

3796:3-1-05

Processor financial responsibility.

(A) A provisional licensee shall provide evidence of financial responsibility before a certificate of operation can be issued, which may be payable to the department for any of the following reasons:

- (1) A processor fails to adhere to the security plan approved by the department or otherwise operates the facility in a manner that allows for or results in theft, loss, or diversion of medical marijuana;
- (2) A processor engages in activities prohibited under rule 3796:3-2-07 of the Administrative Code; or
- (3) A processor has its certification of operation fined, suspended, or revoked, resulting from activities prohibited under rule 3796:5-6-02 of the Administrative Code.

(B) Evidence of financial responsibility shall be provided by the following:

- (1) Providing and maintaining at its own expense any insurance coverage and terms of insurance required and approved by the department, including, but not limited to, products liability and general liability, prior to the issuance of a certificate of operation, if such products are in existence at the time of issuance or the time of renewal for the certificate of operation; and
- (2) Establishing and maintaining an escrow account in a chartered financial institution in Ohio in the amount of two hundred fifty thousand dollars, with escrow terms, approved by the department, that it shall be payable to the department in the event of circumstances outlined in paragraph (A) of this rule. A financial institution may not return money in an escrow or surety account to the processor that established the account or a representative of the processor unless the processor or representative presents a statement issued by the department indicating that the account may be released; or
- (3) Providing a surety bond naming the processor as principal of the bond, upon terms approved by the department, in the amount of two hundred fifty thousand dollars, payable to the department in the event of circumstances outlined in paragraph (A) of this rule. Bond terms include the following:
 - (a) The business name and registration number on the bond must correspond exactly with the business name and registration number in the department's records.
 - (b) A copy of the bond must be received by the department before a certificate of operation is issued.
 - (c) The bond shall not be canceled by a surety on less than thirty days' notice in writing to the department. If a bond is canceled and the processor

fails to file a new bond with the department in the required amount on or before the effective date of cancellation, the processor's license shall be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified on the bond.

- (4) The department shall permit a processor to reduce the escrow or surety bond by seventy-five thousand dollars upon the successful achievement of each of the following milestones, resulting in a potential elimination of the escrow account or surety bond:
- (a) A determination by the department that the processor remained fully operational without substantial interruption and was able to provide and maintain an uninterrupted supply of medical marijuana, in accordance with rule 3796:3-1-07, and demonstrates an ability to comply with the requirements of Chapter 3796. of the Revised Code and the rules promulgated in accordance with Chapter 3796. of the Revised Code, as determined by the department, for a period of one year;
 - (b) A determination by the department that the processor remained fully operational without substantial interruption and was able to provide and maintain an uninterrupted supply of medical marijuana, in accordance with rule 3796:3-1-07, and demonstrates an ability to comply with the requirements of Chapter 3796. of the Revised Code and the rules promulgated in accordance with Chapter 3796. of the Revised Code, as determined by the department, for two consecutive years; and
 - (c) A determination by the department that the processor remained fully operational without substantial interruption and was able to provide and maintain an uninterrupted supply of medical marijuana, in accordance with rule 3796:3-1-07, and demonstrates an ability to comply with the requirements of Chapter 3796. of the Revised Code and the rules promulgated in accordance with Chapter 3796. of the Revised Code, as determined by the department, for three consecutive years. A processor that achieves three consecutive years of compliance, pursuant to this rule, shall have the escrow or surety bond requirement waived.
- (5) A processor will not be held in default should the failure to comply be the direct result of an event or effect that cannot be reasonably anticipated or controlled, such as an act of God or nature and not the result of a lack of good faith effort.
- (C) The required insurance policy and surety bond shall be written by an insurance company formed, licensed or eligible, and authorized or approved to write such insurance in the state of Ohio under Title XXXIX of the Revised Code.
- (D) The department may waive any of the requirements of this rule on a temporary or

permanent basis, if it is determined by the department that the financial responsibility instruments listed in this rule are not in existence in the insurance market.

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Certification

08/14/2017

Date

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