

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:18-3-09

Rule Type: New

Rule Title/Tagline: Employee Badges.

Agency Name: Department of Commerce

Division: Division of Cannabis Control

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I. Rule Summary

1. Is this a five year rule review? No
 - A. What is the rule's five year review date?
2. Is this rule the result of recent legislation? No
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 3780.03, 3796.03
5. What statute(s) does the rule implement or amplify? 3780.03, 3780.08, 3780.17, 3796.03, 3796.12, 3796.13
6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No
 - A. If so, what is the citation to the federal law or rule? Not Applicable
7. What are the reasons for proposing the rule?

To establish requirements for the background check and badging of employees working at licensed cannabis facilities.
8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

Establishes requirements for employees and owners of licensed cannabis facilities to obtain an employee badge via application to the Division. Requires these individuals to submit fingerprints for BCI and FBI background checks. Allows the Division to enroll eligible individuals into "Rapback."

Allows an employee to maintain one badge for each license in the family of companies, rather than a badge for each individual license.

Provides a provisional employee badge to streamline and expedite the hiring and onboarding process for new employees. An applicant for an employee badge may begin working in a licensed cannabis facility upon submission of 1) a complete and accurate application, 2) attestations that the employee does not have any offenses on their record that would disqualify them from obtaining employment, 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.

- 9. Does the rule incorporate material by reference? Yes**
- 10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The referenced materials are citations of the Ohio Revised Code and Ohio Administrative Code and are therefore exempt under Ohio Revised Code 121.75(A)(1) (a) and (d). These materials can be found at www.codes.ohio.gov.

- 11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

N/A

This rule will not have an impact on the agency's revenues or expenditures.

13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

There may be some minimal costs associated with the completion of employee applications. Additionally, a licensee who wishes to seek a provisional employee badge may incur costs associated with completing a thorough background evaluation, which may vary depending on the method used by the licensee to meet such requirement. There is a fee associated with filing employee applications; however, it is established in a separate rule.

14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not Applicable.

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. Does this rule have an adverse impact on business? Yes

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

An individual wishing to be employed by a licensed cannabis facility must be badged with the Division.

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Licensees must submit an application for any individual wishing to be employed by a licensed cannabis facility and the applicant must obtain FBI and BCI background checks.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

- 19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes**

- A. How many new regulatory restrictions do you propose adding to this rule? 16**

1 • (A) Employee Badge Required

o (1) Each licensee shall ensure all of the following associated individuals obtain an employee badge from the division of cannabis control prior to commencement of business:

(a) Any administrator or individual responsible for the daily operation of the facility;

(b) All owners, officers, and board members, of the licensee; and

(c) All employees and agents of the licensee.

2 o (2) Each licensee shall ensure all associated individuals outlined under paragraph (A)(1) of this rule are appropriately designated as follows:

(a) Responsible Party:

- (i) Prior to the issuance or renewal of a certificate of operation, each licensee shall designate at least one, but not more than three individuals to serve as the licensee's responsible party.

- (ii) The designated responsible party will manage the facility's daily operations and ensure compliance with all standard operating procedures.

- (iii) A responsible party is to be physically present at the licensed premises at least twenty hours per week and be immediately available to communicate with facility staff or the division during any operating hours when they are not physically present.

(b) Owner or Officer:

- (i) Any and all owners, officers, and board members of the licensee.

(c) Employee:

- (i) All other employees and agents of the licensee.

3 • (B) Prior to petitioning the division for an employee badge, each licensee shall:

o (1) Complete a thorough background evaluation to confirm the applicant does not have a disqualifying offense, as defined by rule 1301:18-1-01 of the Administrative Code; and

o (2) Submit a receipt or transaction number confirming that the applicant submitted the following to the Ohio bureau of criminal identification as required by sections 3780.08 and 3796.12 of the Revised Code:

(a) A complete and accurate application for:

- (i) An Ohio bureau of criminal identification records check; and
- (ii) A federal bureau of criminal identification records check.

(b) Two fingerprint impressions; and

(c) Clearly indicated that both records checks be sent directly to the division.

4 • (C) Application for Employee Badge

o (1) Pursuant to the application process, each licensee shall submit the following to the division on behalf of the applicant:

(a) A complete and accurate application on a form prescribed by the division evidencing the following:

- (i) The following applicant information:

o (A) Full legal name;

o (B) The applicant's intended employee designation, as outlined under paragraph (A)(2) of this rule;

o (C) Telephone number that may be utilized during normal business hours;

o (D) Electronic mail address; and

o (E) Mailing address.

o (F) All information provided must be in working order and readily available to receive voice messages, electronic messages, or other communication as applicable.

- (ii) The applicant submitted fingerprint impressions to the Ohio bureau of criminal identification for an Ohio and federal bureau of criminal identification records checks;

- (iii) The applicant does not have a disqualifying offense, as defined by rule 1301:18-1-01 of the Administrative Code;

- (iv) A copy of the applicant's valid, unexpired government issued photographic identification evidencing that the applicant is at least twenty-one years of age;

- (v) A clear, recognizable photographic headshot of the applicant, captured within the past six months of the date of submission;

- (vi) The business name and license number for any associated cultivator, processor, testing laboratory, or dispensary at which the applicant seeks employment;
- (vii) Individuals who have been a resident of the state of Ohio continuously for the past five years may apply for expedited renewal if the applicant consents for enrollment in the Ohio attorney general's retained applicant fingerprint database ("Rapback"), or other third-party database as determined by the division, that monitors publicly available databases for arrests and criminal convictions; and
- (viii) The non-refundable application fee as outlined under rule 1301:18-2-09 of the Administrative Code.

5 o (E)(3) Each licensee shall print the applicant's employee badge certificate and ensure the individual maintains the card on their person while engaged in any activity within the scope of their employment.

6 # (E)(3)(a) Each licensee shall ensure all employee badge certificates prevent unauthorized duplication of the badge.

7 o (E)(4) An employee badge certificate shall expire two years after the date of issuance.

8 o (F)(2) Within ten business days of receipt of written notification from the division, the licensee shall ensure that all deficiencies outlined are alleviated and submit any further documentation requested by the division.

9 o (F)(3) Should a licensee fail to cure all application deficiencies, the application shall be deemed abandoned.

10 • (G) Failure to Comply with Application Requirements.

o (1) Should a licensee fail to ensure all requirements of this rule are met, the division shall abandon the application and the licensee shall forfeit any non-refundable fee submitted to the division.

11 • (H) Denial of application required.

o (1) The division shall deny an application for an employee badge pursuant to any of the following:

(a) The applicant was convicted of a disqualifying offense; or

(b) The applicant is not at least twenty-one years of age or older.

12 • (I) Notification Requirements.

- o (1) Each licensee shall notify the division of any of the following:
 - # (a) Any employee badge that is lost, destroyed, stolen is to be immediately reported.
 - # (b) Any modifications or changes to any information contained within their employee badge application within five business days of such change;
 - # (c) A change of a designated responsible party within ten calendar days of the effective date of the appointment of a new designated responsible party.

13 o (l)(2) An individual registered pursuant to this rule arrested for activities that, if convicted, would constitute a disqualifying offense as defined by 1301:18-1-01 shall immediately notify the division.

14 # (l)(2)(a) If the associated licensed entity has knowledge of such arrest, it shall notify the division.

15 o (l)(3) In the event an individual is no longer employed or associated with a licensee, the licensee shall update all accompanying information provided to the division, within one business day and ensure that the employee badge certificate is returned and destroyed upon separation.

16 • (J) Employee badge renewal.

- o (1) Pursuant to the renewal process, the licensed entity shall submit the following to the division on behalf of the applicant prior to the badge's expiration:
 - # (a) A complete and accurate renewal application in a manner prescribed by the division; and
 - # (b) The non-refundable renewal fee as outlined under rule 1301:18-2-09 of the Administrative Code.

B. How many existing regulatory restrictions do you propose removing from this rule? 32

1 OAC 3796:5-2-01(A) Every owner, principal officer, board member, employee, administrator, agent, or other person who may significantly influence or control the activities of a cultivator, processor, or testing laboratory must apply to the department for an employee identification card.

2 OAC 3796:5-2-01(A)(1) The cultivator, processor, or testing laboratory with which a person listed under paragraph (A) of this rule is seeking employment shall submit the following information:

- (a) A completed application;
- (b) A copy of the applicant's valid driver's license or state issued identification card establishing that the individual is at least twenty-one years of age;
- (c) A recognizable headshot photograph of the applicant taken no more than six months before the date of application;
- (d) The name of the cultivator, processor, or testing laboratory that the applicant seeks to work for or otherwise be associated with;
- (e) The application fee; and
- (f) Any additional information requested by the department in the application.

3 OAC 3796:5-2-01(A)(2) An individual on whose behalf an application is submitted under this chapter or is issued an employee identification card under this chapter shall notify the department of any changes to the information provided on the application no later than five business days after such change.

4 OAC 3796:5-2-01(B)(1) Upon receipt of an application and verification of the information specified in paragraph (A) of this rule, the department shall do the following:

Approve or deny the application within thirty days after receipt;

5 OAC 3796:5-2-01(B)(2) Issue an identification card that shall expire two years after the date of issuance

6 OAC 3796:5-2-01(C) An employee identification card issued by the department shall contain, at a minimum, the following:

- (1) The name of the cardholder;
- (2) The license number of the cultivator, processor, or testing laboratory employing the cardholder;
- (3) The date of issuance and expiration;
- (4) A random ten-digit alphanumeric identification number with at least four numbers and four letters that is unique to the holder and assigned by the department; and
- (5) A photograph of the cardholder that was provided as part of the application.

7 OAC 3796:5-2-01(D) No person shall begin working at a cultivator, processor, or testing laboratory prior to receiving his or her employee identification card.

8 OAC 3796:5-2-01. (D)A cardholder must keep his or her employee identification card visible at all times when on the property of a cultivator,

processor, or testing laboratory and during the transportation of medical marijuana to another cultivator, processor, or testing laboratory.

9 OAC 3796:5-2-01(D) Any employee identification card that is lost, destroyed, or stolen shall be reported to the department immediately upon discovery of the loss, destruction, or theft, and the department may require a similar report to law enforcement.

10 OAC 3796:5-2-01(D) Any employee identification card that is lost, destroyed, or stolen shall be reported to the department immediately upon discovery of the loss, destruction, or theft, and the department may require a similar report to law enforcement.

11 OAC 3796:5-2-01(D) A cardholder that reports his or her employee identification card as lost, destroyed, or stolen shall apply for a replacement card with the department and pay a replacement employee identification card fee as specified in rule 3796:5-1-01 of the Administrative Code.

12 OAC 3796:5-2-01(F) An employee identification card remains the property of the department and the department may order the return or seizure of an employee identification card if the registration is revoked or expires. The employee identification card shall be immediately returned to the cultivator, processor, or testing laboratory upon termination or completion of services provided.

13 OAC 3796:5-2-01(F)(1) Following the revocation or expiration of an employee identification card, the cultivator, processor, or testing laboratory shall do the following:

- (a) Notify the department of the circumstances around the termination or expiration within one business day in a manner determined by the department;
- (b) Ensure the employee identification card is returned to the cultivator, processor, or testing laboratory; and
- (c) Return the employee identification card to the department within fifteen calendar days of the employee's termination or completion of services.

14 OAC 3796:5-2-01(C)(2) The department shall revoke an employee identification card upon receiving notification that the individual is no longer associated with the cultivator, processor, or testing laboratory. If the employee identification card is not returned within thirty days of the termination, the department may take action under rule 3796:5-6-01 of the Administrative Code.

15 OAC 3796:5-2-01(G) An individual arrested for activities that, if convicted, would constitute a disqualifying offense shall immediately notify the department. If an employer has knowledge of such arrest, the employer shall notify the department.

16 OAC 3796:5-2-01(G) An individual arrested for activities that, if convicted, would constitute a disqualifying offense shall immediately notify the department. If an employer has knowledge of such arrest, the employer shall notify the department.

17 OAC 3796:5-2-01(H) A cultivator, processor, or testing laboratory shall designate the level of access granted to an applicant for an employee identification card.

18 OAC 3796:5-2-01(H)A cultivator, processor, or testing laboratory may choose to implement additional access restrictions, but at a minimum, the access levels shall be designated as follows:

(1) A type 1 designation is an owner, administrator, or individual that has control and management over the day-to-day activities that significantly impact the operations of the cultivator, processor, or testing laboratory.

19 OAC 3796:5-2-01(H)(1)A cultivator, processor, or testing laboratory shall designate one and may designate up to three type 1 cardholders as a key employee.

20 OAC 3796:5-2-01(H)(1) A key employee shall be responsible for all activities at the facility and will serve as the point of contact for the facility with the department.

21 OAC 3796:5-2-01(H)(2) A type 2 designation is a board member, officer, employee, or agent permitted to enter the production and non-production areas of the facility designated in the facility plans and specifications submitted by a cultivator, processor, or testing laboratory under rule 3796:2-1-02 of the Administrative Code. A type 2 cardholder shall not be permitted to access the areas containing the vault, security equipment, and other equipment related to the facility's surveillance operations.

22 OAC 3796:5-2-01(I) A person that is not a holder of a valid employee identification card of a cultivator, processor, or testing laboratory is prohibited from accessing a facility, unless they receive authorization and obtain a visitor identification badge from the cultivator, processor, or testing laboratory.

23 OAC 3796:5-2-01(I) To obtain a visitor identification badge, the visitor must provide a valid, government issued identification with a photograph.

24 OAC 3796:5-2-01(I)(1) A person who obtains a visitor identification badge must do the following:

(a) Be escorted and monitored by an assigned registered employee of the facility at all times he or she is on the premises and has access to medical marijuana;

25 OAC 3796:5-2-01(I)(2) A cultivator, processor, or testing laboratory shall maintain a visitor log, which includes the name of the visitor, the date and time of arrival and departure, the assigned registered employee of the facility, and the purpose of the visit.

26 OAC 3796:5-2-01(I)(2) The cultivator, processor, or testing laboratory shall make its visitor log available to the department upon request.

27 OAC 3796:5-2-01 (I) (3) Notwithstanding the requirements of paragraph (I) of this rule, employees of the department, law enforcement, emergency medical personnel, in the event of an emergency, or other federal, state of Ohio, or local government officials may enter a cultivator, processor, or testing laboratory if necessary to perform their official duties.

28 OAC 3796: 5-2-02(A) Pursuant to division (B)(1) of section 3796.12 of the Revised Code, any person required to perform a criminal records check must submit fingerprint impressions to the Ohio bureau of criminal identification and investigation for a criminal records check of the applicant.

29 OAC 3796: 5-2-02(A) Pursuant to division (B)(1) of section 3796.12 of the Revised Code, any person required to perform a criminal records check must submit fingerprint impressions to the Ohio bureau of criminal identification and investigation for a criminal records check of the applicant.

30 OAC 3796: 5-2-02(B) Pursuant to section 3796.13 of the Revised Code, prospective employees for a medical marijuana entity licensed by the department must submit fingerprint impressions to the Ohio bureau of criminal identification and investigation for a criminal records check of the applicant.

31 OAC 3796: 5-2-02(C) A person required to submit a criminal records check under paragraph (A) or (B) of this rule shall submit both a bureau of criminal identification and investigation criminal records check and a federal bureau of investigation criminal records check.

32 OAC 3796: 5-2-02(C) A person required to submit a criminal records check under paragraph (A) or (B) of this rule shall submit both a bureau of criminal identification and investigation criminal records check and a federal bureau of investigation criminal records check.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

3796:5-2-01, 3796:5-2-02

- D. Please justify the adoption of the new regulatory restriction(s).**

The Division is required by statute to establish rules to ensure individuals working at licensed cannabis entities are background checked with no disqualifying offenses, and are properly registered with the Division.