



**OHIO MEDICAL MARIJUANA LEVEL I AND LEVEL II CULTIVATOR
APPLICATION REVIEW**

**DEPARTMENT OF COMMERCE
MEDICAL MARIJUANA CONTROL PROGRAM**



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Executive Summary

In May 2016, the Ohio General Assembly voted to legalize medical marijuana in the state of Ohio. The law, which took effect on Sept. 8, 2016, established the Medical Marijuana Control Program (MMCP), which is administered by the Ohio Department of Commerce, State of Ohio Board of Pharmacy and the State Medical Board of Ohio.

The Department of Commerce (the Department) was assigned the responsibility of licensing, administering, monitoring, and the development and enforcement of rules for marijuana cultivators, testing laboratories, and processors. Additionally, the Department is responsible for implementing an electronic database for compliance monitoring and production control from seed to sale in accordance with the Ohio Revised Code.

The Department announced the winners of cultivator provisional licenses and applicant scores on Nov. 30, 2017. Allegations of flaws in the scoring system and a lack of appropriate oversight by the Department at various stages of the review process arose shortly thereafter. Many of the unsuccessful cultivator applicants have challenged the Department's scoring, and lawsuits were filed with various claims, including a lack of due diligence in selecting subject-matter experts who helped shape the entire process.

As a result of these developments and questions that arose independently within the Auditor of State's (AOS) office, AOS launched an examination of the process utilized by the Department in the scoring and awarding provisional medical marijuana cultivator licenses.

Auditors uncovered errors the Department made in final score calculations effecting 13 applicants, including one error which led to the eventual issuance of a 13th Level I provisional license. In addition to these errors, auditors found errors on reviewer score sheets affecting 15 applications, which had a potentially material effect on a Level II provisional licensee

Auditors found weaknesses in how the Department protected passwords, system folders and summary scoring sheets which created vulnerabilities for system integrity.

While the Department established a process designed to prevent potentially identifiable information from being revealed to applicant evaluators, auditors found instances on 5 of 11 applications reviewed where the process failed.

Auditors identified dozens of errors and inconsistencies in the standards held by the Department for determination of compliance with zoning requirements in the Ohio Administrative Code (OAC) which may have directly impacted applicant scores.

The AOS review found numerous instances of errors and inconsistencies in the evaluation and scoring of applicants and examples of the Department acting in violation of the Ohio Revised Code (ORC) and Ohio Administrative Code (OAC). Most notably, the OAC 3796: 2-1-01 limits the number of provisional cultivator licenses that could be awarded before Sept. 8, 2018 to 12 per cultivator type for both Level I and Level II cultivators. The Department issued an additional Level I and an additional Level II provisional license in excess of the established threshold in an attempt to resolve errors made by the Department and its reviewers which resulted in an apparent violation of state law.

Introduction

Following the failure of Issue 3 in the November 2015 general election which would have granted a monopoly for the commercial production and sale of marijuana in Ohio for recreational and medicinal purposes, State Rep. Stephen Huffman introduced House Bill 523, legislation allowing for the legalization and regulation of medical marijuana in Ohio. A month after its April 2016 introduction, the bill was passed by the Ohio General Assembly and was signed into law by Gov. John Kasich in June. The law took effect on Sept. 8, 2016, establishing the basic framework of the Medical Marijuana Control Program (MMCP).

The program is administered by the Ohio Department of Commerce, State of Ohio Board of Pharmacy and the State Medical Board of Ohio in accordance with ORC Chapter 3796 and Ohio Administrative Code (OAC) 3796. The Department is responsible for the licensing, administration, monitoring, and development and enforcement of rules for cultivators, testing laboratories, and processors. Additionally, the Department is responsible for implementing an electronic database for compliance monitoring and production control from seed to sale in accordance with ORC §3796.07. The seed-to-sale tracking system will monitor medical marijuana from its initial cultivation through processing, testing, and dispensing. This tracking system offers immediate status reports on the flow of product.

Licensing and monitoring for dispensaries, patients and caregivers are under the direction of the Board of Pharmacy, while physician certification is under the direction of the State Medical Board. Once all parts of the MMCP are operational, persons suffering from any one of the qualifying conditions outlined in ORC §3796.01 will have the ability to access, purchase, and consume medical marijuana oil with a specially certified physician's recommendation. Medical marijuana cultivation, administered by the Department, was the first sector of MMCP to issue provisional licenses.

Allegations of flaws in the scoring system and the lack of general oversight by the Department at various stages of the review process arose shortly after the cultivator provisional licenses and applicant scores were announced on Nov. 30, 2017. More than a third of the unsuccessful cultivator applicants filed a Chapter 119 Administrative hearing to challenge the Department's scoring. Lawsuits also were filed by unsuccessful applicants with a variety of claims, including the constitutionality of the Economically Disadvantaged licensing requirement set forth in ORC §3796.09, fairness of the scoring process and the Department's alleged lack of due diligence in selecting subject matter experts who helped shape the process.

As a result of these developments and questions that arose independently within the Auditor of State's (AOS or Auditors) office, AOS launched an examination of the process utilized by the Department in the intake, evaluation, scoring and awarding of provisional medical marijuana cultivator licenses.

Following the commencement of AOS review, the Department also retained the services of Ernst & Young (E&Y) to review the Level I and Level II scoring and selection process. As part of their limited scope engagement, E&Y organized the rescoring of certain Section Two plan parts for applications identified as having score sheet errors. Due to the level of expertise required to score applications, all rescoring was performed by the original Section Two review team; neither AOS nor E&Y rescored applications based on material content included in applicant submitted Section Two plans.

E&Y completed their review of the Level I cultivator scoring and selection process and released a report of those findings June 2018. No report outlining E&Y's Level II findings was made available to the AOS prior to the release of this report, and the status of the E&Y review of Level II cultivator scoring and selection process was unknown. The E&Y Level I report was reviewed by AOS and an analysis is included in "Testing Performed by Auditors" located on page 19.

Background

In August 2016, the Department posted a Request for Information (RFI)¹ seeking contractors with specialized medical marijuana industry knowledge to assist in the development of cultivator rules and regulations. B&B Grow Solutions LLC, a medical marijuana consulting firm headquartered in Illinois, was contracted for this RFI and began working with the Department in October. B&B's work involved the research, review, and input of draft rules for cultivators, testing labs, and processors. B&B also reviewed and provided feedback on proposed cultivator application materials and instructions. During this time, B&B was in frequent contact with the Department Director of MMCP and MMCP Team Coordinator.

In May 2017, MMCP posted a Request for Proposal (RFP), enlisting the aid of subject matter expert consultants in the development of the scoring rubrics and the review of Level I and Level II cultivator applications as was allowed by OAC 3796: 2-1-03(B). The Department received four proposals, selecting three consulting firms to contract with. Two of the three had worked with the MMCP in the development of program rules in some way: B & B Grow Solutions LLC was involved in the development of the cultivator rules; iCann Consulting LLC was involved in the development of the testing lab and processor rules. The third consultant, Meade & Wing LLC, also was contracted to work with MMCP. Before beginning its contract to develop cultivator rules, B&B became aware of a potential independence issue, notified the Department and recused itself from the work associated with this RFP.

Medical marijuana cultivator rules outlined in OAC Sections 3796:1 and 3796:2 were adopted on May 6, 2017. Cultivator license types were classified into two categories based on the initial size of operations. Level I license types permit an operating facility containing up to 25,000 square feet designated for growing space upon initial licensure², and Level II license types permit an operating facility containing up to 3,000 square feet designated for growing space upon initial licensure³. The Department was given permission to issue up to twelve licenses for each type⁴.

The Department review process consisted of five steps in this order: Intake, Section One review, Redaction review, Section Two review, and Post-review procedures, which included the Director's recommendation and approval of provisional license awards. Intake, the first step, occurred in June 2017 with the Department receiving a total of 185 cultivator applications: 109 for Level I and 76 Level II.

During the same month, the Department held a training session for all application reviewers. As part of the training, the Department provided materials to reviewers on public records laws as they relate to personal notes, which generally are not considered to be a public record. Reviewers were instructed to maintain public records; however, the reviewer's individual records of application review results fell under the personal notes category as long as no other employees used or had access to these notes.

¹ RFI COM2016-ADM003, obtained from procure.ohio.gov

² OAC 3796: 1-1-01 (A)(23) "Level I cultivator" means a cultivator that is permitted to operate up to twenty-five thousand square footage of space designated as the marijuana cultivation area in the application, unless a request for expansion is approved by the director of the department under rule 3796:2-1-09 of the Admin Code.

³ OAC 3796: 1-1-01(A)(24) "Level II cultivator" means a cultivator that is permitted to operate up to three thousand square footage of space designated as the marijuana cultivation area in the application, unless a request for expansion is approved by the director of the department under rule 3796:2-1-09 of the Admin Code.

⁴ OAC 3796: 2-1-01 (A) Until September 8, 2018, the director of the department of commerce or the director's designee may issue up to twelve level I and twelve level II cultivator provisional licenses, in consideration of the ranking of the applicants in accordance with the criteria listed in section 3796.09 of the Revised Code and this chapter.

The Department conducted its application review procedures for Section One, Redaction and Section Two review between July and November of 2017. Post-review procedures were completed in October and November. The Department announced cultivator provisional license award recipients Nov. 3 for 11 of the 12 Level II Cultivator licenses available; the remaining Level II and 12 Level I Cultivators license recipients were announced on Nov. 30.

Development of the Rules, Scoring System, and Application Review Process for Cultivators

The methods used to review and score applications were created by the Department in accordance with OAC 3796.

Submissions for cultivator applications were divided into two distinct sections: Section One – Identifiers, and Section Two – Non-Identifiers.

Section One consisted of informational forms filled out by the applicant in addition to other documentation requirements regarding the business, those involved with ownership and operations, ownership structure, proposed facility location, etc.

Section Two was organized to mimic the cultivator provisional license application requirements outlined in OAC 3976: 2-1-02(B). Accordingly, Section Two was divided into five plan portions: Operations, Quality Assurance, Security, Business, and Finance. The plans were used as the main element of evaluation in determining applicant qualifications. Applications were scored based on the content and comprehensiveness of these plans.

The scoring rubrics were developed following Department fieldwork in June 2017. In accordance with OAC 3796: 2-1-03(B)(7), the Department could evaluate applicant plans based on any item it deemed appropriate.

Consultant subject-matter experts and state-employed specialists were involved in developing score sheet testing criteria for the five plans included in Section Two of the application. These experts advised the Department on items they believed should be addressed in a medical marijuana cultivation plan for each Section Two portion. These items were taken into consideration in determining testing criteria outlined in the final score sheets used in Section Two testing. The Department had final approval in all testing criteria included in the final score sheets. OAC 3796: 2-1-03(B) outlines the basic minimum testing criteria that were used to assess cultivator applicants across all Section Two plans. The final Section Two plan score sheets each contained several areas of focus, each broken down into individual assessment items called “testing criteria.” Testing criteria were used to objectively evaluate and score applicants based on plan comprehensiveness and compliance with Ohio laws.

Reviewers evaluated testing criteria as either “Yes” or “No” depending on whether testing criteria was demonstrated. The number of areas of focus included in the five different Section Two plan score sheets ranged from two to six. Each area of focus within the plans contained one, six, or eight testing criteria, each offering a maximum of five “raw” points. Points awarded were based on the number of testing criteria reviewers determined were met within each area of focus, and a point value was assigned for each possible number of testing criteria an applicant could have demonstrated within an area of focus. Failure to demonstrate required elements (testing criteria required by state statute) forfeited the applicant from receiving any point considerations in that area of focus, regardless of the number of other testing criteria demonstrated. Required elements were denoted on the score sheet as bold and italicized testing criteria. The Table below is an example of the point conversion rubric used on Section Two score sheets

	Possible Points
Plan addresses all of the required elements established in rule and adequately demonstrates all 8 of the elements above, or the plan adequately demonstrates 7 of the 8 elements and also contains additional features that materially improve the quality of the applicant's operations plan	5
Plan addresses all of the required elements established in rule and adequately demonstrates 4-7 of the elements above	3
Plan addresses all of the required elements established in rule and adequately demonstrates 2-3 of the elements above	1
Plan fails to address all of the required elements established in rule or adequately demonstrates fewer than 2 of the elements above	0

The Department allowed a margin of subjectivity if an applicant had demonstrated all but one testing criteria in a single area of focus for determining the number of points to award. If an applicant had either demonstrated five of six score sheet testing criteria or seven of eight score sheet testing criteria (inclusive of all those required by Ohio law) the review team assessed whether the plan contained additional features that materially improved the quality. Plans determined to have these features were awarded the full five points; if not, plans would receive three of the five possible points.

The Operations and Business Section Two plans had "Optional" sections prescribed under OAC 3796: 2-1-03(C). This information could be used by reviewers in determining whether a plan contained additional features that materially improved its quality. For plans without optional content, the plan was assessed based on the level of detail, comprehensiveness, and overall cohesiveness. There were no bonus points awarded for an applicant addressing the optional areas included in the Business or Operations plans. Optional information included by applicants was only used as a point of assessment for determination in instances where an applicant was on the cusp between receiving two different point values.

The application instructions outlined additional requirements that applicants had to meet in order to be considered:

- Receive a minimum of 60% of "raw" (non-converted) points available in each Section Two plan submitted
- Have included less than five personally identifiable information instances
- Receive a minimum of 60% of cumulative points available, after point conversion factors

Failure of an applicant to meet any of the above requirements resulted in applicant disqualification in accordance with OAC 3796: 2-1-04(A)⁵.

⁵ OAC 3796: 2-1-04(A): A provisional license shall be issued to the level I and level II qualified applicants receiving at least the minimum required score in each category and the highest total score overall as compared to the other applicants.

Stages of Department Application Review

Application Intake

The Department began accepting cultivator license applications June 5, 2017 for Level II applicants and June 19 for Level I applicants, each open for a 12-day period. All applicants were required to hand deliver one complete printed copy and two digital copies of their application along with the nonrefundable application fee. Each application was given a unique numerical identifier based on the order in which the application was received in lieu of using business names. Cultivator applications were numbered 0001-0076 for Level II applicants and 0077-0185 for Level I applicants to maintain the anonymity of the applicant throughout the review process.

The Department utilized the secure drop box portal, Tumbleweed, throughout the review process to transmit documents, applications, and completed review materials between Department administrators and MMCP reviewers during the Section One, Redaction, and Section Two review steps of the process. After the Department's IT division performed a virus scan on the provided digital application, a Department administrator uploaded it into Tumbleweed; secured copies were stored in a locked file room located at the Department with access limited to select MMCP administrators.

Tumbleweed provides users the ability to upload documents and also limits user internal access based on privileges determined by the account administrator(s). The Department had two administrator accounts for this program; both were given unlimited access to all Tumbleweed account folders. Unlimited access consisted of the ability to view, upload, and download documents from all user folders.

Each individual involved with the program was given a unique username login to access documents within Tumbleweed. The standard account creation process used by the Department for the portal required administrators to contact the Department IT division to create user accounts. Once these accounts were created, login information was communicated to the administrator who had initially requested the account creation. As required by Department policy, the administrator logged into each individual account and changed the original default password set by IT. The administrator then communicated login information to the assigned user. Users were not required or instructed to change the administrator-created passwords upon receipt, nor was there a password expiration policy in place requiring users to update the login password at any point. This allowed administrators the ability to login to any and all user accounts throughout the review process.

Section One Application Review

Information identifying the applicant was limited to Section One of the application. Section One consisted of forms requiring documentation regarding business entity and contact information, liquid assets, financial responsibility, proposed property, local jurisdiction, owners and officers, business organizational chart, individual background information, license information for medical marijuana businesses in other jurisdictions, individual and business tax information and disadvantaged group certification.

Section One review was divided into thirds. Each of the three Section One reviewers were designated a specific list of forms which they were responsible for reviewing for every applicant. The review sheets had two testing columns: "Submitted (Y/N)" and "Flag for Disqualification Review (Y/N)". Reviewers marked each form box accordingly, along with notes, as needed. The "Flag for Disqualification Review" testing box was only available and used for certain Section One forms deemed critical to ensure compliance. The ORC or OAC requirement associated with that form was outlined on the Section One review sheet for reference. Section One forms tested that could be flagged for disqualification review were:

- 1B: Liquid Assets Form⁶
- 1F: 500 Foot Compliance⁸
- 1G: Notice of Proper Zoning¹⁰
- 1I: Owners and Officers Roster Form⁷
- 1K: Individual Background Information⁹

Reasons a Section One form could be flagged for disqualification review varied, and a flag did not explicitly result in the applicant disqualification. Applications with Section One forms flagged in this box continued through the review process to Redaction and Section Two evaluation. A secondary review for compliance was performed during post-review procedures over forms flagged, and was only reviewed for the highest-ranking applicants who remained a contender for a provisional license. At this point, the Department made determinations whether the forms flagged had adequately demonstrated compliance or warranted disqualification. See Post Review on page 12 for additional information.

Section One did not have any points directly associated with its review; however, certain information provided in select Section One forms was necessary to evaluate testing criteria contained in the Business and Financial plans of Section Two. This information was communicated to the Section Two Business and Financial Review team to aid in testing criteria determinations. See Section Two Plan Review on page 8 for additional information.

Redactions

Section Two applications were screened by a separate Redaction Team prior to being provided to the Section Two review teams. Members of the Redaction Team were not involved in any other step of the review process. The Department took a conservative approach, redacting both directly personally identifiable information (PII) and items that could indirectly cause bias. Two points were deducted from application raw scores for each instance of PII identified, which was multiplied by a conversion factor of two in the calculation of the final cumulative score. Points were not deducted for items redacted due to concern of indirect bias influence.

PII warranting point deduction as defined by the Department included the following categories¹¹:

- Individual, Entity, or University names
- Personal addresses, business addresses, or individual components of an address such as number, city, county, or municipality
- Personal or Entity identification numbers
- Contact information
- Company logos, trademarks, or other identifying marks
- Location references that would make it possible for a reviewer to identify where the proposed facility will be located
- References to involvement in Ohio's marijuana legalization effort

The Department set a maximum threshold of five PII instances. Applications found to have five or more instances of PII were automatically disqualified. Items redacted due to having been determined to have the potential to cause indirect bias did not result in any point deductions, nor were there limits on the

⁶ Compliance tested in accordance with Ohio Admin Code 3796:2-1-03(A)(1).

⁷ Compliance tested in accordance with Ohio Admin Code 3796: 2-1-03(A)(5) and (A)(2)(b).

⁸ Compliance tested in accordance with Ohio Admin Code 3796: 2-1-03(A)(3).

⁹ Compliance tested in accordance with Ohio Admin Code 3796: 2-1-03(A)(2)(a). BCI&I and FBI background checks were tested during post review procedures.

¹⁰ Compliance tested in accordance with Ohio Admin Code 3796: 2-1-03(A)(4).

¹¹ Per Cultivator Request for Application

number of instances redacted. These items included state names, graduation years, and niche occupations among other things.

Each Section Two application was reviewed a total of three times by the Redaction Team. The first review was performed on a printed copy of the application, which the reviewer would mark redaction instances identified. The second review was performed utilizing the same printed copy of the application to ensure all redaction instances were identified. Following the secondary review, the Redaction Team met, discussed, and input redactions on the electronic version of the application. The Redaction Team recorded the number of redaction instances identified for each application on the Redaction Application Results form. These forms, along with the completed redacted applications, were certified and uploaded onto Tumbleweed for administrator review, distribution, and use.

Following Redaction team review, an administrator also scanned Section Two applications for any additional PII instances missed by the Redaction Team. Instances identified by the administrator were redacted prior to being distributed to the Section Two review teams utilizing a different redaction block color than that used by the Redaction Team. The administrator did not make any additions or modifications to the Redaction Application Results form completed by the Redaction Team to reflect additional instances identified. Additional instances were verbally communicated to the administrator responsible for calculating applicant final scores.

Section Two Plan Review

Scoring considerations were exclusive to Section Two. Applicants were required to outline cultivation plans for areas of Operations, Quality Assurance, Security, Business, and Finance following guidance outlined in the application instructions.

Section Two review was performed by four (4) three-member teams. Each plan was assigned to a different team with the exception of Business and Finance Plans, which were both reviewed by the same team. All team members were required to individually read the plan section(s) they had been assigned for all submitted applications. They were not given any information regarding applicant business names, individuals associated with the business or other identifiable information.

The 12 individuals selected by the Department to review Section Two cultivator applications consisted of nine state employees and three subject matter expert consultants¹². These individuals were chosen by the Department based on each person's professional field of expertise and placed on the review team most-closely aligned with that individual's field.

Each team had a designated "team leader" who was chosen by the Department at the beginning of the process. Team Leaders were given added responsibilities, including scheduling team consensus calls, compiling agreed-upon testing results during consensus calls, and submitting the final score sheet to the Department through Tumbleweed. All four Team Leaders were State of Ohio employees. The Section Two reviews utilized score sheets containing specific testing criteria. Applicant plans were provided to reviewers through Tumbleweed in batches of 10. Each team member reviewed plans and independently documented assessments on the score sheets, stating "Yes" or "No" whether the applicants had adequately addressed individual testing criteria. Each page of the score sheet addressed a different subsection of the plan, as outlined in MMCP-C-1001B Cultivator Section Two Non-Identifiers Application Filing Packet. Applicants could receive a point value of 0, 1, 3 or 5 based on the total number of testing

¹² Note: The twelve individuals involved in Section Two review did not take part in any other step of the review process

criteria addressed. Failure to address all OAC 3796 required testing elements (identified on the score sheet as the bold and italicized) would result in an automatic zero out of five points for that subsection. Following independent individual reviews and assessment, all team members convened for a consensus call to determine results. During the call, applicant plans were discussed and each testing criteria was evaluated. Discussions continued until all team members came to an agreement for the treatment of all individual testing criteria used to evaluate applicants and the corresponding points awarded. Agreed-upon testing criteria marks and corresponding points awarded during the team consensus calls were documented on the final score sheet and submitted to the Department exclusively by the team leader.

The same scoring rubric was used to evaluate both Level I and Level II applications. The Section Two review teams were given access to only the redacted Section Two plan(s) they were responsible for reviewing and did not have access to information in other plan sections.

Certain testing criteria contained in the Business and Financial Plan score sheets required the evaluation of information provided in Section One, necessitating the communication of certain Section One information to the Business and Financial Team. Draft compliance determinations were made and communicated to the Section Two Business and Financial review team in a summary sheet compiled by an administrator. The summary sheet did not contain entity-identifiable information and only contained the application number, Section One form title, rule requirement tested, “Yes” or “No” indicating whether or not the applicant had met the rule requirement based on Section One information provided. The administrator compiling the summary sheet reviewed the answers and comments contained on completed Section One review sheets to determine if compliance with the rule requirement had been adequately demonstrated. The administrator reviewed actual Section One forms submitted for determination on an as-needed basis in cases in which the Section One reviewer had expressed confusion. The related Section One forms and corresponding rule requirements tested on the summary sheet included:

Financial Plan – Funding Analysis	
Section Title	Rule Requirement
1I: Owners and Officers Roster Form	Identity and ownership interests
1B: Liquid Assets Form	Liquid capital requirement
1C: Financial Responsibility – Insurance	Financial responsibility
1D Financial Responsibility – Escrow/ Surety	Financial responsibility
1N: Tax Payment Records Cover Page	Record of tax payments ¹³

Business Plan – Business Model	
Section Title	Rule Requirement
1A: Business Entity and Contact Information Form – Secretary of State	Ability to operate/ conduct business in Ohio
1E: Property Owner Approval for Use Form	Owns, leases, or has ability to use property
1G: Notice of Proper Zoning Form	Compliance with any local ordinance, rules or regulations

¹³ If the application had included any tax documentation in Section One, the rule was “met”. Tax Payment Records were reviewed for completeness and evaluated during post review procedures. See section *Post Review Procedures* and results comment *Record of Tax Payment Procedures*.

All Business and Financial Plan testing criteria related to information provided in Section One documents were components required by OAC. Of the five plans, Business and Financial were worth the fewest number of points, each offering a maximum of 10 possible points. Consequently, failure to meet a Section One rule requirement or adequately demonstrate compliance in the Section Two plan would result in a maximum plan score of 5/10. This would result in applicant disqualification in accordance with the 60% minimum point requirement. This condition is evident in applications 0118 and 0119; both applications were submitted by the same applicant and received identical testing criteria determinations and scores across Section Two with the exception of one testing criterion which caused the disqualification of application 0118.

Post Review

Following the completion of Section Two review, all scores were compiled in the Master Score Sheet Compilation Workbook by an administrator. Final score sheets submitted by reviewers along with Redaction Application Results forms were exported from the secure drop box portal from which they had been initially uploaded. Excel formulas were utilized in the Master Score Sheet Compilation Workbook to add, subtract, and convert applicant raw scores to final cumulative scores utilizing the conversion factors established by the Department prior to application intake.

The Department performed additional confirmation and compliance procedures for top-scoring applicants. Post review procedures included:

- Compiling the names of all people with an ownership interest for all applicants and reviewing to ensure that no individual or business with an ownership interest in a provisional license awardee had applied with other applicants. (OAC 3796: 2-1-04(D))
- Reviewing individual applicants to ensure tax compliance and that there were no outstanding tax debts associated with individuals or their businesses. Tax compliance and review procedures were performed by the Ohio Department of Taxation on behalf of the Department. (OAC 3796: 2-1-03(A)(6))
- Review to ensure no individuals included in the application had been convicted of or had pled guilty to a disqualifying offense outlined in ORC 3796 (OAC 3796: 2-1-03(A)(2))
- Verify that the local jurisdiction of the proposed facility did not have a moratorium or other restrictions prohibiting the operation of a MMCF (OAC 3796: 2-1-03(A)(4))
- Economic Disadvantage status confirmation (Ohio Admin Code 3796: 2-1-03(C)(4))
- Review Section One review sheets for applicants flagged for disqualification. Applicants flagged for disqualification were required to submit to the Department clarifications, modifications, or amendments in order to receive further consideration, which was a right of the Department as stated in the application instructions provided to cultivator applicants. This request included items such as individual background check submission and additional tax documentation needed, among other things.

Department personnel maintained a spreadsheet of the names of all persons included in the applications of the top scoring applicants. This spreadsheet was used to track applicants with outstanding items remaining, individuals with potential issues identified regarding tax debt and background check compliance, and individuals who were successfully reviewed without issue.

Information for Level I applicants and Level II applicants were compiled and maintained on identical, separate Master Score Sheet Compilation Workbooks. A Department administrator downloaded from Tumbleweed the final score sheets and Redaction Application Results forms that had been uploaded by Section Two Review Team leaders and the Redaction Team. Points awarded per final score sheets and redaction instances per Redaction Application Results forms were entered into the Master Score Sheet Compilation Workbook. A column was also created titled "Redaction Adjustments: +instances". This column was used to denote additional PII instances identified by an administrator that had not been identified by the Redaction Team.

Formulas contained in the workbooks included simple math calculations as well as more complex formulas. Complex formulas included those which captured data and tested if an applicant achieved the minimum raw score required in each Section Two plan, had achieved an overall minimum raw score of 60 points, had not breached the limit of five redaction instances allowed, and adjusted for the "Record Keeping" testing subsection which had been included in both the Quality Assurance and Security Plan. Failure to meet any of the minimum requirement stipulations and failure to be within the redaction limit set by formulas would result in "Disqualified" appearing in the "Score after Qualifiers" column contained on the Master Score Sheet Compilation Workbook.

Upon completion of post-review procedures, applicants that remained in the running for a provisional license were compiled in a list and sorted by final score. The Department was required to award 15% of provisional licenses to applicants qualifying under economic disadvantaged status under ORC §3796.09(C). The Department interpreted this law to require 15% of Level I and Level II Cultivator license types issued to qualify under economic disadvantaged status both individually and collectively. None of the 12 highest-scoring Level I applicants had applied under the economic disadvantaged status. As a result, in order to meet licensing requirements set by ORC §3796.09, the 10 highest scoring Level I applicants and two highest-scoring Level I applicants qualifying under economically disadvantaged status were awarded Level I Cultivator provisional licenses. Level II Cultivators had three economically disadvantaged applicants scoring in the top 12; therefore the top 12 scoring applicants were selected for award of Level II Cultivator provisional licenses.

Significant Review Process Controls

The Department implemented controls over the review process by limiting application information provided to reviewers to aid in a blind scoring method as well as the three member Section Two review teams.

The blind system of grading removes identifying information from submissions prior to being reviewed, forcing the reviewer to limit his/her evaluation on content alone. It is typically used as a means to reduce the risk of individual biases affecting scoring outcomes and increase external confidence in its accuracy. The Department's logic behind implementing this control was to reduce the risk of potential reviewer biases affecting scores, whether conscious or unconscious. Applicants were given explicit instructions not to include any personally identifiable information in Section Two plans; points were deducted from applicant cumulative scores for each instance of personally-identifiable information included in Section Two discovered by the Redaction Team. There were no points awarded directly from Section One review. All points were awarded in Section Two review, although certain Section One information was assessed and provided in a non-descript form to help reviewers determine whether applicants met certain testing attributes in the Business and Financial Plans.

Distribution of application information to reviewers was restricted to an as-needed basis. Section One reviewers were not given access to Section Two plans, and vice versa. Further, Section Two reviewers

were only given access to the plan section for which they were responsible for reviewing. These restrictions were implemented utilizing individually assigned folders in Tumbleweed, the secure drop box portal utilized by the Department throughout the review process. Restricting Section One information was established as a necessary control to facilitate the blind system of grading. Supplemental controls restricting access to Section Two information were put in place to preserve the trade secret information contained in plans.

Section Two plan reviews were performed by three-member teams. Each team was delegated a plan section to review for all 185 applications to ensure consistency. The Section Two reviewers selected by the Department consisted of nine state employees and three consultants with expertise in this area. These individuals were chosen by the Department based on their areas of expertise and placed on review teams according to their areas of expertise.

Team members were instructed to review each plan individually¹⁴. Applicant plans were provided to reviewers through Tumbleweed in batches of 10.

Upon the completion of a batch, the Section Two review team would convene with a consensus call. On the call, reviewers would discuss each individual testing criteria included on the score sheet for each applicant. They would jointly decide whether the applicant demonstrated score sheet testing criteria (“Yes”) or not (“No”). Team members would further discuss and agree upon the points awarded when the maximum score was not fully supported by the application (based on the point conversion rubric). This control was put into place as a tool to distribute power among team members, reduce the risk of individual oversight of application information effecting applicant scores, and ensure the review maintained objectivity and consistency of testing across all applications. Final scoring was recorded by the team’s leader on the final score sheet PDF which was submitted to Department administrators through Tumbleweed. The final score sheet submitted by the Team Leader was not reviewed by any other team members prior to submission, nor were other team members given access to score sheets at any other time during the review process.

Many of the Section Two plan submissions contained trade secret information, which is why reviewers received public records laws training at the beginning of the process. AOS requested personal notes made by all Section Two reviewers regarding the cultivator evaluation. Personal notes were provided to AOS by two of the 12 Section Two reviewers. The remaining 10 reviewers however, including all Section Two reviewers employed by the Department, said they had destroyed their notes. The lack of independent information nullified the intended audit procedures to determine the frequency that submitted score sheets agreed/disagreed with other team member review determinations.

¹⁴ Note: there were no audit procedures performed to ensure team members did not communicate with each other regarding individual review during the process

Ohio Auditor of State Analysis of Cultivator Application Review Process

Audit work was conducted between December 2017 and July 2018. Auditors worked closely with the Department throughout the engagement period to gain an understanding of the process used for the intake, review, scoring, selection and award of provisional cultivator licenses. Data and information obtained from the Department was reviewed by auditors and with Department staff involved at each stage of the review process to ensure an accurate understanding was gained.

Sources of criteria used by auditors to assess the guidelines, scoring process, and methodology used by the Department included: statutory requirements in ORC and OAC; MMCP's Ohio Cultivator Application Instructions; MMCP's Scoring Reference Guide; MMCP-C-1001-A and B, Cultivator Applications; MMCP's Cultivator Application Q&A Session 1 and Session 2 Answers; MMCP's internal policies and procedures; information gathered through interviews; and other documents obtained from the Department.

Summary of Procedures Performed

Audit procedures consisted of the following:

- Interviewed key individuals involved in the MMCP Cultivator review process. Individuals interviewed include:
 - Justin Hunt, Former Director of MMCP
 - Mark Edwards, Chief Information Officer
 - Kathy Frato, MMCP Project Manager
 - Diana Wynkoop, Administrative Professional
 - All (six) Redaction Team members
 - All (12) individuals responsible for Section Two, including four Team Leaders
 - Various Department IT personnel
- Reviewed individual score sheets for all applicants for any errors or omissions based on information contained on reviewer score sheet.
- Points awarded were reviewed for all Section Two plans for all applicants for accuracy in accordance with the number of "Yes" and "No" responses recorded in relation to the individual testing criteria located on the individual Section Two plan score sheets.
- Reviewed Master Score Sheet Compilation Workbook to ensure formulas used throughout were accurate, agreed to prior guidance set forth by the Department, and were consistent across all applicants for Level I and Level II Cultivator applicants.
- Recalculated cumulative scores for all applicants utilizing the number of points awarded calculated in audit procedure criteria testing above and redaction instances per the Redaction Application Results forms submitted by the Redaction Team. Results per auditor final score recalculation was compared to final scores calculated by the Department.
- Reviewed Section One identifiers packet to ensure comprehensiveness and accuracy of all ORC and OAC references.
- Reviewed Section One review forms. Auditor reviewed Section One forms submitted for certain items flagged for disqualification review during the Section One review and compared to Section One forms submitted by applicants to ensure consistency of flags
- Performed a detailed analysis over Section One Summary worksheets provided to Section Two reviewers. Auditors compared results shown on completed Section One Review sheets, Section One Summary Sheet, and Section Two final score sheets to determine the consistency and

accuracy of information provided to Section Two reviewers on Section One Summary Sheet and accuracy of Section Two utilization of Section One information provided.

- Performed scanning procedures over Redaction Application Results forms obtained from Department Administrator for any unusual items, obvious errors or omissions.
- Reconciled select Redaction PII instances per Redaction Application Results form to the number of PII instances contained in Section Two applications
- Compared select redacted Section Two applications to the non-redacted application to determine reasonableness of non-PII redactions and ensure redactions had no material effect on the application quality in accordance with testing criteria
- Reviewed select Section Two Applications with “Redaction+ Instances” input in the Master Scoresheet Compilation Workbook, which consisted of PII instances identified by an administrator following Redaction Team review, which were not denoted on the Redaction Application Results forms submitted by the Redaction Team
- Reviewed the Level I Medical Marijuana Control Program Cultivator Licensing Scoring Recalculation Report issued by Ernst and Young

Testing Performed by Auditors

Intake

AOS met with Department administrators responsible for intake procedures and were provided a detailed step-by-step overview of the work performed. Personnel from the Department IT division performed a walkthrough with AOS to demonstrate how the Tumbleweed system worked, the controls in place, and information recorded in the Tumbleweed audit log. A list of individuals with access to the secure file room where application submissions were maintained was provided to and reviewed by AOS to ensure access was limited to appropriate Department personnel.

Section One Identifiers Packet

Auditors reviewed all forms included in the Cultivator Application Section One Identifiers packet. Forms were reviewed for comprehensiveness and accuracy of ORC and OAC references. One inaccurate OAC reference was noted on form 1O Disadvantaged Group Applicant; however, the error was determined to be insignificant as the Department manually confirmed the economic disadvantaged status of all applicants awarded a provisional license during post-review procedures.

Section One Review Sheets

Auditors performed a scan of all Section One review sheets submitted by the three reviewers to ensure completeness of files provided to auditors. Fields documented on the Section One review sheets included receipt of form submission, flag for disqualification review, and reviewer notes as needed. Section One summary sheets with documents marked “Flagged for Disqualification Review” were haphazardly compared to applicant Section One submissions to determine the reason and accuracy for the document flag.

Certain Section One forms necessary to ensure compliance were included as testing attributes in Section Two review and therefore had points associated with their submission. Section One review sheets were used by an administrator to compile a summary sheet for the section, outlining compliance measures in the application that were necessary for the evaluation of the Section Two Business and Financial Plans. The Section One summary sheet consisted exclusively of the Section One form name, the rule being

tested, and whether an applicant had adequately demonstrated rule compliance. Section One documents reviewed for compliance assessments necessary for Section Two review consisted of Section One forms: 1A, 1B, 1C, 1D, 1E, 1G, 1I, 1J, and 1N

Information contained on the Section One review sheet was compared to determinations documented on the summary sheet to determine if both documents were in agreement. Auditors haphazardly reviewed Section One submissions and compared them to determinations made on Section One review sheets and summary sheets to ensure consistency was maintained across determinations made for all applicants.

Redaction Application Results Sheet

AOS obtained and reviewed supporting documentation for PII redaction instances identified from the administrator.

Auditors identified two Redaction Application Results sheets were completed for applications 0001-0010, one in a format broken down by section, and another simpler Redaction Application Results sheet which had been completed for all applications 0001-0185. AOS interviewed all Redaction Team members, at which time it was noted the Redaction switched to the simpler Redaction Application Results sheet following the completion of the first application batch reviewed. Following the change, the Redaction Team recreated new Redaction Application Results sheets for Applications 0001-0010 utilizing the new form to ensure consistency of documentation.

Auditors identified two instances for Application 0004 and 0008 where the Instances of PII identified on the Redactions Application Results sheet broken down by section did not match the Instances of PII identified on the simpler Redaction Application Results sheet used for all 185 applications. Auditors did not receive a response from the Department's Redaction Team as to why the two forms differed for Application 0004 and 0008. Auditors relied on the simpler Redaction Application Results sheet used for all 185 applicants for Redaction Instances testing.

Redaction Application Testing

AOS haphazardly selected 11 applications for testing – six from Level I, including three winners, and five from Level II, including two winners. Auditors reviewed the original submitted application that was unaltered by the Redaction Team for PII as detailed on page six of the Ohio Cultivator Application Instructions. Auditor then compared the results from the blind review performed above to the results of the Redaction Team and administrator as reported on the Level I and Level II Master Score Sheet Compilation Workbook. Auditors also reviewed all of the redacted applications tested against the unredacted applications to ensure non-PII redacted would not affect the material quality of the application.

Section Two Score Sheet Testing

Auditors obtained all final Section Two Score Sheets directly from team leaders for all five Section Two Plans. Auditors re-calculated the score for each subsection of each plan for all Level I and Level II applicants based on the number of testing criteria met.

Auditors relied on the individual testing criteria assessments input on the Section Two Score sheets by review Team Leaders. Auditors reviewed score sheets for completeness, obvious errors or omissions, and recalculated the number of points to be awarded based on the number of testing criteria and OAC required testing criteria met as denoted on the Section Two score sheets. Review procedures and point recalculation was performed for all Section Two plans for all Level I and Level II Cultivator applicants.

Auditors compared recalculation results for each plan and individual subsection to points awarded as denoted on Section Two Score sheets. Auditors then performed the same comparison to figures input on the Master Score sheet. All variances were investigated (see Results item 3 Failure of Secondary Review of Master Score Sheet located on page 20). Points awarded as recalculated by auditors were also used in the recalculation of applicant final scores in Master Score Sheet Compilation Workbook procedures outlined below.

Additionally, auditors requested individual score sheets and notes taken during the review process from all Section Two review team members not responsible for final score sheet submissions. Intended audit procedures included the review of team member notes and comparing score sheet criteria testing determinations per team member notes to the submitted results. Individual score sheets/notes were, however, considered to be personal notes not subject to public records requests. As a result had been destroyed or made otherwise unavailable for 10 of the 12 Section Two reviewers from which auditors had requested.

Section One Information used for Section Two

Auditors reviewed Section One forms (1A, 1B, 1C, 1D, 1E, 1G, 1I, 1J, and 1N), their corresponding OAC the Summary Sheet Code references, the corresponding testing criteria on Section Two score sheets, and rules tested to ensure all items were in agreement and that testing was consistent with objectives set forth by the OAC section. All rules were in agreement with and consistent with the OAC.

Auditors analyzed testing and review procedures performed by the Department for the determination of testing criteria treatment of individual applicants. Auditors noted compliance procedures performed in regards to Form 1N, *Tax Payment Records Cover* were completed following Section Two testing during post review procedures for top scoring applicants only, therefore the resulting effect was limited. Auditors reviewed the Form 1N *Record of Tax Payments* testing criteria contained in the Section Two Financial Plan Score Sheet and noted 100% of applicants were marked "Y", criteria met. See Record of Tax Payment Testing Procedures comment in 'Results' section below.

In performing testing procedures, auditors initially placed no reliance on the summary sheet as the administrator responsible for compiling the summary sheet had access to the applicant name and numerical identifier legend. Detailed analytical procedures were performed, comparing responses denoted on the Section One review sheets to corresponding testing criteria results contained on the Section Two Business and Financial Plan score sheets for 100% of Level I and Level II applicants. Auditors investigated all instances in which Section One review sheet responses did not agree with the criteria response denoted on the Section Two score sheet, and all instances in which testing criteria related to Section One information provided were marked "N" on the Section Two score sheet. Procedures performed by auditors in investigating the above items included a review of Section One review sheet notes, Section Two Final Score sheet notes, and Section Two Plans to determine if there were any additional notes that may have impacted results and to ensure criteria items were properly marked as met/not met.

Auditors also compared the Section One summary sheet provided to the Section Two review team to the Section Two criteria results of the Business and Financial Plan score sheets to ensure results were in agreement. For all instances where the results did not agree, the Auditors once again reverted to source documentation to determine whether criteria items were properly marked as met/not met. For all errors identified, auditors reviewed the Section One review sheet, Section One summary sheet, and Final Score Sheet to determine the error source.

Master Score Sheet Formula Testing

Auditors obtained the Master Score Sheet Compilation Workbooks for Level I and Level II Cultivator applicants from the Department in February 2018. Formulas within the workbooks were reviewed by auditors to ensure they were accurate, functioning properly and consistent across all applicants.

Auditors noted that formulas were consistent across every column for all applicants for both Level I and Level II and included correct cell references. Qualifier formulas and Record Keeping Adjustment formulas were recreated by auditors to ensure proper function. Math formulas were reviewed for accuracy and point conversion factors used within the formulas were compared to those identified on Table 2 of the Ohio Cultivator Application – Instructions below.

Table 2 Category	Raw Score	Conversion Factor	Weighted Score	Percentage of Total Available Points
Business Plan	10.00	1.46	14.6	7.30%
Operations Plan	30.00	2.36	70.8	35.40%
Quality Assurance Plan	30.00	1.64	49.2	24.60%
Security Plan	20.00	2.00	40	20.00%
Financial Plan	10.00	2.54	25.4	12.70%
Redaction Deduction, if applicable	<i>up to -10.00</i>	2.00	<i>up to -20.00</i>	<i>up to -10%</i>
Total Possible Points	100		200	100%

Auditors did not find any issues in the structure or formulas contained in the Level I or Level II Master Score Sheet Compilation Workbooks. All formulas appeared to be accurate and consistently applied across all Level I and Level II applicants.

Department Scores Compared to Auditor Recalculation

Auditors created an exact duplicate of the Master Score Sheet Compilation Workbook for Level I and Level II Cultivators and input columns for “Score Re-Entry” and “Calculated Variance.” Auditors entered points awarded per the point recalculation performed during Section Two Score Sheet Testing into the “Score Re-Entry” column. The “Calculated Variance” column used a formula to display any discrepancies between the scores entered by the Department and the recalculated scores.

Redaction Application Results compared to Master Score sheet Compilation Workbook Instances

AOS compared Redaction Team Instances reported on the Level I and Level II Master Score Sheet Compilation Workbooks to the Redaction Application Results forms provided by the Department for all Level I and Level II applicants. Auditors entered the number of redaction instances shown per the Redaction Application Results form into a “Score Re-Entry” column. Variances were calculated in the “Calculated Variances” column, however AOS did not identify any differences between actual and reported redactions for Level I or Level II applicants utilizing the Redaction Application Results forms.

Additional Redaction Instances Adjustments

Redaction Adjustments were recorded for three Level II applicants (0002, 0053, and 0073) on the Master Score Sheet Compilation Workbook. Redaction Adjustments, which were recorded in a column separate from the Redaction Team instances identified, were a result of a secondary review performed by an administrator of applications already redacted by the Redaction Team. No separate supporting

documentation was maintained for the additional PII instances identified. Administrator redactions made on applications provided to Section Two reviewers were, however, made in a color different from that used by the Redaction Team, and were easily distinguishable.

Auditor reviewed applications for two of the three applications which have redaction + instances identified on Master Score sheet Compilation Worksheet to ensure the additional redactions were justified. The review was performed by comparing the redacted and unredacted application versions for all five Section Two plans for each application and manually counting the number of PII instances identified by the Redaction Team and by the administrator. After reviewing the two applications, Auditors identified one additional redaction instance that did not meet the description of identifiable information per page six of the Ohio Cultivator Application Instructions, which the Redaction Team and Administrator used as guidance for identifying errors.

Recalculation of Final Scores

Auditors recalculated final scores for all Level I and Level II applicants based on the awarded points recalculated by auditors during Section Two Score Sheet testing. Recalculated final scores were compared to those shown on the Department's original Master Score Sheet Compilation Workbook for both Level I and Level II applicants. See 'Results' Section below.

Department Results Compared to Results Published at MMCP website

AOS compared the Department's "Total Converted After Redaction" and "Score After Qualifiers" on the Level I and Level II Master Score Sheet compilation workbook to the "Total Weighted Score" and "Final Result" on the Ohio MMCP Cultivator Applications Level I and Level II Review Results to ensure the correct results were posted online to the public. AOS noted three instances (one Level I Cultivator applicant and two Level II Cultivator applicants) in which the applicants listed as "Disqualified" in the Final Results column of the Ohio MMCP Cultivator Application Review Results that were not listed as disqualified on the Master Score Sheet Compilation Workbook. The Department stated both applicants were disqualified due to disqualifying offenses discovered during post-review procedures. Auditors reviewed supporting documentation and noted applicants were properly disqualified in accordance with ORC 3796, therefore no issue was taken. See 'Results' Section below.

Economically Disadvantaged Review

Per Ohio Revised Code §3796.09(C) the Department must issue no less than 15% of licenses to economically disadvantaged groups. This review was performed to ensure the Department maintained compliance with ORC §3796.09 and to ensure the Level I licenses awarded to economically disadvantaged group applicants in lieu of other higher-scoring applicants were in fact the highest scoring economically disadvantaged applicants.

Per the Department, two of the 12 (16.7%) Level One Cultivator provisional licenses and three of the 12 (25%) Level Two Cultivator provisional licenses were awarded to economically disadvantaged group applicants. Auditors reviewed Section One 10 Disadvantaged Group Applicant Form for all applicants with a Total Weighted Score (before disqualifiers) greater than or equal to that of the lowest scoring provisional licensee. This review consisted of 28 Level I applicants (33 total applications) and 17 Level II applicants (20 total applications).

Of the applicants reviewed, auditors identified a total of two Level I applicants that had certified economically disadvantaged on *Form 10*, both of whom were awarded a Level I provisional license. Auditors identified four Level II applicants applying under the economic disadvantaged status. Three of

the four Level II Cultivator applicants were awarded a Level II provisional license; the fourth was disqualified due to a disqualifying offense discovered during post-review procedures. No issues were noted for Level I or Level II economically disadvantaged provisional license award or ORC §3796.09 compliance.

Ernst and Young Level I Medical Marijuana Control Program Cultivator Licensing Scoring Recalculation Report

AOS reviewed the report issued by Ernst & Young (E&Y) outlining their review and rescoring of Level I Cultivator applications. The report was issued as a limited scope engagement to provide the Department with certain assurances over the cultivator scoring and selection process. Auditors reviewed the Level I report, which included E&Y's results, and compared information and determinations made by E&Y to work completed by the AOS. The results corroborated AOS errors found in the master score sheet calculation effecting 10 Level I applicants (See results item 3. Failure of Secondary Review of Master Score Sheet located on page 21) and existence of score sheet errors effecting 4 level I applicants (see results item 4 Internal Controls over Section Two Final Score Sheets located on page 22).

E&Y procedures also included the rescoring of applications identified as containing score sheet errors in which the written testing criteria determinations did not agree to the number of points awarded. E&Y had the original Section Two review team perform a limited blind re-review of certain applications in which the level I applications that had been identified as containing this error were rescored.

E&Y results concluded that the points awarded in the rescored applications agreed to the number of points originally recorded in the master score sheet for all four Level I applications effected by this error. The error source was a result of incorrect testing criteria determinations input on original submitted score sheets. At the time this report was issued Ernst & Young had not yet completed their review of Level II Cultivator Scoring, and therefore AOS was unable to determine the overall results of E&Y's review, and their effect on Level II cultivator applications also affected by this error.

Results

AOS communicated issues and concerns to the Department as they were identified throughout the audit period to allow the Department the opportunity to remedy control deficiencies and errors identified, and prevent the same issues from occurring during the Department's subsequent review of Processor and Testing Laboratory applications.

1. Administrator Access to All Reviewer Passwords

OAC Section 117-2 sets out requirements for public offices in establishing internal controls over processes. Specifically, 117-2-01(D)(4) states, in part, when designing the public office's system of internal control and the specific control activities, management should plan for adequate segregation of duties or compensating controls. Implementing internal controls is an important responsibility of management to ensure discipline, structure, and integrity is maintained throughout the entity. Having proper controls in place reduces and manages risk in an organization to ensure the reliability and accuracy of information and the integrity of process outcomes.

The Department utilized the secure drop box portal Tumbleweed throughout the review process to transmit documents and completed review work between reviewers and administrators. The standard account creation process used by the Department for the portal requires administrators to change the original default password for all new accounts after successful login.

Two administrators within the MMCP had unlimited access to all portal accounts and folders assigned to individual reviewers throughout the entire grading process while also having related responsibilities, including: uploading segments of the application to the portal; maintaining a numerical identifier legend spreadsheet tying individual applicant names to the application number used in the blind review process; and exporting and calculating the cumulative scores of each review team by manually entering these scores into an excel spreadsheet to track points for each of the five graded sections. The program administrators not only had unlimited access to all documents contained in MMCP individual user folders through their administrator assigned accounts, but also assigned, tracked, and created the password for them. Passwords were not required to be changed by the individual assigned to each account, nor was there a password expiration policy in place.

Without adequate password policies in place, the risk of unauthorized access to the application systems is increased. Ultimately this could lead to an unauthorized individual gaining access to the system and accidentally or intentionally deleting or altering data. This specific weakness could allow administrator access to modify documents uploaded by reviewers while logged into the portal as an account holder rather than the administrator's assigned account, limiting the traceability and effectiveness of the Tumbleweed audit log.

Recommendation: We recommend the Department of Commerce adopt and implement an information technology policy modeled after the Information Technology policy of the State of Ohio Administrative Policy including a password expiration policy. Further, we recommend the Department educate employees on proper internal control procedures to ensure the effectiveness of implemented policies and to enable personnel to properly identify control deficiencies.

2. Internal Controls over Reviewer Secure Drop Box Portal Submissions

The secure drop box portal utilized by the Department during the review process allows for modification of documents within the portal by all users with access to the folder. There were no controls in place limiting external users to read-only access of files uploaded by reviewers. Further, final score sheet PDF's completed and submitted by reviewers through the secure drop box portal did not have any document restrictions in place to ensure modifications were not made to files following their submission.

As a result, final submitted score sheets were at risk of manipulation within the secure drop box application following submission.

Recommendation: We recommend the Department implement control procedures in the submission process to protect reviewer materials.

3. Failure of Secondary Review of Master Score Sheet

As a control to ensure points entered into the Master Score Sheet used to calculate final scores were accurate, the Department performed a secondary review over data input into the final Master Score Sheet. The review for Level I Cultivators was completed subsequent to the announcement of Provisional License Award recipients. Two Department staff members were assigned areas for which they were responsible for the review of data entered into the Level II Cultivator Master Score Sheet spreadsheet, and one Department staff member was assigned the responsibility of reviewing all data entered into the Level I Cultivator Master Score Sheet spreadsheet. Secondary review procedures consisted exclusively

of agreeing data input on the spreadsheet to points awarded denoted on the Section Two submitted score sheets and redaction deductions denoted on the Redaction Application Results forms.

The Department review failed to identify and amend keystroke errors affecting three Level II Cultivator applications and failed to timely identify and correct errors affecting 10 Level I applicants. Level II errors identified by auditors were as follows:

App No.	Errors Identified	Category Affected	Original Score (Before Qualifiers)	Amended Score (Before Qualifiers)	Variance	Applicant Ranking Before Error Amendment	Applicant Ranking After Error Amendment
0017	4	Operations	176.76	176.76	0.00*	2	2
0069	2	Security	-13.44	-29.64	-16.20	Disqualified	Disqualified
0070	2	Security	124.66	122.66	-2.00	Disqualified	Disqualified

* Data input on spreadsheet for application 0017 were transposed into incorrect columns; the resulting net effect was zero.

Keystroke errors affecting 10 Level I applicants were identified during the Department's secondary review; a Department staff member responsible for reviewing the Level I Master Score Sheet notified a MMCP administrator of the Level I errors via email in December 2017. Keystroke errors were a result of Financial Plan scores inadvertently being duplicated and input into the Business Plan Score column. The Auditor of State did not identify any additional keystroke errors affecting Level I applicants.

Level I errors identified by the Department were as follows:

App No.	Errors Identified	Category Affected	Original Score (Before Qualifiers)	Amended Score (Before Qualifiers)	Variance	Applicant Ranking Before Error Amendment	Applicant Ranking After Error Amendment
0080	2	Business	108.56	111.48	2.92	Disqualified	Disqualified
0081	2	Business	147.08	145.62	-1.46	21	Disqualified
0082	2	Business	172.72	175.64	2.92	4	3
0083	2	Business	111.28	114.2	2.92	Disqualified	Disqualified
0084	2	Business	158.56	164.4	5.84	12**	8
0085	2	Business	173.44	176.36	2.92	2	2
0086	2	Business	92.56	95.48	2.92	Disqualified	Disqualified
0087	2	Business	136.4	139.32	2.92	Disqualified	Disqualified
0088	2	Business	119.12	126.42	7.30	Disqualified	Disqualified
0089	2	Business	159.8	162.72	2.92	10	9

** Applicant was not initially awarded a provisional license as the 12th highest scoring applicant due to the Department's obligation under Ohio Revised Code §3796.09(C), requiring the Department to award at minimum 15% of licenses to economically disadvantaged applicants

Data entry errors had a material effect on Level I Cultivator provisional license award results. Applicant 0084 which ranked 12th in the Department's erred final score calculation was actually the 8th highest scoring applicant in the amended calculation, and therefore, should have been awarded a provisional cultivator license.

The Department failed to identify these errors prior to the publication of cultivator applicant scores and announcement of cultivator provisional license award recipients. This issue was compounded by the Department’s failure to follow-up on identified keystroke errors which had been brought to administrator attention to determine their significance at the time they were discovered. The Department did not come forward to the public or auditors, nor did they begin taking necessary steps to remedy known errors until February 2018, following the Auditor of State’s request to review the Master Score Sheet and Final Score Sheet materials to ensure the accuracy of calculations, nine weeks after the errors were initially discovered and communicated.

These failures resulted in the issuance of a 13th Level I Provisional Cultivator license to applicant 0084 which was awarded in May 2018¹⁵, which caused the Department to be noncompliant with OAC 3796: 2-1-01(A) which restricts the Department from issuing more than 12 Level I provisional licenses prior to Sept. 8, 2018.

Recommendation: We recommend the Department design and implement an effective system of internal control procedures to ensure secondary reviews are both comprehensive and timely. Further, we recommend the Department take timely corrective action to correct any errors identified as a result of secondary review procedures,

4. Internal Controls over Section Two Final Score Sheets

Section Two reviews were performed by four three-member teams (Business and Finance plans were reviewed by the same team). As a measure to ensure the objectivity and consistency of points awarded to applicants, each area of focus that the plans tested included a table prescribing the number of points to award an applicant based on the number of testing criteria the reviewer marked “Yes”.

Team members convened during routine consensus calls at which time testing criteria determinations and corresponding points awarded were agreed upon. During these calls, the points awarded were recorded by the team’s leader on the final score sheet, who then submitted them to the Department through Tumbleweed.

The final score sheets were not reviewed by or signed off by any of the other Section Two Plan’s team members at any point to corroborate the accuracy of the information submitted. Further, the Department did not perform a secondary review of the Section Two final score sheets to ensure the number of points awarded agreed to the corresponding number of testing criteria marked “Yes”.

Section Two score sheet errors identified by auditors affected four Level I Cultivator applications and 11 Level II Cultivator applications. Further, errors identified affecting Level II Cultivators include three application submissions by two Level II applicants who were awarded provisional licenses. (See Inconsistent grading of Applications comment for additional information.) Errors identified and the resulting score effect are as follows:

App No.	Section	Points Calculated by Reviewer	Points Calculated by Auditor	Variance	Condition
0001	Quality	1.00	0.00	1.00	Ohio Admin. Code testing criteria not met

¹⁵ https://www.cleveland.com/metro/index.ssf/2018/05/ohio_officials_award_medical_m.html

	Assurance				
0024	Quality Assurance	N/A	0.00	0.00	Did not document number of points awarded
0027	Security	3.00	1.00	2.00	Points did not agree to number of testing criteria met
0043	Business	3.00	0.00	3.00	Ohio Admin. Code testing criteria not met
0052	Operations	1.00	3.00	-2.00	Points did not agree to number of testing criteria met
0058	Operations	0.00	1.00	-1.00	Points did not agree to number of testing criteria met
0064	Quality Assurance	N/A*	0.00	0.00	Did not document number of points awarded
0065	Security	3.00	1.00	2.00	Points did not agree to number of testing criteria met
0066	Security	5.00	0.00	5.00	Ohio Admin. Code testing criteria not met
0067	Quality Assurance	0.00	5.00	-5.00	Points did not agree to number of testing criteria met
0075	Security	3.00	1.00	2.00	Points did not agree to number of testing criteria met
0125	Security	3.00	1.00	2.00	Points did not agree to number of testing criteria met
0140	Security	3.00	0.00	3.00	Ohio Admin. Code testing criteria not met
0166	Security	3.00	0.00	3.00	Ohio Admin. Code testing criteria not met
0168	Security	3.00	0.00	3.00	Ohio Admin. Code testing criteria not met

Note: N/A*: Points awarded were not denoted on completed score sheet

No effective oversight, proof, or secondary team or Department review was made over the information contained in final score sheets submitted to the secure drop box portal by the Team Leader. As a result, the above errors in the number of points awarded were undetected by the Department.

Recommendation: We recommend the Department design and implement an effective system of internal control procedures in the Section Two review processes including secondary review procedures over Section Two final score sheets at both the review team level and administration level to verify data input on final score sheets was input correctly and agreed-upon results are accurately reflected and ensure score sheets are free of error. Section Two score sheets compiled by team leaders should be signed off by all team members. Any errors identified should be brought to the attention of the Section Two review team for corrective action.

5. Reliability of Section Two Score Sheets

The individuals selected by the Department responsible for Section Two review were chosen based on area of expertise and placed on review teams based on that expertise. Those review teams were Operations, Quality Assurance, Security, and Business and Finance. Auditors reviewed work completed by the specialized teams, including final score sheets, placing reliance on score sheet testing criteria determinations documented as agreed upon by the state employed and contracted subject matter experts involved in the Section Two review process.

Two specific error instances in which points denoted on the final score sheet submitted by the Section Two review team did not agree with the corresponding number of testing criteria identified on the score

sheet as met were brought to the Department's attention due to their effect on final results of two applications, both belonging to a Level II Cultivator Provisional Licensee. Points awarded following auditor adjustment in accordance with guidance expressed on the final score sheets resulted in both applications falling beneath the 60% minimum point threshold set forth by the Department¹⁶, effectively disqualifying the Level II Cultivator Provisional Licensee. These errors were not exclusive to this applicant; errors were identified affecting 11 Level II applicants and four Level I applicants¹⁷.

The Department has maintained that the number of points awarded on the original submitted score sheets originally marked accurately and properly reflect application content, and the error source was the individual testing criteria determination marks. Additional procedures were completed by Ernst and Young to re-review applications identified with criteria scoring errors¹⁸ as part of a limited engagement arranged by the Department's legal counsel. Ernst and Young had the original Section Two reviewers re-perform scoring for the applications and application sections where this error was present. As of this report release date, Ernst and Young had not yet published the results of its Level II Cultivator review, however, the outcome of their review of Level I Cultivator applications corroborated the Department's stance, indicating testing criteria determinations written on original score sheet submissions were incorrect, and the points awarded properly reflected the application content for those Level I applicants affected by this error¹⁹.

The position held by the Department contends that the original Section Two score sheet testing criteria determinations made by Section Two reviewers, which were used as the sole measure to derive the number of points to award applicants for all five Section Two plans, may be inaccurate. This result indicates that the Department and public cannot rely on the accuracy of the Section Two review process.

Recommendation: We recommend the Department implement thorough control procedures to ensure application review results are documented consistently and accurately for all applicants. These controls may include requiring all Section Two review team members to review and certify to the accuracy of all completed score sheets prior to the submission of completed reviews materials. Review team members should also document in the notes section of submitted score sheets the page number(s) in which each addressed testing criteria was found within each application.

6. Redactions not identified during Department Review

The Ohio Cultivator Application Instructions document states "an applicant for a cultivator license is prohibited from including identifiable information in Section Two of the application. Points were deducted for each instance an applicant included identifiable information within any of the five Section Two plans. Per the Ohio Cultivator Application Instructions, the following categories were classified as identifiable information:

- Individual, entity, or university names;
- Personal addresses, business addresses, or individual components of an address, which includes numbers, cities, counties, municipalities, etc.;

¹⁶ Per Cultivator Application Instructions v1.0 located at medicalmarijuana.ohio.gov

¹⁷ See Report Comment "Internal Controls over Section Two Final Score Sheets" for additional information on this error type

¹⁸ See Report Comment "Internal Controls over Section Two Final Score Sheets" for additional information on this error type

¹⁹ Per E&Y Medical Marijuana Control Program Cultivator Licensing Scoring Recalculation – Level 1 Applications report published June 5, 2018

- Personal or entity identification numbers;
- Contact information;
- Company logos, trademarks, or other identifying marks;
- Location references that would make it possible for a reviewer to identify where the proposed facility will be located; and
- References to involvement in Ohio’s marijuana legalization efforts.

The Department established a Redaction Team to review Section Two applications, redact any and all identifiable information included in the application, and document results to reduce the applicant cumulative score two points (four points following conversion factor) for each instance of inclusion identified.

Auditors reviewed all five Section Two plans submitted for six Level I applicants and five Level II applicants. Of the plans reviewed, auditors identified additional instances of personally identifiable information not identified or redacted by the Department affecting three Level I applicants and two Level II applicants. Errors identified were as follows:

Application	Instances per the Department	Instances identified by Auditors	Variance
0002	4	6	2
0053	6	7	1
0079	2	6	4
0110	0	1	1
0114	0	1	1

Failure to identify and redact all instances of personally identifiable information included in Section Two could result in the failure of the blind system of grading control put in place to prevent reviewer bias. Further, applications which included personally identifiable information that was not identified by the Department did not have the points reduced from the cumulative score resulting in inaccurate final score postings.

Recommendation: We recommend that the Department perform additional review of applications to ensure consistency and completeness of the redaction review.

7. Department Verification of Section One Information

OAC 3796: 2-1-03 outlines certain required documentation and certifications applicants must submit in order to receive consideration, including information documented on Section One forms. Section One review was completed to ensure applicants had submitted forms related to these documentation requirements. These forms were reviewed to ensure applicant forms were correctly and compliantly filed, had been signed by the applicant and notarized.

Verification procedures performed by the Department to ensure the accuracy of information provided in Section One were limited to certain forms; compliance was not verified for all measures related to information provided in Section One outlined in the ORC and OAC. Due to the limited scope of verification procedures performed by the Department, it failed to verify across all applicants proposed facility

locations were not within 500 feet of prohibited facilities in accordance with ORC §3796.30 and OAC 3796: 2-1-03(A)(3). The Department also failed to verify across all applicants were compliance with liquid capital requirements in accordance with OAC 3796: 2-1-03(A)(1).

Failure of the Department to verify proposed facility compliance with the 500 foot rule outlined in ORC §3796.30 resulted in the award of provisional licenses to four applicants whom were later discovered to have been potentially noncompliant with the rule at the time of the application²⁰. Failure to obtain assurance over applicant compliance with all laws prior to license issuance could result in improper awarding of licenses.

Recommendation: We recommend the Department perform verification procedures to ensure the accuracy of information submitted by applicants over all compliance measures and, in suitable instances, require applicants to submit third party verification of compliance to gain additional assurance.

8. Inconsistent Treatment of Local Jurisdiction Approval Documentation Requirements

The Department stated in a Q&A session held to provide prospective cultivator applicants that certification zoning compliance was not required in order to receive consideration and applicant scores would not be affected by failing to do so. Certification of zoning compliance, however, had points directly associated with it as a testing measure included in Section Two of the application.

OAC 3796: 2-1-02(B)(2)(k) states,

“[A business plan at minimum must include] Documentation that the applicant is in compliance with applicable building, fire, safety, and zoning statutes, local ordinances, and rules and regulations adopted by the locality in which the applicant's proposed property is located, which are in effect at the time of the application, including but not limited to building department approval demonstrating compliance with rules adopted by the board of building standards pursuant to Chapters 3781 and 3791 of the Revised Code and any applicable zoning considerations.”

Further, OAC 3796: 2-1-03(A)(4) states “[In order to receive consideration an applicant shall] Certify that the local jurisdiction where the facility is proposed has not passed a moratorium or taken other action that would prohibit the applicant from operating as a medical marijuana cultivator.”

Compliance with the two above rules were to be documented on Section One, Form 1G – Notice of Proper Zoning which was to be filled out and certified by an authorized zoning representative or official of the local government. Any combination of the following certifications could be made:

1. The Applicant has applied for local zoning approval to operate a Medical Marijuana Cultivator facility
2. The Applicant complies with local zoning laws and regulations to operate a Medical Marijuana Cultivation facility [the date of authorized representative certification]
3. The area has no local moratorium on Medical Marijuana Facilities in place at [the date of authorized representative certification] (Ohio Admin Code 3796: 2-1-03(A)(4))
4. The Area has no zoning in place [the date of authorized representative certification]

²⁰ https://www.cleveland.com/metro/index.ssf/2018/02/4_medical_marijuana_grow_sites.html

Compliance with OAC 3796:2-1-02(B)(2)(k) was a Section Two testing criteria of the Business Plan score sheet required by the OAC. As part of Section Two, compliance directly affected points awarded, and failure to demonstrate compliance would automatically forfeit the applicant from receiving any point considerations for the area of focus the testing criteria was listed under. Due to the blind system of grading implemented, all Section One information needed for Section Two review was assessed by administrators and communicated to Section Two reviewers. Compliance with OAC 3796: 2-1-03(A)(4), was tested as part of Section One review and did not have any points associated with its certification.

In the spring of 2017, the Department held two Q&A sessions to offer guidance to prospective cultivator applicants. In Q&A Session 2, released May 16, 2017, the following questions and answers were published by the Department:

ID	Applicant Question	Department Response
8	What is the state zoning code for Medical Marijuana Cultivation? How are we to receive proper zoning approval, when Franklin County does not even know what we are asking for?	There is no statewide zoning code for medical marijuana cultivation. The Department is aware of the length of time involved in securing zoning approval. At the time of application, the applicant need only certify that the proposed jurisdiction has no moratorium or other ban on medical marijuana cultivation. Zoning approval in any form, up to and including a full zoning permit, may be presented with the application if it is available.
9	Will points be deducted for not having the proper zoning form 1G signed? If so, can someone explain to Franklin County that we are not trying to get a permit at this time, we just need to know if cultivation will be allowed at a specific location?	At the time of application, the applicant need only certify that the proposed jurisdiction has no moratorium or other ban on medical marijuana cultivation. Zoning approval forms are in Section1 of the application, which will not receive a numerical score. Therefore, no points will be deducted. Determinations on zoning permits and cultivation locations must be made by individual jurisdictions. There is nothing in statute that prohibits a local jurisdiction from placing restrictions on the location or permissibility of most medical marijuana businesses.

Following the commencement of the review process, in an internal meeting held by the Department on July 27, 2017, it was determined that to have adequately demonstrated compliance with OAC 3796:2-1-02(B)(2)(k), an applicant must have certified at minimum item 1, 2, or 4 on Section One form 1G Notice of Proper Zoning, or have demonstrated compliance with all local zoning statues, ordinances, rules, and regulations in their submitted Business plan.

Although demonstration of zoning compliance was a required element set forth by OAC 3796, the inclusion of zoning compliance as a Section Two scoring measure, as well as the compliance demonstration standards set internally by the Department following application intake directly conflict with the answers provided to prospective cultivator applicants during Q&A Session 2.

Further, auditors identified errors and inconsistencies in the standards held by the Department for determination of compliance with OAC 3796:2-1-02(B)(2)(k). Of the 35 applications identified that had exclusively certified item three on Section One form 1G *Notice of Proper Zoning* we identified the following errors and inconsistencies:

Inconsistent handling:

- A. Auditors identified 23 application instances in which the local zoning authority had exclusively certified item three on Section One Form 1G Notice of Proper Zoning that were marked “N”, on the Section Two score sheet, due to applicant failing to demonstrate compliance. This condition may have directly impacted applicant scores.
- B. Auditors identified seven application instances in which the local zoning authority had exclusively certified item three on Section One Form 1G *Notice of Proper Zoning*. The applicant also submitted supplemental documentation from the local zoning administrator verifying the permissibility of use and zoning district at the proposed location and offering an explanation as to why zoning was not certified on Form 1G. Although the supplemental documentation included in the Section One submission was largely the same across the seven applications identified, the Department accepted the letters as sufficient evidence of compliance for only two of the seven.

Data entry errors:

- C. Auditors identified one instance in which the applicant’s local zoning authority had exclusively certified item three on Section One Form 1G *Notice of Proper Zoning*, in which the OAC 3796: 2-1-02(B)(2)(k) compliance testing criteria on the submitted Section Two Business Score Sheet was marked “Y”, denoting applicant had certified compliance with the rule being tested on Form 1G. The Section One Summary Worksheet provided to Section Two reviewers however denoted the applicant had not adequately demonstrated compliance in Section One (application 0011, provisional licensee)

App. No.	Section One Summary Worksheet	Section Two Score Sheet	Supplemental Documentation Included	Business Review Team Comment on Score Sheet	Form 1G Certification
0011	N	Y	None.	Not noted in narrative. See Section 1, Form 1G.	Item 3 only.

- D. Auditors identified one instance in which the local zoning authority had exclusively certified item three on Section One Form 1G Notice of Proper Zoning, in which the Section One Summary Worksheet provided to the Section Two Business review team was marked “Yes”; denoting applicant had certified compliance with the Section Two rule being tested on Form 1G. Per review of the Section One submitted, the applicant did not certify item 1, 2, or 4 on Form 1G Notice of Proper Zoning, nor did the applicant provide supplemental documentation. (application 0076, provisional licensee)

App. No.	Section One Summary Worksheet	Section Two Score Sheet	Supplemental Documentation Included	Business Review Team Comment on Score Sheet	Form 1G Certification
0076	Y	Y	None.	Not noted in narrative. See Section 1, Form 1G.	Item 3 only.

Failure of the Department to determine documentation expectations to meet compliance standards prior to application intake resulted in misleading published guidance provided to prospective applicants, which may have affected applicant scores and qualification status. Further, following the Department’s determining of documentation expectations, required for an applicant to adequately demonstrate compliance with OAC 3796: 2-1-02(B)(2)(k), the Department failed to effectively review completed work resulting in errors and inconsistencies in the handling of applications.

Recommendation: We recommend the Department review laws and internal policies to ensure information and publications are accurate. We further recommend the Department establish expectations, testing criteria, and compliance standards prior to providing application guidance. We recommend additional review to mitigate the possibility of inconsistent handling of testing criteria and/or data entry errors.

9. Record of Tax Payment Testing Procedures

OAC 3796: 2-1-03(B)(6)(e) states cultivator applicants must submit with their application a record of tax payments in the form of tax summary pages for individuals and businesses at the state and federal level and in all jurisdictions in which an applicant has operated as a business, and for every person with a financial interest of one percent or greater in the applicant for the three years prior to the filing of the application, unless the department determines that documentation should be submitted for all individuals and entities.

In accordance with OAC 3796: 2-1-03(B)(6)(e), "A record of tax payments for those with a [one percent] or greater financial interest in applicant" was included as an OAC required testing criteria in the Section Two Financial Plan review. Procedures performed for the determination of whether or not the testing criteria was met consisted of scanning procedures to ensure applicants had included some type of tax information in their submission(s), however these scanning procedures did not include a review for completeness. Tax review procedures were performed following the completion of Section Two scoring by the Ohio Department of Taxation on behalf of the Department of Commerce *for top scoring applicants only*. Completeness procedures to ensure applicants had submitted with their applications tax summary information for the three years for all persons and businesses with 1% or greater financial interest were only performed for those applications reviewed by the Department of Taxation.

Failure to perform review procedures to ensure applicant submissions included all documents required by OAC 3796: 2-1-03(B)(6)(e) could result in incorrect applicant scoring considerations.

Recommendation: We recommend the Department review documents fully to ensure submissions are compliant with all direct or associated laws and regulations.

10. Department contact with applicants during the review process

During the final stages of the review process, the Department contacted applicants with requests for clarifications, modifications, and amendments to applications for items necessary for the Department's review. Review items included documents such as background checks, individual tax compliance, and economic disadvantaged status confirmation. This type of contact was allowable in accordance with the Department's rights outlined in the Cultivator Request for Application and Instruction Packet.

The Department did not maintain a log of applicants contacted, dates of contact, or the reason(s) for contact. As a result, documentation was not available for auditors to review to ensure all contact and requests made by the Department were allowable.

Recommendation: We recommend the Department maintain a log of all contact made with applicants including the date, time, and reason for contact to ensure compliance with OAC 3796: 2-1-03(D), which requires applicants to respond within 30 days of initial request.

11. Department Issuance of Additional Cultivator Provisional License

OAC 3796:2-1-01 grants the Department authority to issue up to 12 provisional licenses for Level I Cultivators and 12 for Level II Cultivators through Sept. 8, 2018. Beginning Sept. 9, 2018 and beyond, the Department may issue additional cultivator provisional licenses as deemed necessary by the Director. Criteria set forth for the establishment of the original number of licenses is outlined in ORC §3796.05 and amplified by ORC §3796.03.

Since the issuance of the 12 Level I and 12 Level II provisional cultivator licenses in late 2017, the Department also has issued two additional provisional cultivator licenses – one Level I and one Level II, due to errors which occurred during various stages of the review process.

The additional Level I provisional cultivator license was issued in May 2018 as a result of data entry errors in the final score calculation identified following the announcement of provisional license recipients. These errors had artificially lowered the score of an applicant; following error amendment, this applicant had the eighth-highest Level I score and was awarded a Level I Cultivator provisional license. The additional Level II provisional cultivator license was issued in July 2018 following a Chapter 119 hearing requested by the applicant. The applicant had initially scored higher than several other Level II applicants that were awarded a provisional license, however had been disqualified due to the Security Plan score being below the 60% minimum point threshold. During this Chapter 119 hearing, the applicant was able to prove its security plan had demonstrated certain testing criteria which had been marked “no” on the Section Two score sheet and caused the applicant’s disqualification. Following score sheet amendment, the applicant was no longer disqualified and, as a result, the Department awarded the applicant a Level II cultivator provisional license.

A total of 13 Level I and 13 Level II provisional cultivator licenses have been issued by the Department prior to Sept. 8, 2018. The Department has cited OAC 3796:5-6-01 as the authorizing law allowing them to issue additional licenses above the threshold set by OAC 3796: 2-1-01.

The specific language the Department has used to justify the issuances states that in accordance with OAC 3796:5-6-01(A)(11), the Department may “exercise any other power or duty authorized by Chapter 3796 of the Revised Code or the rules promulgated in accordance with Chapter 3796 of the Revised Code.” The ORC does not, however, delegate any power or duty to the Department that allows for the creation of additional provisional cultivator licenses before Sept. 9, 2018. Further, OAC 3796:5-6-01 applies specifically to “the oversight and enforcement of the cultivation, processing, and testing of medical marijuana.” The rules set forth in OAC 3796:5-6 apply specifically to “establish legal standards for the denial, suspension or revocation of licenses issued by the department under Chapter 3796 of the Revised Code.” Where applicable to licensure, this code only applies to the denial, suspension, or revocation of licenses as this section does not address in any part the creation or issuance of licenses.

Since OAC 3796:5-6 does not address the creation of additional cultivator licenses, nor can the Department use ORC §3796.03(C) to modify the number of cultivator provisional license issuances allowable until after Sept. 8, 2018, the Department is in violation of OAC 3796: 2-1-01, ORC §3796.05, and ORC §3796.03.

Recommendation: We recommend the Department consult the Attorney General’s office to determine the validity of additional provisional licenses awarded prior to Sept. 9, 2018.



September 10, 2018

The Honorable Dave Yost
Ohio Auditor of State
88 E. Broad Street, 5th Floor
Columbus, OH 43215

Dear Auditor Yost:

Thank you for the opportunity to review and respond to the Application Review from your office related to the Ohio Medical Marijuana Control Program's licensure of cultivators.

First, let me express my appreciation for the acknowledgments in your report about a couple of key elements of the cultivator application process; specifically, that the scoring teams involved in developing scoring criteria and reviewing applications consisted of "consultant subject-matter experts and state-employed specialists," and that the scoring criteria developed by the Department of Commerce "were used to objectively evaluate and score applicants." These were two critical elements of ensuring the fair and effective licensure of cultivators, and I am pleased that you agree these elements were achieved.

Your report notes several areas in which the application process could have been improved, and while we may not agree with every conclusion in the audit report, we have fully acknowledged that there were opportunities for improvement in the process. In working with your auditors, Attorney General Mike DeWine and his team, our third-party validator Ernst & Young, and our own internal reviews, we have identified most of the same opportunities, and some additional ones. In fact, many of the issues noted in your report – such as internal controls related to passwords and editable documents and implementing secondary reviews to ensure accuracy of scoring decisions – have already been implemented by the Department and utilized in subsequent application reviews.

That said, the final conclusion of your report indicates that the Department did not have the authority to issue additional licenses to remedy a scoring error and an applicant's successful administrative appeal. The courts have already upheld that the Department does have this authority under Ohio Administrative Code 3796:5-6-01(A)(11). While I appreciate your recommendation that "the Department consult the Attorney General's office" on this issue, I can assure you that our legal strategy in addressing this litigation was certainly developed in consultation with the Attorney General's Office and our appointed special counsel. As such, and because this authority has been validated by the courts, we respectfully disagree with the Auditor of State's interpretation of the Department's legal authority.

Again, I appreciate the work of your audit team over the past several months, and the productive suggestions they have made with regard to our application process. At the current time, we have four cultivators who have been issued their Certificates of Operation (with a number of additional licensees scheduled for their compliance inspections in the coming days), and we have provisional licenses issued for testing labs and processors. Along with the dispensary provisional licenses issued by the Pharmacy Board and the Certificates to Recommend issued to doctors by the Medical Board, Ohio's medical marijuana industry is taking shape. The Medical Marijuana Control Program will continue its work to ensure that Ohio patients have access to safe, reliable, stable sources of medical marijuana, and I appreciate your support of these efforts.

Sincerely,



Jacqueline T. Williams
Director

Conclusion

The Ohio Department of Commerce argues that Section 3796: 5-6-01(A)(11) of the Ohio Administrative Code empowered the Department to issue more than twelve level I and twelve level II cultivator provisional licenses prior to September 8, 2018, in spite of the limitations set forth in Section 3796: 02-1-01. The Department has suggested that the Department's position has been "upheld" by the "courts." Although the Department has provided no reference to any such judicial determination, it appears that it bases the assertion on a ruling by the Common Pleas Court of Franklin County, Ohio, in *Ohio Releaf LLC vs. Williams*, Case No. 18CV-2436, incident to a motion for injunctive relief. It is the position of the Auditor of State that the Department has reached conclusions which are inconsistent with the content of the court's ruling and the context of the determination. The Auditor of State's Office continues to find fault with the propriety of the Department's action.

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Dave Yost • Auditor of State

DEPARTMENT OF COMMERCE MEDICAL MARIJUANA CONTROL PROGRAM

FRANKLIN COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

CERTIFIED
SEPTEMBER 13, 2018