



Common Sense Initiative

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Business Impact Analysis

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

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

Medical Marijuana Patient & Caregiver Registration Fee Elimination, Processor Fee Reduction, and Provisional Employee Badging.

Rule Number(s): OAC 3796:7-3-01 (Rescind); 3796:5-1-01 (Amend); 3796:5-2-04 (New)

Date of Submission for CSI Review: 2/27/2024

Public Comment Period End Date: 3/12/2024

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ 1 rules (FYR? Y)

Rescinded/ 1 rules (FYR? N)

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

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Reason for Submission

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

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

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

OAC 3796:7-3-01 PATIENT & CAREGIVER FEE ELIMINATION (Rescind)

- The DCC proposes to rescind the rule imposing the medical marijuana registration fee of \$50 for patients and \$25 for caregivers annually.
- The DCC encourages eligible patients to remain in the Medical Marijuana Control Program (“MMCP”).

OAC 3796:5-1-01 PROCESSOR RENEWAL FEE REDUCTION (Amend)

- This rule establishes the application, licensing, renewal, advertising approval request, and change of ownership or location fees for medical marijuana cultivators, processors, and testing laboratories, as well as the application and renewal fees for employee identification cards.
- The Division of Cannabis Control (DCC) is proposing to reduce the processor renewal fee by half – from \$100,000 annually to \$50,000 annually.

OAC 3796:5-2-04 PROVISIONAL EMPLOYEE IDENTIFICATION CARD (New)

- The DCC proposes to implement a medical marijuana provisional employee badge to streamline and expedite the hiring and onboarding process for medical marijuana industry employees.
- The provisional employee badge process will expedite the typical medical marijuana entity employee approval process by permitting an applicant for an employee badge to

begin working in a facility upon submission by the licensed medical marijuana entity of 1) a complete and accurate employee badge application, 2) attestations that the employee does not have any offenses on their record that would disqualify them from obtaining an badge and 3) evidence that the applicant has submitted fingerprints for both a BCI and FBI background check.

- The licensed medical marijuana facility is responsible for conducting a thorough background evaluation to confirm the employee applicant does not have a disqualifying offense and is compliant with all program rules.
- A provisional employee identification card is valid for 90 days.

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

Authorized By: R.C. 3796.03, 3796.04

Amplifies: R.C. 3796.03, 3796.04, 3796.08

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No

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

n/a

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

The Division proposes to eliminate the medical marijuana patient and caregiver registration fee; therefore, we do not believe this regulation is needed. The DCC encourages eligible patients to remain in the MMCP.

Application and licensing fees are necessary to cover the costs of administering the program. The DCC believes that reducing the processor renewal fee by half will continue to help fund the cost of administering the program, while providing a more equitable fee schedule.

Provisional employee badging is a request from the industry that will help expedite the hiring and onboarding process for employees. The Division also feels that it's a needed change to the process. Employees are still required to be background checked; however, this process allows them to begin working while the background check is being conducted. The rule puts some guardrails in place to ensure that due diligence has been done on the part of the licensee to ensure the applicant does not have any offenses on their record that disqualifies them from working for a medical marijuana licensee and is otherwise compliant with program rules.

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

Continued success of the Medical Marijuana Control Program for patients and the businesses that operate within it.

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

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

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

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

Patient & Caregiver Registration Fee

- Eliminating the medical marijuana patient and caregiver fee will help reduce financial requirements of obtaining a medical marijuana card, and this proposal is strongly supported by patients from whom we have received feedback over the life of the program and during the rule drafting process.

Processor Renewal Fee

- Similarly, the reduction of the processor renewal fee is supported by the Division and stakeholders alike.

Provisional Employee Badging

- Finally, the Division believes that based on the anticipated need for additional employees within the industry in the coming months, allowing provisional employee badging is an effective way to regulate while maintaining statutory and other necessary guardrails. This proposal is strongly supported by stakeholders.

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

Patient & Caregiver Registration Fee

- The program has received feedback from patients which has consistently shown that patients identify cost as a reason for not renewing their medical marijuana card.

Processor Renewal Fee

- The Division reviewed medical facility license fee structures and determined that it was proportional to reduce the processor fee compared to other facility license fees.

Provisional Employee Badging

- BCI/FBI background checks can take up to 60 days to be processed. The Division determined that permitting provisional employee badging will provide a more expedient process for hiring and onboarding new industry employees.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The alternative to eliminating a registration fee for patients and caregivers or to reducing the licensing fee for processors is to maintain the status quo. The Division feels that it is no longer necessary to require the patient and caregiver fee, and reducing the processor fee will make it more proportional compared to other facility licensing fees.

The new rule for provisional employee badging serves to add some flexibility to the current medical marijuana employee badging rules. Currently, employee applicants cannot begin working until their application is reviewed and approved, and the Division receives the background reports from BCI. With the new provisional employee process, applicants can begin working in the facility immediately upon submission of a complete application and fingerprints to BCI.

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

The DCC is the sole entity with statutory authority to regulate medical marijuana patients/caregivers and license processors and industry employees, including assessing licensing or registration fees.

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

These rules apply to all patients, caregivers, processors, and employee applicants consistently. The fee elimination and reduction will be communicated to all patients, caregivers, and processors. The new process for issuance of a provisional employee badge will be communicated to all cultivators, processors, testing labs, and dispensaries.

Adverse Impact to Business

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

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

The business community impacted by these rules includes all medical marijuana cultivators, processors, testing laboratories, and dispensaries.

Medical marijuana registration fees are currently \$50 for patients and \$25 for caregivers, annually. In FY2023, registration fees for patients and caregivers totaled \$6.6 million.

There are 46 licensed medical marijuana processors (45 operational, 1 provisional). Reducing the fee in half (from \$100,000 to \$50,000 annually per licensee) will reduce license renewal fees paid by processors from \$4.6 million annually to \$2.3 million annually.

Finally, provisional employee badging will reduce the amount of time a medical marijuana licensee must wait before they can onboard new hires. BCI/FBI background check reports can take up to 60 days. Additionally, the industry has reported that the amount of time it can sometimes take results in the loss of good, qualified candidates – resulting in increased recruiting and hiring costs for licensees.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

All of the proposed rules will reduce regulatory burdens on the business community. The reduction of the processor renewal fee will decrease the annual cost by half for licensed processors. As stated above, provisional employee badging will reduce the amount of time a medical marijuana licensee must wait before they can onboard new hires; thereby expediting the filling of needed positions within the facilities and retention of qualified candidates.

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

Licensing fees help fund the licensing and regulatory operations of the Division required by ORC/OAC 3796. Additionally, it is in the public interest to ensure that no individuals with disqualifying offenses are employed within the industry.

Regulatory Flexibility

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

Processors are not distinguished in statute or rule by size and the licensing fee applies to all processors. Provisional employee badging will be available for applicants in all license types. Therefore, these rules are intended to create a level playing field for all licensees.

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

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

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

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



OHIO DEPARTMENT OF COMMERCE
DIVISION OF CANNABIS CONTROL

Chapter 3796

(All section numbers and citations subject to change)

*** TO BE RESCINDED ***

OAC 3796:7-3-01: Medical marijuana patient and caregiver fee structure

- ~~(A) The following non-refundable fees shall be paid to the state board of pharmacy:~~
 - ~~(1) The annual fee for a patient registration is fifty dollars. One application fee must be submitted with each application.~~
 - ~~(2) The annual fee for a caregiver registration is twenty-five dollars. One application fee must be submitted with each application.~~
- ~~(B) The state board of pharmacy may reduce registration fees to fifty per cent of the full registration price for a prospective patient who qualifies for indigent or veteran status, and any prospective caregiver for such a patient. To qualify the patient must be a patient who is:~~
 - ~~(1) Enrolled in the federal "Social Security Disability Income" (SSDI) or the "Supplemental Security Income" (SSI) disability programs. To qualify for a reduced registration fee due to enrollment in either SSDI or SSI programs, the prospective patient shall submit to the state board of pharmacy a copy of a letter or other documentation from the United States social security administration demonstrating the:~~
 - ~~(a) Identity of the patient; and~~
 - ~~(b) Amount of monthly SSDI and SSI benefits to be received by the prospective patient during the current year of the registration submission.~~
 - ~~(2) A veteran. To qualify for a reduced registration fee due to veteran status, the prospective patient shall submit to the state board of pharmacy a copy of any of the following documents. All acceptable proof documents, except veterans identification card, must show the veteran status as honorable, general, general under honorable conditions, or discharged or released under conditions other than dishonorable.~~
 - ~~(a) Department of defense identification card (active, retired, temporary disability retirement list (TDRL));~~
 - ~~(b) DD214, DD215, or national guard bureau (NGB) military discharge certificate indicating disposition of discharge;~~
 - ~~(c) Report of separation from the national archives national personnel records center in St. Louis, Missouri; or~~
 - ~~(d) Veterans identification card from the department of veterans affairs.~~

OAC 3796: 5-1-01 Fee Schedules.

- (A) An applicant for a license issued by the department or an applicant seeking employment with a licensee shall submit the following non-refundable application fees with the corresponding application:
 - (1) Level I cultivator application fee shall be twenty thousand dollars.
 - (2) Level II cultivator application fee shall be two thousand dollars.



OHIO DEPARTMENT OF COMMERCE DIVISION OF CANNABIS CONTROL

- (3) Processor application fee shall be ten thousand dollars.
 - (4) Testing laboratory application fee shall be two thousand dollars.
 - (5) Employee identification card application fee shall be one hundred dollars.
- (B) An applicant that is awarded a provisional license by the department shall submit the following non-refundable fees at the time a certificate of operation is issued:
 - (1) Level I cultivator certificate of operation fee shall be one hundred eighty thousand dollars.
 - (2) Level II cultivator certificate of operation fee shall be eighteen thousand dollars.
 - (3) Processor certificate of operation fee shall be ninety thousand dollars.
 - (4) Testing laboratory certificate of operation fee shall be eighteen thousand dollars.
- (C) A cultivator, processor, or testing laboratory awarded a certificate of operation by the department shall renew on an annual basis from the date the certificate of operation is issued and shall submit the following non-refundable fees:
 - (1) Level I cultivator certificate of operation renewal fee shall be two hundred thousand dollars.
 - (2) Level II cultivator certificate of operation renewal fee shall be twenty thousand dollars.
 - (3) Processor certificate of operation renewal fee shall be fifty thousand dollars.~~one hundred thousand dollars.~~
 - (4) Testing laboratory certificate of operation renewal fee shall be twenty thousand dollars.
- (D) An employee that is issued an identification card shall renew every two years from the date of issuance and shall submit a non-refundable fee of one hundred dollars.
- (E) A cultivator, processor, or testing laboratory that is issued a certificate of operation shall submit the following non-refundable processing fee for a change in ownership or transfer to a new location:
 - (1) Cultivator processing fee shall be one thousand dollars.
 - (2) Processor processing fee shall be one thousand dollars.
 - (3) Testing laboratory processing fee shall be one thousand dollars.
- (F) A cultivator, processor, or testing laboratory that is issued a certificate of operation or a person possessing an employee identification card that is lost, stolen, destroyed, or otherwise misplaced shall submit the following replacement fees:
 - (1) Cultivator certificate of operation replacement fee shall be one hundred dollars.
 - (2) Processor certificate of operation replacement fee shall be one hundred dollars.
 - (3) Testing laboratory certificate of operation replacement fee shall be one hundred dollars.
 - (4) Employee identification card replacement fee shall be ten dollars.
- (G) A level I cultivator that is issued a plant-only processor license shall submit a fee of five thousand dollars at the time the license is approved and the license shall renew on an annual basis from the date the license is granted. The renewal of a plant-only processor license for a level I cultivator shall be five thousand dollars.
- (H) A level II cultivator that is issued a plant-only processor license shall submit a fee of five hundred dollars at the time the license is approved and the license shall renew on an annual basis



OHIO DEPARTMENT OF COMMERCE DIVISION OF CANNABIS CONTROL

from the date the license is granted. The renewal of a plant-only processor license for a level II cultivator shall be five hundred dollars.

- **(I)** A cultivator or processor shall register each medical marijuana product with the department and pay a registration fee in accordance with the rules promulgated by the state of Ohio board of pharmacy pursuant to Chapter 3796. of the Revised Code.
- **(J)** A cultivator, processor, or testing laboratory shall submit an advertisement for approval prior to disseminating the advertisement with a fee of one hundred dollars for every advertisement.
- **(K)** Any fees due and payable to the department shall be submitted in the form of a certified check or money order payable to the "Treasurer, State of Ohio," or by such other means as approved by the department.

NEW OAC 3796:5-2-04 Provisional Employee Identification Cards

- **(A)** The division may issue a provisional employee identification card to any individual required to obtain an employee identification card pursuant to rules 3796:5-2-01, 3796:6-2-07, or 3796:6-2-08 of the Administrative Code.
- **(B)** A licensee seeking a provisional employee identification card shall submit the following to the division on behalf of the applicant:
 - **(1)** All employee identification card application materials as required under rules 3796:5-2-01, 3796:6-2-07 or 3796:6-2-08 of the Administrative Code;
 - **(2)** The associated application fee as defined by rules 3796:5-2-02 and 3796:6-5-01 of the Administrative Code; and
 - **(3)** Assurance by the licensed entity of the following on a form prescribed by the division:
 - **(a)** The licensee conducted a thorough background evaluation to confirm the applicant does not have a disqualifying offense, as defined by rule 3796:1-1-01 of the Administrative Code; and
 - **(b)** Confirmation that the applicant submitted all required information to the Ohio bureau of criminal identification to obtain an Ohio and federal bureau of criminal records check as required by sections 3796.12 and 3796.13 of the Revised Code.
- **(C)** Provisional Employee Identification Card
 - **(1)** Upon receipt of a complete application, the division shall process the application and issue the applicant a provisional employee identification card.
 - **(2)** The applicant may then immediately commence business at the associated licensee.
 - **(3)** Unless otherwise authorized by the division, an applicant's provisional employee identification card expires three months after the date of issuance.
- **(D)** Division review of application.
 - **(1)** The division shall review the employee identification card application and accompanying Ohio and federal criminal identification records checks when received and will approve or deny issuance of an employee identification card pursuant to rules 3796:5-2-01, 3796:6-2-07 or 3796:6-2-08 of the Administrative Code.
 - **(2)** If the division issues the applicant an employee identification card under this chapter, it shall replace the provisional employee identification card issued pursuant to this rule.