.**

Q. Okay. What did you use it for?

A. **Anyone who requested an operational extension received the checklist.**

Q. Okay. And so is this what the Department used to review whether or not to grant an extension request list -- or to grant an extension?

A. **Was it solely based on this? No. This is the checklist that I was given to give to those that requested the extensions.**

Q. So it's your testimony that you would have given this to Puffy's LLC for the purposes of creating its operation extension request?

A. **I would have given this to anyone, including Puffy's, that would have requested, correct.**

Q. So if we look down below, it says it's been reviewed by, and then there's a staff signature that's supposed to be there. And then it says extension request granted, and it says yes or no. And then it says the SDMCP administrator's signature there.

Having reviewed the bottom there, is it still your testimony that this is a document that was publicly

available and given to Puffy's and other entities that were requesting an operation extension request?

A. **Yes.**

Q. Okay. And so this is not a document, to the best of your recollection, that the Department used internally to review operation extension requests?

A. **Say it again.**

Q. So it's your testimony that this is not an internal document that the Medical Cannabis Program used to review operation extension requests?

A. **This is the document that anyone who received -- or anyone who requested an extension received the checklist so they knew what the Department of Health needed. But did we use this as an internal document? Yes. Because this was not a public forum so not everybody that was an establishment owner had access to this, to my knowledge.**

Q. Okay. And so it's your testimony this was publicly available to people who requested it -- or it was available to people who requested it, and then it's also a document that the Department used internally to review extension requests?

A. **Correct. But it wouldn't have been public to everyone, just those --**

Q. Uh-huh.

A. **Okay. Just those who wanted the extension request.**

Correct.

Q. Okay. And is this the only form or document that the Department used when reviewing operation extension requests?

A. **I can't recall.**

Q. Okay.

A. **It's been two years. I honestly don't know.**

Q. Okay. And I should just ask, were you the staff person who reviewed Puffy's operation extension requests?

A. **I was not the only staff member.**

Q. Okay. Were you the primary?

A. **I guess I don't know that I was the primary either.**

Q. Okay.

A. **I was one of several.**

Q. Okay.

A. **Did I have the first review on it? Yes.**

Q. So you were the first review of the information that Puffy's submitted for its operation extension requests?

A. **I was the first person to receive the extension request.**

Q. Okay.

A. **Was I the first person to receive all the documentation they provided? No.**

Q. Okay. Explain then what your involvement was in reviewing Puffy's operation extension request.

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A. **I did anything that I was advised to do with any of the extension requests. And so, specifically speaking, I did more than one extension request involving different entities or different owners. And so could I specifically tell you at this point? I couldn't. It's been almost two years ago. I can't specifically answer that.**
Q. Do you recall what you were advised to do?
A. **It's been so long ago. I'm really sorry. I really can't.**
Q. Okay.
A. **It's been so long ago, I would not be able to answer that.**
Q. Are there any documents or written communications that could help refresh your memory that you could think of?
A. **I don't know. I have not seen any of this information nor any -- had any knowledge or conversations in regard to any of this since I left the Department in June. So I met with Tamara to do this obviously after -- after I left in June, because it's signed in July, so I had that one meeting.**
Q. Uh-huh.
A. **And that would -- and I don't even recall meeting with her. So I -- I honestly don't know. And I would**

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have to have ample time -- if you wanted me to be able to answer to any of that, I would need ample time to be able to review and try to remember what it was.
Q. Okay. So when you say you need ample time to review, what do you need to review? That's the question I was asking. What documents? What --
A. **I don't know. I thought you were going to provide information to me.**
Q. No. I want to know what could help refresh your memory to the best of your knowledge?
A. **I would have -- I would have to look at the checklist again and look at the requirements on the checklist and I would have to go through what was received and what we were looking at or what was recalled. So I -- honestly, I would have to start at the beginning.**
Q. Do you recollect ever signing any of these operation extension request checklist forms down below by staff signature?
A. **I -- I don't know. I really don't. I don't know. It's been too long ago.**
Q. Okay. And we asked for that in this request for production that you answered, and the Department did not produce any of those; correct?
A. **I don't know. I don't know what the Department has**

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given you. I don't know what you've requested. I have received nothing in regard to this.
Q. Okay. Earlier you said that this was a checklist but it's not the only thing that the Department went off of when it was reviewing these requests. What other things do you remember the Department utilizing to make a determination on whether to grant extension requests?
A. **If I -- I would have to take a guess, and I would prefer not to because I -- I don't know without going back into that role and into those parts of what we were working on, I don't feel comfortable answering that.**
Q. Okay. And so again I'll ask. You say you need to go back and look at stuff. What stuff do you think you would need to look at?
A. **Well, I'd have to look at the policy guidelines for the applications, and not even an extension application, just a regular storefront application or a regular dispensary application. I would have to look at the initial application to see what was in the initial and what had to be brought forth in regard to the extension to be able to see what wasn't met.**
Q. Uh-huh.
And so tell me more about these policy guidelines.
A. **They're on the application. I don't have any of them. I don't know. I would have to go onto the medical**

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cannabis. There were -- there were -- there were items outlined in the initial application for a dispensary as well as like the requirements basically. There were basic requirements that had to be met.
And I recall that there were basic requirements for any dispensary application, but I -- I don't remember what they are. And I know that they're outlined. So I would need to review that and then review the checklist information and then compare and see what the information is.
Q. Okay. And so these policy guidelines as you recollect are publicly available documents?
A. **I believe at the time that I was employed with the Department of Health there was a link on the website. I don't know if that website is still there. I don't know if those links are still there. I don't know if those resources are still listed.**
Q. Uh-huh.
A. **I don't know.**
Q. Okay. And it's also your testimony that you don't recollect signing any of these extension request forms, as staff?
A. **I'm not going to say that I -- I honestly --**
Q. Yeah.
A. **Again, without having further -- it's been two**

years. I can't honestly tell you if I signed any of them. But I'm not comfortable telling you that I didn't. I don't know.

Q. Okay.

A. **It's been two years ago.**

Q. Okay. Well, let's look a little closer at this Exhibit 2. Do you see there there's the first question where it says "Did the establishment submit the request at least two weeks prior to the expiration of their certificates," and then there's a yes or a no.

To the best of your recollection, do you remember if Puffy's would have received a yes or no answer for that question on its five extension requests?

A. **I have no idea.**

Q. To the best of your recollection, you would agree that the Department did not deny Puffy's operation extension request for failure to timely submit information; correct?

A. **I can't say yes or no to that. I don't know. You asked me about timely, and I can't tell you if they were timely because I don't have anything to refer back to. And so I -- I do not know.**

Q. Okay.

I'm going to have you turn to, I guess it's tab 13. It's Exhibit 39 -- or page 39. Excuse me.

A. **Which tab?**

Q. It should be 13.

Okay. This is an email from you dated Thursday, March 9, 2023; correct?

A. **Correct.**

Q. And at the top there it says "We have received your request for a one-year extension for the following certificate numbers, 22EST563 [sic], 22ESTC166 [sic], 22ESTC6030, 22ESTC5788, and 22ESTC9436," and then you ask for additional information; correct?

A. **Yes.**

Q. Okay. So going back to Exhibit 2, does that email help refresh your memory on whether Puffy's met the first requirement of the operation extension request checklist?

A. **No. Because I don't know when their applications were approved so I don't know when their expiration dates were. So, no, it does not.**

Q. Okay. You would agree that this email says you received it and that it was not out of time; correct?

A. **I guess the email says that it was received, yes, and it was to inform that we were requesting additional documentation.**

Q. Uh-huh.

A. **So that's what I would say yes to and nothing additional. I can't verify when they received their certificates, when their date of issuance was, or when their expirations were. And this, to me, just says that we're requesting additional information to consider the extension.**

Q. Okay.

Could you go to tab 1.

MR. CWACH: And we can go ahead and mark this as Exhibit 3.

(Exhibit 3 is marked for identification.)

Q. (BY MR. CWACH) I'm handing you a document that's been marked Exhibit 3.

MR. CWACH: Tamara, this is page 1 in the pdf that was sent to you.

Q. This is one of the operation extension requests, correct, that Puffy's filled out?

A. **Yes.**

Q. Okay. And you have seen this document before; correct?

A. **I can't remember if I've seen this document.**

Q. Okay. Did you do any of the reviews for Puffy's license extension requests?

A. **I did several reviews for extension requests. I do believe that I worked on Puffy's, but it wasn't the only one that I worked on and the information didn't primarily come to me -- I mean, it didn't come to me first. So I**

may have seen this, yes, but can I recall seeing it at this time? Again, it was almost two years ago so I don't recall seeing it, but I may have seen it. I don't know.

Q. Okay. And reviewing it now in front of me, it doesn't prompt any thoughts of any sort?

A. **No.**

Q. Who are the other persons who reviewed operation extension requests at the Department in March of 2023, to the best of your recollection?

A. **I'm trying to think. We had so much turnover happening. I don't know if I remember for sure who was there.**

Q. Okay.

A. **I know that I reviewed information and made notes on information and then it went to the next person or we had team calls.**

Q. Okay.

A. **But who were on those calls or who the next person was that I handed off to, could I tell you exactly? No. It's been too long.**

Q. Could I have you turn back to Exhibit 1. Do you see your answer to question 2? I asked you to identify all persons you believe have knowledge concerning these issues. You wrote Chris Qualm. Who is Chris Qualm?

A. **If Chris was involved, Chris at that time would have**

been the administrator --

Q. Okay.

A. **-- for the program at that time.**

Q. And, to the best of your recollection, did Chris have any involvement with reviewing these operation extension requests?

A. **Yes. I do believe so.**

Q. What was his involvement?

A. **I couldn't tell you what all his involvement was or what he did for sure. I can tell you that I know that, with number 2 and the people that were outlined, I can tell you that Chris and Jen Seale would have been the individuals that would have taken the information after I received the information and then, if I recall correctly, would have went to Melissa Johnson.**

Q. Okay. And so who's Melissa Johnson?

A. **Melissa Johnson is the -- she would have been the person over Chris and Jen. And I'm not sure if she's considered a deputy or a -- I don't remember her title. I'm sorry.**

Q. Okay. And then going back to Interrogatory No. 1, what knowledge did you believe Emily Raad had?

A. **I know that Emily during the time -- Emily and I did some of the extension reviews together. Well, not -- together but not together, if that makes sense. We were**

in the same room together, and we had extension requests coming in. And one would take the first pass, and one would take the second pass. But who had which ones, I would not be able to identify at this time.

Q. Okay. So was the order of operations that either -- these would come in, these extension requests would come in, and then either you or Emily Raad would do the first pass, and then after the first pass had been completed, then that set of documentation would be passed to the other person. So Emily would -- or Emily would review it, and then she would give it to you for a second review. And then would the two of you discuss it?

A. **There were some that we had open discussions with. There were some -- so if there were questions that arose during the first pass, we would mark them, and then we would come back and we would discuss them. And if there were still questions, we would take them to Chris or Jen. And then from there I know that there were a few, not just Puffy's alone, but there were a few that we had to have like big group calls on --**

Q. Uh-huh.

A. **-- in regard to information.**

Q. And so when you said "big group calls," who would have participated in those calls?

A. **It would have been -- you know, actually I don't**

want to guess. I know you want exact people, and I don't want to guess because I -- it's been two years. I could tell you that there was a group of us and I could tell you that there was at least three or more of us on the call and Emily and I were two of them. But the calls would vary between participants of who was available. And if we had to have additional calls and then who else could get on the calls. And especially if there were legality questions. So I couldn't say for sure.

Q. But it is your recollection that some of these calls did involve Puffy's extension requests?

A. **Some of them, yes.**

Q. Do you recall what was discussed during those calls regarding Puffy's extension requests?

A. **I don't know. I feel like it was in regard to the documentation, but I don't remember what the documentation was and I haven't seen anything. I mean, basically we can say I haven't seen anything since at least July when I signed this document. So I can't tell you what that documentation was.**

I know that there were questions -- if we had questions on whether it met the requirement. But what the requirement was, I'd have to go back into the policies and look.

Q. Okay.

Going back to exhibit -- I'd like you to compare Exhibit 2 and Exhibit 3. And you can take them out of the binder if that's easier for you.

A. **Okay.**

Q. So exhibit -- sorry. Let's start taking them out of the binder. It always --

A. **Okay.**

Q. And then I just want to make sure -- earlier you testified that this checklist request -- operation extension request checklist, which is Exhibit 2, was provided to dispensaries. I just want to make sure we're absolutely clear on that.

When we compare Exhibit 2 and Exhibit 3, is it still your recollection and belief that Exhibit 2 as well as Exhibit 3 was provided to dispensaries that requested it?

A. **Yes.**

Q. Okay.

Okay. Going back to Exhibit 2, there's the next question where it says "Did the establishment submit written documentation of the efforts made to meet the deadline?"

To the best of your recollection, do you know if any one of Puffy's applications for an extension request received a yes answer to this question?

A. **I don't know.**

Q. Okay.
If you'd turn to tab 2.
MR. CWACH: This would be page 6, Tamara. 6 through 14.
(Exhibit 4 is marked for identification.)
Q. (BY MR. CWACH) I'm going to hand you a document marked Exhibit 4, this document identified up top as "Timeline Operational Activity for License 22ESTC5788." Have you seen this before?
A. Yes. I believe so.
Q. Okay. And this is a document, correct, that is a timeline of events?
A. It appears to have a timeline on it, yes.
Q. Uh-huh.
And so if we go back to Exhibit 2 and we ask -- just look at that question, in its most basic form is did they submit a timeline of events received. For the timeline of events received, you would say -- you would agree the correct answer would be yes; right?
A. Since this states that it's in regard to an extension and they are listing out a timeline starting before the program started, I would say that, yes, it's a timeline. But is it a timeline that we would need to grant an extension with? I don't know that it would be helpful, no.

Q. Okay. And that's because it includes Puffy's -- all of Puffy's efforts even before the program got started?
A. Well, I understand that they have efforts that go before the program starts because they want to -- they want to have their business, they want to have their full timeline for possibly their business plan or for whatever they're doing. But for the purposes of an extension request, would I consider this? I mean, there's items outlined, but there's not detail in here. So I wouldn't -- I wouldn't say that this would meet the requirement due to lack of detail.
Q. What lack of detail is missing in this document?
A. I would need to review everything that's posted in here, again, with the checklist to be able to tell you.
Q. You have the checklist in front of you; right?
A. Do you want to sit here for how long? Because I'm not going to answer additional questions until I feel comfortable answering them.
Q. Sure. Go ahead.
A. Okay. It works for me. I need a copy of the initial application then.
Q. No. Your testimony was you wanted to look at this --
A. I need to look at the policy that goes with the extension. So there are policy requirements in the

application -- I mean, if you want me to answer is there a timeline on here? Yes, there is. Is it one that I would consider that would grant an extension? No. I don't think so. I would need to have the additional information in the policy to know that it's meeting all of the requirements, and I don't have that.
Q. Okay. You don't remember what the requirements were?
A. It has been over three years since I've done an initial application, let alone have to do it with an extension application. So, no, I can't recall.
Q. Okay. If you turn to Exhibit 1, and if we turn to page -- to request for production -- see question 4. I asked you to provide any and all documents, communications surrounding the -- Puffy's extension request there? Do you see that?
A. I see it, yes.
Q. And if I told you there was no policy guideline ever produced to Puffy's in response to that question, would you have any recollection or memory to disagree with that statement?
A. I feel like that goes in a legal direction that I can't answer on behalf of the Department.
Q. You don't remember if you produced policy guidelines or not?

A. There was policy outline on the website when the website first got up in regard to initial applications and filling out applications. Is that still there? I do not know. Do I know if there were written documents provided to everyone? I do not know.
Q. Okay.
Okay. And so, to the best of your recollection, why were Puffy's timelines insufficient for purposes of an operation extension request?
A. Okay. So say it again. I'm sorry.
Q. To the best of your recollection, why were Puffy's timelines that it submitted insufficient for purpose of an extension request?
A. These timelines right here? Well, I would have to -- again, I would have to look at all of it, and I would have to know more about the extension.
But the information in here, I mean, it provides a timeline of what they were doing, but that doesn't tell me why it made it so they couldn't be up and running. It doesn't depict what caused them to not be able to have a building set up and doors open.
Q. Okay. Do you remember reviewing any documentation from Puffy's that -- including statements from contractors, that contractors basically advised them that, given the current construction materials issues and

lack of labor, that it would be impossible to build seven dispensaries in one year?

A. It's been so long ago, I don't remember seeing it. I feel like maybe there was some sort of -- I don't -- I don't know. I really don't.

Q. Okay.

A. I'm really sorry.

Q. You're okay.

A. It's just been so long ago I really don't know.

Q. I respect that it's been a long time.

Could you look at Exhibit 3.

A. Okay.

Q. And then, Cody, real quick just so we keep everything clean for the court reporter, I'm just going to --

If you turn to page 4 of Exhibit 3, this is a letter to Mr. Jeffries that was submitted as part of the operation extension request for 22ESTC0916. And it's a two-page letter; right? If we turn to the second page, we see it's James Cerone is the signer of it, Century Construction Services, LLC.

A. Uh-huh.

Q. And so, to the best of your recollection, would you stipulate to me that Century Construction Services, LLC was one of the contractors that Puffy's engaged to

complete its dispensaries?

A. According to this letter it is.

Q. Uh-huh.

A. This letter isn't dated, though.

Q. Sure. And you have no reason to dispute that they were one of the contractors; correct?

MS. LEE: I'm going to object to that because it's a lack of foundation. She's not involved with Puffy's business decisions.

MR. CWACH: I'm asking if she has any sort of documentation to dispute that.

Q. (BY MR. CWACH) Do you see in the second paragraph where Mr. Cerone says "You are well aware of labor shortages that are being experienced by all contractors in the area"?

A. Yes. I see the statement.

Q. Yeah. And then he, at the end of that paragraph, further says "Something to note as well, we are very thankful to earn your business. We will need to finish out our remaining projects to free up available subcontractors and laborers for your projects"?

A. I see the statement.

Q. Would you agree that those statements, if true, would support the conclusion that there was a labor -- a lack of labor issue in the city of Rapid City?

A. I don't know that I feel that -- due to the lack of date on this, I don't know that I want to confirm anything. Does it state that? It states that. But there's no date on here to indicate when this was received or when the dates --

Q. Okay.

A. So I would -- I would not confirm or deny at this point.

Q. Did you, in reviewing any operation extension requests in the Rapid City area, do anything to investigate or determine if there were labor supply issues in the construction industry in the Rapid City area?

A. Are you asking did I call contractors?

Q. I'm asking if you did anything to make a determination, independent determination, about the status of available labor to complete construction projects in Rapid City in 2022 and 2023?

A. I would have done due diligence, yes.

Q. Yes. What is that due diligence that you did?

A. I would have done whatever was asked in the review team to confirm the information. Can I tell you what that was right now? Nope. It's been two years ago.

Q. Would there be email communications between you and other employees of the Department explaining what that

due diligence should be, to your recollection?

A. I don't know that there would be email communications or written communications in regard to it because I believe that they were conversations that were in offices.

Q. Uh-huh. But you don't remember ever actually like doing any sort of research relating to labor supply -- just labor supply in general in Rapid City for the purposes of reviewing these extension requests?

A. Well, I didn't only just do Rapid City extension requests. I did extension requests across the state so --

Q. I know. But I'm just asking if you did any for Rapid City.

A. So, yes, I would have had to follow through on anything that I was asked to check in on and to take care of. So if I was asked or advised that there was additional calls that needed to be made or information that we needed to find out in regard to what the status of contracts were doing, would I have done it? Yes.

Q. But you today can't recall doing anything specifically?

A. I know that I did specifically. However, can I tell you that it was related to one of these certificates?

Q. Okay.

A. I don't know. I did several extensions for Rapid City.
Q. Well, I mean, just, I guess, tell me what you did for Rapid City then regardless of whether it was related to these extensions or not.
A. Well, there were additional conversations held. There were supply issues. But, also, there were other contractors available for work outside of this contracting agency.
Q. Okay. What contractors did you determine were available in Rapid City to build dispensaries during the year 2022 and 2023?
A. I don't have to answer to who was available. I can say that there were other contractors that they could have checked with to see if there was availability. And I can't make that determination for them. If they choose to put everything with one contractor and this one contractor can't do that, then that's up to them. That's their business choice.
Q. Okay.
A. But there were other areas that had extension requests that split out contractors --
Q. Yeah. And so I'll --
A. -- for Rapid City.
Q. -- put Exhibit 4 in front of you again. If we go to

the last page of that, would you agree that that is a pretty extensive list of contractors that Puffy's had engaged to complete build-out of dispensaries?
A. It says "Under contract or engaged." I don't know what "engaged" means. I don't know what those conversations were.
Q. Yeah. I'll stipulate we --
A. Is there a large list? Yes, there's a large list.
Q. -- Puffy's hired them to complete build-outs.
A. Okay. But that's not what's stated. It says "Engaged as needed." So I wouldn't know that that was a contract on file and what the stipulations of that contract were. Are there copies of the contract? Were those provided to the Department?
Q. Okay. So you needed copies of contracts to make a determination?
A. No. I don't know. I'm just asking.
Q. Did anybody else who requested an extension request submit contracts?
A. I don't know if -- legally, can I answer that?
Q. I'm just trying to understand was that a requirement --
A. I understand what you're saying. I don't know if -- legally, if I can answer that to provide you the answer in full because that has to do with another entity.

Q. Well, without telling me specifics, do you remember reviewing any contracts between a dispensary and --
A. Yes. For Rapid City, yes.
Q. Dispensary and a contractor?
A. Correct.
Q. Okay. And that was for an extension request form?
A. Correct.
Q. And if Puffy's had produced that contract, would that have been sufficient for the Department to conclude that they had engaged that contract -- contractor?
A. I don't know. So I can tell you that it had to do with the dates of the engagement of the contract and the information contained in the contract and the follow-up that was given --
Q. Okay.
A. -- as to whether or not the extension was granted.
Q. Okay. And so your complaint with this list is it says "Engaged as needed." And so if we in -- for example, called Estes Construction to testify and they said, "Yeah, we were going to work on Puffy's dispensaries once supplies came in," that wouldn't -- that type of statement wouldn't satisfy you -- your concern?
A. But it's not up to me.
Q. Sure. That's a fair point.

At the time you reviewed it, though, if we had had statements from each one of these contractors as opposed to just a few of them -- as opposed to just the general contractors, you would have needed that to determine that we had engaged all these people?
A. Again, I know that the ones that I had received contract information from had exact dates in them with ordered supplies and then follow-up in regard to the supplies being held with those dates. So -- but, again, that's not up to me. I just take the information. So it's not solely on me to determine yes or no.
Q. Okay.
A. I'm advised what I need to do.
Q. So I just want to understand that. When you say it's not up to you, you were never authorized to include your staff signature on Exhibit 2 as having reviewed --
A. Stating that I've reviewed the information and given my notes and passed it to somebody else, yes.
Q. Okay. And so --
A. Somebody else has to sign off on it.
Q. On Exhibit 2 where it says "Extension granted, yes or no," you don't recall ever checking yes or no for any of these spots, or for any operation extension request?
A. Me myself? No, I don't.
Q. Okay. So to your recollection, would the yes or no

there have been something that was done by the administrator on Exhibit 2?

A. I don't know if it would have been done by the administrator or if it would have been done above the administrator. I don't know.

Q. Okay.

A. Because I don't know after it left my area and left me with the notes that I had made, I don't know what those steps looked like.

Q. Okay. But your step was never, on Exhibit 2, checking yes or no on the extension granted line?

A. Not that I recall, no.

Q. Okay. Were you, as one of the initial reviewers before it went up the chain, asked to make a recommendation for any extension request?

A. I was advised to make a summary and notes.

Q. Okay. So did you produce a written summary for each extension request?

A. I don't know that it was a written summary. I know that there was a meeting held and a discussion, and then if there was more additional information that was needed, I would have to go back and either request additional information or see whatever questions I needed to answer and continue going from there.

Q. So this review process and the inner communications

within the Department was entirely oral and in person?

A. I believe -- I believe -- I have to stop and think.

I remember lots and lots of oral communication in regard to the information. I don't know if there's written.

Q. Uh-huh. Okay.

Let's go back to Exhibit 2 there. Do you see, as we talk about Mr. Cerone's letter, one of the requirements on this operation extension request is that we -- that there was a letter received from a contractor; correct? On this document?

A. Uh-huh.

Q. Okay. And so Mr. Cerone appears to -- that appears to meet that requirement; right? I know it's not dated, but outside of the date issue, if it was submitted with the extension request, that would -- you would agree that that is a letter from a contractor?

A. Yes. It is a letter from a contractor.

Q. Uh-huh.

A. And it states their difficulty in opening seven or eight locations.

Q. Uh-huh.

And then going back to Mr. Cerone's letter here on Exhibit 3, he further states that they're experiencing delays in other projects due to the construction

materials, labor, finish materials, and hardware in the third paragraph; correct?

A. Uh-huh.

Q. Okay. And I guess one of the questions I've always had, if we go to the fourth paragraph, he says, "In theory, we should have enough staff to start the project while simultaneously working on Sturgis and having construction completed around April 1, 2023, or May 1, 2023, as it relates to one of their locations at 910 Main Street."

Do you see that?

A. Uh-huh.

Q. Okay.

A. But is that you -- you state 910 Main Street.

Q. Uh-huh.

A. But in the extension, is that one that needed an extension request? All I have are numbers. I don't know what certificates --

Q. Sure.

A. -- or addresses these go to.

Q. Yes. This is for 22ESTC0916.

A. And that's 910 Main Street?

Q. Yeah. We submitted an operation extension request for that.

I mean, if -- I guess one of the things I've wanted

to ask someone from the Department is we have this statement that says they're going to have this next location ready to go by May 1, 2023. How is that insufficient evidence of them not making a good-faith effort to get all supplies and materials to be open?

A. I feel like that relates back to -- I don't know if that's more of a legal question or if it's more of an administrative question. I don't believe that this outlines in detail -- I feel like it is a blanket statement in regard to "Hey, we can't open these five locations because we're using one contractor."

Q. Okay.

A. I don't know.

Q. Yeah.

A. That's the best I can do right now.

Q. So you've said that a couple times.

Do you recall, was it kind of the Department's position that Puffy's had to engage 10 contractors for 10 different dispensaries?

A. No. I don't know that there was any requirement for that. I'm just thinking, as a person who has investments in other areas, that I don't leave everything in one basket.

Q. Uh-huh.

A. And so in looking at this, me myself and I, would

I -- if I know that I was awarded this and this is the time frame I have to get it done and I don't have availability for that, I better start looking and finding for something. But that's coming from me.

Q. Uh-huh.

A. I don't know what anybody else would do.

Q. You can't say that that was the Department's view or position back when it reviewed Puffy's extension requests?

A. I -- I don't know.

Q. Okay.

A. I don't know.

But I feel like, with the information presented in front of me, it gives a very vague statement as to what is causing the delay. Everybody has labor force issues. I mean, it wouldn't matter if it's a dispensary or a department store or a restaurant or a gas station. Everybody has labor issues. And everybody, with the state of how things were, were having labor issues of having people show up. You know what I mean?

So I don't -- I don't know that I -- I don't know that I can answer that.

Q. Okay.

In the last paragraph here he says, "Regarding your Sturgis location, Campbell Street location, Meade County

location, and any other Biernbaum locations, you'll need concrete contractors to get those poured. However, our fear is that that won't be able to happen because the plant won't let you pour under 32 degrees and you'll have issues with handicap ramps and parking lots that are required under city code to get your certificate of occupancy."

Do you see that statement there?

A. I see the statement.

Q. To your recollection, did the Department or you give any weight to that statement?

A. I don't know.

Q. Okay. Would you agree with me that if they couldn't get concrete poured because of the issue that is expressed in this letter at the time that these extension requests were submitted or before that, that that would be evidence of them trying to get a supply but unable to get it?

A. I don't know. I understand what the concern is, but I don't know that -- when did they have -- when was their certificate up, and when did they --

Q. If you go to exhibit --

A. When was their initial certificate awarded? When -- when were they granted the certificate? When did they get the award date that they knew that they had these

locations?

Q. Yes, there. If you go to the first page of Exhibit 3, it says "Our renewal date is --"

A. It says "Your certificates expire 3-10 of '23."

Q. Yes.

A. Okay. When were they issued? Does that mean they were issued 3-10 of '22?

Q. I would say that that's correct, yes.

A. So then my question would be, is that this is the letter that's coming with the extension and they were awarded this the March before, knowing that they had these locations and the concrete came in, how is it happening now?

Q. So the Department would need, I guess, further evidence concerning concrete issues beyond just when it was cold outside?

A. Well, I would think that if -- if that truly is when their certificate was issued, that would be -- I don't know about two years ago when we were doing this. I would tell you that, in looking at this right here right now, that would be my question. If that certificate was issued in March of '22, you could have done -- so April, May, June, July, August, September, October at least. You could have had seven months. And they're saying there's these locations. So Campbell, Meade, three,

four -- four of them. Or is it five?

Q. Uh-huh.

A. Anyway, so if this was going to come into play, they didn't know it was going to come into play in March when they did them? Because that would be a question I would have right now. I don't know if it was a question that I had then or not but it would be -- in looking at this right now, that would be a question.

Q. Okay.

I'm going to have you turn to tab 3.

MR. CWACH: Tamara, this would be page 15 and 16 in the pdf.

(Exhibit 5 is marked for identification.)

Q. (BY MR. CWACH) Ms. Shippy, I'm handing you a document that's been marked Exhibit 5. This document purports to be the Affidavit of Sean Casey; correct?

A. Correct.

Q. And if you go to the second page, it's dated March 14, 2023. Do you know who Sean Casey is?

A. No.

Q. Okay. Do you understand what an affidavit is?

A. Yes.

Q. Do you recall this being submitted in response to a request for additional information by you to Puffy's?

A. I think so, yes. I think that this was submitted

with the timeline, which was exhibit something that you initially handed to me. Exhibit 4. I think it was with that possibly.

Q. And I guess at the time that it was reviewed by you, did you or anyone at the department, to the best of your recollection, have any reason to doubt the truthfulness of this Mr. Casey's statements in this affidavit?

A. Not that I'm aware of.

Q. Okay. And so in paragraph 7, Mr. Casey says that, with Puffy's projects, they're experiencing long lead times on critical path components, which are electrical mechanical, plumbing, doors, and related hardware. Some of those items have 50- to 60-week lead time.

Do you recall what, if anything, you or the Department, someone in the Department, may have done to investigate that statement?

A. No. I don't -- I don't know.

Q. Okay.

A. And with that statement, I would go back again. If their certificate was issued to them on March 10 of '22, and that would be just from reading this statement with you now --

Q. Uh-huh.

A. -- my response would be they had a year. So even if it was a 50- to 60-week lead time, did they order it?

When was it ordered? What additional -- you know, is it that they have it? Is it that they are still 20 weeks out from getting it? What -- what is factoring into all of that?

Q. Okay. And so is it your testimony here then that even though Puffy's had statements from its general contractor that it could not complete all 10 dispensaries within one year, part due to labor and part due to supplies, that even though that was impossible for the contractor to do according to the contractor, that Puffy's still had to order every single piece for every single location and sit on critical path components --

A. I --

Q. -- in storage for --

A. Go ahead.

Q. -- potentially over a year?

A. I can't answer that. Because that, to me, is a business decision. Puffy's would have had to make that call. And if that is the call that they chose to make, then that's what they did.

Q. And if a contractor hypothetically advised them that it's not industry practice or good practice to order certain materials for a site that you're not going to build on for a year and a half, you would still say that's immaterial?

A. I would say was there documentation supporting that that stated it is impractical at this time to order one year out because A, B, and C could change. And I would just say that from our conversation right now.

Q. Okay.

A. I don't know that that was anything that was a conversation prior or anything that entered into factoring this. That would just be a question that I would have now. Was there documentation to support that they were advised not to order?

Q. Okay. If I could have you turn to tab 12.

MR. CWACH: Tamara, this would be page 37 and 38.

(Exhibit 6 is marked for identification.)

Q. (BY MR. CWACH) I'm handing you a document that is marked Exhibit 6. This document purports to be the Affidavit of Daniel King. Do you see that up there?

A. Yes.

Q. And if we turn to the second page, Daniel King signed this on March 15, 2023, in Colorado; correct?

A. Correct.

Q. Okay. And on paragraph 2 there, it says that he's the owner of a company called Reno James LLC. He's a South Dakota engineer. And on paragraph 3 you agree he says he's the engineer completing the mechanical,

electrical, and plumbing engineering, designs for projects including Puffy's LLC dispensaries; correct?

A. Yep. I see that.

Q. Okay. And like the Affidavit of Sean Casey, you would acknowledge that this was submitted to the Department as part of the Department's review of its extension request?

A. I believe so, correct.

Q. Okay. And on paragraph 5 there, he states that "Completing blueprints and attempting to construct seven dispensaries simultaneously is not practical in my opinion or based on my experience. It takes a long time to do engineering correctly, especially for marijuana facilities, so it is best to work linearly on one project before you jump to the next project."

A. I see the statement.

Q. And you would agree, based on your previous testimony here, that that appears to be a statement from one of his contractors, that it is --

A. But he's saying to construct seven of them.

Q. Uh-huh.

A. These are looked at -- at least when I reviewed them, they were looked at as an individual basis. They're not looked at as a bundled deal. It was one certificate, one dispensary. So I understand that he had

multiple but this was looked at as individual. So, yes, I see that statement, but he's saying for seven. He's not saying for one. He's saying for seven.

Q. Uh-huh. And paragraph 4 he says he's working on a blueprint for 910 Main Street and 2020 Deadwood Avenue; correct?

A. Uh-huh. Yes.

Q. And would you agree also that Puffy's did get two medical marijuana dispensaries open in Rapid City at 2120 West Main Street and at 2206 Highway 44 during the first year?

A. I don't recall the locations that they had open. I really don't.

But I would also like to note, because you pointed out in Exhibit 3 here --

Q. Uh-huh.

A. -- that their issue date was 3-10, then this extension request comes in and it says "Was this two weeks prior to the expiration?" This affidavit comes in March of 2023, which is March 15 of 2023, which, if we're going off of the dates off of Exhibit 3 and it says that they were issued March 10, this would have been after -- this would have been received after the one-year time frame.

So this might -- this might have been received in

the additional documentation that was requested. I truly don't recall. I don't remember. But...

Q. Okay.

A. Because that would be the same for Exhibit 5 as well. It was received after. So if their extension requests -- which this could have changed. I have no idea about the program regulations and rules at this point. But I know that they initially were approved for one year from the date of issuance. So if we're going with Exhibit 3 and the issuance date was March 10, all of these are given as information after their certificates had expired. Which, again, could be because of additional documentation that was requested. I don't know.

Q. Yeah. I mean, I appreciate that statement. But you would agree with me that Puffy's did submit an initial operation extension request and then the Department, on several occasions, asked for additional information with additional deadlines in email communications from you to Kittrick Jeffries; right?

A. I know I was requested more than once to contact him in regard to documentation.

Q. Uh-huh.

A. Yes.

Q. Yeah. And this --

A. And so this -- that's why I said these could be as a result of those.

Q. Uh-huh.

A. I don't know. But it would -- my question again, because this goes back two years ago, is if this was all in place or if this was all documentation that was available, then how many -- I don't know how many times it was requested or how it was requested or -- so I don't know how many of those requests came in.

Q. Okay.

And then on page 7 Mr. King also notes that he's observed long lead times on construction material and supplies and that electrical gear again particularly has serious delays and that this lack of available skilled tradespeople is also delaying projects.

Do you see that in paragraph 7?

A. I do see it.

Q. Okay.

A. What does a long lead time mean?

Q. Okay. So that statement was a little vague for you when you --

A. I don't -- I -- I'm asking right now. I don't know if that was part of the conversation that was held before. I don't know if it was -- I don't know if it was involved in a talk. Because this one specifically states

50 to 60 weeks lead time. But, then again, I would take it back to they had their issuance date, and so if the lead time was going to be a problem, why was it addressed only at the extension?

I mean, I don't know if -- was there other communication prior to the extension request about all of these issues, about -- I -- I don't know. I don't recall receiving things before that.

Q. Uh-huh.

A. And -- and I'm sorry. Because now reading through some of these, these are just questions that I'm having now.

Q. Okay.

A. So I don't know.

Q. Okay. And you don't know if they were questions that you or anyone else at the Department had at the time the review was actually conducted?

A. Not two years ago. I couldn't -- they could be. They might not be. I honestly can't answer that.

Q. Yeah. And you can't remember if they were questions that you had?

A. I can't.

Q. Okay.

I'll have you turn to page -- or tab 4.

MR. CWACH: Tamara, this is page 17 through 19.

(Exhibit 7 is marked for identification.)
(A short recess is taken.)
Q. (BY MR. CWACH) We're back on the record here now after a short break.
Real quick, before we go to Exhibit 7, with Daniel King and him being an engineer, would you agree that engineering for constructing a medical cannabis dispensary is a necessary service?
A. I guess I don't know. I don't do buildings and I don't do engineering. I would assume that you have an engineer on most projects but I don't know.
Q. Yeah. So the Administrative Rule requires we have to have a showing of getting all equipment and supplies and services. And you would agree that engineering is one of those services that would be needed?
A. Well, I think if it falls under Administrative Rule and that's as it is outlined, if it specifically states engineering, then yes. But if it doesn't, I can't say that that's a yes or a no.
Q. Okay. Going to Exhibit 7, this purports to be the Affidavit of James Cerone; correct?
A. Yes.
Q. And if we go to page 2 of that, Mr. Cerone dated this -- or signed this on March 10, 2023; correct?
A. Yes.

Q. And we have previously reviewed his letter but this is his sworn statement. Do you recall if this was submitted as part of the Department's review of Puffy's operation extension requests?
A. I'm sure it was if it was additional documentation that was requested.
Q. Uh-huh.
A. Can I tell you that I specifically recall reading this two years ago? Not specifically. But I'm sure --
Q. Yeah. Okay. And I guess you don't recall if you did the Puffy's reviews or not. I mean --
A. I know I was involved in some of them. But you have different licenses here so I don't know which specific ones I was involved with.
Q. Okay.
A. Because they were looked at, like I said, individually. They weren't looked at as a bulk of Puffy's.
Q. Okay. And so if we went through each license number, would that help refresh your memory as to which ones you reviewed or did not review?
A. At this point in time, I don't know that it would.
Q. Okay. And if we went by address, would that help you?
A. I don't know that -- I honestly don't know if it would.

Q. Okay.
A. It's just been so long.
Q. Okay.
A. There may be certain things that would stick out, but I don't know what that would be offhand to be able to identify yes or no.
Q. Okay. So I'll just ask, do you remember reviewing the application for -- or, excuse me. Do you remember reviewing the extension request for 910 Main Street?
A. Specifically 910 Main Street?
Q. Uh-huh.
A. No. But I -- again, it could have been one of them. I don't know.
Q. Uh-huh.
And I'll just ask another one. Do you remember reviewing the extension request for 4024 Biernbaum Lane?
A. No.
Q. Okay. No. That's --
A. No. I'm sorry. I just -- I don't. I don't. It's -- yeah. It's been so long I just don't. I know that I was in the reviews on some of them. I don't know that I was on all of them. And I very well could have been.
Q. Uh-huh.

A. It's just been so long, I have no idea.
Q. Uh-huh. Okay. So looking at going back to Exhibit 7 and Mr. Cerone's affidavit here, you would see on page 1 there, in paragraph 2, it says that "Puffy's was hired by our company [sic] in August 2022 to complete all of their dispensaries after their previous contractor had abruptly retired."
A. Okay.
Q. Did that --
A. 910 --
Q. It's on page 1, paragraph 2. The last sentence.
A. Okay.
Q. Okay. And so he says in that -- your recollection, did this hold any weight by the Department, that he was in fact hired in August of 2022 after the first one had retired?
A. I can't say that it did, but I can't say that it didn't. I feel like, in this moment with you talking about the dates, if he was hired in August of 2022 and they were approved in March of 2022, there was still -- looking at it right now, I would still say that there was timeline and so I -- I guess I don't know if it would take any weight. I don't know that it wouldn't, but I don't know that it would either.
Q. Okay. And again here in paragraph 3, one of the --

one of the questions on Exhibit 2 was "Were there construction delays?" And in paragraph 3, he indicates there is a construction delay because the state electrical inspector is not coming out to finalize one of their projects for Puffy's in Sturgis; correct?

A. Yes. But it also states Sturgis, and Sturgis isn't part of Rapid City.

Q. In the last sentence he says "It's preventing us from starting our Puffy's dispensaries in Rapid City."

A. Okay.

Q. Did you just -- to your recollection, in your review of this affidavit at the time, did you just not believe this statement?

A. Again, I have to take this back to I was not the only one in reviewing this information so I don't know that -- I don't know that it held any type of weight for anyone. I don't know that it was anything that was discussed that came specifically down to this point.

Q. Uh-huh. Okay.

And if we turn to the second page, on paragraph 6, in the middle of this, Mr. Cerone says that he has material purchase orders ready to go but he won't order materials until they get the engineer's final blueprints. Do you see that?

A. Uh-huh.

Q. Do you have any sort of knowledge or experience that would suggest that this plan of action, to not order materials until blueprints are done, is inappropriate in the construction industry?

A. I can't answer that. I don't work construction. I've never worked --

Q. Uh-huh.

A. You know, if that's what they determined, then that's what they determined. But I feel like that goes back to a business decision and are you looking at one or several?

Q. Uh-huh. Okay. Yeah. And so Mr. Cerone says it's his business practice that he has materials ready to go at least for this one but he doesn't order until he gets the final blueprint; correct?

A. That's what it states. And it states for this one, but on top of here, which one is he talking about?

Q. Uh-huh.

A. Because there's five listed. So which one is he referring to that he's holding on.

Q. And if we go to paragraph 5 there, he says 910 Main Street; correct?

A. Okay.

Q. Yep. And if we read that within -- if we take the statement within the context of Mr. Daniel King's

statements about doing projects linearly, linearly as opposed to all at once, as being his best practice, in part just because that's how engineering -- he does it and also because of the construction delays, you would agree that those statements kind of make sense as to why we don't have necessarily the receipts that the Department seems to believe needed to be there?

A. I don't know that -- I don't know that I can say yes or no to that because that is their business practice. So it's not a standard across the board for every business. And so if you're looking at a point for -- if you're -- if you're going to look at treating everybody the same across the board and this is his business practice and this is what he states, then that's what he wants to do. And if that's what Puffy's chooses to do, then that's what they choose to do. I can't make them do something different.

Q. Uh-huh.

And then in paragraph 7 here, Mr. Cerone says that they've had difficulty getting hot water heaters quickly. Glass orders have also had long lead time. And there again, another complaint about electrical supplies.

Do you see that?

A. Yep. I see it.

Q. Okay. And the Department -- to your recollection,

the Department ignored or did not give that statement any sort of weight or credibility when it reviewed this extension request?

A. I can't say yes or no to that. I was involved in a review of this and there were conversations, but I can't say what the weight is or wasn't. I don't know.

Q. Uh-huh.

And to the best of your recollection, and I know it's been two years -- I appreciate that -- and there's not any sort of documentation, to your knowledge, that's out there about what weight the Department gave to certain statements or documents?

A. Not -- not to my knowledge. Not that I have, no.

Q. Okay. If I could have you turn to tab -- well, I'll just -- tab 5.

(Exhibit 8 is marked for identification.)

MR. CWACH: Tamara, this is pages 20 through 21.

Q. (BY MR. CWACH) I'm handing you a document that's been marked Exhibit 8 that purports to be the Affidavit of Lee Kruse. Do you see where Mr. Kruse signed this on March 10 of 2023?

A. Yes.

Q. And, again, you would agree with me that this was an affidavit sent to the Department at some point for purposes of review of whether to give Puffy's an

extension request on its five locations in Rapid City?
A. Right.
Q. Okay. And here Mr. Kruse says that he is -- he works for Century Construction Services; correct?
A. Yes.
Q. And I didn't ask this, but if we go back to Mr. Cerone's affidavit, he's the general contractor for KC Construction LLC; correct?
A. Yes.
Q. And if we go back to Sean Casey's affidavit, which was Exhibit --
A. 5.
Q. -- 5, he states that he is the owner and contractor known as Vulcan Construction; correct?
A. Yes.
Q. And so Puffy's had, essentially, three general contractors working on its dispensaries based on these affidavits; right?
A. Based on the information provided here, yes.
Q. Uh-huh. Thank you.
And going back to Mr. Kruse's affidavit, if we turn to paragraph 4, he states he was engaged to work for Puffy's in August of '22; correct?
A. Correct.
Q. And paragraph 5, he states that "The supply chain

for materials is tricky right now. We've received delays and difficulties in securing supplies for Puffy's projects. Vendors have reported trouble to us in getting necessary supplies and equipment." And then these supply chain issues are basically creating delays in every project that they are doing right now.
With that statement in mind and going back to 2022 and 2023, would you agree with me generally that in South Dakota and perhaps across the entire country there were pretty serious issues within the supply chain of the country?
MS. LEE: I'm going to object to that for lack of foundation.
MR. CWACH: Well, I'm asking if she knows or agrees.
Q. (BY MR. CWACH) So go ahead and answer.
A. I don't think that it's up to me to answer.
Q. You don't --
A. I mean, generally speaking, again, any place, regardless if it was a restaurant or anywhere, was having issues.
Q. Yes.
A. So everyone, any business, not just an extension, not just construction, not just electrical, any place was having issues.

Q. Uh-huh.
And you would agree that the extension review process, its primary purpose was to make a determination of whether the license holder was making a good-faith effort to overcome those supply chain issues?
A. Yes.
Q. Okay. In paragraph 6 here, Mr. Kruse mentioned specifically in the Black Hills area, Rapid City, there's a tremendous demand for contractors right now.
To your knowledge or recollection, did you or anyone at the Department make any sort of effort to determine if there were actually, I guess, issues finding contractors, available contractors, in 2022?
A. Well, during August of 2022, like specifically, or just the year? I think that everyone was having issues, and it didn't relate just to Puffy's.
Q. Uh-huh.
A. And there were other additional extension requests that were also reviewed. So I understand that this is in regard to his five locations, but am I aware that there were issues across the board, not just in South Dakota? Yes.
Q. Okay. And in this statement Mr. Kruse complains that there's an employee shortage in the region and there are trusted subcontractors who are struggling to quickly

complete the work.
Did you or anyone at the Department make any efforts, complete any investigations, to your knowledge, to determine if -- that there was an issue with employee shortages in Rapid City or with subcontractors being available?
A. I don't think that, again, we had to go just to the Rapid City area. Across the state it was knowledge, it was fact, that there were shortages of employees at all locations, not just for contractors or anywhere else. Grocery stores, there were restaurants, there were other entities that also had shortages.
Q. And would it be fair to say that because everyone was having this problem, that Puffy's was having this problem?
A. I don't think that anybody has ever denied that everyone, including Puffy's, was having this problem.
Q. And would it also be fair to say then that, based on our review of the documents here today so far, that Puffy's was making a good-faith effort to overcome those problems with labor shortages, equipment shortages, supply shortages?
A. I don't feel that I will answer that question based on the fact of, yes, there were shortages. However, again, they were everywhere. And I think that I -- as it

relates to this, do I completely agree? I agree that there was a shortage and I agree that everyone was having an issue. But the rest of it, I don't think I can answer.

Q. Why is that?

A. **State your question again.**

Q. Why don't you think you can answer it?

A. **The question before.**

Q. Uh-huh.

A. **Yes. State the question before again.**

MR. CWACH: Cheri, could you reread the question.

(Reporter reads back the question:

"And would it also be fair to say then that, based on our review of the documents here today so far, that Puffy's was making a good-faith effort to overcome those problems with labor shortages, equipment shortages, supply shortages?")

A. **So based on the documentation here today, I feel that the information that -- I don't know if there is additional information that is presented or not presented, but I don't feel -- I feel like these are blanket statements in regard to five entities and not an individual entity. And so I feel like the information presented is in regard to a bundle for five locations,**

not for one specific location. And I do see that, you know, this one says the 910. But it says "Then we can't do this because we're doing this in Sturgis and so we have to wait."

Again, I feel like it goes back to a business decision. And maybe that's not what it is. I don't know if that's what comes into play or not, but I don't think that I can answer -- I mean, based on the information you've provided, we have blanket statements that they had shortages, yes.

Q. Okay. And they have those shortages -- you would agree that those issues applied to everyone? It applied to Puffy's five licenses that extension request was made for?

A. **The shortages?**

Q. Uh-huh.

A. **Yeah. They had the same shortages that everybody else did.**

Q. Uh-huh.

And I guess would you also agree with me that at the time, within that first year, Puffy's completed two -- got two dispensaries open?

A. **How many were they awarded?**

Q. Seven.

A. **They were awarded seven.**

Q. Uh-huh.

A. **So they were awarded seven, they got two up and running, and they requested an extension for five?**

Q. Uh-huh.

A. **Okay. So when they were awarded the seven certificates, they knew that they had one year to get up and running.**

Q. Uh-huh. Yes.

A. **Okay. So I think that I -- I don't feel that they ran into any additional shortages that anybody else didn't run into. I feel that they came up against the same challenges that everybody else did --**

Q. Uh-huh.

A. **-- that was awarded certificates.**

Q. Yes. They just had -- they had more certificates; right?

A. **They had more certificates, yes. However, the certificate is each based on one individual dispensary. So I understand that he was awarded more of them, but he had the same opportunity as everyone else.**

Q. Yeah. But so, for example, Genesis Farms had two locations in Rapid City that an extension request was made for; correct?

A. **I don't know.**

Q. You don't remember?

A. **No.**

Q. Okay.

And you don't remember if those became up and running within the first year or not?

A. **No.**

Q. You've said several times that these were business decisions by Puffy's to do it this way. Do you think -- is it the Department's position that those business decisions were wrong to make based on the Administrative Rule?

A. **I have no idea. I can't -- I can't quantify that for anybody. I have no idea.**

Q. Uh-huh.

A. **That is just me myself.**

Q. Do you recall Puffy's submitting receipts for equipment items, materials it purchased?

A. **I recall seeing receipts.**

Q. Uh-huh.

A. **But I don't know for which locations.**

Q. Okay. Okay.

And do you recall seeing forms from Puffy's that were cost projections on each location?

A. **I feel like at one point there were some projections, but I don't know which locations.**

Q. Yeah. So --

A. Okay.

MR. CWACH: Tamara, I'm turning to page 48 in your pdf.

Q. Looking at this, this is an updated cost projection, updated March 28, 2023, for Puffy's at 4024 Biernbaum Lane. Do you remember reviewing this?

A. I remember seeing -- it might have been in with receipts.

Q. Uh-huh. Okay.

A. I didn't study it. I didn't do anything additional with it.

Q. Sure. I mean, so I know we don't have the context of this other than, you know, we know it's here and you acknowledge, remember reviewing it as part of it.

I mean, would you agree with me that this shows a good-faith effort to be in a position to acquire equipment and supplies?

A. I guess I don't know if I can answer that. I mean, from a business perspective, I could go in and I can create a projection in regard to any business that I want to start and have a projection printout. So, I mean, is that what this contains?

It shows me like the general how much it's going to cost to order doors and labor and -- it shows me all of that, yes. But do I think that this is good faith? I

guess I don't know because I don't know what we require for good faith. Because, again, I could go online and just create one of these as well.

Q. Uh-huh. Yeah. So I mean if Kittrick's contractor testified in his affidavit that he had purchase material orders ready to go and we have these budgets for each spot, I mean, that would seem to evidence good faith; right?

A. I don't know that I have an answer.

Q. So before we leave these affidavits, I want to go back to Exhibit 6, Mr. King's.

Now Mr. King is an engineer licensed by the State of South Dakota; correct?

A. Is that what he tells me? He's an engineer --

Q. Look at paragraph 2.

A. Okay. Yes. He has a South Dakota engineering license, yes.

Q. Okay. And I mean, would you agree with me that the fact that he is licensed by the State of South Dakota to perform engineering gives him a certain amount of expertise on the engineering, construction, and design of buildings, projects?

A. Probably. I mean, he's an engineer. He might be a subject matter expert on it. I'm not.

Q. Yeah. And so it's his statement that, based on his

experience and his qualifications as an engineer, that it is not advisable to do all seven of those dispensaries simultaneously?

A. I understand that. But you're also talking about all seven of them simultaneously. We didn't ask -- or at least not to my knowledge. There was no ask for seven. He applied for seven certificates and he won them.

Q. Uh-huh.

A. So seven coming into play came into play when he decided that's what he was going to put in for applications.

Q. So going --

A. I don't feel like that is different than having an individual. I mean, he -- so he had seven individual licenses.

Q. Uh-huh.

A. They were individuals.

Q. Uh-huh.

And so going back to this concept of Puffy's making business decisions, when he engaged with an engineer, an expert, who said it's not good practice to do it like this, the Department's rationalization probably is that Puffy's should have told him "Well, too bad, we have to"?

A. I can't make that determination.

Q. Okay.

A. I'm not qualified to do so.

Q. Okay.

Going back to Exhibit 2, it says one of the things that was on this list is receipts received to show supplies ordered. To the best of your recollection, what is that question looking for from the applicant?

A. I guess I don't know -- I don't -- to show supplies ordered, to me, in regard to an extension checklist, would be whether you ordered the doors or you ordered the windows or you ordered the concrete or you ordered the -- any of that, to me, would be -- logically, to me, that would be what would fall within an extension request.

I guess there probably could be other supplies, because if you're going to run a business, I mean, you need other supplies. But do I know what those supplies are? No.

Q. Okay. I'm going to read from the Administrative Rule. It says "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."

So written documentation could be more or something other than just receipts; correct?

A. I would think so.

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Q. Uh-huh. And the rule says "secure" not "ordered"; right?
A. Right. But what's the difference between "ordered" and "secured"? "Secured" to me means it's secure, it's safe, it's sound, it's down. But I guess is that what you're referring to?
Q. Well, you would agree that a dispensary needs to have a toilet in it; right?
A. I suppose if they have a public restroom.
Q. For their employees; right?
A. Yeah. I guess so.
Q. Now if Puffy's could go out on any day and buy a toilet at Menards, would you agree that they're secure in getting that equipment in supply because it's readily available?
A. Well, I guess if that's the route you would go, if any supplies are readily available and you could go to Menards or Lowe's or wherever and get them, why wouldn't you?
Q. So Puffy's should have bought a toilet for a --
A. I'm not saying that they should have or that they shouldn't have had. Like, they get to make that choice.
Q. Okay. And going back to the Administrative Rule, it says that "Upon a finding by the Department that despite the establishment's documented timely efforts to secure

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all equipment and services necessary to become operational, the establishment is unable to become operational by the expiration date, the Department may grant an extension of time."
Again, I wanted to focus on that phrase, "documented timely efforts." Documented would not -- the word "documented" is not limited to necessarily just receipts or order forms of things but that are delayed; correct?
A. Right.
Q. Okay. But in this checklist, it seems like receipts were important, on Exhibit 2, as opposed to affidavits.
A. I guess I don't know that receipts -- I mean, receipts, to me, can be a documented invoice or it can be a receipt that they, you know, went and paid for the toilet. I mean, I don't know. I guess a receipt, to me, is a receipt. An invoice is a receipt. An order, an online order, a printout, is a receipt.
To me, a blueprint can be a receipt. To me, ordering the wood or the windows, all of those, to me, are receipts. They would all fall under -- a contract, to me, could be a receipt. Because a contract is still going to give you -- so I guess I don't know for sure receipts. Are you just defining what they're purchasing or what --
Q. I'm just using the word "receipts" that's on

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Exhibit 2. And I guess I give it its plain, ordinary meaning. I'm trying to understand, to the best of your recollection, if the Department found the receipts, as you defined them, invoices, et cetera, to be kind of the end all and be all of whether good-faith efforts were made to timely secure equipment and services.
A. I don't know that they were the end all be all. And I don't know that -- I don't know that I can answer to that then.
Q. Okay. Because there's some things -- like we couldn't show -- you would agree like it would be pretty hard to show a receipt for labor; right?
A. Well, how did they pay labor? I guess I don't know. I don't know because they have people that are punching timecards and there's some sort of labor supply or there's some sort of order supply. There's --
Q. Uh-huh.
A. I -- I don't know.
Q. So you typically pay labor after the work is performed; right?
A. Okay.
Q. And so Puffy's couldn't show like a labor receipt for 910 Main Street, for example, because there was a labor shortage that prevented the contractors from starting on that. Does that make sense?

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A. I mean, it makes sense. But on the other part with them -- because you've pointed out that this is -- they have -- I'm going to get it wrong. How many did they have?
Q. They had a total of seven.
A. Seven.
Q. And five operation extension requests were made.
A. Okay. And two up and running.
Q. Uh-huh.
A. Okay. So in that -- so they didn't pay any money down and the two that they had up and running before everything was complete and they opened their doors?
Q. I guess I don't understand your question.
A. Well, you're saying that labor is usually paid for afterwards. So you're saying that with everything that they did in those or within any of the seven of these, there was nothing that would show that they've ordered it or that they -- I mean, I don't know. I'm just asking in general. Because you're saying that labor is paid after the fact. So they didn't pay anything to anyone --
Q. Uh-huh.
A. -- for the two that they had up and running until the doors were open and it was good to go?
Q. Uh-huh.
I mean, we could show receipts for the two places

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that were open for labor, for our contractor bill, but I was -- the question I was pondering is really just a question of whether the Department needed receipts for everything. And how do you -- if that's the case, how do you do that for certain things that typically don't have receipts?

A. Okay. And I don't think that -- I don't think that I can answer because I don't know that that's -- I don't know that that's what it solely relied on.

Q. Okay. During the review of the operation extension request for Puffy's five locations, did you have phone call communications with Kittrick Jeffries?

A. From the office? Yes.

Q. Yes. Okay.

A. Uh-huh.

Q. And did you ever have phone calls with him outside of the office?

A. I know I talked to him at a couple events.

Q. You never talked to him about the extension requests like on your personal cell phone?

A. I don't think.

Q. Okay.

A. Not that I'm aware of. I know that he called my personal phone while we were headed to Rapid City to do the -- my goodness, I forget what meeting it was.

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Because he needed to get ahold of Geno at that time. And at that time when we were with the Department, I didn't have a work phone.

Q. Did you ever do text communications with Kittrick about operation extension requests?

A. Not that I recall.

Q. Okay. Yeah. Would it be fair to say that, I mean -- you asked Kittrick to provide a letter of recommendation for you once, didn't you?

A. Uh-huh.

Q. Okay. And so you worked -- why did you ask Kittrick for that?

A. Because I had worked with him in regard to his initial application, and I thought that we had a good work experience together.

Q. Uh-huh.

A. And so I had worked with him directly on helping him -- they had a couple issues -- I forget what their system is called.

Q. Metrc.

A. Yes. There you go.

Q. M-E-T-R-C for the record.

A. Yes. Sorry. I'm like drawing a blank. Once you're out, you're out.

Q. Uh-huh.

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A. But they were having some issues in Metrc. And we had called and we had done some calls back and forth and I helped walk them through those things. So yeah.

Q. Okay. Okay. For the record, Kittrick thinks very highly of you.

A. I'm like I -- I hope. I thought I was being helpful so I hope but --

Q. Yeah. No. He thinks very, very highly of you.

I guess one question I had is, prior to the official denial was sent, did you ever inform Kittrick that his extension requests were being approved at the first level but at the second level there were issues?

A. I know that we had talked, and I had -- he had called in and there was a conversation. We were at the office. And so, yes, he had asked if I had had -- if we had received them. So, yes, I -- yes, we had received them. Yes, the first review was done, and they were going to the second request.

Q. Okay. But you didn't say anything like passed the first review?

A. I don't know -- well, but in order for them to go to a second review, for everybody to come to them -- I mean, I guess I don't know that there is a pass/fail on it, if that makes sense.

Like as far as the information received, was it

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received and were we passing it on, pass aka approve, to go to the next level for review --

Q. Uh-huh.

A. -- that would be a review.

Q. Okay.

A. You know, so I don't think in that stance, I don't think it means the same.

Q. Okay.

A. Does that make sense?

Q. Yes. That --

A. I'm like I don't think that means the same thing.

Q. And so -- yeah. One of -- so you and I think it was Emily Raad, you said, were doing the first reviews.

A. Yes.

Q. You didn't make recommendations?

A. No. We -- well, I guess we made notes --

Q. Uh-huh.

A. -- on what we found and the information that we saw. And it was brought forward to a group. And, again, the groups varied so I couldn't tell you for sure who was who and which certificates went where.

But then after they were reviewed, we would have to get more information.

Q. Uh-huh. Okay. And so when you say notes, did you and Emily provide -- did you do written notes?

A. I don't think so. I think -- I don't believe they were. I think that all notes that we did were on like Teams calls --
Q. Okay.
A. -- I think. And --
Q. So when you say like notes were on Teams calls, I'm somewhat familiar with Teams. There is like a function where you can type in notes --
A. No. We didn't type in notes. Like we were just on a Teams call. And so like we did the first review. We would be on a Teams call. We would give the information that was outlined -- or at least -- not even outlined basically. We would say -- like example would be we received two affidavits, this, this, and this. Contains this. And then we would get feedback on what we would need to do next.
Q. Okay. Okay.
And so would it be better to say, instead of notes, perhaps oral reports?
A. Well, I don't know if you can even -- well, I mean, I guess yes, we verbally talked to each other about it. But there was no report.
Q. Yeah.
A. You know what I mean? Like there was nothing -- or at least as far as I know, I don't believe that there is

writing to it.
Q. Okay. Okay.
A. There was just an oral, hey, we have a Teams call in 10 minutes. We need to talk about where you're at on this review.
Q. Okay.
A. And there were several of those phone calls before it would go on to the next group.
Q. Uh-huh. Okay.
And do you recall who were the next people in the next group?
A. Like I said, it varied. Sometimes there were four. Sometimes there were five. Sometimes -- gosh, sometimes I think -- I'm not sure. I'm not sure.
Q. Okay.
A. But I always -- I know that there were always higher individuals --
Q. Uh-huh.
A. -- than Emily and I. And the decisions were not made at our level.
Q. Okay.
Let's go back to the interrogatories, which I believe are Exhibit 1.
A. Oh, there it is. Okay.
Q. I want you to turn to Interrogatory No. 12. In this

Interrogatory No. 12, I asked you to identify all persons in the Department who have defined the term "operational". And I guess do you remember providing this answer?
A. No. I mean, I remember talking to Tamara, yes.
Q. Okay. What is a lexicographer?
A. No idea.
Q. Okay. I don't know either.
A. I'm like I really don't know. I can Google it. You want me to Google for you?
Q. What did you mean when you said nobody in the Department actually defines the term "operational"?
A. I thought that the term "operational" was defined by the admin. rule in law. I thought.
Q. Uh-huh.
A. And that would be how I -- and I guess and maybe I -- it's been so long since I've been in it, I guess I don't know that the Administrative Rule and law defines it either.
Q. Uh-huh.
A. But at the time that is what I was thinking, is that it was outlined by the Administrative Rule.
Q. Yeah. The Administrative Rule just says that they must become operational within one year. So it does not -- the rule doesn't have a definition of what

"operational" meant.
And so I was just -- but it was your statement here that --
A. I just think "operational" can mean so many things to so many different people, and I don't know that it is truly defined.
Q. Okay. Yeah. And so in 13 and 14 here I asked for the Department's definition of "operation". And your answer was just to refer back to Interrogatory No. 12. But Interrogatory No. 12 doesn't provide a definition or interpretation of "operational," does it?
A. No.
Q. Okay.
Okay. And then I wanted to turn to 16(a), which is on the next page. I asked who reviewed the extension request, and your answer was primarily you. I want to -- now that we've gone through this deposition, is it still accurate to say that you were primarily the person who did the reviews of the extension requests?
A. I guess they all landed -- it doesn't matter which extension request it was. It landed on my desk at some time. So if they're looking at that as me being the primary, then I am the primary --
Q. Okay.
A. -- no matter what.

Q. Okay. And you don't recall if Emily Raad also reviewed all of --

A. I don't know if she reviewed all of them. I know I reviewed all extension requests that came in.

Q. Okay.

A. Not just Puffy's but all of them.

Q. How many extension requests were there? Do you remember?

A. I don't remember. Well, and not helpful because when you say "extension requests," there were other locations that also had lotteries that had extension requests.

Q. Uh-huh.

A. So any extension request came across my desk so not just Rapid City.

Q. Yeah.

A. So, no, I -- I don't know.

Q. My recollection is that the only places that had state-run lotteries were Rapid City and Yankton and then, I believe, North Sioux City. Is that your recollection?

A. I'm not sure.

Q. Okay.

A. I am not sure.

Q. Do you remember reviewing any extension requests from a community other than Rapid City?

A. Uh-huh.

Q. Okay.

A. Yes.

Q. Do you remember what community?

A. I want to say -- it's North Sioux City, South Dakota --

Q. Is it cultivation facility --

A. -- isn't it?

Q. Yeah, cultivation facility, North Sioux City. Does that sound right? I'm not going to hold you --

A. I don't know. I -- I don't know. But I know that I did. But it's been so long, I'm really sorry, I don't know.

Q. Okay. Okay.

And then when you said there was no ultimate person who made the decision, it was a team decision to provide denials, who was the team that made that decision?

A. That would have been the medical cannabis team, which would have involved Melissa Johnson, Emily, Chris Qualm, Jen Seale, Emily Raad. I feel like I'm forgetting -- I don't know if -- I don't remember if legal was on some of those. Because we may have had -- I'm not sure. I'm not sure.

Q. Would it be fair to say, looking at Exhibit 2, that ultimately the buck stopped with the administrator as to whether to approve or deny?

A. Yes.

Q. Okay. And so the administrator at that time would take all the team's input into it and then make a decision, to your knowledge and recollection?

A. I don't know that I can -- I can attest to that because I wasn't involved in those.

Q. Uh-huh.

A. So I don't know for sure what those conversations looked like. I -- so I'm not sure. I know that -- and I guess I also maybe shouldn't say that it ultimately was up to the administrator because it stopped with me, it stopped at the administrator. But I don't know what their steps were.

Q. Okay.

A. Because that was -- that was after me. So I don't know.

Q. Okay. And then looking at paragraph C, I asked what criteria or checklist or rubrics were used in the interrogatory and you said there was a checklist utilized. Is that checklist Exhibit 2?

A. I'm not sure.

Q. Okay.

A. I know this -- I know Exhibit 2 came into play with it, yes, but I don't know that this was the entirety.

Q. Okay. Is there another checklist out there that doesn't look like that?

A. I don't know that -- it goes back to the initial application checklist. That was when they did their initial application to do -- to open a dispensary when they do the initial application --

Q. Uh-huh.

A. -- and the checklist that is there.

Q. Okay. So the initial application for a dispensary license?

A. Yes. And that big checklist that's on there.

Q. Yeah. Okay.

A. That -- that would be the other one that I recall.

Q. You didn't use that to make a review --

A. Not an extension.

Q. Yes.

A. But it was -- it was in there. Like it would get included to show that they had met the requirements.

Q. Okay.

A. Does that make sense?

Q. Yes.

A. Okay.

Q. So did the Department have like folders for each extension request that included the initial application checklist?

A. I know that there were folders with the initial applications when I was there. I don't know what that looks like now.
Q. Okay. And then going back to (d) here, I asked what if any facts was the Department looking for? And you just said looking for facts that would determine if the criteria set out was satisfied.
Do you have any specific facts that the Department looked for when it was, you know, denying Puffy's or approving a different location?
A. I don't remember.
Q. Were there -- outside of this checklist on Exhibit 2, were there specific facts that the Department was looking for, to your knowledge?
A. Outside of -- I don't know.
Q. Okay.
(Discussion off the record.)
Q. (BY MR. CWACH) I guess in your review was there any particular equipment that you were looking to see if Puffy's had ordered in order to meet the requirements of the rule?
A. I guess at that time I don't -- I don't really recall. I guess in looking at the information today and the affidavits and the information provided and trying to relate back to that time two years ago, I think that I --

I would have looked -- and even now I think I would look for contracts.
Q. For contracts for equipment?
A. Whether it's equipment or like contracts for start dates, contracts for orders, those types. Because I don't see any of those in here but --
Q. Yeah.
A. I don't know.
Q. I mean, do you -- I mean, but you would agree that Mr. Cerone, Mr. Kruse, and Mr. Casey and their companies, I mean, they all said they were hired to do this; right?
A. Yes. These all state that they were hired to do this and that they said that they were going to do this, but that doesn't give me definite start times.
Q. Okay.
A. I guess that -- even -- I don't know if that entered in then, but for me today it enters in as to there's no dates for these. And so they had a year. And if they couldn't get them up and going in a year, then when did they actually enter it or when did it start or when did any of the orders start.
Q. Uh-huh.
A. Were there orders that started? Which we see he's like, this isn't how I do this. But I also feel like in looking -- in reviewing the information today, I feel

like this was looking at building seven and not building one.
Q. Uh-huh.
A. And I would -- I don't know, but I think that this is off of building one. And if you have to look at it as building one and one independent instead of seven, that there's not enough information.
Q. Okay. So I mean, if Mr. Cerone said that he was uncomfortable committing to a start date because of all the construction supplies and labor shortage issues on any of the projects, would that be relevant? Or would that satisfy, I guess, your concern of needing to find a start date?
A. Well, I guess I don't -- I don't know because that -- I mean, because now you're talking here now today.
Q. Yeah.
A. And this is two years ago. So you know what I mean? I don't know that -- I don't know. I don't know how to answer that.
Q. Okay. Yeah. And so you don't know if that would have been --
A. I don't know if it would have made a difference or not made a difference. I don't know what weight any of it would have played.

Q. But you would agree if he enters into a contract that says he has to start on March 1 and he can't, he's exposing himself to some liability there; right?
A. Probably.
Q. Yeah. And I mean they were working on two dispensaries, right, at the time for Puffy's?
A. Right.
Q. Uh-huh.
A. But would it look different if they were individual dispensaries instead of seven dispensaries? I guess I don't -- I don't know. I don't know that.
Q. Yeah. So I mean going back to that, because that's something that's come up a lot, was it the Department's position that Cerone and all these other contractors should have been like putting the walls up in 910 Main and then going to Biernbaum Avenue and putting the walls up there and then going to --
A. I don't know. I can't answer that because I don't know -- I don't know if the other -- other locations had the same contractors. I -- I don't know.
Q. Uh-huh.
A. I don't know -- earlier, like you had brought up Genesis Farms. I don't know if they used the same contractor. I don't know if the other locations that had won in the lottery, I don't know if they used -- if they

got more than one, did they use the same contractor or did they have different contractors? Like I -- I don't know that I can answer those.

Q. So just let's take that. Let's say, okay, they're supposed to put the walls up in each -- all seven spots. And then is it kind of because they're supposed to be individual is Puffy's supposed to -- is the electrician supposed to go and do the wiring at each spot, at one spot?

A. I don't know.

Q. Yeah. That's where we start --

A. That's where, I think, that it comes into that's not -- that's not my choice.

Q. Okay. And then --

A. But I think that if you have to treat everybody the same across the board and you're looking at one individual, then you have to look at it as an individual and not as seven separate projects within one.

Q. Yeah. And so -- but if three general contractors, you know, turn around and say like "We don't have the labor to do seven at one time in Rapid City," I mean, is the response -- I mean, how did the Department evaluate that statement? Because that statement was made by three contractors.

A. Yeah. I don't know.

Q. Okay.

Okay. I wanted to turn to Request For Admission No. 30. For No. 30, I asked you to admit that Puffy's had oral contractors -- and I didn't ask you. I asked the Department, but you answered for the Department. And I asked the Department to "Admit that Puffy's had oral contracts with contractors, subcontractors, and suppliers to provide equipment and services necessary to become operational." And your answer was that "The Department does not have sufficient evidence to be able to state that there are such contracts."

What additional evidence could Puffy's provide to the Department so that it could help the Department answer this question?

A. I don't know.

Q. Okay. And if we turn to Request For Admission 35 -- or excuse me -- 34, which is on page 113, I asked for you to -- I asked the Department to admit there were wait times for security grade windows of 12 to 14 weeks. And your answer was that "It is unclear what is meant by the term 'security grade.'"

What additional information could Puffy's provide to the Department to help better answer that question -- or define that term?

A. Well, I mean, security grade windows, what are you -- what is that? I'm like I don't know what "security grade" means. Why is that important?

Q. Well, I think Administrative Rules require for a certain level of window.

A. And that's probably in the initial application.

Q. Uh-huh.

A. Could be. I don't know.

Q. In your answers to 36, 38, 42, 43, 44, 45, 46, 47, 48, and 49, the Department uses the same phrase, and that is that you admit only that the requester asserts that this is the case.

So, for example, in 36 you say you admit that only the requester asserts that the wait times for some critical path components was 50 to 60 weeks.

What efforts did you do, answering these Requests for Admissions, on behalf of the Department to verify that the wait times for critical path components was 50 to 60 weeks?

A. I didn't verify 50 to 60 weeks. It was stated in the information provided.

Q. Uh-huh. And would it -- for each one of those instances where that phrase is used in these Requests for Admission, is that -- did you do anything to verify for your answers to the remaining ones, 38, 42 through 49?

A. For these I went through the documentation provided.

Q. Okay. And based on the information provided, you did not admit or deny it, correct, on behalf of the Department?

A. I don't have the ability to admit or deny the extension.

Q. Well, I'm talking about the question.

A. Oh, the questions. This is so long ago I need to read them quick. Sorry.

Q. It's fine. So, yeah, it's 38 and then that answer is used again in your answers to 42 through 49.

A. Yep.

Q. And I just want to know, I mean, when there's that -- you admit only that we say that. Did you do anything to verify whether what we were asking you to admit was true or not?

A. I admitted based on the documentation provided.

Q. And so just to clarify, though, you're not admitting these facts are true; right? You're admitting that Puffy's says that?

A. Right. I'm admitting that Puffy's is providing the information.

Q. So there was no effort to --

A. I can't say that there was no effort to collaborate or to verify any of the information. Can I tell you I solely did it? No, I can't.

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Q. Okay. And you're the one who the Department asked to answer these interrogatories; correct?
A. Correct.
Q. Okay. So are you -- in these answers are you denying them?
A. Am I denying what?
Q. The statements that Puffy's is asking you to admit.
A. I don't -- I don't think that I -- I guess I didn't take it that I was denying them. I was taking it that it was the information that I found within their documentation.
Q. Okay.
Okay. Going to 51, Request For Admission 51 on page 116, I asked the Department to admit that Puffy's engaged, either by written contract or oral contract, 43 contractors and subcontractors and other service providers as listed on attachment 6, which is --
A. The initial page with all the bulleted --
Q. Yes.
A. Yes.
Q. This page here. It's the last page of Exhibit 4.
And your answer was that "Puffy's did not provide the Department with this documentation of written or oral contracts with all of the contractors listed."
Are you saying that Puffy's had to provide the terms

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of the contracts and that the Department needed to review all the terms of Puffy's private contracts with independent contractors?
A. I'm just saying that we did not receive copies of them.
Q. Okay.
A. It's not up to me whether they -- we didn't receive them.
Q. And so the Department disputes that Puffy's has oral contracts -- or written contracts with those individuals listed on the last page of Exhibit 4?
A. I don't know that they're disputing it. I'm just saying I can't -- I can't confirm an oral agreement. Yes, they are listed. I can see what the statement is. But I have nothing else. That's all I'm saying.
Q. Okay. And so what further information could -- I mean, we provided affidavits for some of these contractors, right, that said they had contracts; right? Such as Century Construction Company. I mean, if we went and got affidavits from each one of these individuals that, yes, they had oral contracts with Puffy's to do these things, or written contracts, would you then feel more confident about being able to admit or deny number 51?
A. I guess I don't know right now.

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Q. Okay. I want to talk a little bit about the location 910 Main Street. And so if you would turn to tab 9.
First of all -- and I know you said on several occasions that this was two years ago and it's hard for you to remember, and I respect that. Do you remember, with this particular location, reading any information from Puffy's about how an issue of whether it was 500 feet away from a park created a delay on 910 Main Street?
A. Not that I can recall right now.
Q. Okay.
A. I wasn't -- I mean, if there was, I wasn't provided anything prior to this to refresh my memory at all so --
Q. That's fair.
I don't know that I have it either on me right now so... but this document on page 28 here, this is a Reno James Engineering invoice; correct?
A. Yes.
Q. And it is dated February 7, 2023; correct?
A. Yes.
Q. And it's for the mechanical, electrical and plumbing, engineering, construction, and design service for 910 Main Street; right?
A. Uh-huh.
Q. Okay. I guess for this specific location, based on

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this date, I was curious why the Department issued the extension request denial since it's very evident from this and from the other statements that they are about to build and start construction on this spot. Do you know why 910 in particular was denied?
A. I do not.
Q. Okay. And looking at Puffy's and all the other ones, is the fact that like maybe they were turning dirt, knocking down walls or about to do that, did that weigh into the Department's consideration as it reviewed these extension requests?
A. Okay. Say it again. Sorry. I'm like say it again.
Q. Yeah. The fact that like for these locations --
A. Uh-huh.
Q. -- and I'm talking about just in general --
A. Okay.
Q. -- the fact that maybe evidence was submitted by the applicant that they were knocking down walls or putting up 2-by-4s or about to do those things, did that have any relevance to --
A. Are you asking --
Q. -- your consideration?
A. Are you asking if that information was provided?
Q. Well, did you -- if it was, was it important?
A. So I -- I guess I think what you're asking -- you're

stating, just for an example, so let's just take that this random certificate that was one -- it's not one of Puffy's, it's not one of anybody's but -- and they're requesting an extension request but they send in pictures and documentation that they're in the middle of still like gutting their building --

Q. Uh-huh.

A. -- would that be taken into consideration?

Q. Uh-huh.

A. I guess I can't answer as to then or now because I'm not with the program but I think it would make a difference.

Q. Yeah. I mean, when you did review these?

A. I would think that it would make a difference.

Q. Okay. Because, I mean, for this particular location, 910 Main Street, I mean, we submitted this invoice. And then we also submitted statements from our contractors that they were going to have this done by May 1 of 2023, which was only, you know -- March is when we needed to renew. So that -- I mean, they were lined up and ready to go on this one.

And so I've just never understood, and I was hoping you might be able to provide some insight specifically to that location, as to why a denial was still given?

A. I cannot.

Q. Can't recall?

A. No.

Q. And with this specific location -- with this specific location, do you actually remember issuing a renewal for it?

A. For?

Q. 910 Main Street.

(Witness examines document.)

A. I believe this is the one that the renewal was issued and it was issued incorrectly to the wrong address and it was --

MS. LEE: What document number are you looking at right now -- she's looking?

MR. CWACH: Page 62. Sorry, Tamara.

MS. LEE: Thank you.

A. And the renewal was declined within minutes of it being approved because the approval was actually -- the certificate was supposed to actually be on -- I believe maybe it was on the open location.

Q. Okay.

A. But yes.

Q. Thanks.

And so it's your recollection that it was accidently sent and then immediately deleted?

A. It wasn't -- I don't think it was deleted. I think it was denied.

Q. Yeah.

A. So there was a step in there that there was a certificate sent and then it was revoked.

Q. Yeah. So on page 66, it was sent on March 10, and then on March 15, at least on Puffy's side of the Excel program, it says there was an amendment in progress and it was accidently issued?

A. It was accidently issued due to the certificate needing to be issued on the current location.

Q. Do you know how that mistake occurred?

A. Actually, it was during a training day so, yes, I know how it occurred.

Q. Okay. How did it occur?

A. Emily was -- I was training Emily on how to issue certificates so that establishments would receive them.

Q. I guess before you did that amendment in progress notation, did you consult with anybody on what should be done on this particular location?

A. I would have had to go to those above me. And so at that time I don't know who that was. I -- I -- I could get it wrong, but I believe that Chris was still there.

Q. So it was either Chris or his successor?

A. I believe so.

Q. Okay. And did Chris or the successor just instruct you to take the license back?

A. Correct. And just to make the note.

Q. Okay.

A. Make the note in the system.

Q. Was there any discussion about whether you could legally do that, to your recollection?

A. Well, there wasn't -- if there was, it wasn't a discussion with me.

Q. Okay.

A. I was just told what needed to be done.

Q. Did the Department of Health, when it was doing these operation extension requests -- and I may have already asked this so I apologize, but did the Department of Health, as it was reviewing these extension requests, create a list of equipment that was necessary for a dispenser to be operational?

A. Not that I'm aware of.

Q. Okay. You didn't use a list to do any of your reviews?

A. Not that -- no.

Q. Okay. And would that also be true for services?

A. No. I mean, there's no list at all --

Q. Yeah.

A. -- for either one. Correct.

Q. Did the Department consider cannabis and cannabis

products to be supplies under the Administrative Rule?
A. **I can't answer that. I don't know.**
Q. Okay. It wasn't something that you considered in your reviews?
A. **Well, no. Because I guess -- no. No.**
Q. Okay.
Did the Department give any weight to the fact that the City of Rapid City granted extension requests to become operational to Puffy's?
A. **I don't know.**
Q. Okay. You didn't give it any weight?
A. **I don't think that it was anything -- because, to my knowledge, Rapid City gave everybody approval for extensions.**
Q. Uh-huh. They did. And that just wasn't -- the fact that the local government --
A. **They didn't have the same application process as the Department of Health to become a dispensary so I don't know that it was looked at the same.**
Q. Okay.
A. **So I don't think I can answer that.**
Q. Okay.
Ms. Shippy, have you lived in Pierre the last 10 years?
A. **No.**

Q. Okay. Where did you live before Pierre?
A. **Winner.**
Q. Winner. Okay. What brought you to Pierre?
A. **A State job.**
Q. And so since you've been in Pierre, have you basically been working for the State of South Dakota between the Department of Social Services and the Department of Health?
A. **I've always worked for the State of South Dakota, yes. I went from the Department of Social Services to UJS.**
Q. Okay.
A. **And then to DOH and then back to DSS, yes.**
Q. Okay. What did you do for UJS?
A. **I worked for the specialty courts.**
Q. Oh, okay. Good for you. Those courts are really important.
A. **They are --**
Q. I bet it's tough to work for.
A. **-- very, very, very important.**
Q. What's your date of birth?
A. **5-11-77.**
Q. And have you ever been involved in any other lawsuit?
A. **No. No. I don't think so.**

Q. And you said you took a deposition in one case.
A. **I worked -- it was while I was with the Child Protection Services. So sometime between 2003 and 2013.**
Q. Okay. Okay. Have you been convicted of a felony in the past 10 years?
A. **No.**
Q. And then what is your highest level of education?
A. **I have a bachelor's degree.**
Q. In?
A. **Business admin.**
Q. Okay. And where did you get that?
A. **Sinte Gleska.**
Q. Okay. Is that on OLC, Oglala Lakota College?
A. **It's in Rosebud Mission.**
Q. Rosebud Mission?
A. **Yep.**
Q. Ms. Shippy, I don't have any other questions for you.
MR. CWACH: Tamara, did you have any questions for Ms. Shippy?
MS. LEE: I do not.
MR. CWACH: Okay. I'll let you, Tamara, advise Ms. Shippy as to whether she wants to read or waive her rights to read since she's your witness -- or I guess on your side.

MS. LEE: Okay. Cody, as you've obviously realized, the court reporter has been transcribing this entire interaction and will create a transcript of it. You have the right to read that, proofread it, make sure everything is done accurately. Or you can waive the reading of that.
THE WITNESS: Okay. I'll read it.
(The deposition is concluded at 12:40 p.m.)

STATE OF SOUTH DAKOTA)
:SS CERTIFICATE
COUNTY OF SULLY)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that the witness was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth relative to said cause and that the foregoing pages 1-109, inclusive, are a true and correct transcript of my stenotype notes made during the time of the taking of the deposition of this witness.

I FURTHER CERTIFY that I am not an attorney for, nor related to the parties to this action and that I am in no way interested in the outcome of this action.

In testimony whereof, I have hereto set my hand and official seal this 13th day of May, 2025.

/s/ Cheri McComsey Wittler

Cheri McComsey Wittler
Registered Professional Reporter
Certified Realtime Reporter
and Notary Public

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EXHIBIT
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4

President Pro Tempore Lee Schoenbeck, Chair | Speaker Spencer Gosch, Vice Chair
Reed Holwegner, Director | Sue Cichos, Deputy Director | Justin Goetz, Code Counsel
500 East Capitol Avenue, Pierre, SD 57501 | 605-773-3251 | sdlegislature.gov

South Dakota Legislature
Legislative Research Council

September 27, 2022

Ms. Doreen Kayser
Department of Health
600 East Capitol Avenue
Pierre, South Dakota 57501

Dear Ms. Kayser:

The Legislative Research Council received proposed rules from the Department of Health on September 9, 2022. In accordance with SDCL 1-26-6.5, the Council reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommended corrections.

Please find attached:

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

In addition to the recommended corrections to form, style, and clarity included in the proposed rules, the Council identifies the following issues regarding legality:

- ARSD 44:90:03:16 proposes to allow the Department to extend the validity of a registration certificate of an establishment that is unable to become operational within one year of receiving a certificate. The General Authority citation only provides that the Department promulgate rules to "[establish] a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government". The citation does not provide authority that goes beyond establishing the scoring system for competitive applications and the factors the system must analyze. Moreover, the provided citation does not appear to authorize the Department to establish an expiration for a registration certificate, including consideration for whether the establishment is "operational" or not. Statute instead appears to envision the Department's ability to suspend or revoke based on negligent or knowing violations. *See* SDCL 34-20G-80. The extension of a registration certificate also appears to conflict with ARSD 44:90:03:02 that a renewal application for a registration certificate is required every twelve months.
- ARSD 44:90:13:02 states that "[a] qualifying medical condition shall be recognized through rules promulgated by the department pursuant to chapter 1-26." A rule cannot provide the authority for promulgating additional rules. Language is proposed to address this concern. Additionally, the cited General Authority and Law Implemented statutes direct the Department to promulgate rules including public notice and hearing for the opportunity to comment on a petition to add a medical condition. Neither section in chapter 44:90:13 lays out that process. While the current reference to recognize a condition through the rule-making process is perhaps intended to satisfy the opportunity for public participation, the statutes clearly indicate that the Department is to promulgate rules *including* public notice and opportunity to comment on the petition before the Department approves or denies it. The current rule only provides for any possible public comment *after* the petition is approved by the department. It would therefore appear that more provisions are needed regarding the procedure to recognize debilitating medical conditions.

Under SDCL 1-26-4(4), the Department is required to adopt the recommended corrections, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination.

Please do not hesitate to contact me if you have any questions or if you would like to discuss any of the recommendations.

Sincerely,

Justin J. Goetz
Code Counsel

Enclosures

CC: Joan Adam, Secretary, Department of Health

Legislative Research Council
Proposed Rules Research Review Checklist

Date Proposed Rules Received by LRC:	September 9, 2022
Date Public Hearing Scheduled:	October 11, 2022
Proposed Rules Reviewed by:	Anna Madsen
Fiscal Note Reviewed by:	Joey Knofczynski

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

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

KEY

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

1. Verify the rules packet includes (SDCL 1-26-4(2)):
   a. The proposed rules: AM
      i. Any incorporated material: N/A
   b. Notice of hearing (Form 6): AM

2. Verify all documents have correct citations to the proposed rules provided in the packet. AM

3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. (SDCL 1-26-4(1)) AM

4. **If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.**

5. Review proposed rules for:

   a. Form, style, and clarity in accordance with the Administrative Rules Drafting Manual (including all existing language, not just amended language). AM*

      i. Verify the most recent rule is used. (Manual, pg. 5) AM

      ii. Verify all cross-references in text are current. (Manual, pg. 6) AM

      iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. (Manual, pg. 6) AM

      iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. (Manual, pg. 7) AM

b. Legality, including:

i. Verify the General Authority statute provides rule-making authority (i.e., ". . . shall/may promulgate rules to . . ."). (Manual, pg. 8) AM*

ii. Verify the Law Implemented statute identifies the policy intended to be implemented. (Manual, pg. 8) AM*

iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. (SDCL 1-26-6.6; Manual, pg. 11) N/A

For incorporated material that is not CFR, USC, Fed. Reg., Stat.:

1. Verify the proposed rule includes a reference note identifying the publication by title, date of publication, author, version/edition and where and at what cost the publication may be obtained. N/A

2. Verify there is a statement attached to the material that includes the agency's name, the section number of the rule that incorporates the material, and the date the proposed rule was served on the LRC. N/A

iv. Verify the proposed rule does not incorporate or reiterate any statutory language other than definitions, and that the agency is not publishing or distributing statutory material. (SDCL 1-26-6.1) AM

v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. (SDCL 1-26-6.10) AM

vi. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ 23(9), 26) AM

vii. Verify the rule does not allow the agency to circumvent the SDCL ch. 1-26 rulemaking process (e.g., authorizing it to make its own rules). (*See* SDCL 1-26-4, 1-26-6.5, 1-26-6.6, 1-26-38(2)) AM*

viii. Verify the rule does not contain the agency's internal processes or policy (e.g., personnel policies) or other matter that is not defined as a rule per SDCL 1-26-1(8). AM

ix. Verify the rule does not incorporate a future rule or regulation, or incorporate future amendments to an existing rule or regulation, of another state or the federal government. (*State v. Johnson*, 84 S.D. 556, 173 N.W.2d 894 (1970)) AM

x. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. (Manual, pg. 8) AM

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

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

b. Verify the notice contains a narrative description of the effect of the proposed rule. AM

c. Verify the notice contains the reason for adopting the proposed rule. AM

d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing. AM

e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented. AM

f. Verify the notice contains a deadline for submission of comments. AM

i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. (SDCL 1-26-4(6)) AM

ii. If the authority promulgating the rule is a part-time citizen board, Commission, committee, or task force, ensure the deadline is at least 72 hours before the public hearing (not including hearing day). (SDCL 1-26-4(6)). N/A

g. Verify the notice contains information for how the public may obtain copies of the proposed rules. AM

7. For any proposed rule regarding professional or regulatory examination or licensing that is to be published in pamphlet form, review the pamphlet for style, form, and clarity in accordance with the Administrative Rules Drafting Manual. (SDCL 1-26-11) AM

Reviewed by Code Counsel on 9/27/2022

Legislative Research Council
Proposed Rules Fiscal Note Review Checklist

Date Proposed Rules Received by LRC:	September 9, 2022
Date Public Hearing Scheduled:	October 11, 2022
Proposed Rules Reviewed by:	Anna Madsen
Fiscal Note Reviewed by:	Joey Knofczynski

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

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

KEY

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

1. Verify the rules packet includes (SDCL 1-26-4(2)):
   a. Fiscal note (Form 5): JPK
   b. Small business impact statement (Form 14): JPK
   c. Housing Cost Impact Statement (Form 16), if applicable: N/A

2. Review proposed rules for:

   i. If the rule increases a fee, verify the agency provided information regarding financial resources available to the agency: beginning fund balance, receipts, disbursements, and ending fund balance for each of the last two fiscal years, as well as beginning fund balance, projected receipts, projected disbursements, and ending balance for current and next fiscal years. (SDCL 1-26-4.8) N/A

   ii. If the rule increases a fee by a licensing board or commission, verify the fee increase is "reasonable and necessary" in accordance with SDCL 1-26-6.9. N/A

3. Review the Fiscal Note (SDCL 1-26-4.2):

   a. Verify the Fiscal Note states whether the proposed rule will have any effect on the revenues, expenditures, or fiscal liability of the state, agencies, and subdivisions: JPK

      i. If there is an effect, verify the Fiscal Note includes an explanation of how the effect was computed? N/A

      ii. If there is an effect on subdivisions, is that effect described? N/A

4. Review Small Business Impact Statement (SDCL 1-26-2.1):

a. Verify if the rule change has any small business impact based on readily available info:	JPK
i. If only INDIRECT, verify that a brief description of the impact is included.	N/A
ii. If DIRECT, review 4.b through 4.h:	
b. Verify the Impact Statement includes a narrative explanation in plain, easy-to-read language.	JPK
c. Verify the narrative explanation discusses the effect of the proposed rule on small business, including the basis for the rule's enactment and why the rule is needed.	JPK
d. Verify the narrative explanation includes an identification and estimated number of small businesses subject to the proposed rule.	JPK
e. Verify the Impact Statement includes the projected reporting and record-keeping required for compliance with the proposed rule.	JPK
f. Verify the Impact Statement includes the types of professional skills necessary for preparation of required reports or records.	JPK
g. Verify the Impact Statement includes a statement of the probable effect on impacted small business.	JPK
h. Verify the Impact Statement includes a description of any less intrusive or less costly alternative methods of achieving the proposed rule's purpose.	JPK

5. Review Housing Cost Impact Statement (SDCL 1-26-2.3), if applicable:

a. Verify that the agency has indicated what building sectors will be impacted by the rule change.	N/A
b. Verify a description of and explanation of necessity for each each standard and requirement is included.	N/A
c. Verify the statement includes the average estimated cost of each standard and requirement.	N/A
d. Verify that contact and estimate information is included for three licensed contractors or building trades professionals.	N/A

Reviewed by Code Counsel on 9/27/2022

Style and Form

CHAPTER 44:90:03

REGISTRATION CERTIFICATES

Section

44:90:03:01 Initial application for registration certificate.

44:90:03:02 Certificate renewal -- Application.

44:90:03:03 Certificate location transfer -- Application.

44:90:03:04 Transfer of ownership.

44:90:03:05 Operating procedures -- Required contents -- All medical cannabis establishments.

44:90:03:06 Cannabis cultivation facility operating procedures -- Additional requirements.

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

44:90:03:08 Cannabis product manufacturing facility operating procedures -- Additional requirements.

44:90:03:09 Cannabis dispensary operating procedures -- Additional requirements.

44:90:03:10 Compliance with local zoning requirements -- Form of certification.

44:90:03:11 Local registration, license, or permit -- Department verification.

44:90:03:12 Deadline to submit initial applications for establishments.

44:90:03:13 No registration certificate revocation -- Department verification.

44:90:03:14 No disqualifying felonies -- Form of certification.

44:90:03:15 Department review of competitive applications -- Scoring criteria.

44:90:03:16 Department awarding of certification -- Tiebreaking procedures -- Notice to unsuccessful applicants.

44:90:03:17 Fees for registration certificate -- Application and renewal.

44:90:03:16. Department awarding of certification -- Tiebreaking procedures -- Notice to unsuccessful applicants. The department shall award certification as follows:

(1) If more establishments apply than are allowed by a local government, the department shall 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 shall 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 shall 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 shall have the opportunity to view, in person or via videoconference, a random drawing to determine the successful applicants. All applicants ~~will~~ must be ranked via the lottery system to establish the order and ~~establish~~ a waiting list.

Any establishment granted a certificate pursuant to this section must become operational within one year of the date of award or the certificate is deemed void and ~~will~~ must be awarded to the next applicant on the waiting list. If the establishment granted a certificate pursuant to this section cannot become operational within one year, ~~then it~~ 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. ~~Such~~ The written documentation ~~should~~

must include the ~~steps~~ action taken by the establishment to secure equipment and services necessary to become operational, ~~as well as~~ and the reason why the establishment is unable to meet the deadline. Upon a finding by the department that, despite the ~~certificate holder's~~ establishment's documented ~~timely~~ efforts to secure all necessary equipment and services, ~~certain equipment or work necessary to operate will not be available or complete~~ the establishment is unable to become operational by the ~~one-year anniversary of the date of award~~ 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 ~~will be~~ for one ~~additional~~ year from the date of expiration of the certificate ~~, meaning the establishment must become operational within two years of the date of the initial award of certificate~~. No further extensions ~~will~~ may be granted.

Commented [AM2]: Clarity: "Timely" could be subjective.

Commented [AM3]: Clarity: Does this need to be further defined?

Commented [JG4]: Clarity: Should this be "up to one year"? Otherwise the rule reads that all extensions must be one year.

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.

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

Law Implemented: SDCL 34-20G-56, 34-20G-72(3).

CHAPTER 44:90:04

ESTABLISHMENTS

Section

44:90:04:01 Change in management -- Duty to report.

44:90:04:02 Corrective and preventive action -- Written procedures.

44:90:04:03	Duty to report criminal activity to department and law enforcement.
44:90:04:04	Co-location of medical cannabis establishments.
44:90:04:05	Lighting.
44:90:04:06	Doors and windows.
44:90:04:07	Placement of security cameras.
44:90:04:08	Recording by security cameras -- Access by department.
44:90:04:09	Storage of camera footage.
44:90:04:10	Alarm system.
44:90:04:11	Agent identification badges to be provided by establishments.
44:90:04:12	Agent identification badges to be displayed.
44:90:04:13	Controlled access -- Verification of identity.
44:90:04:14	Visitor badges to be worn by contractors performing work at a medical cannabis establishment.
44:90:04:15	Operation of agricultural, industrial, or other heavy equipment – Training requirements.
44:90:04:16	Record-keeping -- Use of inventory tracking system -- Training requirements.
44:90:04:17	Security protocols -- Training requirements.
44:90:04:18	Vehicle requirements -- Establishments.
44:90:04:19	Transport manifests -- Form and content.
44:90:04:20	Separate transport manifest required.
44:90:04:21	Storage during transport.
44:90:04:22	Conduct during transport.
44:90:04:23	Transport incident notification.

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

44:90:04:25. Transportation to the Ppublic Hhealth Llaboratory.

44:90:04:11. Agent identification badges to be provided by establishments. A medical cannabis establishment shall provide an agent identification badge to each agent. The establishment shall include on the badge:

(1) The agent's photograph that meets the requirements of § subdivision 44:90:02:04(3), except that the photograph may be as small as 7/8seven-eighths inch by 1one--and 5/32-five-thirty-seconds inches; and

(2) In a plain black font not less than 24 16 sixteen point:

(a) The first and last name of the agent; and

(b) The name of the establishments

Each agent shall display this badge whenever on the premises of the establishment or transporting cannabis or cannabis products.

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

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

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

44:90:04:25. Transportation to the Ppublic Hhealth Llaboratory. A medical cannabis testing facility that is directed by the department to transfer cannabis to the Ppublic Hhealth Llaboratory for testing pursuant to § 44:90:06:08 may transport the cannabis by use of a courier service designated by the Ppublic Hhealth Llaboratory in tamper resistant packaging, or as

Commented [JG5]: Form: There is no period after the citation in the index. Only in the catchline. *See* Manual, pgs. 25-26, 28.

Commented [JG6]: Style: Manual, pgs. 18, 19 - fractions are spelled outy.

Commented [AM7]: Clarity: Shouldn't this be singular?

Commented [AM8]: Clarity: Does it make more sense to add this section to chapter 44:90:06 since it only pertains to testing facilities, and then cross reference the applicable transportation rule sections that are exempted below?

Commented [JG9R8]: Agreed that this makes more sense.

Commented [AM10]: Clarity: SDCL 34-20G-1(5) defines "cannabis testing facility" or "testing facility".

Commented [JG11]: Clarity: Is there a need to define this term, or alternatively, should the proper name be used--"South Dakota Public Health Laboratory." There is a "Public Health Laboratory" in Sioux Falls, for instance, that might otherwise create confusion.

otherwise directed by the ~~P~~public ~~H~~health ~~L~~laboratory. The rules in this chapter pertaining to transport requirements ~~are not required~~ do not apply when ~~the~~ cannabis is being transported to the ~~P~~public ~~H~~health ~~L~~laboratory.

Commented [AM12]: Clarity: It may be helpful to list the sections that do not apply.

Commented [JG13R12]: Clarity: Further, there is a specific provision in this chapter regarding transport for testing purposes--ARSD 44:90:04:21. Would that provision not apply to PHL transport, despite its plain language?

Source:

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

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

CHAPTER 44:90:07

CANNABIS PRODUCT MANUFACTURING FACILITIES

Commented [JG14]: Form: As noted above in the first comment, please strike any chapter indexes where no catchlines are being amended or provisions repealed/transferred, etc., such as this one.

Section

44:90:07:01 Manufacturing practices.

44:90:07:02 Work environment.

44:90:07:03 Cannabis product nonusable.

44:90:07:04 Prohibited manufacturing activities.

44:90:07:05 Extraction -- Approved operating procedures.

44:90:07:06 Generally safe concentration methods.

44:90:07:07 Potentially hazardous extraction methods.

44:90:07:08 Extraction using inherently hazardous substances.

44:90:07:09 Edible cannabis products.

44:90:07:08. Extraction using inherently hazardous substances. Before performing extraction using an inherently hazardous substance, the establishment must have prior physical inspection and written approval by an engineer licensed pursuant to SDCL chapter 36-18A that the establishment's storage, preparation, electrical, gas monitoring, fire suppression, and exhaust systems are adequate for the extraction methods and substances used.

Any extraction method using inherently hazardous substances must be listed in the operating procedures on file with the department and use a substance of ~~99~~ ninety-nine percent or greater purity. The resulting extract must not exceed residual limits for the substance established by the department as part of testing requirements.

Commented [JG15]: Style: Numbers and percentages are spelled out. Manual, pgs. 18, 19.

The following solvents may be used in approved inherently hazardous extraction:

(1) Butane;

(2) Propane;

(3) Acetone;

(4) Heptane; or

(5) Pentane.

The use of any inherently hazardous substance other than butane, propane, acetone, heptane, or pentane requires written approval of the department, upon documentation of the safety and efficacy of the selected method. All flammable gas must be ~~odorized~~ stored and handled in accordance with all applicable safety standards contained in local ordinance, SDCL chapter 11-10, article 61:15, and chapter 20:44:22.

Commented [JG16]: Clarity: Is "prior" a necessary modifier, or "written approval of the department prior to use,"?

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

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

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

CHAPTER 44:90:13

Commented [JG17]: Form: As noted above in the first comment, please strike any chapter indexes where no catchlines are being amended or provisions repealed/transferred, etc., such as this one.

PETITIONS TO RECOGNIZE DEBILITATING MEDICAL CONDITIONS

Section

44:90:13:01 Petitions -- Required forms.

44:90:13:02 Department's decision.

44:90:13:02. Department's decision. The department's written decision to approve or deny a petition shall be issued within ~~180~~ one hundred and eighty days of submission and must include the factors supporting the decision, including whether the written petition, public testimony, written comments, peer-reviewed research, and consultation with practitioners support the following conclusions:

Commented [JG18]: Style: Numbers are spelled out. Manual, pgs. 18, 19.

(1) The proposed medical condition is recognized by the medical profession as a serious and chronic medical condition; and

(2) ~~Treatments currently available for the proposed condition are either ineffective or produce harmful side effects; and~~

~~(3)~~ Medical use of cannabis ~~will~~ is likely to provide therapeutic or palliative benefits that outweigh the risks of cannabis use.

A qualifying medical condition ~~shall~~ may only be recognized through rules promulgated by the department pursuant to chapter 1-26.

Commented [AM19]: Legality: A rule cannot provide authority for promulgating additional rules.

Commented [JG20R19]: Legality: I think Anna is right here. To make it seem less like this language is establishing new authority, instead, the language to the left goes from a language of authorization to a language of limitation. In other words, this language is no longer suggestive of rulemaking authority per se.

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

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

Law Implemented: SDCL 34-20G-26.

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EXHIBIT I

October 2, 2026

Writer's E-mail: tmf@mayadam.net

SENT VIA EMAIL TO: Whitney Brunner, Whitney.Brunner@state.sd.us

On behalf of:
Cannabis Industry Association of South Dakota
27058 S. Southeastern Avenue
Sioux Falls, SD 57108

RE: CANNABIS INDUSTRY ASSOCIATION OF SOUTH DAKOTA – 2026 RULES WRITTEN TESTIMONY

To whom this may concern;

The following is a written summary of the testimony I gave on behalf of the Cannabis Industry Association of South Dakota ("CIASD") at the rules hearing on September 23, 2023.

CIASD applauds the Department for its efforts to work with the industry and safely regulate medical cannabis in the State of South Dakota. We value our camaraderie with the Department and the Department's willingness to work with the industry on solutions to administrative rules that safely and reasonably regulate medical cannabis in the fashion prescribed and permitted by statute.

CIASD possesses three main concerns with the Department's proposed rule changes and will set forth our concerns below. However, accompanying this letter you will find a proposed red-line of the Department's proposed rules which CIASD feels provides a reasonable compromise with the Department's intended goals and industry and legal standards for medical cannabis.

Pre-Rolls

The Department seeks to clarify that pre-rolls shall be subject to the testing procedures set forth in ARSD § 44:90:09:07:01. Importantly, however, the cannabis that is placed into the pre-rolls is already subject to, and undergoes, the testing procedures outlined in that regulation. Requiring that pre-rolls also be tested, after the cannabis within them has already been tested is duplicative and costly to the industry. It is CIASD's understanding that the Department would like to ensure that the non-cannabis components of the pre-roll are also in compliance with the

rules and do not contain harmful chemicals that could negative affect patients. CIASD believes a reasonable compromise to the Department's proposed regulation would be to require that facilities selling pre-rolls provide a "certificate of analysis" for any non-cannabis component of the pre-roll which would include the composition of the non-cannabis component. Accordingly, we have provided sample language for the Department's consideration which would incorporate certificates of analyses for non-cannabis components of pre-rolls.

Decontamination and Pretreatment

It is CIASD's understanding that the Department reads its rules as prohibiting decontamination and/or pretreatment of cannabis prior to testing. The plain language of the rules does not currently prohibit decontamination and/or pretreatment of cannabis prior to testing, and it is somewhat of an industry standard for many facilities to decontaminate and/or pretreat cannabis prior to testing.

Additionally, the proposed rules requiring testing both before and after decontamination and/or pretreatment would be extremely costly to the industry because they would, in many cases, require multiple tests. The testing itself is costly and that cost would unfortunately be borne upon the patient who is purchasing their medicine.

Because under the current rules and as proposed by the Department, cannabis that has been decontaminated and/or pretreated is still permissible to be sold to patients, it is CIASD's understanding that the proposed rules are simply to ensure that patients know whether or not their cannabis has been decontaminated and/or pretreated. Thus, we believe that a reasonable compromise to the proposed rules would be to include requirements for labeling of all decontaminated and/or pretreated product so that the patient is aware that the process has been undergone on the cannabis that patients are purchasing. We have provide proposed language with regard to labeling for the Department's consideration.

Video Surveillance and Viewing of Stored Footage

The provision states that all recordings are subject to inspection by any department employee or law enforcement officer and must be copied and provided upon request. It does not specify when such requests may be made, does not limit the frequency of requests, and does not provide any explicit mechanism for an establishment to seek precompliance review before facing penalties for noncompliance. Under *Patel*, the United States Supreme Court held an administrative search scheme that penalizes noncompliance without affording any opportunity for precompliance review before a neutral decisionmaker is facially unconstitutional. *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015).

ARSD 44:90:04:09's grant of access to any department employee or law enforcement officer upon request, without any temporal limitation or frequency constraint, raises a concern under *Patel*'s certainty-and-regularity prong. *Patel*, 576 U.S. 409. *Patel* held that a scheme fails this prong if it does not sufficiently constrain officers' discretion as to which establishments to search and under what circumstances. *Id.* ARSD 44:90:04:09, as existing and as proposed, does not specify when requests may be made, how frequently, or what standard must be met before a request is issued. This open-ended grant of access, is constitutionally vulnerable, to say the least.

Accordingly, CIASD has proposed a new section into administrative rule to address the constitutional concerns it possesses. The provision would require that the Department notify facilities when they intend to view video surveillance, and provide the facility with their basis for doing so. Such provisions address the issues set forth above and demonstrate a reasonable compromise between the Department's legitimate basis to view live and stored footage with the facilities' Constitutional rights.

We thank you for your consideration of my comments and proposed language. I welcome an opportunity to meet with the Department if anyone has any questions.

Sincerely,



TERRA M. LARSON

Registered Lobbyist for the Cannabis Industry Association of South Dakota

CIASD: PROPOSED AMENDMENT REGARDING PRE-ROLL COMPOSITION

44:90:09:07.01. Requirements for samples of cannabis and cannabis products.

With the exception of pre-rolls, 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.

For pre-rolls, the cannabis contained within the pre-roll shall be tested in accordance with the procedure set forth in this section. Upon request from the department, the facility manufacturing the pre-roll shall provide the department with a verification from the manufacturer of any non-cannabis component of the pre-roll certifying the composition of any non-cannabis component of the pre-roll, or a

verification of independent testing of the non-cannabis components of the pre-roll from a certified testing facility.

CIASD: PROPOSED LANGUAGE REGARDING DECONTAMINATION OR PRETREATMENT

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~~.

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.~~

(6) All cannabis and cannabis products that are subject to any type of decontamination or pretreatment, either prior to or after initial testing under § 44:90:09:01 or research and development testing, must include labeling on the packaging to the consumer that the product was remediated.

Please note, the above language could also be placed in its own section, after § 44:90:09:11.

CIASD: PROPOSED LANGUAGE REGARDING VIDEO

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.

CIASD suggests a new section 44:90:04:08.01, after section 44:90:04:08 to read as follows:

The department may access, review, or continuously monitor the live video surveillance footage or stored video surveillance recordings of an establishment upon a showing of probable cause that a violation of these regulations, statute, or a criminal offense has occurred, is occurring, or is about to occur. Prior to accessing, reviewing,

or continuously monitoring the live video surveillance footage or stored video surveillance recordings the department shall provide notice to the establishment in writing, which articulates manner in which the department intends to view the video surveillance and the department's rationale for viewing the video surveillance.

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

(3) 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.

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

605 Cannabis LLC

EXHIBIT J

Written comments on proposed amendments to ARSD Article 44:90

Submitted to the South Dakota Department of Health

Date: September 30, 2026

Re: Medical Cannabis Administrative Rules, ARSD Article 44:90

605 Cannabis LLC submits the following written comments to memorialize and supplement the comments we provided during the Department's stakeholder meeting. We appreciate the opportunity to provide practical feedback on rules that directly affect transportation, product development, and labeling.

1. Safer options for long-distance transport

Rule: ARSD 44:90:04:22, Conduct during transport

Current rule

ARSD 44:90:04:22 currently limits stops during transport and prohibits an agent from removing cannabis or cannabis products from the vehicle before arrival at the destination listed on the transport manifest, except under exigent circumstances.

Requested change

We ask the Department to allow 2 additional options for long-distance transport.

Overnight layover at a licensed establishment

If a shipment will not reach its destination the same day, the transporting establishment should be allowed to use the layover function available in METRC and temporarily store the shipment overnight at an SDMCP-licensed dispensary, cultivation facility, manufacturing facility, or cannabis testing facility.

During the layover, the shipment would remain:

- documented as an active transport in METRC;
- secured in a locked area within the licensed establishment; and
- under required video surveillance.

The layover facility would only provide temporary secure storage. It would not take ownership of the shipment, receive the product into its inventory, or remove the inventory from its shipping container.

Handoff between approved drivers and vehicles

Establishments should also be allowed to use METRC functionality to document a change in transporter and vehicle during an active transfer.

A shipment could be handed from one approved driver and vehicle to another at an SDMCP-licensed establishment in an area covered by video surveillance, including exterior cameras. The shipment would remain secured and be transferred directly between approved transport vehicles.

Proposed rule language

Add the following permitted stops:

> (5) For a documented handoff between authorized transport agents and vehicles at a medical cannabis establishment, provided the handoff occurs under the establishment's video surveillance system and is documented in the inventory tracking system;
> (6) For a documented overnight layover at a medical cannabis establishment when the shipment will not reach its destination the same day, provided the cannabis or cannabis products remain in their shipping container, are stored in a locked area under video surveillance, and the layover is documented in the inventory tracking system.

Amend the existing restriction on removing product from the vehicle to read:

> An agent may not remove cannabis or cannabis products from the vehicle until arrival at the destination listed on the transport manifest, except under exigent circumstances pursuant to § 44:90:04:23 or as permitted under subdivisions (5) and (6).

Reason for the change

Both options would improve the health and safety of establishment drivers transporting cannabis across South Dakota.

Long delivery routes can require drivers to remain on the road for very long periods of time. An overnight layover would allow a driver to stop for the night while the shipment remains secured inside a licensed, locked, camera-monitored facility. A documented handoff would give establishments another option by allowing a second approved driver and vehicle to complete the remaining portion of the route.

METRC already provides tools to document these transport activities. We ask that the rules allow establishments to use those tools while maintaining security, surveillance, chain of custody, and inventory tracking.

2. Definition of a cannabis beverage

Rule: ARSD 44:90:01:01(10)

Current definition

> “Cannabis beverage,” a liquid edible cannabis product with a concentration of less than one milligram of delta-9 tetrahydrocannabinol per ounce of liquid.

Requested change

> “Cannabis beverage,” a liquid edible cannabis product intended for consumption as a beverage, excluding a cannabis tincture, cannabis oil, or concentrated liquid product intended to be diluted before consumption.

Reason for the change

The current definition ties the definition of a cannabis beverage to the amount of liquid in the container rather than the allowable THC serving. A 10 mg serving in a 12 oz beverage fits the current definition at about 0.83 mg THC per ounce. The same 10 mg serving in an 8 oz beverage is 1.25 mg per ounce and does not.

ARSD 44:90:10:05 already allows a single-serving beverage containing up to 10 mg THC and a multiple-serving beverage containing up to 100 mg THC. Removing the per-ounce concentration limit would allow the existing serving and package limits to control potency while allowing manufacturers to make beverages in reasonable serving sizes.

3. Alignment of required warning language

Rule: ARSD 44:90:10:12.01

Requested change

For establishments subject to the federal warning requirement, replace the state-required phrase **“For medical use by qualifying patients only”** with:

> Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed.

All other state-required warning language would remain unchanged.

Reason for the change

The 2 statements serve the same basic purpose. Allowing the federal warning to replace the overlapping state language would avoid unnecessary duplication and save limited label space while maintaining the restriction on transfer to unauthorized persons.

605 Cannabis LLC appreciates the Department’s consideration of these comments and the opportunity to participate in the rulemaking process.

Respectfully submitted,

605 Cannabis LLC

MEMORANDUM

EXHIBIT K

WRITTEN PUBLIC COMMENT - PROPOSED RULE 970

Submitted by an Individual Citizen

TO:	South Dakota Department of Health, Office of Medical Cannabis
FROM:	Amanda Rubin, Brandon, South Dakota
DATE:	October 2, 2026
SUBJECT:	Written Public Comment - Proposed Rule 970
RULES:	ARSD 44:90:09:02(4), ARSD 44:90:09:11(6), and related definition in ARSD 44:90:01:01
STATUS:	Individual Citizen - Written Comment Only
POSITION:	Supports amendment of the proposed pretreatment provisions; does not oppose Rule 970 as a whole

PURPOSE

I support the public-safety goals behind Rule 970. My concern is limited to the proposed language on pretreatment before testing. I am asking DOH to draw a clear line between manipulating a compliance sample, which should remain prohibited, and microbial decontamination of an entire identified batch before the official sample is selected. Under the approach I am proposing, the treatment would be disclosed to the cannabis testing facility before sampling, noted in the testing record, and the batch would still have to pass every required South Dakota test before sale or release.

ACTION REQUESTED

- Amend ARSD 44:90:09:11(6) to prohibit manipulation of a compliance sample while allowing microbial decontamination of an entire identified batch before official sampling, subject to the safeguards below.
- Require pre-test microbial decontamination to be disclosed to the cannabis testing facility before sampling, with the testing facility recording whether the batch was pretreated as part of the testing record and, if required by the Department, on the certificate of analysis.
- Keep prohibited pesticides, prohibited solvents, and other impermissible chemical treatments subject to existing South Dakota restrictions and testing requirements.
- Make the same change in ARSD 44:90:09:02(4) so the two provisions do not conflict.
- Add a definition of "microbial decontamination" to ARSD 44:90:01:01.
- If DOH believes more review is needed, consider delaying these two provisions while safeguards and alternatives are evaluated.

WHY I AM ASKING FOR THIS CHANGE

The main issue for me is that manipulating a test sample and treating an entire batch before sampling are not the same thing. Once a sample has been selected or designated for compliance testing, it should not be treated, replaced, diluted, or otherwise changed. That would undermine confidence in the test and should remain prohibited.

Treating the entire identified batch before the official sample is selected is different. In that situation, the whole batch receives the same treatment, the treatment can be disclosed through the testing process, and the testing facility or its authorized designee can collect the official sample afterward under the normal sampling process.

Not all pretreatment raises the same regulatory concern. South Dakota already regulates prohibited pesticides and solvents and requires final compliance testing for potency, microbials, mycotoxins, metals, pesticides, and solvents. Microbial decontamination specifically targets microbial contaminants. I am asking DOH to regulate that process through clear disclosure during testing and all required testing after treatment.

This would not reduce the State's testing requirements. A treated batch would still have to pass every required test before transfer, sale, or release.

STATE OVERSIGHT AND PUBLIC SAFETY

I understand why DOH may want an untreated first test. An untreated result can show whether growing, drying, curing, storage, sanitation, or handling practices contribute to high microbial levels.

At the same time, DOH has other ways to oversee those practices, including inspections, sanitation records, testing records, historical test trends, and targeted follow-up. I ask the Department to consider whether those tools, together with treatment disclosure and all required testing after treatment, can address problems at a cultivation or processing facility while still allowing microbial decontamination before official sampling.

R&D TESTING AND CLEAR TERMS

I also believe R&D testing should be considered separately from compliance testing. R&D testing can help compare treated and untreated material or determine whether a process works. A treated R&D result should not replace required compliance testing or be used to allow the product to be sold or released, but I do not think that means R&D testing of treated material has to be prohibited.

The phrase "any type of decontamination or pretreatment" is broad. I would encourage DOH to define microbial decontamination and explain how the rule applies to drying, curing, humidity control, sanitation, heat, irradiation, and other microbial-control processes. Clearer wording would make the rule easier for both regulators and businesses to apply consistently.

DISCLOSURE OF RELATIONSHIP AND REQUEST FOR THE RECORD

Janice Rubin is my mother-in-law, and her business may be affected by these proposed provisions. I am submitting this comment in my own name and not on behalf of Janice Rubin, CleanBudz, Dakota Herb, or any other business. My comments and proposed language reflect my own review of the rulemaking materials and my own position on the proposed amendment.

Please include this memorandum in the official Rule 970 rulemaking record. I am submitting it as an individual citizen and will not appear in person. Any oral comments made by other people are separate and should not be attributed to this submission.

SUGGESTED AMENDMENT TO THE PROPOSED LANGUAGE

ARSD 44:90:09:11(6) - Proposed Replacement

(6) A sample selected or designated for initial testing under § 44:90:09:01 or for research and development testing may not be subjected to decontamination, remediation, pretreatment, substitution, dilution, or other treatment intended to alter the test result. Cannabis may not be subjected to a prohibited pesticide, prohibited solvent, or other chemical treatment prohibited under article 44:90 for the purpose of decontamination before initial testing. A cultivation facility or cannabis product manufacturing facility may subject an entire identified batch to microbial decontamination before the sample for initial testing is selected, provided that: (a) the entire identified batch is treated; (b) the treatment is disclosed to the cannabis testing facility before the representative sample is collected, and the testing facility records whether the batch was pretreated in the testing record and, if required by the Department, on the certificate of analysis; (c) the representative sample is selected and collected after treatment in accordance with the testing facility's sampling procedures; and (d) the batch undergoes and passes all testing required by article 44:90 before transfer, sale, or release. Research and development testing may be performed on treated material. A research and development test result may not be used in place of required compliance testing or to authorize transfer, sale, or release.

ARSD 44:90:01:01 - Suggested Definition

(To be placed in alphabetical order.)

"Microbial decontamination," a process applied to cannabis to reduce microbial contaminants subject to testing under article 44:90, without adding a prohibited pesticide, prohibited solvent, or other prohibited chemical decontaminating agent to the cannabis.

ARSD 44:90:09:02(4) - Conforming Change

(4) The decontamination or remediation of cannabis prior to initial testing, except for microbial decontamination of an entire identified batch permitted under § 44:90:09:11(6).

SOUTH DAKOTA RULEMAKING SOURCES REVIEWED

These public sources identify the South Dakota rulemaking framework and materials I reviewed. They are not cited to challenge the Department's general rulemaking authority.

- SDCL 34-20G-72 - DOH medical cannabis rulemaking authority
- SDCL 1-26-4.11 - Regulatory Impact Analysis requirements
- SDCL 1-26-6.5 - Code Counsel review of proposed rules
- September 4, 2026 LRC review letter for Rule 970
- 2026 LRC Drafting Manual - process and drafting guide

CONCLUSION

My goal is not to weaken testing or patient safety. I am asking the Department of Health to distinguish manipulation of a compliance sample from disclosed microbial decontamination of an entire identified batch before official sampling. I believe a controlled, disclosure-based approach can preserve full compliance testing and State oversight without completely banning microbial decontamination before testing.

Thank you for considering my comment and for the opportunity to participate in the rulemaking process.

Amanda Rubin

Amanda Rubin

Brandon, South Dakota

From: Tyler Koehne <tyler.koehne@gmail.com> **EXHIBIT L**
Sent: Saturday, October 3, 2026 3:35 PM
To: DOH Admin Rules <DOHAdminRules@state.sd.us>; Katie Larsen <katie.crushmore@gmail.com>
Subject: [EXT] KTTK LLC Rules Package Written Comment - 2026

Hello,

On behalf of KTTK LLC, please accept the following written comment in response to the 2026 Proposed Rule Draft for Medical Cannabis.

Rule Draft Considerations:
44:90:09:02 - Decontamination/Remediation

- Testing of the final product prior to transfer to a licensed dispensary should remain as the only testing requirement to ensure patient safety. If this new language is approved then at the very least new definitions need to be drafted and agreed upon regarding what is considered decontamination, remediation, and/or pretreatment, and what is not. One reason this doesn't fully make sense, for example, relates to hydrocarbon extraction performed at low temperatures. Is the utilization of low temperatures considered a process of decontamination? Furthermore, extract/concentrate that is decarboxylated to prepare for a vaporizer apparatus has had heat applied to it for that part of the process. This is typical in many cannabis manufacturing facilities. The point is, even heating/cooling the product could be interpreted by some to be "decontamination" or some sort of remediation or treatment through the utilization of temperature, when it is simply just a part of the manufacturing process. This type of confusion and potential compliance issue is what we need to avoid in order to preserve existing manufacturers and maintain current, safe, generally accepted processes that are verified by final testing.

44:90:09:07:01

- Pre-rolls should remain exempt from final form testing as long as the flower used to make the pre-roll already has a test-passed status. As an alternative, if deemed necessary, any licensee making a pre-roll could be required to submit a certificate of analysis from the paper manufacturer indicating its safe for use. One thing to consider is that testing the flower and paper together would skew all of the analytical results because the weight of the paper would be included in the test. That is especially unhelpful to the patient when they are trying to dose their medicine and really doesn't make sense.

44:90:04:08

- This just simply seems unconstitutional, and legal experts and even the DEA seem to agree. The department should not have unrestricted access like this outside of confirmations during inspection and specific requests made for investigatory purposes.

Additional considerations:

- We believe the department needs to make changes to transportation regulations. South Dakota is a large state, and a full delivery route can literally take 20+ hours. If a licensee cannot take product out of the vehicle until arriving at the final destination, and the licensee cannot compliantly stay overnight somewhere during a delivery route, then the only choice is to complete all deliveries before any rest can be had. This is dangerous and needs to be changed. Overnight stays should be allowed if indicated on the manifest. Another way to create more safety around transportation would be to allow vehicle-to-vehicle transfers. All of this would be indicated on the manifest, and both drivers/vehicles would be properly registered with the department. Lastly, the layover function in Metrc should be allowed to be utilized compliantly by all licensees.

- Remediation should be allowed on products that fail for analytes that are instead currently deemed failures for destruction. For example, we can use scientific techniques in the lab to remediate cannabis products from heavy metals and solvent failures. These techniques are well understood and accepted in many industries outside of cannabis. A failure for metals or solvents should never be automatically mandated for destruction when we have these techniques available to save the products. Please contact me directly if you would like to further discuss the science around these processes. I would be happy to help anyone in the department understand that we can still make these products safe for use. In the end, it is still the required analytical testing that will determine the product is safe for consumption before it can be transferred to a dispensary.

- Waste regulations should not include timeline requirements. They put an unnecessary burden on licensees who may prefer to efficiently perform larger waste events less often.

Thank you for your time and consideration. If you would like to further discuss any of the above, please feel free to reach out.

Regards,

Tyler Koehne (TK)
Owner/Operator
KTTK LLC | Crushmore
605-941-3394

EXHIBIT M

We are writing in, in response to the Schedule of fines (44:90:12:11). While we are pleased to see that fines were removed from the Category 4 and 5 violations first offenses, we are disappointed to see that the remaining first-offense violations are still punishable by fines. These fines are all very extreme and leave no room for discretion. Not to mention, corrective action must be taken immediately, yet that is not factored into the fines. We need to rectify the violation within 10 days or less, but, once we do, we still get fined the maximum for that violation. How is that working with those of us in this industry? How is that conducive to a fair and effective program?

We are hopeful that the Rules Committee will take the time to review these fines and how they are assigned, because, if they continue as they are, the industry will not survive. The voters of our state voted medical cannabis into law with nearly a seventy percent majority vote. Those of us who invested in this industry and who work very hard to serve our patients and be compliant and upstanding are continually fighting against very extreme, ineffective and damaging rules and regulations, especially in regards to these fines.

We think, for context, examples are important here. When we applied for our licenses back in 2021, we went through a very detailed and rigorous application process. Every year when we renew our licenses, we go through the same process, having to resubmit everything. We go back and forth with the DOH until everything, in great detail, is covered. From there, we get on-site inspections. In the Fall of 2025, after we had passed all compliance on previous inspections, we got inspected and got fined ten thousand five hundred dollars. The DOH broke its own rules when they fined us this amount in one visit, as their rules state that the total fines assessed per inspection may not exceed ten thousand dollars. These violations were not willful violations, and they were not serious violations. First-offense, minor infractions that were rectified immediately, should not result in ten thousand five-hundred-dollar fines. Practices like this will kill all smaller operators in this state. The majority of these fines have nothing to do with patient safety, which was supposed to be the basis of the fines. The only way we can appeal the fines is through legal representation, so, that is more expense for us. There is no due process here without incurring significantly more costs.

We felt so strongly about our fines, that we hired an attorney and appealed. During depositions, the DOH stated on record that there is no communication between the inspectors who levy the fines and those who assign the fines. How is zero communication between these individuals efficient or fair to those of us getting slapped with the fines? As we stated, there is no discretion

when issuing these violations. The Department Head has stated that preventative communication will equal avoiding citations but that has not been the case, and, again, per their words, there is no communication within the department when issuing the fine amounts. During depositions, they also stated that if we seek guidance from the DOH cannabis department and an inspector comes in and cites us for something that we were advised on by the DOH, that has no bearing, the inspector can still cite us. So, we cannot look to a department that is funded by our license fees, to advise us? If our state legislators and our DOH really want to honor the patients and the voters who voted this in, the people they represent, then they would start with taking a hard look at how they can make this tiered-fine-system more fair and reasonable.

We strongly encourage the DOH and the Rules Committee to reassess the Schedule of fines, not just Category 4 and 5 first-offenses, but a majority of the first-offenses punishable by fines. You have industry leaders who want to be compliant and who want to work with the DOH to have a smooth, safe and effective cannabis program, which is what our patients and the seventy percent of SD voters who wanted this, deserve.

Thank you for your time.

Amanda Johnson

Happy Flower Healing

Yankton, SD

From: Elizabeth Tiger <etiger605c@gmail.com>
Sent: Saturday, October 3, 2026 10:34 PM
To: DOH MC Establishments <MCEstablishments@state.sd.us>
Subject: [EXT] Patient Comments on Proposed Changes to ARSD Article 44:90

EXHIBIT N

To the South Dakota Department of Health Medical Cannabis Program,

Thank you for the opportunity to provide feedback on the proposed changes to ARSD Article 44:90. I am submitting these comments from the perspective of a South Dakota medical cannabis patient, patient advocate, and someone who has been involved with the program since its beginning.

Caregiver cultivation for patients under 21

The proposed change to ARSD 44:90:02:07 would prohibit a qualifying patient under 21 from cultivating cannabis or designating a caregiver to cultivate on the patient's behalf.

I would ask the Department to reconsider removing the caregiver-cultivation option for patients under 21.

Not every variety of cannabis that works well for a patient makes sense to grow commercially. A plant may have lower yield, lower demand, lower potency, or a cannabinoid and terpene profile that is useful to a small number of patients but not practical for a commercial cultivation facility to keep in production.

A caregiver growing for one patient has a different purpose. They can maintain a plant that works well for that individual patient even when there is not enough commercial demand to justify producing it at scale.

Home cultivation can provide the biomass needed to make patient-specific products at home. Cannabis grown by a patient or caregiver can be made into oils for topical use or ingestion, allowing the patient to use the plant in a form that works best for them. For patients who rely on these preparations, having enough plant material available is an important part of maintaining access.

I understand the Department may have concerns about diversion or access by younger patients. I would just ask that those concerns be weighed against the value of allowing an adult caregiver to cultivate specifically for an under-21 patient when the product or plant profile that works for that patient may not be available commercially.

Death of a qualifying patient

The proposed change to ARSD 44:90:02:13 would require a designated caregiver to immediately destroy the registry identification card associated with a patient who has died and also addresses destruction of cannabis plants and products associated with that patient.

I would ask the Department to keep a short period of time for the caregiver or family to safely dispose of the remaining cannabis, plants, and cannabis products.

The current rule provides 15 days, and I think that remains a reasonable amount of time. When someone has just lost a loved one, dealing with the medical cannabis remaining in the home may understandably not be their first priority.

Allowing a short window for safe disposal recognizes that reality while still making clear that the cannabis can no longer be used, transferred, or distributed under the deceased patient's authorization.

Thank you again for considering the patient perspective as these rules are revised. I appreciate the Department's willingness to hear from patients and stakeholders and to work through the practical effects of these changes.

Respectfully,
Liz Tiger
South Dakota medical cannabis patient

Our Shared Mission

We've partnered with the **ACNA** (American Cannabis Nurses Association) and the **ICIA** (Indigenous Cannabis Industry Association) because of our aligned mission: to advance cannabis science, education, and equitable access while promoting safe, evidence-based care.

ACNA:
By supporting education for nurses, practical guidance, and clear standards, we help ensure that patients, families, and caregivers have reliable information to make informed health decisions.

ICIA:
The ICIA and Rad Source support equitable opportunities and responsible industry development for Indigenous communities through policy, programming, and outreach.

RAD SOURCE | POWERED BY QUASTAR™

Microbial Decontamination

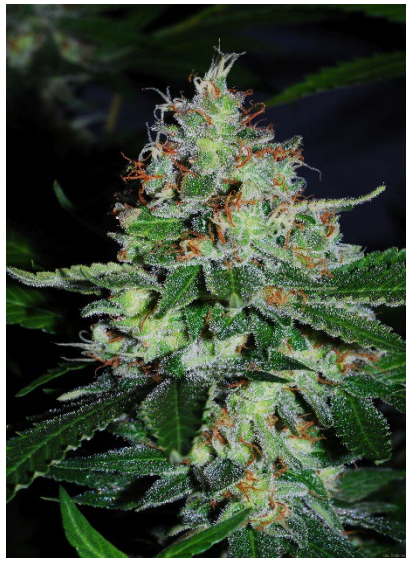
Presented by:

Jason Nunley



About the Presenter





Jason Nunley
jnunley@radsource.com

- Worked in cannabis since 2014
- Medical cultivator since 2001
- Experienced dispensary Manager
- Member OCA/ORCA
- Former ACF Certified Chef
- Passionate about clean cannabis
- Advocate of standardized lab testing and sampling methods



I. Cannabis Market

About the market



Why Irradiate Cannabis?

- Cannabis Plant are subject to a variety of pathogens
- Irradiation helps eliminate pathogens
- Irradiated cannabis is safe to use

Cannabis Irradiation

- Ionizing radiation has been successfully used to remediate cannabis for over 10 years in Canada & Netherlands
- Unlike alternative methods, ionizing radiation is a Cold Technology does not pre-activate the decarboxylation of THC-A
- Proven reliable and safe for cannabis with minimal terpene and potency loss
- Proven reliable and safe for the public

Market Data

- 70% of the US population lives in states that have legalized cannabis
- US Testing Market: $12.0B in 2018 to $24.3B by 2025, (15% CAGR
- Global Testing Market: $1.4B in 2021 @11.5% CAGR
- Cannabis companies raised $13.8M in investment in 2018

Market Trends

The Cannabis Market can be divided into number of sectors:

- Cannabis cultivation and growing and production of marijuana plants.
- Extraction, processing and packaging of the plant.
- Analytical testing of cannabis plant and products.
- Distribution and sales of cannabis products.
- Drug development of cannabis-related compounds.

	2017	2018	2019	2024	CAGR (2019-2024)
Global cannabis market based on end-user sales	$ 10,000	$ 16,000	$23,000	$70,000	24.9%
Global cultivation cannabis market	$300	$600	$ 1,500	$4,500	24.6%
Global market for cannabis testing: equipment and services	$550	$650	$800	$2,150	21.9%
Global extraction cannabis market: equipment and services	$70	$100	$200	$ 600	24.6%
Drug development cannabis market	$15	$30	$120	$300	20.1%
Total	$ 10,935	$ 17,380	$25,620	$77,550	24.8%

Global Cannabis Market (2019-2024)

- $25.6B (2019) - to - $77.6B (2024)
- CAGR of 24.8%

Global Cultivation Market (2019-2024)

- $1.5B (2019) - to - $4.5B (2024)
- CAGR of 24.6%

* This most likely does not include the irradiation market

Legality of Cannabis

Why Cannabis to Irradiate?

- **Varies by countries**
- **Regulated by three United Nations treaties:**
  - **1961 Singe Convention on Narcotic Drugs**
  - **1971 Convention on Psychotropic Substances**
  - **1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

Recreational Use

- *Canada*
- *Georgia*
- *Malta*
- *Mexico*
- *South Africa*
- *Thailand*
- *United states (Legalized in 19 states)*
- *Uruguay*

Medical Use

- *Argentina*
- *Australia*
- *Barbados*
- *Bermuda*
- *Brazil*
- *Canada*
- *Chile*
- *Colombia*
- *Costa Rica*
- *Croatia*
- *Cyprus*
- *Czech Republic*
- *Denmark*
- *Ecuador*
- *Finland*
- *Georgia*
- *Germany*
- *Greece*
- *Ireland*
- *Israel*
- *Italy*
- *Jamaica*
- *Lebanon*
- *Lithuania*
- *Luxembourg*
- *Malawi*
- *Malta*
- *Mexico*
- *Morocco*
- *Netherlands*
- *New Zealand*
- *North Macedonia*
- *Norway*
- *Panama*
- *Peru*
- *Poland*
- *Portugal*
- *Rwanda*
- *Saint Vincent and Grenadines*
- *San Marino*
- *South Africa*
- *Sri Lanka*
- *Sweden*
- *Switzerland*
- *Thailand*
- *United Kingdom*
- *United States (Legalized in 37 states)*
- *Uruguay*
- *Vanuatu*
- *Zambia*
- *Zimbabwe*

The list of countries where the use of cannabis is fully legal. Please click on this link to see the whole list of countries: https://en.wikipedia.org/wiki/Legality_of_cannabis

Microbial Testing

GROWING YEARLY

Overview and Current Perspectives

Testing is Growing

Testing is essential to ensure that cannabis users are not being exposed to harmful contaminants.

It has been reported that the amount of **testing is increasing yearly** at **12% CAGR** and the value of the testing market is expected to reach **$2B by 2024**.

In 2018, the Cannabis Industry Association one recreational state reported that just **5% of the cannabis products for sale** were tested for safety.

Nearly **20% of marijuana products failed tests** for potency and purity.

The biggest challenge is the **lack of standardized testing**.



Growth in the cannabis testing market is primarily driven by

- **legalization of medical cannabis**
- **growing number of cannabis testing laboratories**
- **growing adoption of LIMS in cannabis testing labs**
- **rising awareness of the medical use of cannabis through conferences, symposia, and workshops**
- **Increasing availability of analytical testing instruments and software**

RAD SOURCE

Market Challenges

Microbial Contamination – It Affects the Entire Industry

When we create ideal conditions for growing cannabis, we also create the best environment for bacteria and fungi, including yeast and molds, to thrive.

Microbials can be wreak havoc on your crop, business, revenue potential:

virus

bacteria

fungi

yeast



How microbials travel:

air

clothing

tools

fertilizer

water

containers

Conditions microbials thrive:

humidity

soil

plant

Everything you need to know about aspergillus



1-Year Survival

59%

Among solid organ transplant recipients

1-Year Survival

25%

Among stem cell transplant

ASPERGILLUS MORTALITY RATE

40% to 90%

In immunocompromised individuals

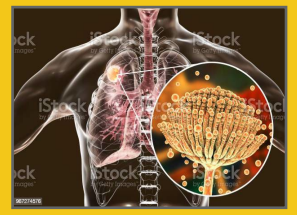
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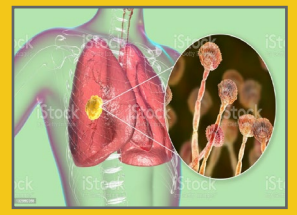
"Fatal aspergillosis associated with smoking contaminated marijuana, in a marrow transplant recipient"

"Invasive pulmonary aspergillosis associated with marijuana use in a man with colorectal cancer"

"Early invasive pulmonary aspergillosis in a leukemia patient linked to aspergillus contaminated marijuana smoking"

" Fatal Early - Onset Invasive Aspergillosis in a Recipient Receiving Lungs from a Marijuana - Smoking Donor "



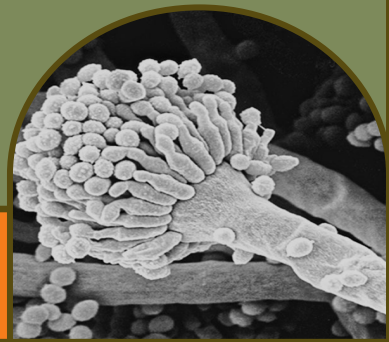


The Challenge of Organic Farming

- Time is Critical (requires up to 35% more time)
- Difficult to maintain chemical free pest management practices
- Lost of production & Money
- Additional Cost & Labor

Why to choose Photonic Decontamination By RAD SOURCE?

- World's most advanced X-Ray Technology
- Does not heat flower which causes premature decarboxylation of THC A
- Safe, Clean, Efficient
- Does not saturate flower with disinfectants or leave potential residuals



RAD SOURCE

POWERED BY QUASTAR

CHOOSE WISELY!

More about Mold, Salmonella, E-coli and Aspergillus

U.S. NEWS JAN. 13, 2020 / 6:21 PM

Michigan recalls marijuana contaminated by dangerous fungicide

By Jessie Higgins



Michigan officials recalled a batch of marijuana Friday after they discovered it was contaminated by a dangerous fungicide. Photo by Atomazul/Shutterstock.

Westword SUPPORT US *The Independent voice of Denver since 1977*

[No Title]



Jacqueline Collins

In Random Mold Tests at 25 Denver Dispensaries, 80 Percent Fail

THOMAS MITCHELL | OCTOBER 30, 2019 | 10:07AM

Denver recently conducted random tests of more than two dozen local



VIEWPOINTS

Beware moldy cannabis that poses a health risk

BY KATHLEEN GEORGE
POSTED ON MARCH 5, 2019



II. Remediation Technology

Prevention and Remediation Types

Pre and Post Options

Prevention

Grow Technology Preventative

Extraction Save What You Can!

Remediation

Chemical

- Ozone
- Chlorine Dioxide
- Ethylene Oxide

Electromagnetic

- RF
- Microwave
- Ultraviolet
- X-ray
- Gamma

Choosing the Right Technology



RF (Radio Frequency)

- Moisture dependence
- Uses heat
- Burns product



Ozone

- Chemicals
- Limited to surface
- Altered flower integrity



H2O2

- Surface treatment only
- Human health hazard
- Expensive

Electromagnetic Treatment

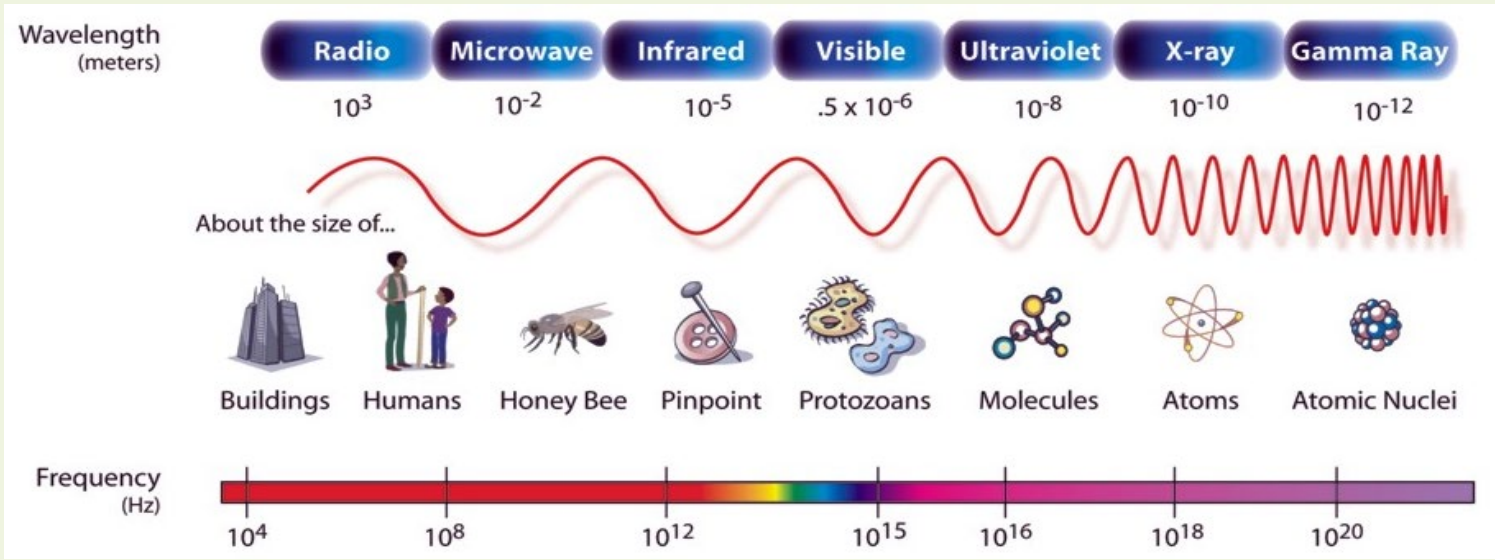
REMEDIATION

The Electromagnetic Spectrum

Ultraviolet (UV)

The UV-C light (ionizing radiation) emitted from ultraviolet lamps attacks the very core of mold spores and bacteria, preventing them from replicating, and turning the microorganisms into harmless, microscopic dust.

PROS:	CONS:
• inexpensive • readily available	• time consuming, difficult to scale, efficacy issues • does not work well on mold spores and has limitations to some microbials. (botrytis) • it only treats the surface where light can reach • if photolysis occurs near the UV lamp, it will cause oxidation and terpene loss



The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/

RAD SOURCE

Electromagnetic Treatment

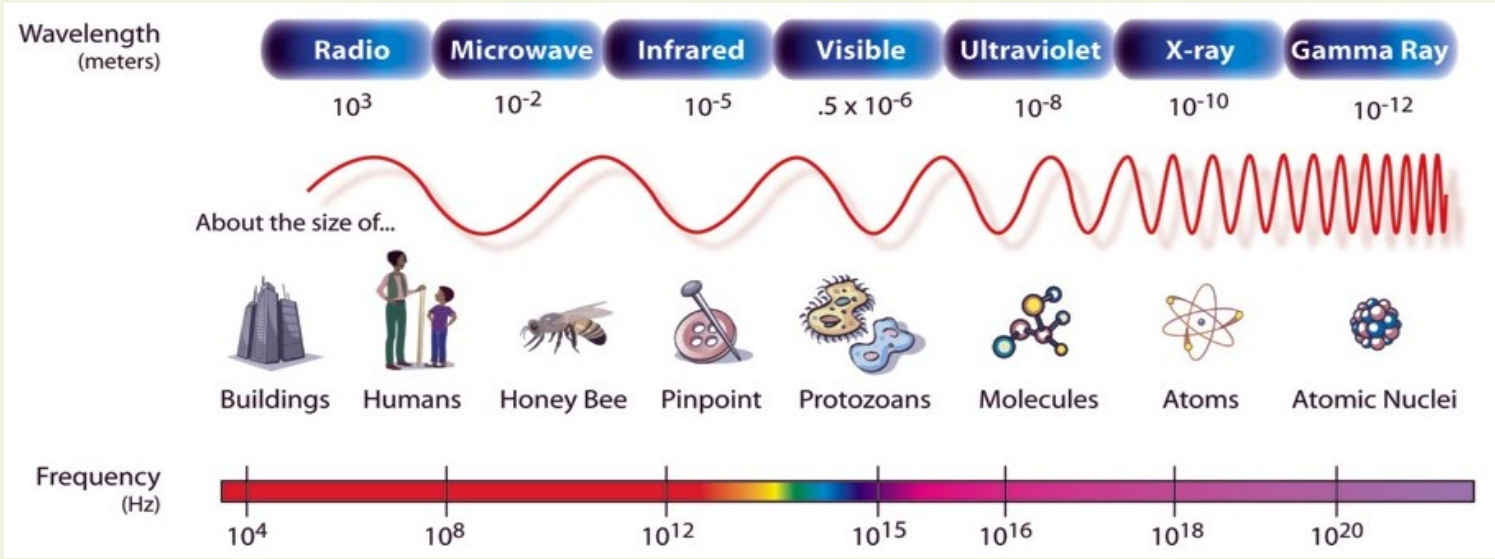
REMEDIATION

The Electromagnetic Spectrum

X-ray

The use of ionizing radiation to kill microbial life on the nuclear level by destroying its DNA.

PROS:	CONS:
• very effective, fast and scalable • undetected terpene loss • cold - no pre-mature de-carboxylation • potency unaffected • very fast pay-back period • non-nuclear	• Initial investment in instrumentation



The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/

RAD SOURCE

Electromagnetic Treatment

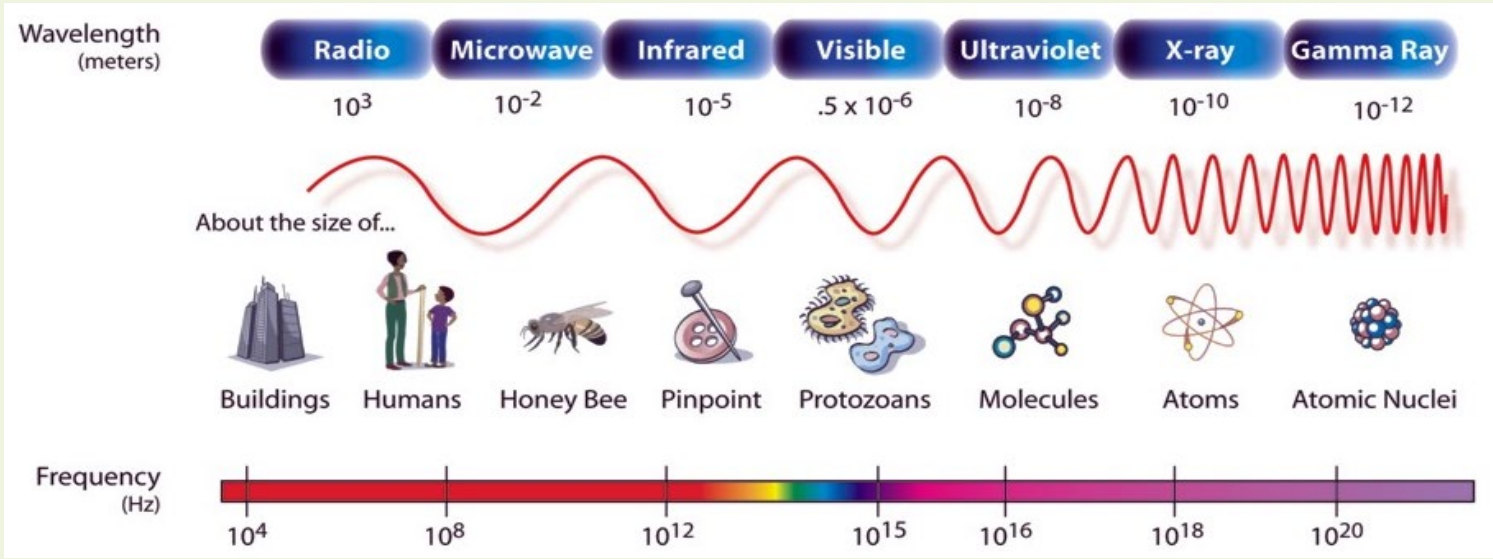
REMEDIATION

The Electromagnetic Spectrum – Gamma Ray

Gamma Ray

The use of ionizing radiation to kill microbial life on the nuclear level by destroying its DNA.

PROS:	CONS:
• very effective, fast and scalable • undetected terpene loss • cold - no pre-mature de-carboxylation • potency unaffected • very fast pay-back period	• cost of regulatory compliance • cost of security • cost of employee safety • terrorism and environ-mental concerns • loss of product control • one size fits all, can't customization to specific application



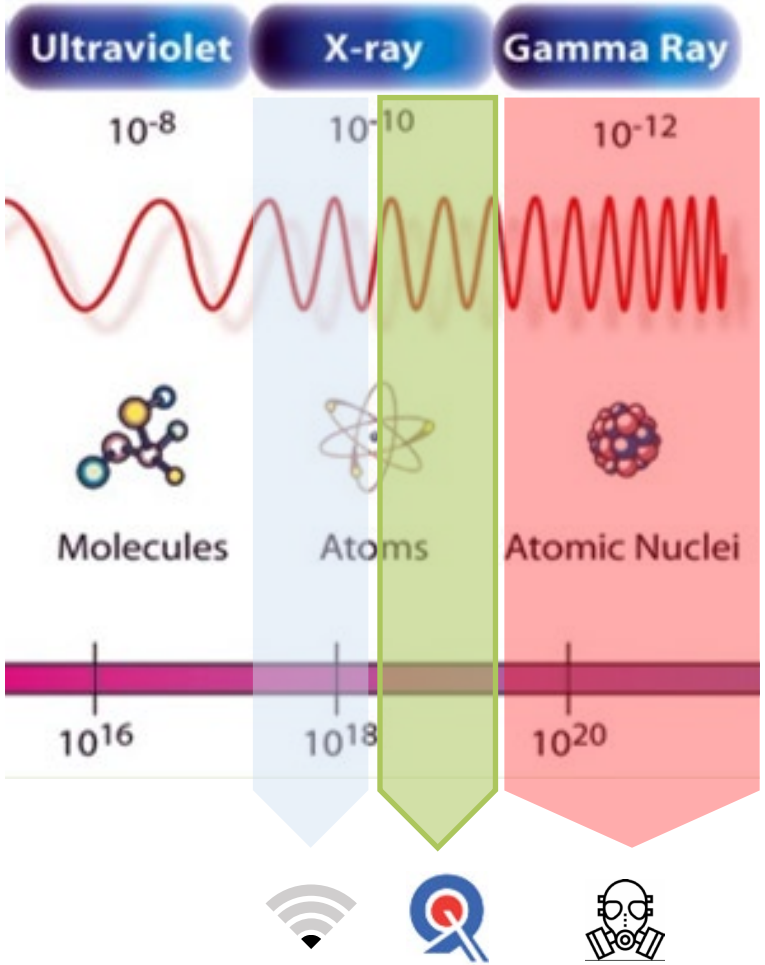
The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/

RAD SOURCE

Unrivaled x-ray Technology

UNRIVALED X-RAY TECHNOLOGY

- X-ray Re-invented
- Worlds most advanced x-ray technology
- Patented emitter design
- Produces efficient and high-quality photons
- Started in blood, cancer research, sterile insect technology
- Treated by regulators like a standard dental x-ray machine
- Compliant with 21 CFR 1020.4 for **cabinet** x-ray device.



The electromagnetic spectrum. Image courtesy of https://mynasadata.larc.nasa.gov/science-practices/electromagnetic-diagram/
Gas mask icon curtesy of free education icons

Photonic Cloud





The typical X-Ray emitters create a direct light where Rad Source Quastar emitters creates a photonic cloud of high-quality photons!



Rad Source’s Offerings

The 420 Series for Cannabis Decontamination

Pass State Mandated Testing Levels Every Time

Reduce or Eliminate Product Loss

Cold Technology	Does not heat flower which cause premature decarboxylation of THC A
Chemical and Residual Free	Does not saturate flower with disinfectants or leave potential residuals
Safe	Uses short wavelength Electromagnetic energy, clean and efficient
Unparalleled Technology	World's Most Advanced X-ray Technology
Proven Experience	Same Technology as Canada & Netherlands
Multiple Options	3 models to suit your operational needs



RS 420 M



RS 420 Q



RS 420 XL

RAD SOURCE

QUASTAR®

CANNABIS DECONTAMINATORS Treats yeast, mold, harmful insects and other pathogens.

	RS 420 M	RS 420 Q	RS 420 XL
Process Volume	~1-2 lbs. / Cycle (3 hrs. based on product density & 2000 Gy dose)	Up to 5 lbs. / Cycle (3 hrs. based on product density & 2000 Gy dose)	Up to 50lbs. / Cycle (5-7 hrs. based on product density & 2000 Gy dose)
Unparalleled Technology	Patented Single QUASTAR® X-ray Emitters	Patented Single QUASTAR® X-ray Emitters	Patented Dual QUASTAR® X-ray Emitters
Chamber Design	Single Chamber Design – ease of use for smaller quantity volumes	Patented Rotator Technology – holds up to (5) canisters during operation	Patented Rotator Technology – holds up to (5) canisters during operation
Safe and Secure Operation	Self shielded unit with NO radioactive source	Self shielded unit with NO radioactive source	Self shielded unit with NO radioactive source
Unit dimensions	30 x 36 x 64" | (76.2 x 91.44 x 162.56 cm)	72 x 47 x 64" | 182.88 x 119.38 x 162.56 cm)	72 x 47 x 77“ | 182.88 x 119.38 x 195.58 cm)
Weight	1350 lbs. | 612.35 kg.	2450 lbs. | 979.76 kg	6,300 lbs. | 2858 kg
Remote access	Set programs, add/remove users, retrieve processing data, email notifications	Set programs, add/remove users, retrieve processing data, email notifications	Set programs, add/remove users, retrieve processing data, email notifications
Warranty	The lesser of 12 months or 2400 hours of operation, parts, labor, and travel (US and Canada only)	The lesser: 12 months or 2400 hours of operation, parts, labor, and travel (US and Canada only)	The lesser: 12 months or 2400 hours of operation, parts, labor, and travel (US and Canada only)
Mitigates	Total yeast and mold (cfu/g) Total aerobic plate count Entero (cfu/g) Coliform (cfu/g) Powdery Mildew Aspergillus	Total yeast and mold (cfu/g) Total aerobic plate count Entero (cfu/g) Coliform (cfu/g) Powdery Mildew Aspergillus	Total yeast and mold (cfu/g) Total aerobic plate count Entero (cfu/g) Coliform (cfu/g) Powdery Mildew Aspergillus







The CFU and How it Affects You

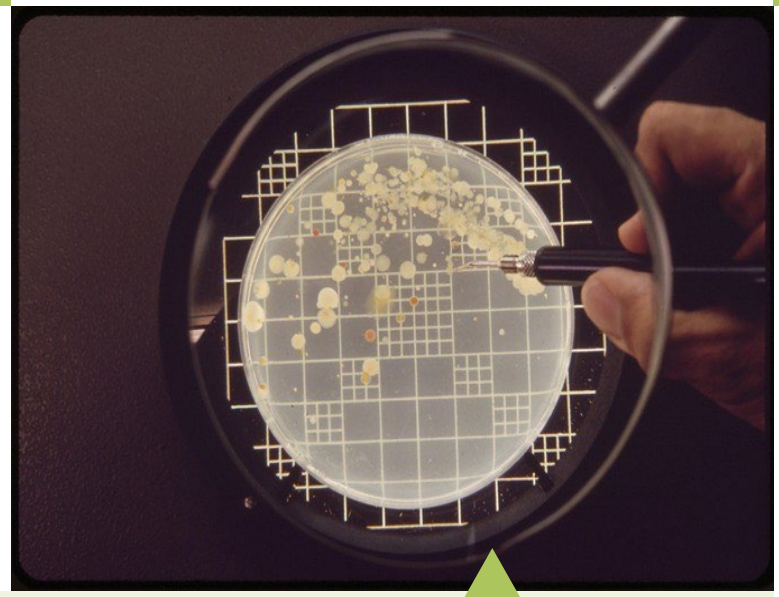
NEED TO KNOW

The more you know the better the prevention



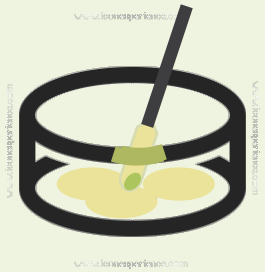
CFU | Colony Forming Units

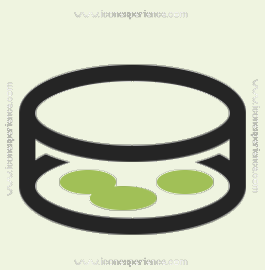
- A measurement of the number of viable organisms on a sample, which is proportional to the number of colonies on a plate.
- ***Some microbial colonies double every 20 minutes** (**36x/day – 1080/month**)!
  - Consider time to dispensary and shelf time to sale
- It is critical to understand the **risks associated with re-growth of supposedly "cleaned product".**

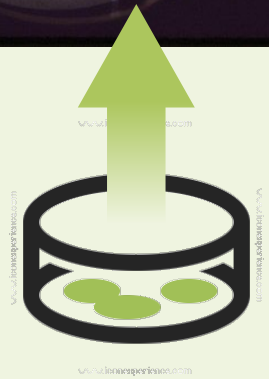


The Process (visualization)









1. COLLECT
2. APPLY
3. GROW
4. COUNT



Installation

Installation Process

We Send Out Site Readiness Form

- The form provides all the details regarding the delivery and installation.
- The machine is usually connected to a standard wall mount disconnect box, but a plug/receptacle combination can also be used
- Your facility is responsible for both male/female sides to avoid compatibility issues

Shipment Of Unit

Delivery Of Unit

Your electrician connects the unit to the power

Installation w/our technician

- Dose map
- Survey the unit

In-Service Training



R&D Studies

White Paper – RS's 3 Year Study

Purpose

Purpose	Address the efficacy and safety of photonic decontamination utilizing x-ray conducted by Rad Source's 420 customers
Customers	5 Studies conducted by customers in 5 different states and 1 independent Testing Lab
Public Health and Safety Concerns	Cannabis is subject to a wide range of potential contaminants including yeast, mold, insects, etc.
Studies	Nevada Study, Nevada Independent Testing Lab, Colorado Study, Ohio Study, California Study, Florida Study



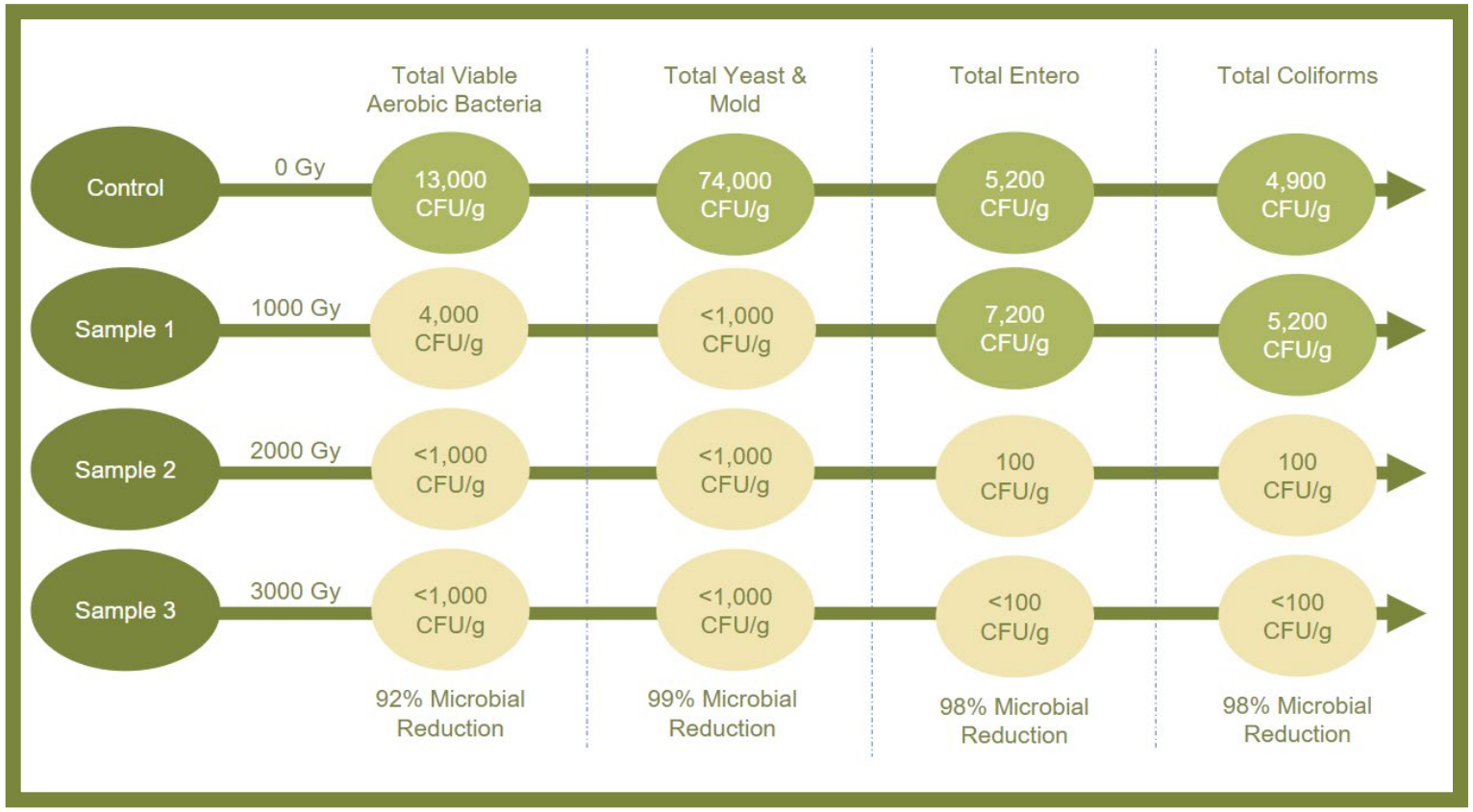
RS 420 Series Cannabis Decontamination System Types

System	Power	Dose Uniformity Ratio	Processing Volume
420 M	4 kW	3 - 3.5	~1-2 lbs. / 3-4 hr. /cycle (based on product density & 2000 Gy dose)
420 Q	4 kW	1.8	Up to 5 lbs. / 4-5 hr. /cycle (based on product density & 2000 Gy dose)
420 XL	8 kW	1.6	Up to 50 lbs. / 7-8 hr. /cycle (based on product density & 2000 Gy dose)

RAD SOURCE

White Paper – RS's 3 Year Study

Nevada Study: February 2017



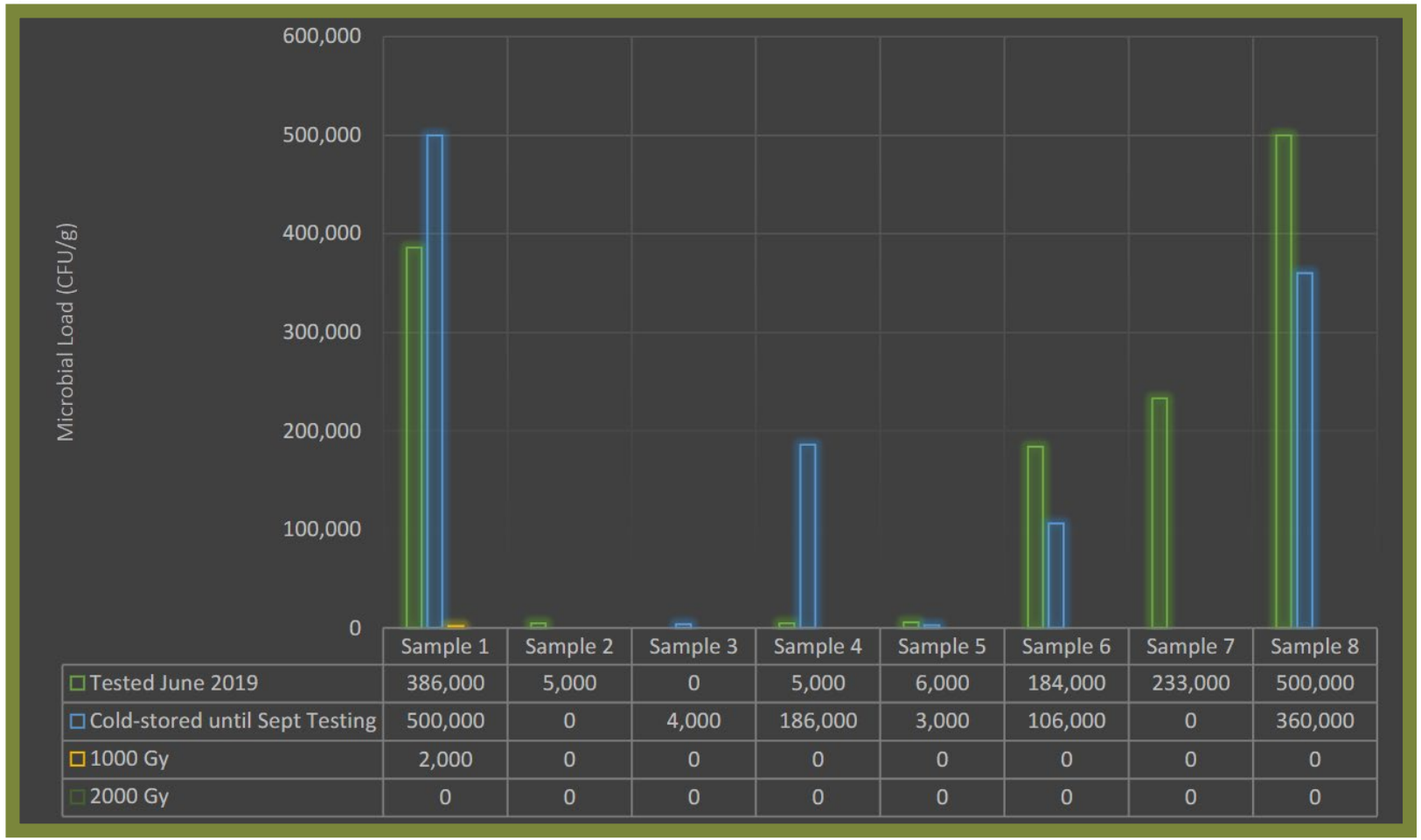
Microbial Reduction across varying dose exposures.

Note: Light green color signifies failure, light yellow signifies pass.

- Higher microbial load in entero (BTGN) and coliforms after being subjected to 1000 Gy exposure treatment than that of the control
- Not the exact same sample was treated multiple times (1000 Gy, 2000 Gy) to derive the CFU/g.
- The control and sample 1 may have had a longer duration between testing each sample, and the batch may have had increased microbial levels before exposure at 1000 Gy.

RAD SOURCE

Nevada Independent Testing Lab: September 2019



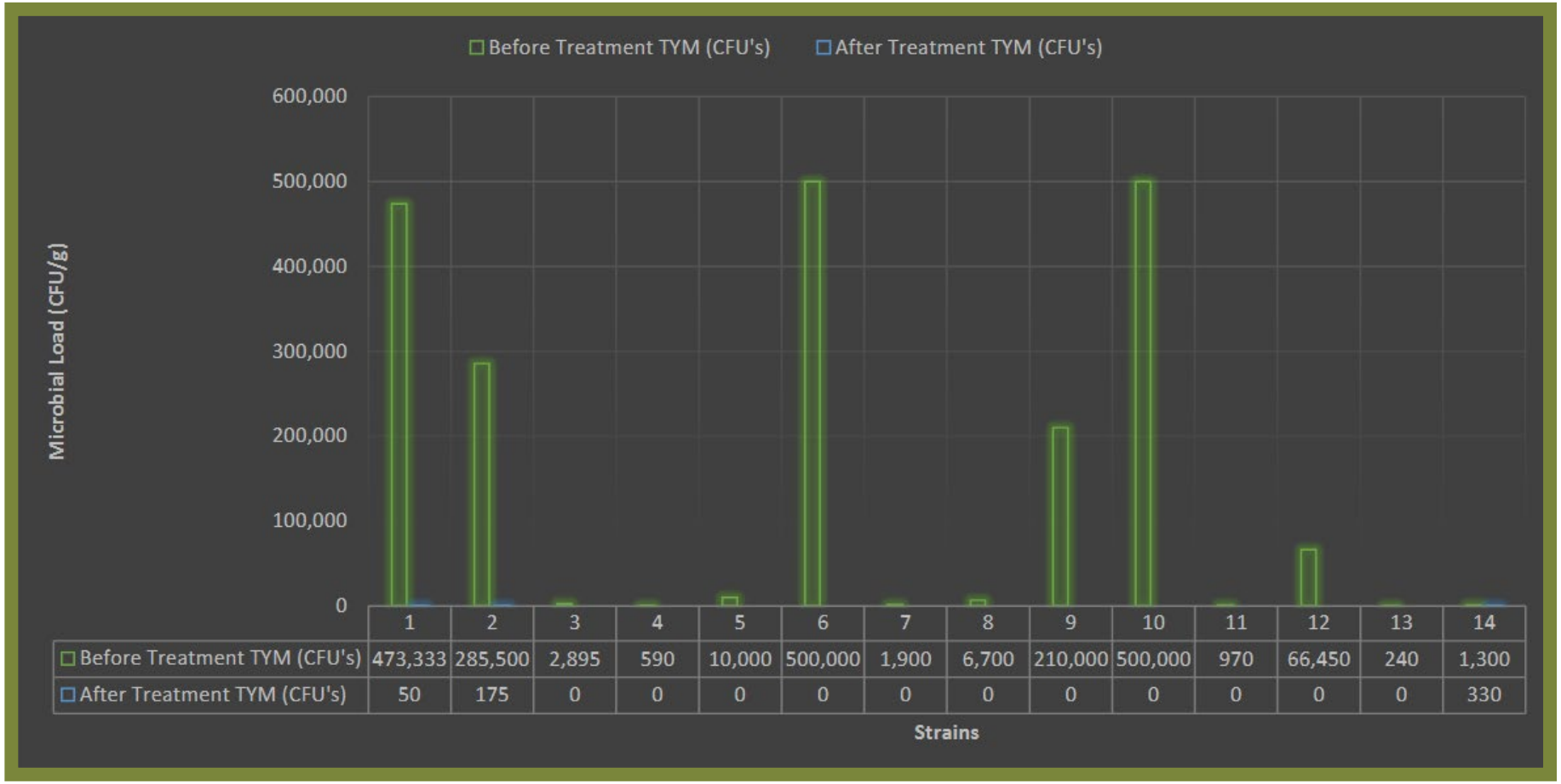
	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5	Sample 6	Sample 7	Sample 8
Tested June 2019	386,000	5,000	0	5,000	6,000	184,000	233,000	500,000
Cold-stored until Sept Testing	500,000	0	4,000	186,000	3,000	106,000	0	360,000
1000 Gy	2,000	0	0	0	0	0	0	0
2000 Gy	0	0	0	0	0	0	0	0

Treatment at 1000 and 2000 Gy (Total Yeast and Mold).

RAD SOURCE

White Paper – RS's 3 Year Study

Colorado Study: October 2019



	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Before Treatment TYM (CFU's)	473,333	285,500	2,895	590	10,000	500,000	1,900	6,700	210,000	500,000	970	66,450	240	1,300
After Treatment TYM (CFU's)	50	175	0	0	0	0	0	0	0	0	0	0	0	330

Strain	# of Samples
Strain 1	3
Strain 2	2
Strain 3	2
Strain 4	2
Strain 5	1
Strain 6	2
Strain 7	3
Strain 8	2
Strain 9	1
Strain 10	1
Strain 11	1
Strain 12	2
Strain 13	1
Strain 14	1
Total	24

Experimental Set Up

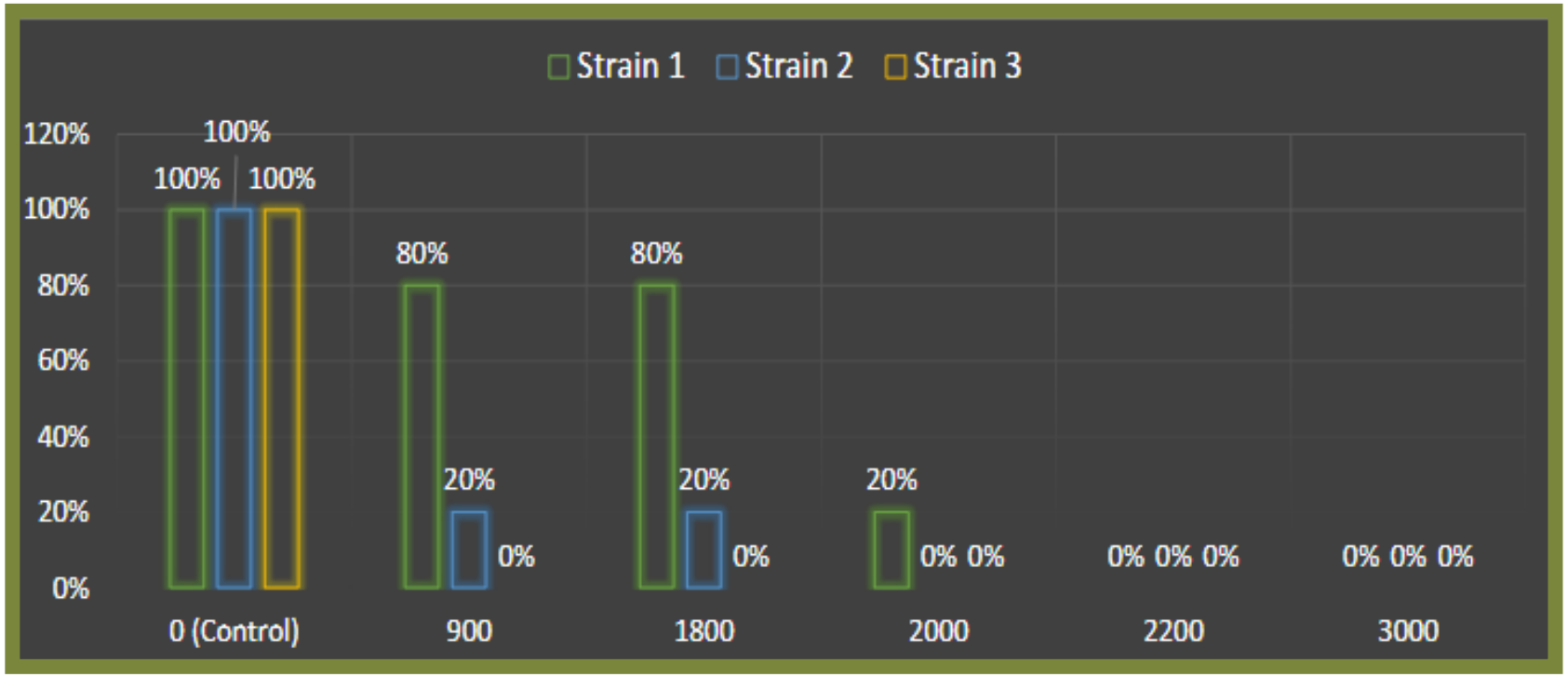
Total Yeast and Mold before and after photonic decontamination.

Note: Samples 3-13 are shown as "0" but the microbial count is <LOQ.

RAD SOURCE

White Paper – RS's 3 Year Study

Ohio Study: April 2020



Strains that failed testing over a range of doses.

Experimental Setup			
	Strain 1	Strain 2	Strain 3
Control	5 samples	5 samples	4 samples
900 Gy	5 samples	5 samples	4 samples
1800 Gy	5 samples	5 samples	4 samples
2000 Gy	5 samples	5 samples	4 samples
2200 Gy		5 samples	4 samples
3000 Gy		5 samples	4 samples
Total	20 samples	30 samples	24 samples

Experimental Set Up

RAD SOURCE

White Paper – RS's 3 Year Study

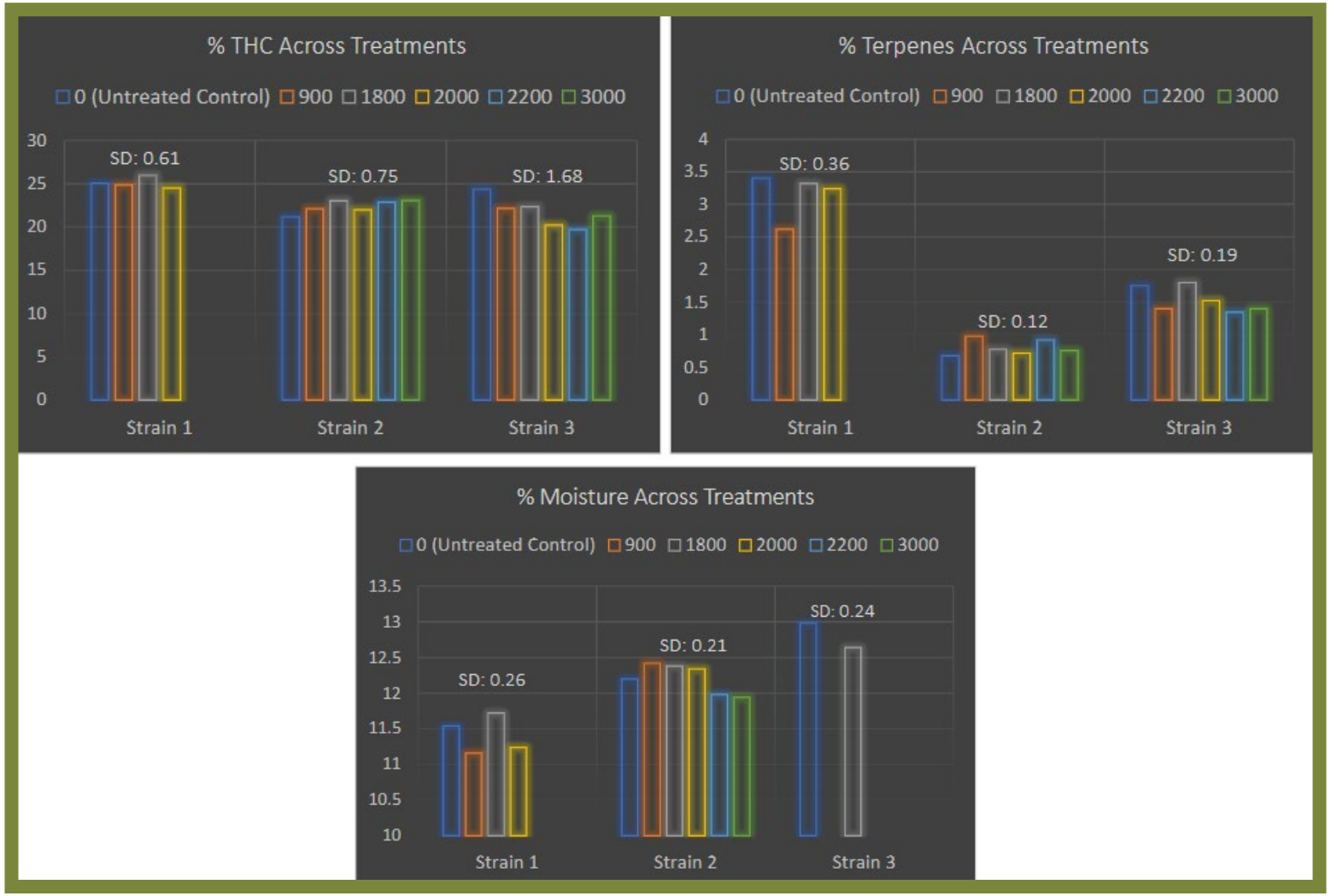
Ohio Study: April 2020



Microbial Reduction by Strain and Treatment Exposures.

White Paper – RS's 3 Year Study

Ohio Study: April 2020



Cannabinoid and Terpene Profiles in pre-treated and post-treated samples.

White Paper – RS's 3 Year Study

Ohio Study: April 2020



Visual Appearance of pre-treated and post-treated flower.

RAD SOURCE

White Paper – RS's 3 Year Study

California Study: 2020

Contaminated cannabis flower was weighed out (1g/sample) and pretreated with 2.5kGy of X-rays

↓

Samples were inoculated with known amount of Aspergillus spores 100, 1000 or 10,000 (3x). One set of samples was then treated with x-rays again while the second set served as untreated controls.

↓

All samples were then processed according to CTS Aspergillus in flower detection method. Enrichments were also plated on PDA plates to determine viability.

Experimental Design.

Aspergillus strain type	Cannabis flower weight (grams)	Initial treatment dosage (grays)	Aspergillus detection via qPCR of naturally contaminated Cannabis flower treated with 2500 grays of x-rays	Aspergillus viability/growth on PDA plates post enrichment (2500 grays)	Aspergillus detection via PCR of spiked Cannabis flower treated with 2000 grays of x-rays	Aspergillus viability/growth on PDA plates post enrichment (2000 grays)	Aspergillus detection via qPCR of spiked Cannabis flower treated with 5000 grays of x-rays	Aspergillus viability/growth on PDA plates post enrichment (5000 grays)
Aspergillus niger	1 g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Not Detected	Detected	Not Detected
Aspergillus flavus	1 g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Detected	Detected	Not Detected
Aspergillus terreus	1g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Not detected	Detected	Not Detected
Aspergillus fumigatus	1 g	2000, 2500 and 5000 grays	Not Detected	Not Detected	Detected	Detected	Detected	Not Detected

Results of Aspergillus detection of 2000, 2500 and 5000 Gy for qPCR and PDA plating.

RAD SOURCE

Reviews

Customer Testimonials

"We have run this machine through the gauntlet and it 100% performs as advertised!"
- Large Grower, Colorado

The Magic Bullet

"After working in the growing legal Cannabis Market for over 5 years, I can attest that of all the treatment methods and services offered for microbial decontamination, this is the magic bullet."
- Large Grower, Colorado

Flower Integrity

"0% impact to product!
100% pass rate!"
- Medium Sized Grower, Michigan

You Get What You Pay For

"No adverse effect on the terpene or cannabinoid profiles and guaranteed to remediate any yeast and mold growth you may be experiencing to non-detectable levels. You get what you pay for, and x-ray decontamination is the way to go."
- Large Grower, Colorado

Peace of Mind

"The Rad Source gives me Peace-of-Mind that no change in operating procedures or any other piece of technology has given me."
- Medium Sized Grower

RAD SOURCE

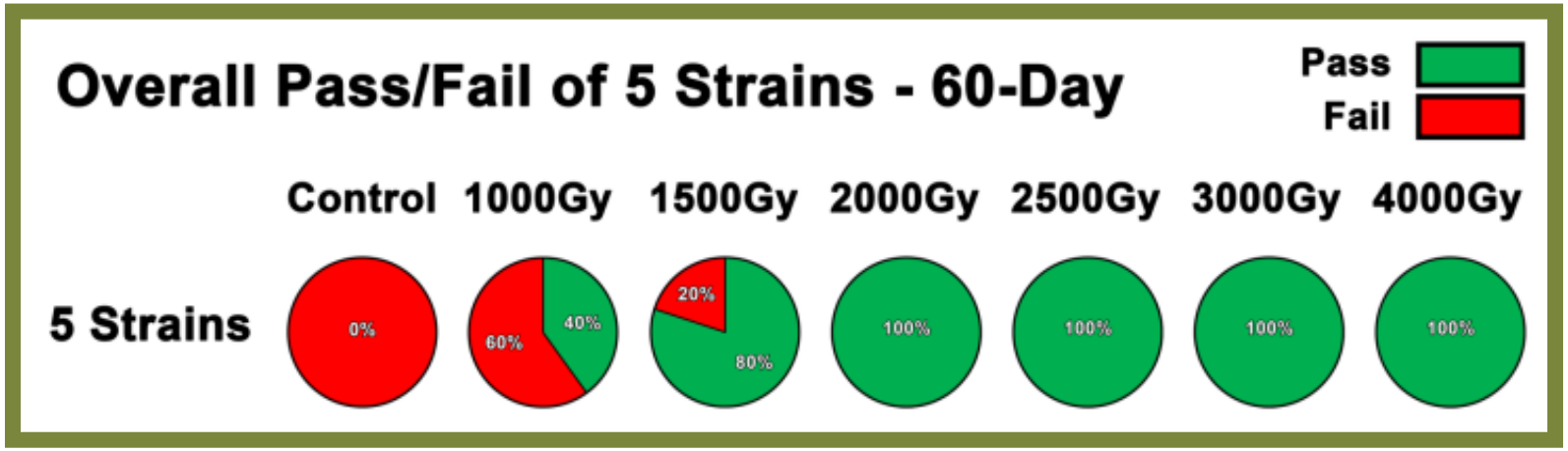
Canndelta Study

Overview

Objective 1	Quantify the change in microbial content observed in samples treated with the Equipment from the Original Report 60 days after initial treatment.
Objective 2	Assess whether after 60 days the microbial levels of treated cannabis continue to meet the current Health Canada-approved microbial testing limits for dried cannabis.
Objective 3	Assess whether after 60 days the microbial levels of treated cannabis do not show a significant increase from the results obtained immediately after treatment in the Original Report.
Selected Analytical Tests	TAMC, TYMC, BTGN, *Pseudomonas aeruginosa*
Timing of Testing	60 days post-treatment
Selected cannabis lots	Strain 1, Strain 2, Strain 3, Strain 4, Strain 5
Treatment Groups	1000 Gy; 1500 Gy; 2000 Gy; 2500 Gy; 3000 Gy; 4000 Gy

RAD SOURCE

Overall Results



Overall Compliance Results from 60-day Dose Escalation Test.

Strain	Treatment	Count Pass	Count Fail	Percent Pass (%)	Percent Fail (%)
5 Strains	0 Gy (Control)	0	5	0	100
	1,000 Gy	2	3	40	60
	1,500 Gy	4	1	80	20
	2,000 Gy	5	0	100	0
	2,500 Gy	5	0	100	0
	3,000 Gy	5	0	100	0
	4,000 Gy	5	0	100	0

Overall Compliance Results from 60 –day Dose Escalation Test (tabulated)

Strain	Treatment	Percent Pass Original (%)	Percent Pass 60-day (%)	Percent Pass Difference (%)	Overall Pass/Fail 60-day
5 Strains	0 Gy (Control)	–	–	–	–
	1,000 Gy	20	40	20	Fail
	1,500 Gy	80	80	0	Fail
	2,000 Gy	80	100	20	Pass
	2,500 Gy	100	100	0	Pass
	3,000 Gy	100	100	0	Pass
	4,000 Gy	100	100	0	Pass

Overall Compliance Results comparison between Original and 60 –day Dose Escalation Test (tabulated)

Top 10 FAQ from Customers

1. Do all the canisters need to be fully filled or can I run one or two canisters or half canisters?
2. Can I put different strains at once?
3. Can I run 24/7?
4. Is RS approved for remediation?
5. Why should we believe you that your products work?
6. What is the reliability of the Quastar emitter?
7. Is your equipment safe to be around?
8. Why should I buy your RS 420 and not one of your competitors' units?
9. What happens if power to the unit fails (brown out) does it hurt the unit? Will it restart and finish the cycle automatically or do I have to dispose of the animals?
10. What kind of maintenance is required for your unit?


The End

This comprehensive **HACCP Plan template** for **Post-harvest Cannabis Flower Processing** integrates Rad Source Quastar® Photonic Decontamination as your primary **Critical Control Point (CCP)** kill step mitigating microbial contaminants in cannabis.

Because Rad Source utilizes low-energy X-ray technology to disrupt microbial DNA inside a sealed bag without heat or chemicals, it functions as a highly precise, validated step to ensure state-mandated microbiological compliance without altering the product intended.

HACCP Plan: Cannabis Flower Processing & Packaging

1. Product Description & Intended Use

- **Product Name**: Cured Cannabis Flower (Trimmed Buds / Bulk & Retail Packs).
- **Biological Hazards**: *Aspergillus spp.*, Total Yeast & Mold (TYMC), *Salmonella spp.*, Shiga-toxin producing *E. coli* (STEC).
- **Chemical Hazards**: Heavy metals, pesticides, mycotoxins, residual cleaning chemicals.
- **Physical Hazards**: Nitrile glove fragments, hair, stainless steel trimmer blade fragments, stones/soil.
- **Packaging**: Sealed, food-grade, X-ray transparent plastic pouches (bulk or retail).
- **Intended Use**: Inhalation (smoking/vaping) or further processing (extraction) by adult consumers or medical patients.

---

2. Process Flow Diagram

[1. Receiving Cured Flower] ➔ [2. Sifting, Trimming & Sorting] ➔ [3. Weighing & In-Bag Pouching]

⬇

[Shipping & Distribution] ⬅ [6. CCP-1: Rad Source Kill Step] ⬅ [5. Final Packaging & Metal Detection] ⬅ [4. Batch Staging]

---

3. Hazard Analysis & Hazard Identification

Process Step	Hazard Type	Specific Hazard	Controlled By	Is it a CCP?
1. Receiving	Chemical	Pesticide or heavy metal residues exceeding state legal limits.	Supplier COA verification & strict intake testing.	No
2. Trimming & Sorting	Physical	Metal blade fragments, hair, or physical debris from manual handling.	Visual inspection, PPE requirements, tool logs.	No
3. Weighing & Pouching	Biological	Cross-contamination from operator hands, scales, or storage bins.	Sanitation Standard Operating Procedures (SSOPs).	No
4. Batch Staging	Biological	Moisture accumulation causing localized mold growth during staging.	Climate-controlled staging vault (<55% RH).	No
5. Final Packaging	Physical	Post-processing introduction of foreign metal bodies.	In-line conveyor metal detector.	No
6. Rad Source Step	**Biological**	Systemic microbial failure (*Aspergillus*, Yeast/Mold, *Salmonella*).	**Photonic Decontamination (DNA inactivation)**.	**YES (CCP-1)**

---

4. HACCP Master Plan: CCP-1 (Rad Source Kill Step)

Critical Limits (CL)

- **Minimum Absorbed Dose**: **1,600 Gray (Gy)**.
- **Maximum Absorbed Dose**: **2,000 Gray (Gy)** *(To guarantee a 99.9% microbial kill rate while safeguarding terpene profiles and cannabinoid stability)*.

- **Target Run Time**: **5 to 7 hours** *(Batch-validated cycle time required to achieve target Gray dosage uniformly across bulk-loaded canisters)*.
- **Packaging Constraint**: Product must be safely sealed inside X-ray-compatible bags and placed flat within designated canister layers.

Monitoring Procedures

- **What**: Absorbed ionizing radiation dose (Gy), cycle execution parameters, and total elapsed runtime.
- **How**: Machine digital touchscreen readout paired with visual inspection of external rad-reactive dosimeter dots/strips affixed to each batch bag.
- **Frequency**: Checked at machine startup, monitored periodically during the cycle, and verified upon full completion of the 5–7 hour run.
- **Who**: Trained Rad Source Equipment Operator / Quality Assurance (QA) Technician.

Corrective Actions

- **If Cycle is Interrupted or Aborted Before 5–7 Hours**:
    1. Halt the process and safely extract the batch.
    2. Isolate all affected cannabis bags and mark them as "Quarantine."
    3. Access the machine's digital log to determine the exact duration of exposure and absorbed dose received prior to the fault.
    4. Consult the Rad Source operator manual or technical support to calculate the remaining exposure time needed or re-run a validated fallback cycle.
    5. Document the power/system interruption in the Daily Deviation Log.

Verification Procedures

- **Daily**: QA Lead reviews digital machine logs and matches them to physical batch production records.
- **Monthly**: Run internal Challenge Tests using independent third-party laboratory COAs (Certificate of Analysis) to prove pre-treatment vs. post-treatment microbial reduction.
- **Annually**: Arrange for a factory-certified Rad Source technician to calibrate the X-ray tube, system sensors, and emitter arrays.

Record-Keeping & Documentation

- **Decontamination Log**: Machine-generated receipt verifying User ID, Date, Timestamp, Batch ID, Cycle ID, Target Dose, and Program Pass/Fail status.
- **QA Sign-off Sheet**: Physical binder documenting the verification of the dosimeter color change strip for every canister layer.
- **Maintenance Log**: Records of equipment calibration, software updates, and component replacements.

---

5. Prerequisite Programs (PRPs) Supporting the Plan

To ensure this HACCP plan works seamlessly, your facility must maintain the following operational prerequisites:

- **Personnel Hygiene (SSOP-01)**: Mandatory use of powder-free nitrile gloves, hairnets, and beard guards during steps 2 and 3.
- **Environmental Controls (GMP-01)**: Continuous digital monitoring of drying and staging rooms to maintain Relative Humidity (RH) between 45% and 55% to prevent mold germination prior to the kill step.
- **Equipment Sanitation (SSOP-02)**: Alcohol wiping of all weighing scales, trimming scissors, and stainless-steel tables every 4 hours or between distinct strain batches.

Appendix A: CCP-1 Rad Source Operational Log

Facility Name: _____
Equipment Model / Serial No: _____

1. Batch & Cycle Identification

- **Date:** ____ / ____ / 20___
- **Operator Name (Print):** _____
- **Cannabis Strain / Product Name:** _____
- **Batch / Lot ID:** _____
- **Total Batch Weight (lbs/kg):** _____

- **Total Number of Canisters/Bags in Run: _____**

---

2. Operational Parameters & Critical Limits

Parameter	Target Standard / Critical Limit	Actual Target Set Value
Target Radiation Dose	**1,600 Gy – 2,000 Gy**	_____ Gy
Target Cycle Run Time	**5.0 – 7.0 Hours**	_____ Hours

---

3. Cycle Progress Monitoring

The operator must check the machine at startup, mid-cycle, and completion to verify proper function.

Monitoring Stage	Planned Time	Actual Clock Time	Machine Status / Current Dose (Gy)	Operator Initials
1. Cycle Start	———	_____ AM/PM	[ ] System Boot Ok / Cycle Initiated	_____
2. Mid-Check (Hr 2-3)	———	_____ AM/PM	[ ] Running / No Errors Indicated	_____
3. Mid-Check (Hr 4-5)	———	_____ AM/PM	[ ] Running / No Errors Indicated	_____
4. Cycle End	———	_____ AM/PM	[ ] Cycle Complete / Final Dose Met	_____

---

4. Post-Cycle Quality Verification

- **Final Absorbed Dose Displayed on Screen: _____** Gy

- **Total Elapsed Run Time Displayed:** _____ Hours _____ Minutes
- **Dosimeter Strip Verification:**
  [ ] **PASS**: All external rad-reactive dosimeter dots/strips showed the required color change.
  [ ] **FAIL**: One or more strips did not change color *(Initiate Corrective Action immediately)*.

---

5. Deviations & Corrective Actions (If Applicable)

Did any alarms, power failures, or early cycle aborts occur?
[ ] **NO**
[ ] **YES** *(If yes, describe the issue and the exact duration/dose exposure before interruption below)*:

---

6. Sign-Off & Verification

- **Operator Signature:** _____ **Date: /**/20___
- **QA Lead Review Signature:** _____ **Date: /**/20___

Use of X-ray irradiation for inactivation of Aspergillus in cannabis flower



Scientific Prospects for Cannabis-Microbiome Research to Ensure Quality and Safety of Products

California cannabis regulations require testing for four pathogenic species of Aspergillus–A. niger, A. flavus, A. fumigatus and A. terreus in cannabis flower and cannabis inhalable products. These four pathogenic species of Aspergillus are important human pathogens and their presence in cannabis flower and cannabis products may pose a threat to human health. In this study, we examined the potential of X-ray irradiation for inactivation of cannabis flower contaminated with any of the four pathogenic species of Aspergillus.

We determined that X-ray irradiation at a dose of 2.5 kGy is capable of rendering Aspergillus cells non-viable at low (102 spores/g dried flower), medium (103 spores/g dried flower) and high (104 spores/g dried flower) levels of inoculation.

Scan to see study

We also showed that X-ray treatment of cannabis flower did not significantly alter the cannabinoid or the terpene profiles of the flower samples. Therefore, X-ray irradiation may be a feasible method for Aspergillus decontamination of cannabis flower.

Key takeaway: Samples treated with a dose of 2.5 kGy of X-ray irradiation to inactivate any naturally occurring Aspergillus. X-ray irradiation was applied using a Rad Source 420M which was operated according to manufacturer's instructions. This dosage rendered the Aspergillus cells non-viable & the treatment of cannabis flower did not significantly alter the cannabinoid or the terpene profiles of the flower samples.

Use of X-ray irradiation for inactivation of Aspergillus in cannabis flower



Scientific Prospects for Cannabis-Microbiome Research to Ensure Quality and Safety of Products

California cannabis regulations require testing for four pathogenic species of Aspergillus–A. niger, A. flavus, A. fumigatus and A. terreus in cannabis flower and cannabis inhalable products. These four pathogenic species of Aspergillus are important human pathogens and their presence in cannabis flower and cannabis products may pose a threat to human health. In this study, we examined the potential of X-ray irradiation for inactivation of cannabis flower contaminated with any of the four pathogenic species of Aspergillus.

We determined that X-ray irradiation at a dose of 2.5 kGy is capable of rendering Aspergillus cells non-viable at low (102 spores/g dried flower), medium (103 spores/g dried flower) and high (104 spores/g dried flower) levels of inoculation.

Scan to see study

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Evaluating the Effects of Gamma-Irradiation for Decontamination of Medicinal Cannabis



In several countries with a national medicinal cannabis program, pharmaceutical regulations specify that herbal cannabis products must adhere to strict safety standards regarding microbial contamination. Treatment by gamma irradiation currently seems the only method available to meet these requirements. We evaluated the effects of irradiation treatment of four different cannabis varieties covering different chemical compositions.

Samples were compared before and after standard gamma-irradiation treatment by performing quantitative UPLC analysis of major cannabinoids, as well as qualitative GC analysis of full cannabinoid and terpene profiles. In addition, water content and microscopic appearance of the cannabis flowers was evaluated.

Scan to see study

This study found that treatment did not cause changes in the content of THC and CBD, generally considered as the most important therapeutically active components of medicinal cannabis. Likewise, the water content and the microscopic structure of the dried cannabis flowers were not altered by standard irradiation protocol in the cannabis varieties studied. The effect of gamma-irradiation was limited to a reduction of some terpenes present in the cannabis, but keeping the terpene profile qualitatively the same. Based on the results presented in this report, gamma irradiation of herbal cannabis remains the recommended method of decontamination, at least until other more generally accepted methods have been developed and validated.

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Guidance Bulletin: Implementation Timeline for Total Yeast & Mold Count Testing, Preventative Measures, and Sterilization/Remediation Options for Licensees



The Mississippi Medical Cannabis Program (MMCP) is providing the following guidance regarding the necessity of Total Yeast & Mold Count (TYMC) testing requirements for medical cannabis.

Medical cannabis can harbor harmful microorganisms like yeasts and molds, posing significant risks, especially to immunocompromised consumers. TYMC testing ensures that products are free from harmful levels of these contaminants, which can lead to infections and other health complications. Compliance with TYMC testing is essential to meet regulatory safety standards and to protect public health.

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Key takeaway: The following methods may be utilized by licensed medical cannabis establishments for purposes of sterilization/remediation of medical cannabis and/or medical cannabis products:
Ionizing Irradiation - This method is explicitly included in the current regulations as a remediation option.
Pros: Highly effective at sterilizing cannabis and is widely accepted in various industries.
Cons: Consumer resistance due to misconceptions about radioactivity.

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Scientific Prospects for Cannabis-Microbiome Research to Ensure Quality and Safety of Products



Cannabis legalization has occurred in several countries worldwide. Along with steadily growing research in Cannabis healthcare science, there is an increasing interest for scientific-based knowledge in plant microbiology and food science, with work connecting the plant microbiome and plant health to product quality across the value chain of cannabis. This review paper provides an overview of the state of knowledge and challenges in Cannabis science, and thereby identifies critical risk management and safety issues in order to capitalize on innovations while ensuring product quality control. It highlights scientific gap areas to steer future research, with an emphasis on plant-microbiome sciences committed to using cutting-edge technologies for more efficient Cannabis production and high-quality products intended for recreational, pharmaceutical, and medicinal use.

Key takeaway: Gamma irradiation, where material is exposed to a high-powered gamma radiation source, is another approved method by Health Canada (https://www.canada.ca/) for decontamination which does not cause changes in the content of THC and CBD but does alter terpene quality.

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Considerations of using Ozone and Reactive Oxygen for Decontamination or Remediation

Using ozone (O_3) in cannabis cultivation or processing facilities can react with plant-emitted volatile organic compounds (VOCs) to create hazardous formaldehyde and other secondary pollutants. [1, 2]

The Chemical Reaction

Cannabis plants naturally release high amounts of volatile organic compounds (VOCs), particularly monoterpenes like alpha-pinene and beta-pinene. When machine-generated ozone—often used for odor control, mold remediation, or room sterilization—is introduced into these indoor environments, it reacts directly with these airborne terpenes. This oxidation process does not just neutralize odors; it creates secondary organic aerosols, ultrafine particulate matter, and harmful chemical byproducts including **formaldehyde** and acrolein. [1, 2, 3]

Health and Safety Risks

- **Occupational Exposure:** Cultivators and facility workers risk inhaling elevated levels of formaldehyde and ultra-fine particulates if ozone generators run in poorly ventilated grow rooms or processing areas. Formaldehyde is a known human carcinogen and respiratory irritant that can trigger asthma, bronchitis, and cellular damage. [1, 2, 3, 4]
- **Consumer Concerns:** Because formaldehyde and other reactive compounds can settle or remain in plant cellulose materials, improper high-concentration ozone "bombing" or remediation treatments risk leaving harmful residues on consumable cannabis flower. [1, 2]
- **Plant Damage:** High levels of ozone are also phytotoxic, meaning they destroy healthy plant cells, damage leaves, and inhibit chlorophyll production necessary for photosynthesis. [1]

Industry Standards and Regulation

Many indoor cultivation operations use ozone equipment because it has a history of successful use in water treatment and agricultural sanitation. However, because the cannabis sector lacks uniform federal manufacturing standards and routine indoor air quality (IAQ) testing for aldehydes, the improper or unregulated use of high-output ozone remediation remains a hidden occupational and consumer safety hazard. Safe application requires strict containment, adherence to OSHA permissible exposure limits (PEL) of 0.1

ppm over an 8-hour period, and robust ventilation before workers re-enter treated spaces. [1, 2, 3]

Other Health Concerns over Ozone

Worker safety:

Tess Ediem, PhD "Using ozone in cannabis indoor cultivation spaces likely results in similar ozone-generated harmful byproducts, like formaldehyde. However, little attention has been paid to how ozone may impact IAQ in the context of cannabis worker occupational safety. Ozone reacts with monoterpenes, producing formaldehyde, sub-micron particulate matter, and other secondary organic aerosols. These ozone-generated products pose unique health concerns for those who breathe them in."

Dominant volatile organic compounds (VOCs) measured at four *Cannabis* growing facilities: Pilot study results

Vera Samburova[1], Mark McDaniel[1], Dave Campbell[1], Michael Wolf[2], William R Stockwell[3], Andrey Khlystov[1]

Affiliations Expand

- PMID: 31498732
- DOI: 10.1080/10962247.2019.1654038

Free article

Abstract

In recent years, sale of recreational marijuana products has been permitted in several states and countries resulting in rapid growth of the commercial cannabis cultivation and processing industry. As previous research has shown, biogenic volatile organic compounds (BVOCs) emitted from plants can react with other urban air constituents (e.g., NOx, HO radical) and thus negatively affect regional air quality. In this pilot study, BVOC emissions from *Cannabis* plants were analyzed at four grow facilities. The concentrations of measured BVOCs inside the facilities were between 110 and 5,500 μg m^{-3}. One adult *Cannabis* plant emits hundreds of micrograms of BVOCs per day and thus can trigger the formation of tropospheric ozone (approximately 2.6 g day^{-1} $plant^{-1}$) and other toxic air pollutants. In addition, high concentrations of butane (1,080- 43,000 μg m^{-3}), another reactive VOC, were observed at the facilities equipped with *Cannabis* oil extraction stations. *Implications*: High concentrations of VOCs emitted from *Cannabis* grow facilities

can lead to the formation of ozone, secondary VOCs (e.g., formaldehyde and acrolein), and particulate matter. Our results highlight that further assessment of VOC emissions from *Cannabis* facilities is needed, and this assessment is one of the key factors for developing policies for optimal air pollution control.

MILE HIGH REMEDIES LLC
QUALITY DECONTAMINATION

Shelf-Life Study

NOVEMBER 1, 2024

STEPHEN WEICHENTHAL / LEVI POEHLEIN/DARCY HANSEN

Executive Summary

Mile High Remedies LLC is conducting a shelf-life study to be compliant with MED direction/regulation regarding sales of marijuana. Three strains chosen for this study were harvested/dried/cured/irradiated/packaged in accordance with MHR Standard Operating Procedures (SOP). Subsequently tested for microbial, potency, terpene content, and water activity.

1. Microbial testing results show consistent Not Detectable, with one data point exception (still within limits). Demonstrates absolute efficacy of this treatment to mitigate/eliminate microbial risk.

2. Potency results are likely lab vari3ability (slight) with no degradation noted. No significant trending shown to date.

3. Terpene content may be showing slight decrease over time for two of the samples. Subsequent testing may demonstrate that trend better.

4. Water Activity results indicate slight variability over time, all within limits required. Variability likely due to sampling/testing environment.

Test samples have demonstrated shelf life of 17, 21, and 25 months, so the mean value taken is 21 months shelf life.

Test results indicate that following the MHR SOP provides for an extended shelf-life of 21 months.

Mile High Remedies LLC / Quality Decontamination

Shelf-Life Study Report

1. **Introduction**

There arises a critical need to ensure the quality and safety of cannabis products throughout their lifecycle. One essential aspect of product quality management is understanding the shelf-life of flower marijuana—how its potency, flavor, and safety characteristics change over time under various storage conditions.

The shelf-life of marijuana refers to the period during which the product retains its desired quality attributes, including cannabinoid content, terpene profiles, and absence of harmful contaminants, while remaining safe for consumption. Understanding the factors that influence shelf-life is paramount for cultivators, distributors, regulators, and consumers alike. Factors such as storage conditions, packaging methods, cannabinoid degradation, and microbial contamination can significantly impact the shelf-life of marijuana.

This report is Mile High Remedies LLC's attempt to demonstrate compliance with MED *INDUSTRY BULLETIN: 23-08 RE: Use-By Dates - Labeling Requirements Guidance - Effective January 1, 2024. Particularly, Rule 3-1015(2)(a.5), which requires: "Effective January 1, 2024, a product use-by date, upon which the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product will no longer be fit for consumption, or upon which Page 1 of 5the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product will no longer be optimally fresh. Once a label with a use-by date has been affixed to a Container containing Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product and any Marketing Layer, a Licensee shall not alter that use-by date or affix a new label with a later use-by date. The use-by date shall not be longer than nine months from the harvest or production date, unless shelf stability testing, including but not limited to potency, microbial, and water activity testing, supports a longer shelf life. All use-by dates must be entered into the Inventory Tracking System prior to Transfer. Prior to Transfer to a patient or consumer, a Regulated Marijuana Store or Accelerator Store must inform the patient or consumer if the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product is past its use-by date."*

We intend to show the efficacy of it's processes, ensuring the safety and shelf-life of the products. Utilizing the processes established and documented in our Standard Operating Procedures (SOP) will effectively extend the current shelf-life of our products to 18 months. The study is ongoing and results updated every three months to establish new shelf-life values. It is our goal to possibly allow our customers, using our SOP and irradiation process, to extend their shelf life also.

2. Background

There exists a gap in scientific literature regarding comprehensive shelf-life studies, particularly focusing on marijuana. Existing research often lacks standardized methodologies and comprehensive analyses to provide robust insights into the shelf-life dynamics of cannabis.

Therefore, this study aims to address this gap by systematically investigating the shelf-life of marijuana under controlled conditions. By employing rigorous experimental design and analytical techniques, we seek to elucidate the effects of storage conditions, packaging methods, irradiation levels, and time on the quality, potency, and safety of marijuana. The findings of this study are expected to provide valuable insights for industry stakeholders, regulators, and consumers, enabling informed decisions regarding storage, handling, and labeling practices to optimize the shelf-life of indoor marijuana and ensure product quality and safety. The results of this study form the basis for a shelf-life extension for products utilizing the referenced Standard Operating Procedures (SOP).

3. Pertinent Factors

a. **Cannabinoid Degradation:** Cannabinoids, such as THC (tetrahydrocannabinol) and CBD (cannabidiol), are the primary bioactive compounds in marijuana and play a crucial role in its therapeutic and psychoactive effects. Several studies have investigated the degradation kinetics of cannabinoids under different storage conditions. For instance, McPartland and Pruitt (1999) (ref 1) reported that THC degradation is accelerated under exposure to light, heat, and oxygen. Similarly, other studies have shown that CBD can also degrade over time, albeit at a slower rate compared to THC (Andre et al., 2016) (ref 2). These findings emphasize the importance of controlling environmental factors to preserve cannabinoid potency during storage.

b. **Terpene Profile Changes:** Terpenes are volatile compounds responsible for the distinct aroma and flavor of marijuana strains. Research suggests that terpenes can degrade over time, leading to changes in the aroma and taste of cannabis products. A study by Ross and ElSohly (1996) (ref 3) found that terpene content decreased significantly after **six months of storage**, with variations depending on factors such as temperature and humidity. Understanding the kinetics of terpene degradation is crucial for maintaining the organoleptic properties of marijuana during storage.

c. **Microbial Contamination:** Microbial contamination poses a significant risk to the safety and quality of marijuana products, particularly if stored under improper conditions. Mold, bacteria, and yeast can proliferate in moist environments, leading to product spoilage and potential health hazards for consumers. Numerous studies have highlighted the importance of proper storage conditions, including temperature, humidity control and adequate ventilation, to mitigate microbial

growth (et al., 2015; Sexton et al., 2019) (ref 4). Furthermore, regulatory standards such as those set by the American Herbal Pharmacopoeia (AHP) (ref 5) provide guidelines for microbial limits in cannabis products, underscoring the importance of microbial testing in assessing shelf-life. For this study, we utilize MED's established limit for microbial content at 10,000 ppm.

d. **Water Activity:** Water activity is widely recognized for the safety it provides to food because of its control of microbial growth and it is considered a critical control point for preventing microbial contamination. Water activity provides this same determination of safety in cannabis and consequently is already a part of cannabis regulations in many states. Harvested cannabis must be sufficiently dry to allow for storage and transport. Water activity determines if molds, yeasts, or bacteria will be able to grow on biomass during storage. While the growth of pathogenic bacteria would pose the greatest risk at the typical water activity of biomass, the more likely contamination source will be molds. All molds except a few rare xerophilic species stop growing at water activities less than 0.70. In Colorado, the threshold for water activity is .65 while we consider .5 to .55 AW to be an ideal water activity. As shown in our findings, newly dried samples are typically in that range.

e. **Packaging Considerations:** The choice of packaging materials and methods can significantly impact the shelf-life of marijuana products. Oxygen, light, temperature, and moisture are known to accelerate degradation processes, necessitating the use of opaque, airtight containers to minimize exposure to these factors. Studies have shown that packaging materials such as glass jars and mylar bags offer superior protection against environmental degradation compared to plastic containers (Chan et al., 2018) (ref 6). Additionally, vacuum-sealing methods can help extend shelf-life by reducing oxygen levels within the packaging. Our SOP establishes a vacuum-sealed plastic bag, including mylar, as the preferred storage container.

f. **Irradiation Procedure:** Critical to our SOP is the use of irradiation for preventative treatment of product for microbial infestation and accordingly, the extension of shelf-life. We utilize Quality Decontamination with the Rad Source 420XL machine for preventative (and decontamination) of product, including flower, trim, and other. The established level of radiation exposure is 3,200 grays, regardless of the quality of the product.

g. **Conclusion:** In conclusion, the existing literature provides valuable insights into the factors influencing the shelf-life of marijuana, including cannabinoid degradation, terpene profile changes, microbial contamination, water content, and packaging considerations. This study provides standardized protocols for shelf-life extensions, documented in our SOP.

4. Procedures

a. **Sample Collection:** Samples are collected in accordance with MED regulations, specifically, Department of Revenue Marijuana Enforcement Division Colorado Marijuana Rules 1 CCR 212-3 Section 4-110 – Regulated Marijuana Testing Program: Sampling Procedures. Sufficient quantities were collected and set aside to allow for multiple tests comprising this study. Storage of this control sample mimics the normal storage conditions at our grow.

b. **Selection of representative marijuana strains**. Three strains were selected because of their relative popularity. Recognizing this is not statistically significant, we believe results from these strains should be representative of most other. All our strains were grown and processed under identical conditions.

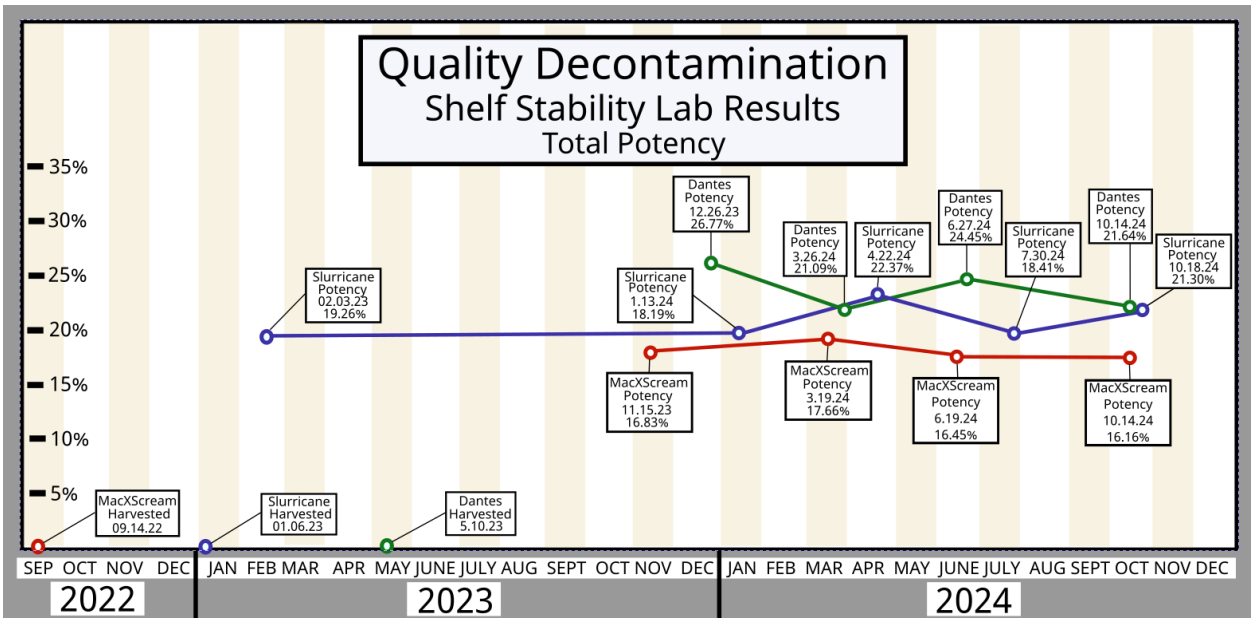
c. **Consideration of storage conditions and intervals for analysis**. The SOP outlines storage conditions of vacuum-sealed plastic bags maintained in controlled humidity/temperature profiles (50-70% RH/50-70 deg F). It should be noted that colder temperatures have not been shown to promote bacterial growth so the lower limit of temperature should not be considered limiting.

d. **Selection of appropriate analytical methods to assess cannabinoid content, terpene profiles, microbial presence, and other quality parameters**. At appropriate intervals, samples are sent to MED-approved laboratories for full-panel analysis. Specifically, plate-analysis is required for aspergillus testing to avoid erroneous detection.

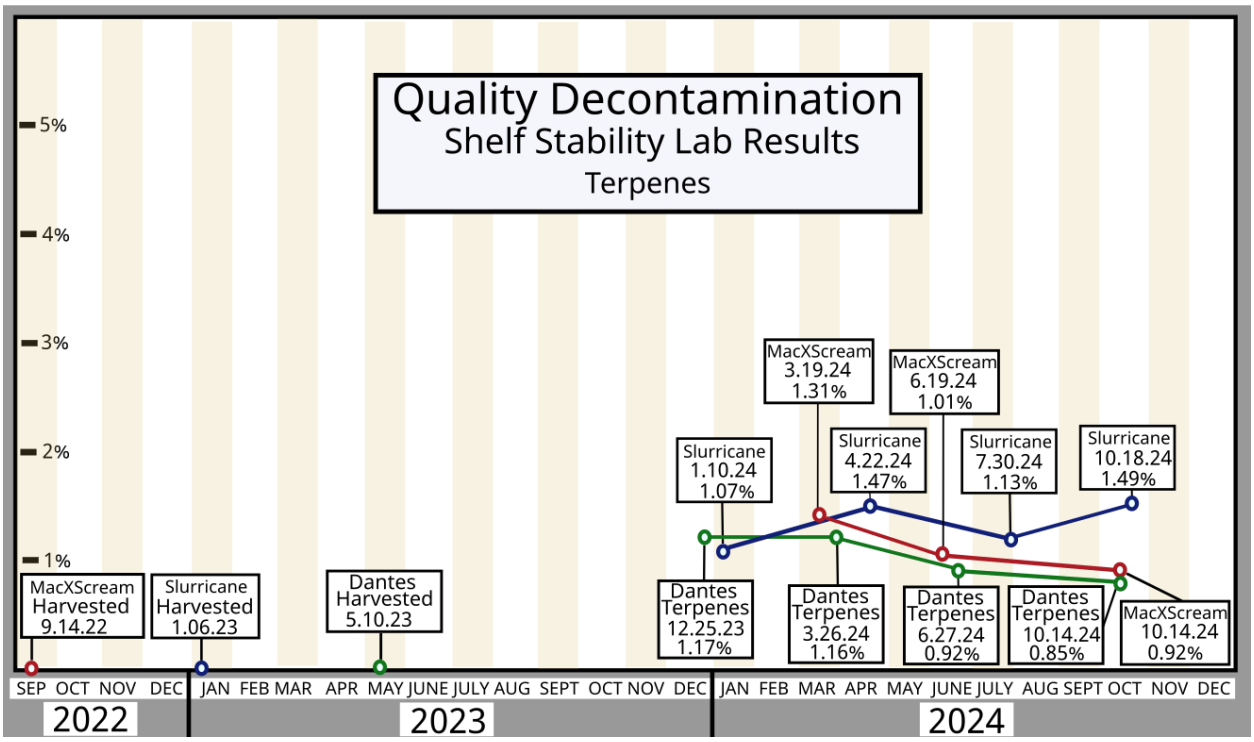
e. **Irradiation process**: After completion of curing/drying, the product is undergoes the irradiation process which takes approximately 10 hours and exposure is 3,200 grays. Post-irradiation, the product is sampled for testing.

5. Analysis and Results

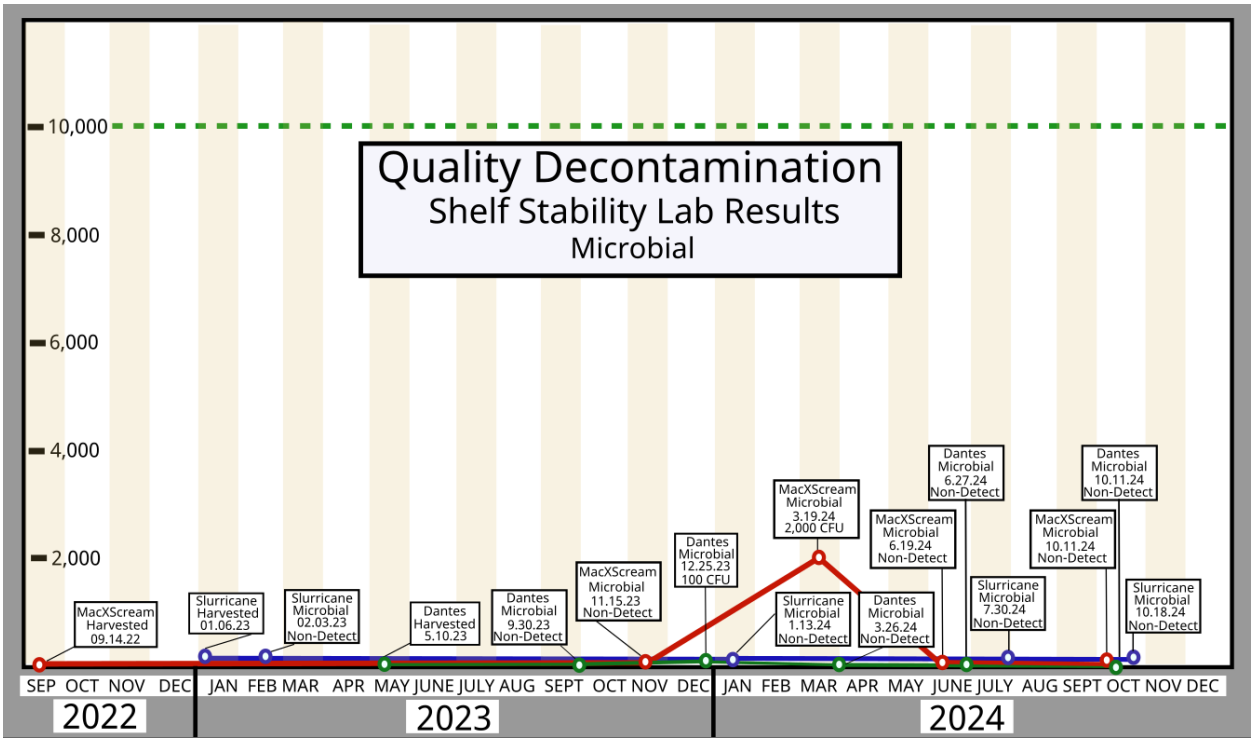
a. **Quantitative analysis of cannabinoid content (THC, CBD, etc.) over time**. Graph 5-1 represents potency results over time for content. As evident in the graph, statistically insignificant amount of degradation has taken place over the 18-month period.



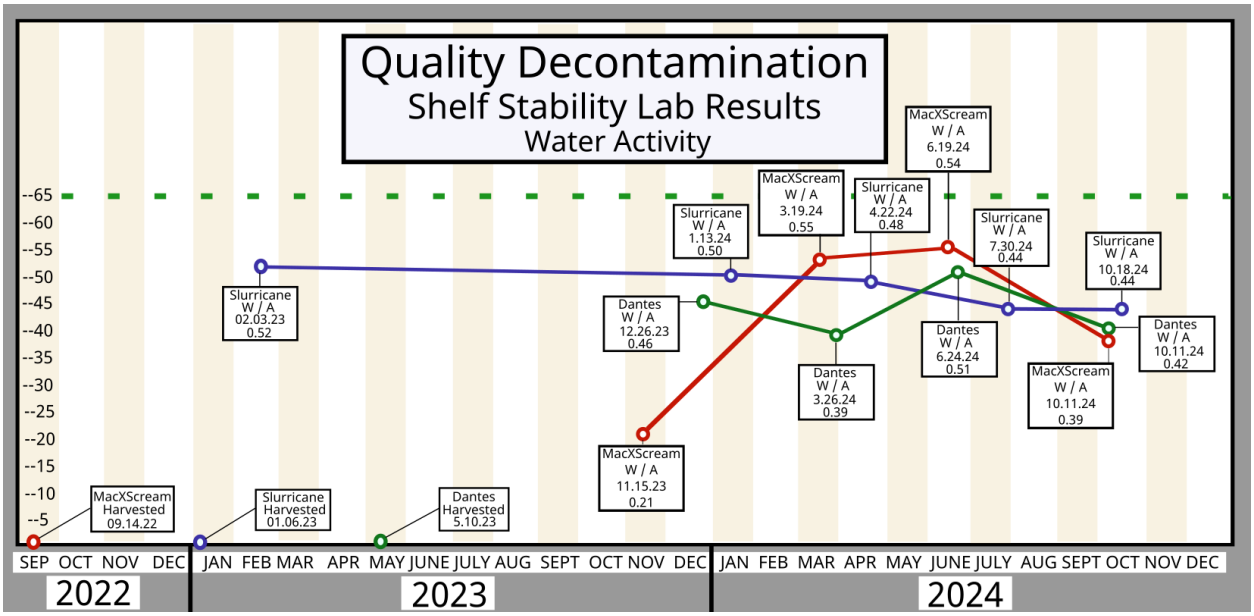
b. **Assessment of terpene profiles and changes**. Total terpene content has shown slight degradation of terpene profiles over time. Subsequent tests will demonstrate trending better.



c. **Microbiological analysis for microbial contamination**. After preventative treatment by irradiation all samples of product should indicate “Not Detectable”. As anecdotal evidence, we have two years of ND after irradiation treatment in our grow. As shown in Graph 5-2, we have seen NO GROWTH in microbial content two samples, and a very small growth of microbial presence to a 2,000 PPM level in one sample, well below the state-established level of 10,000 PPM.



d. **Water Activity**. Small variations in Water Activity measurements are insignificant and do not pose a risk to our products. The values have been stabilized and within regulatory limits.



e. **Statistical analysis of data to identify trends and significant changes**. The test program will continue for extended periods to demonstrate the continued effectiveness of our SOP.

6. Discussion

a. **Interpretation of results in relation to the objectives**. Results indicate the effectiveness of utilizing our SOP in overall extension of shelf-life, primarily ensuring the safety of the product via microbial mitigation.

b. **Identification of critical factors influencing shelf-life**. Obviously, the study shows the importance of decontamination processing, combined with vacuum-sealed storage under controlled environments. These are the significant controlling variables for our SOP.

7. Conclusion

a. **Summary of key findings**. From the data shown, it is obvious that irradiation, vacuum-sealed packages, and correct storage conditions provide an extended shelf life while maintaining all quality indicators for marijuana. The SOP outlines storage conditions of vacuum-sealed plastic bags maintained in controlled humidity/temperature profiles (50-70% RH/50-70 deg F).

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