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Common Sense Initiative

Mike DeWine, *Governor*
Jim Tressel, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Emily Groseclose, Ohio Department of Commerce

FROM: Caleb White, Business Advocate

DATE: April 9, 2025

RE: **CSI Review – Rule Package 6: Provisional Licenses, Fees, Employee Training, Record Keeping, Business to Business Transfers, Forms & Methods of Administration, Advertising, Product Registration, Inventory Control, Cultivator and Processor Operations, Testing Lab Accreditation and Surveillance, Product Recalls, Dispensary Discounts and Returns, Enforcement Authority (OAC 1301:18-1-01, 1301:18-2-07, 1301:18-2-09, 1301-18-3-10, 1301:18-3-14, 1301:18-3-16, 1301:18-3-18, 1301:18-4-01, 1301:18-4-02, 1301:18-4-03, 1301:18-4-05, 1301-18-4-07, 1301:18-4-08, 1301:18-4-09, 1301:18-4-10, 1301:18-4-11, 1301:18-4-16, 1301:18-4-17, 1301:18-4-18, 1301:18-4-22, 1301:18-5-03, 1301:18-5-04, 1301:18-5-06, 1301:18-6-03, 1301:18-6-05, 1301:18-7-04, 1301:18-7-05, 1301:18-7-06, 1301:18-8-04, 1301:18-8-06, 1301:18-8-08, 1301:18-8-09, 1301:18-8-10, 1301:18-8-11, 1301:18-8-12, 1301:18-9-04, 1301:18-9-05, 1301:18-10-03, 3796:2-1-09, 3796:2-2-01, 3796:2-2-04, 3796:2-2-08, 3796:3-2-04, 3796:3-2-08, 3796:4-1-05, 3796:4-1-09, 3796:4-2-07, 3796:4-5-5-01, 3796:5-6-01, 3796:5-7-01, 3796:6-3-06, 3796:6-3-07, 3796:6-3-12, 3796:6-3-18, 3796:6-3-19, 3796:6-3-21, 3796:6-4-05, 3796:6-4-06, 3796:6-4-07, 3796:6-4-08, 3796:6-4-09, 3796:68-2-01, 3796:8-2-02, 3796:8-3-01, 3796:8-3-06, 3796:8-3-07, 3796:3-1-04, 3796:3-1-05, 3796:3-2-01, 3796:3-2-06, 3796:3-2-07, 3796:3-3-01, 3796:4-1-03, 3796:4-1-04, 3796:4-1-07, 3796:5-1-01, 3796:5-2-04, and 3796:6-3-01)**

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This rule package consists of thirty-seven new rules, one amended rule, and forty-three rescinded rules proposed by the Ohio Department of Commerce, Division of Cannabis Control (Department) as a part of the statutory five-year review process.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 December 06, 2024, and the public comment period was held open through December 23, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on December 06, 2024.

This package contains thirty-seven new rules, most of which have a corresponding rule that is being rescinded. While these new rules contain largely similar content to the rescinded rules, the new rules have different Ohio Administrative Code (OAC) numbers and are updated to reflect statute and 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 cultivation area expansion, cultivator operations, cultivator, processor and dispensary inventory control, recordkeeping for cultivators and processors, security and surveillance for testing laboratories, enforcement authority, advertising, dispensary errors, employee training, as well as recall procedures, forms, and administration. This package also contains additional rule rescissions regarding testing laboratories, financial responsibility, winding down, cannabis facility distance from prohibited facilities, and the release of patient transaction records as these rules were replaced with new rules in a different package.

This rule package also contains one amended rule, OAC 1301-18-01, which is amended to update and add definitions.

The new rules in this package address topics such as provisional licenses, fee schedules, requirements for employee training and qualifications, recordkeeping requirements, business to business transfers, manufacturing process requirements, methods of administration, tetrahydrocannabinol (THC) limits, strain name requirements, product limitations, product registration approval, testing requirements, research, advertising, certificates of analysis, operating procedures, quality assurance, cultivation expansion, inventory management, accreditation, security requirements, sanitary requirements, dispensation requirements, dispensing errors, product recalls and returns, patient and caregiver requirements, and the enforcement authority of the Department.

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 June 12, 2024, and ending on June 26, 2024. During this period the Department received several comments on the proposed rules. These comments addressed topics such as required Occupational Safety and Health Administration (OSHA) requirements,

recordkeeping requirements, business to business transfers, good management practice requirements, advertising restrictions, cultivator and processor operating procedures, inventory and control requirements, and restrictions on cultivator area expansion. In response to these comments, the Department updated the rules to require safety training for responsible parties, reduce records retention requirements from five-years to two-years, add more flexibility to transfers between processors, cultivators, and dispensaries, add an exemption for good management practice requirements, clarified the restrictions on advertising, remove a requirement for major modifications to be submitted to the Department 60 days prior to the implementation and only require the modifications to be submitted and approved prior to implementation, update pesticide, fertilizer, and chemical requirements, allow responsible parties to delegate and supervise delivery and inventory requirements, require rejected transfers to be documented immediately rather than requiring the Department to be notified within 48 hours, and to eliminate a restriction that prevented cultivators from submitting more than one cultivation area expansion per year.

During the CSI public comment period, the Department received thirty-two comments. These comments addressed a wide variety of topics such as discounts and loyalty rewards programs, advertising restrictions, delivery requirements, major modification requirements, dispensing errors, single serving unit specifications, requirements surrounding the use of cannabis, THC caps and ranges, the amount of product that is permitted to be dispensed at once, licensure requirements, safety requirements, transfer requirements, records retention requirements, the duties of a responsible party, testing requirements, packaging requirements, health related statements, requirements when purchasing medical cannabis for a patient, investigation costs, taxes, as well as policy and procedural requirements.

After the CSI public comment period, the Department added a requirement to store records on licensed premises, removed a prohibition on licensees conducting their own testing before state required tests, added more flexibility to advertising requirements by allowing licensees to mark, distribute, and sell merchandise to those over the age of twenty-one and added more flexibility around the required use of the THC symbol. The Department also limited an exemption that allowed a licensee's website to permit those under eighteen to visit their website to only registered patients. The Department also made changes to simplify requirements for responsible parties overseeing inventory and allowed responsible parties to oversee weekly inventory rather than requiring them to be the one conducting the inventory, added a requirement for a responsible party to oversee a quality assurance review of dispensing errors once a month and notification requirements if the errors are caused by operational deficiencies, clarified requirements related to discounts for veterans, added limitations on requirements for return policies and added language to prohibit advertising within 500 feet of community addiction service providers, arcades, or any other place where the placement of the advertisement targets or is attractive to children . The Department also responded to commenters and clarified where appropriate. Other requests that were not accepted were either not related to this

rule package, would require a statutory change, would pose a risk to safety, or were not accepted as the requirements in question are already in place.

The business community impacted by the rules includes currently licensed cannabis entities and future cannabis licensed entities. The adverse impacts created by the rules include licensing and application fees, renewal fees, training requirements, records retention requirements, good management practice requirements, registration requirements, the costs associated with developing and implementing policies and procedures associated with operations, quality assurance, and inventory control, testing requirements, reporting requirements, International Organization for Standardization (ISO) certification requirements, security requirements, and the potential fines, sanctions, and license suspension or revocation associated with violations of these rules or cannabis laws. The Department states that initial licensure fees can range from $2,000 to $20,000, certificate of operation fees cost between $18,000 and $180,000, renewal fees range between $20,000 and $200, employee application fees are $100, change of ownership, change of location, and major modification fees are $1,000, change of business or trade name fees are $500, and product registration fees are $100. The Department also states that the required OSHA training course costs $160 and takes about 30 hours to complete, security training is free but takes two hours to complete, and food safety manager training costs $180 and takes eight hours to complete. Lastly the Department states that ISO training accreditation costs an average of $311,485 according to a 2017 report. The Department notes that several changes such as removing an approval requirement for employee training, reducing records retention timelines from five to two years, and allowing processors to submit cannabis samples for research and development testing will reduce the adverse impacts contained in this package. 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.