Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Commerce, Division of Cannabis Control

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Regulation/Package Title (a general description of the rules' substantive content):

Non-Medical Cannabis License Applications – Medical to Dual-Use Conversion

Rule Number(s): 1301:18-1-01 (New); 1301:18-2-01 (New); 1301:18-2-02 (New); 1301:18-2-05 (New)

Date of Submission for CSI Review: 2/13/24

Public Comment Period End Date: 2/27/24

Rule Type/Number of Rules:

New/ 4 rules
No Change/____ rules (FYR? ___)
Amended/____ rules (FYR? ___)
Rescinded/____ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

OAC 1301:18-1-01 DEFINITIONS (New)

- The DCC proposes definitions related to licensing applications, including for abandoned application and dual-use license. The definition of disqualifying offense comes from ORC 3780.01.

OAC 1301:18-2-01 APPLICATIONS GENERALLY (New)

- This rule establishes a requirement that the Division provide advance notice of any application period on its website and prescribes the information required in the notice.

OAC 1301:18-2-02 NON-MEDICAL CANNABIS AUTHORIZED INITIAL APPLICATION PERIODS (New)

- This rule describes the initial application period for non-medical cannabis licensing, who is eligible to apply, and when applications must be made available as prescribed by ORC 3780.
- Non-medical cannabis license applications under the Cannabis Social Equity & Jobs Program cannot be made available until the program is operational through Development.

OAC 1301:18-2-05 APPLICATION TO CONVERT MEDICAL MARIJUANA LICENSE TO DUAL-USE CANNABIS LICENSE (New)

- Pursuant to O.R.C. 3780.10, the Division must issue non-medical cannabis licenses by September 7, 2024, to applicants who have a medical marijuana certificate of operation or provisional license issued under O.R.C. 3796.
- The draft rules propose to make applications available for a dual-use license.
    - A dual-use license permits the licensee to participate in both the medical and adult-use cannabis markets.
    - A current medical marijuana licensee who wishes to participate in the non-medical cannabis market at their current location must apply for a dual-use license.
    - There is no application fee for a dual-use license application.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   Authorized By: R.C. 3780.03
   Amplifies: R.C. 3780.03, 3780.10

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   If yes, please briefly explain the source and substance of the federal requirement.

   No

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   n/a

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   Non-medical application licensing rules are required pursuant to the initiated statute approved by voters in November to legalize the possession and use of non-medical cannabis. The Division is proposing rules to establish the application process. Specifically included in OAC 1301:8-2-05 is a process for current medical marijuana licensees to apply to convert their license to a dual-use (medical and non-medical) license. This will be a streamlined process with no application fee.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   The success of the non-medical license application process will be determined by completion on a timely basis (provisional licenses must be issued by September 7) and that the entities permitted by statute to apply for a license may successfully do so.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.
No

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.
If applicable, please include the date and medium by which the stakeholders were initially contacted.

All current medical marijuana licensees were included. Additionally, feedback was requested from everyone signed-up to receive notifications from the Division, and the request was posted on the Division's public website.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The DCC drafted the rules with consideration of previous medical marijuana licensing application periods – what worked and what could have been improved. This includes input from current medical marijuana licensees. Many of the other comments received on the rules in this BIA during early stakeholder outreach were based on statutory mandates. For example, some stakeholders expressed concern regarding the definition of disqualifying offense. This definition is in statute pursuant to the Issue 2 approved by voters.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Other state cannabis markets and regulations were studied and identified best practices were used to help develop these rules.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.
Alternative regulations could include a full application process for the licensing of current medical marijuana licenses as dual-use licenses. The DCC determined that is unnecessary and creating a process to simply convert an existing medical marijuana license to a dual-use license is appropriate and efficient.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The initiated statute approved by voters in O.R.C. 3780 places sole regulatory authority over the non-medical cannabis industry with the Division of Cannabis Control. Specifically, initial licensing applications included in this BIA are solely under the authority of the DCC.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

All medical marijuana licensees will be required to submit the same application to convert their current medical marijuana license to a dual-use license.

All licensing application periods will be conspicuously posted on the Division's website. For the initial licenses permitted by the initiated statute for current medical marijuana licensees, all medical marijuana licensees will be notified directly at the email addresses provided to the Division in eLicense of the application period and all requirements.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

The impacted business community includes current medical marijuana licensees for the initial adult use licensing period.

The rules require an application and license to participate in the non-medical cannabis market. This includes an application for medical marijuana licensees to convert their existing license to a dual-use license. This will be a simple application with five components that will take minimal time for each applicant to complete. There is no application fee.

16. Are there any proposed changes to the rules that will <u>reduce</u> a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*
The rules included in this BIA are all new and necessary to establish the licensing application process for non-medical cannabis pursuant to O.R.C. 3780.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The adverse impact created is primarily the requirement to obtain a license to engage in the cultivation, processing, testing, or dispensing of non-medical marijuana, which is required by O.R.C. 3780. While some information is required to be reported as a condition of compliance with the application requirements, it is minimal and does not include anything beyond what is required by statute or what the Division needs to process the application.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The application process proposed in the rule for current medical marijuana licensees will be a simple application with five components that will take minimal time for each applicant to complete. These rules are intended to create a level playing field for all licensees.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The DCC works diligently to ensure that all licensees understand all applications, forms, and compliance requirements. The Division does not fine licensees for simple paperwork violations, but does work with licensees who encounter challenges to ensure they have the information necessary to comply with all laws and rules.

20. What resources are available to assist small businesses with compliance of the regulation?

The DCC regularly issues guidance to licensees and posts those documents and other helpful information on its website: www.com.ohio.gov/cannabiscontrol. Additionally, the DCC has a team of inspectors who work closely with all licensees to ensure they are able to achieve and maintain compliance with program regulations.

Chapter 3780 Initial Applications

(All section numbers and citations subject to change)

1301:18-1-01 Definitions:

(A) “Abandoned Application” means an application submitted pursuant to this chapter which does not meet the minimum eligibility requirements for review, or is otherwise deemed abandoned pursuant to this chapter, and is removed from the application process.

(B) "Disqualifying offense" means a conviction or plea of guilty, including conspiracy to commit, attempt to commit, or aiding and abetting another in committing, the following:

(1) Any offense set forth in Chapters 2925, 3719, or 4729 of the Revised Code, the violation of which constitutes a felony or a misdemeanor of the first degree;

(2) Any theft offense set forth under division (K) in section 2913.01 of the Revised Code, the violation of which constitutes a felony;

(a) Any violation for which a penalty was imposed under section 3715.99 of the Revised Code;

(b) A crime of moral turpitude as defined in section 4776.10 of the Revised Code; or

(c) A violation of any former law of this state, any existing or former law of another state, any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any of the offenses listed in paragraphs (a)(iv) to (a)(iv) of this definition.

(3) Any first degree misdemeanor offense listed in paragraphs (a)(i) to (a)(v) of this definition will not automatically disqualify an applicant from licensure if the applicant was convicted of or pleaded guilty to the offense more than five years before the date the application for licensure is filed.

(4) Notwithstanding paragraph (1) or (2) of this definition, no misdemeanor offense, including misdemeanors of the first degree, related to cannabis possession, cannabis trafficking, illegal cultivation of cannabis, illegal use or possession of drug paraphernalia or cannabis drug paraphernalia, or other cannabis related crimes shall be considered a disqualifying offense.

(C) “Dual-use license” means a license issued by the division that allows:

(1) A cultivator to engage in all permissible activities outlined under sections 3796.18, 3780.12, and 3780.13 of the Revised Code.

(2) A processor to engage in all permissible activities outlined under sections 3796.19 and 3780.14 of the Revised Code.

(3) A testing laboratory to engage in all permissible activities outlined under sections 3796.21 and 3780.16 of the Revised Code.

(4) A dispensary to engage in all permissible activities outlined under sections 3796.20 and 3780.15 of the Revised Code.

1301:18-2-01 Applications Generally

(A) The division shall provide notice in advance of its intent to accept applications for licensure. The application notice shall be published on the division's internet website and contain the following information:
  (1) The type of applicants authorized to apply;
  (2) Requirements for a complete application including:
    (a) A list of all application information and materials needed; and
    (b) Requisite non-refundable application fee.
  (3) Minimum eligibility requirements for licensure;
  (4) The deadline to submit an application;
  (5) The number of available licenses, if applicable;
  (6) Any geographical or regional considerations associated with the available licenses; and
  (7) Any other criteria the division determines is necessary for the issuance of licenses.

1301:18-2-02 Authorized Initial Application Periods

(A) The following applicants are authorized to file an application for licensure with the division:
  (1) Cultivators, processors, testing laboratories, and dispensaries currently licensed as a chapter 3796 medical marijuana facility seeking license conversion to a dual-use license as defined by section 1301:18-1-01 of the Administrative Code.
  (2) Entities eligible for a 10(B) dispensary license as established by section 1301:18-2-06 of the Administrative Code.
(B) All application materials for the applicants authorized to apply in accordance with paragraph A of this rule will be published no later than June 7, 2024.

1301:18-2-05 Application to Convert Chapter 3796 license to dual-use cannabis license

(A) Pursuant to 1301:18-2-02(A)(1) a cultivator, processor, testing laboratory, or dispensary that is currently licensed pursuant to chapter 3796 may apply to convert its current medical facility and site to a dual-use facility. To be eligible for conversion, the applicant must comply with all dual-use application requirements outlined under this rule.
(B) A chapter 3796 licensed entity seeking to convert its current facility to a dual-use facility must submit a complete application on a form as prescribed by the division. This application will demonstrate, at a minimum:
  (1) The applicant's designated point of contact that shall serve as the main contact for the division for the duration of the application period.
  (2) Applicant does not have an ownership or investment interest in, or compensation arrangement with:
    (a) An adult use testing laboratory licensed pursuant to chapter 3780 of the Revised Code; or
      (b) An applicant for a license to conduct adult use laboratory testing.
  (3) Applicant does not share any corporate officers or employees with:

(a) An adult use testing laboratory licensed pursuant to chapter 3780 of the Revised Code; or

(b) An applicant for a license to conduct adult use laboratory testing.

(4) Compliance with all applicable tax laws within the state of Ohio; and

(5) Applicant is not contemporaneously employed by a regulatory agency or governmental entity within the state of Ohio that within that role may significantly influence or control entities licensed under chapters 3796 or 3780 of the Revised Code.

(B) Upon receipt of a complete application for a dual-use license, the division shall review the application.

(C) After review of the application, the division may:

(1) Approve the application and issue a dual-use provisional license;

(2) Deny the application; or

(3) Advise in writing that the applicant failed to meet all application requirements.

(D) Upon determination that an applicant failed to meet all requirements of paragraph (B) of this rule, the division shall notify the applicant in writing of all deficiencies contained within the application.

(E) Within ten business days of receipt of written notification from the division, the applicant shall alleviate all deficiencies outlined and submit any further documentation requested by the division. If an applicant fails to alleviate all deficiencies in the time provided their application will be abandoned by the division.