



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Emily Groseclose, Ohio Department of Commerce

FROM: Caleb White, Business Advocate

DATE: September 16, 2024

RE: CSI Review – Renewals, Employee Badging, Transportation, Security, Inspections, Patient & Caregiver Registration (OAC 1301:18-3-09, 1301:18-2-08, 1301:18-3-02, 1301:18-3-13, 1301:18-3-17, 1301:18-5-01, 1301:18-5-02, 1301:18-5-05, 1301:18-6-01, 1301:18-6-02, 1301:18-6-04, 1301:18-7-01, 1301:18-8-07, 1301:18-9-01, 1301:18-9-06, 1301:18-10-01, 1301:18-10-02, 1301:18-10-04, 1301:18-10-06, 1301:18-10-07, 1301:18-10-08, 1301:18-10-09, 3796:2-1-02, 3796:2-1-03, 3796:2-1-04, 3796:2-1-06, 3796:2-1-07, 3796:2-1-08, 3796:2-1-10, 3796:2-1-11, 3796:2-2-05, 3796:3-1-02, 3796:3-1-03, 3796:3-1-06, 3796:3-1-07, 3796:3-1-08, 3796:3-1-09, 3796:3-1-10, 3796:3-2-05, 3796:4-1-02, 3796:4-1-06, 3796:4-1-08, 3796:5-2-01, 3796:5-2-02, 3796:5-2-03, 3796:5-3-01, 3796:6-2-07, 3796:7-2-01, 3796:7-2-03, 3796:7-2-07, 3796:7-2-08, 3796:7-2-10, and 3796:7-2-11)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of twenty-two new rules and thirty-one rescinded rules proposed by the Ohio Department of Commerce, Division of Cannabis Control (Department) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 12, 2024, and the public comment period was held open through June 26, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on June 12, 2024.

This package contains twenty-two new rules which are intended to replace twenty-eight rescinded rules also contained in this package. While these new rules contain largely similar content to the

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rescinded rules, the new rules have different Ohio Administrative Code (OAC) numbers and are updated to apply to both medical and non-medical cannabis rather than only medical cannabis, in addition to relocating, reformatting, and generally updating language. These rescinded rules address topics such as license renewals for cannabis entities (cultivators, processors testing laboratories, and dispensaries), cultivator and processor security and surveillance, as well as patient and caregiver registration, enforcement, and confidentiality.

The new rules address topics including license renewals for cannabis entities, the requirements and procedure for a licensee to change their location, the process and requirements for employee badging, requirements for the transportation of cannabis to another licensed entity, requirements for the discontinuation of business, requirements for cultivators, processors, and testing laboratories to obtain certificates of operation, requirements for cultivators and processors to maintain an uninterrupted supply of cannabis, cultivator and processor security requirements, dispensary patient confidentiality requirements, cannabis facility inspections, rule variances, patient and caregiver registration procedures, notification requirements, and sanctions, as well as rules governing the handling of patient information. These new rules also contain several changes which include updates to the employee provisional badge requirements and allowing testing laboratories to renew on a biennial basis rather than an annual basis. In addition to the rescinded rules being replaced by new rules, this package also contains three rules that are to be rescinded without replacement related to provisional licenses for medical marijuana cultivators, processors and testing laboratories.

During early stakeholder outreach, the Department posted the rules on the Department's website and sent an email to medical marijuana license holders alerting them that the Department would be accepting feedback from April 26, 2024, and ending on May 10, 2024. During this period the Department received several comments on the proposed rules. The first set of comments raised concerns about the requirement for a transporter to maintain visibility at all times of all products contained within the vehicle having unintended consequences. In response to these comments, the Department amended the requirement to require the vehicle to simply be attended. The second set of comments raised a concern that security cameras be "tamper evident" and for licensees be required to test security and surveillance equipment once every thirty days. In response to these concerns the Department updated the rules to require cameras that deter tampering and for the testing of security and surveillance equipment to be tested monthly. Lastly, the Department received a comment which raised a concern about document upload requirements in the patient and caregiver rules. In response the Department adjusted the rules to be consistent with the current requirements.

During the CSI public comment period, the Department received sixteen comments. Several comments were related to testing methods and standards which are currently being developed, to which the Department responded that they will be proposing these rules in the near future and invited these stakeholders to provide feedback when these proposed rules are submitted for review. Other

commenters asked for language that allowed the Department to assess the costs of an investigation to the licensee to be removed from OAC 1301:18-9-01. The Department did not make changes in response to these comments and responded that this ability is currently allowed under OAC 3796:5-6-01 and stated that the Department has not assessed investigative fees to a licensee without finding the licensee in violation of a rule. The Department further stated that investigative fees are considered as a factor in determining an overall penalty. Other commenters raised concerns regarding background checks, employee badging and the potential revocation of a certificate of operation. The Department did not make changes in response to these commenters and replied that the idea behind provisional badging was to streamline and expedite the process and that these requirements are necessary to ensure employees meet statutory and rule requirements and ensure they do not have disqualifying offenses. The Department also received comments asking for clarification regarding inspections for dual-use facilities and variances for rules, to which the Department provided insight. Finally, the Department received one comment which raised concerns regarding the requirement for dispensaries to test all security equipment every thirty days and the requirement for all camera repairs to be completed within twenty-four hours. The Department responded that the rules that were submitted to the CSI office contained a change from the rule submitted for early stakeholder outreach which only required monthly testing for security equipment and that the Department understands that some camera repairs may take more than twenty-four hours. In these cases, the Department will provide direction when these instances are reported which may include a variance for this requirement.

The business community impacted by the rules includes current medical marijuana licensees and future licensees for both the medical and non-medical cannabis markets. The adverse impacts created by the rules include licensing renewal requirements (annual for cultivators and processors and biennial for testing laboratories and dispensaries) which includes an application and fee, the potential requirement for the Department to perform an inspection prior to the renewal of a certificate of operation, the requirement to submit a written plan of correction within ten business days for written deficiencies issued by the Department, the costs associated with requesting a change of location which includes a fee and application, security requirements, the requirement to submit a written plan of closure if the licensee permanently ceases all operations, and the potential suspension or revocation of a license. The Department notes that some of the changes such as the new employee badging rule and changing the renewal requirement for testing laboratories from annual requirement to a biennial requirement will help to reduce the adverse impact on business as they will only require an employee to maintain one badge for each license within a family of companies rather than each individual license and more closely align the laboratory license renewal process with standard laboratory reviews. The Department states that the adverse impacts to business are justified to balance fair regulations of the cannabis industry while protecting public health and safety.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.