May 4, 2026

VIA EMAIL

The Honorable Theresa Gavarone, Senate Chair
The Honorable Jamie Callender, House Chair
Joint Committee on Agency Rule Review
Ohio General Assembly
Columbus, Ohio 43215

Re: Request for JCARR Objection to Division of Cannabis Control THC-Limit Rules Exceeding Statutory Authority

Dear Chair Gavarone, Chair Callender and Members of the Joint Committee on Agency Rule Review:

We write to urge JCARR to object, under R.C. 106.021(A) and (B), to the Division of Cannabis Control's THC-limit rules and proposed revisions insofar as they regulate THC content by "container" and other extra-statutory units rather than by the units the General Assembly actually authorized. JCARR may recommend invalidation where a proposed rule "exceeds the scope of its statutory authority" or "conflicts with the legislative intent of the statute under which it was proposed." That is precisely the problem here.

The General Assembly did not authorize THC-content limits by "container."

The controlling statute is straightforward. R.C. 3796.06(E)(3)(b) authorizes the Division to establish THC-content limits <u>"per serving or per package".</u> That is the legislature's measuring stick. The statute does not authorize THC-content limits per <u>container</u>. The question for JCARR is therefore not whether container-based regulation might be administratively convenient. The question is whether the General Assembly authorized it. It did not.

Elsewhere in the same R.C. section, the General Assembly separately referred to "original packaging," confirming that it knew how to legislate in packaging terms when it chose to do so, yet omitted any reference to "container."

The Division's own rules make the problem worse, not better. The Administrative Code defines a "cannabis container" as "a sealed, hard or soft-bodied receptacle in which cannabis or cannabis products are directly placed." It separately defines "packaging intended for direct customer sale" as the final packaging presented and sold to the customer and explains that such packaging may include a cannabis container and secondary packaging. The Division also defines "secondary packaging" as packaging that holds the cannabis container and is the packaging presented for direct customer sale. In short, under the Division's own definitions, a container is not invariably the package; it is merely something that may be part of the package. That distinction forecloses any attempt to treat "container" as a lawful substitute for "package."

Rules Package 6B illustrates the defect clearly. Proposed Rule 1301:18-4-06 states that all cannabis must first be placed into a single cannabis container and that a cannabis container by itself may constitute the package intended for direct customer sale; but if the container is placed into secondary packaging, then the secondary packaging constitutes the package intended for direct customer sale. The rule then goes on to regulate THC by units other than serving or package. For example, it caps THC per vape device at 900 mg, per inhaler device at 800 mg, per container for certain extracts at 900 mg, per container for beverages at 10 mg, and per container for oral sprays at one gram, while separately regulating serving size and package limits elsewhere in the same rule. That is not faithful implementation of a statute authorizing THC limits per serving or per package. It is the creation of additional regulatory metrics by agency fiat and exceeds the scope of its statutory authority.

The beverage provisions make the overreach especially obvious. In Rules Package 6B, the Division limits THC to 10 mg per container for cannabis beverages while separately limiting each package to six containers per package. Those two commands only make sense if "container" and "package" are different things. The Division cannot have it both ways. If a container is the package, then the second limit is redundant. If the package can include multiple containers, then "container" is an independent regulatory unit that the statute never authorizes. Either way, the rule exposes the same problem: the Division is legislating with a measuring stick the General Assembly did not grant.

The medical beverage provisions definitively prove that "container" is a third, invented regulatory category — and equally confirms that it is not a "serving." OAC 1301:18-4-06(D)(11)(b) imposes three separate THC limits for medical cannabis beverages: (i) per serving shall not exceed 55 mg; (ii) per container shall not exceed 110 mg; and (iii) per package shall not exceed 220 mg. These are three distinct regulatory tiers — each with a different number, each regulating something different. The statute's own three-tiered THC regulatory structure makes clear that serving, container, and package are separate and non-interchangeable regulatory tools — each doing distinct work that the others cannot perform. The DCC's own rules thus confirm that "container" is an independent regulatory category that R.C. 3796.06(E)(3)(b) never created and does not authorize, exceeding its statutory authority.

Serious consideration must still be given to the question of legislative intent in the "per serving or per package" language.

The above objection to the "container" language does not rise or fall on the harder question whether the statute's phrase "per serving or per package" permits the Division, in some circumstances, to impose both serving-level and package-level limits on the same product. That issue is separately worth serious scrutiny, and the current rule certainly strains the statute by doing exactly that for edibles. But JCARR need not resolve that broader interpretive question to act here. <u>The simpler and stronger point is enough: even if the Division could impose both serving-level and package-level limits, the statute still does not authorize a third metric such as container</u>. On that point, the text is clean. The legislature named two units. The agency supplied a third.

> This is also a legislative-intent problem, not just a drafting defect. The statute reflects a deliberate choice to cabin the Division's authority to THC limits by serving or package. Allowing the Division to redefine the unit of regulation at will defeats that legislative choice and invites a moving-target compliance regime in which the agency can regulate by whatever unit it prefers so long as it embeds the term in a definition or a product-specific rule. That is precisely what JCARR exists to police. The rulemaking power to fill in details is not the power to change the governing metric chosen by the General Assembly.
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> The business consequences are real. When the agency regulates THC by package, serving, container, device, and unit in overlapping ways, licensees are forced to redesign formulations, packaging architecture, labels, and inventory systems around a framework that is not clearly rooted in statute. That increases compliance cost, complicates enforcement, and creates needless legal uncertainty in a highly regulated market. If Ohio is to regulate THC by container or by other product-specific vessels or devices, that policy choice should come from the General Assembly in statutory text, not from the Division in administrative drafting.

For those reasons, we respectfully urge JCARR to find that the Division's THC-limit rules and proposed revisions exceed the scope of the Division's statutory authority and conflict with legislative intent to the extent they regulate THC by container or analogous extra-statutory units rather than by serving or package. JCARR should object and require the Division to withdraw and refile Rule 1301:18-4-06 and any related provisions that regulate THC by container or other extra-statutory units.

Finally, as a proposed remedy, we urge the Division to align Ohio's THC-limit framework with the national standard by <u>regulating THC content on a per package basis at 50 mg or 100 mg per package</u>. Adopting a nationally recognized benchmark would root the Division's rulemaking in the statutory authority the General Assembly actually granted, bring Ohio into conformity with the regulatory approach used across comparable markets, and provide licensees with a clear and stable compliance standard. That is the straightforward fix the statute calls for and the industry needs.

Thank you for your time and consideration.

Respectfully,

Level II Cultivators and Processors:

Ancient Roots, Wilmington

Fire Rock, Akron & Columbus

Franklin Biosciences, Columbus

NEN Holdings LLC, Clyde

Wellspring Fields, Ravenna

Dispensaries:

Beyond Hello, Cincinnati, Mansfield, Warren, Parma, Toledo, Oxford
Green Leaf Therapy, Struthers

Italian Herbs, Ashtabula

Ohio Cannabis Company, Canton, Columbus, Harpster, & Piqua

Southern Ohio Botanicals, Portsmouth & Waverly

The Mothership Cannabis Dispensary, Streetsboro

ROAM Dispensary, Seven Hills

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May 8, 2026

VIA ELECTRONIC MAIL

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Re: Transformational Mixed-Use Development Tax Credit Program Rules

To Whom It May Concern:

We submit the following comments regarding proposed Ohio Administrative Code Sections 122:29-1-01, *et seq.* (the "Proposed Rules") associated with the Transformational Mixed-Use Development Tax Credit Program enacted as Ohio Revised Code Section 122.09 (the "TMUD Statute"). We appreciate the effort and diligence already devoted to drafting the Proposed Rules. However, the proposed definition of the term "Project Parcels" poses a risk of inaccurate interpretation that both conflicts with the legislative intent and exceeds the scope of the agency's statutory authority. To avoid any such incorrect interpretation, the Proposed Rules should be amended as set forth and explained in greater detail below.

The definition of "Project Parcels" in Proposed Rule OAC 122:29-1-01(K) "means the total legally defined parcel of land or multiple contiguous parcels of land upon which a transformational mixed use development will be constructed." When construing this Project Parcel definition, the plain meaning of the word "parcel" should be applied. The word "parcel," according to Merriam Webster's Dictionary, means "a tract or plot of land." It is our understanding, however, that the Department of Development is considering interpreting the term "parcel" to mean a tax permanent parcel number as assigned by a county auditor. Such an interpretation would conflict with the General Assembly's intent and would exceed the scope of the Department's authority under the TMUD Statute.

Since the definition of "Project Parcels" could potentially be interpreted by the Department of Development to mean the area that comprises a tax parcel number as designated by a county auditor's office, then the Proposed Rules will conflict with the legislative intent of the General Assembly. As a result, JCARR should exercise its authority, on a limited basis, pursuant to Ohio Revised Code Section 106.021(B), to invalidate that Proposed Rule. From a statutory construction perspective, it is clear that the General Assembly intended for the dictionary definition of the term parcel, which means "a tract or plot of land", to apply throughout the TMUD Statute, along with any proposed Rules further defining terms used within the TMUD Statute. I was involved in drafting much of the statutory language that is in the TMUD Statute, and I had many discussions with members of the General Assembly about the language of the TMUD Statute before it was passed into law. The General Assembly could have used the phrase tax permanent parcel number as designated by an Ohio county auditor's office, instead of the more general term "parcel" within the TMUD Statute. It did not. Instead, the TMUD Statute's use of the broader and more flexible term "parcel" demonstrates legislative intent to focus on the real property that actually constitutes the project site, *rather than* on administrative tax-map boundaries established by county auditors for taxation purposes. The area of land within a county assigned tax permanent parcel number could be significantly larger or smaller than the actual project site. Moreover, the holder of a leasehold interest is eligible to apply under the TMUD Statute. A leasehold interest granted by a landlord to a tenant very rarely encompasses the entirety of a county assigned permanent parcel number, further evidencing that the term "parcel" was not intended to mean the same thing as a tax permanent parcel number.

The Department of Development must not conflate the term "parcel" to mean county assigned tax parcel number. These concepts are distinct, and the distinction is fundamental in real estate development. The Proposed Rules allow for the possibility of an interpretation by the Department of Development that is inconsistent with the legislative intent, and therefore the Proposed Rules should be amended before they go into effect, in order to clarify that distinction, and ensure that the final Rule is consistent with the legislative intent. The Proposed Rules should define the term "parcel," consistent with its plain meaning: "a tract or plot of land."

The currently proposed definition of "Project Parcels" in OAC 122:29-1-01(K) should be amended to "means the parcel of land or multiple contiguous parcels of land upon which a transformational mixed use development will be constructed, so long as the parcels are sufficiently described with a legal description or other description that specifies the parcel boundaries, whether or not the parcel or parcels of land consist of more or less land than the area of land that has been assigned a tax permanent parcel number by a county auditor." The Proposed Rules as currently submitted should be invalidated by JCARR, to the limited extent described in this letter, because they conflict with the legislative intent of the TMUD Statute under which they are proposed, and application of the Proposed Rules in any way that "Project Parcels" would necessarily mean the exact same thing as a county assigned tax parcel number would exceed the statutory authority of the Department of Development.

Thank you for your consideration of these comments. We welcome the opportunity to discuss any of these comments with you further, so that the TMUD Program may be administered as intended and in the manner that is in the best interest of the State of Ohio.

Very truly yours,

Michael J. Sikora III