

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commere

Regulation/Package Title: Ohio Precious Metals Dealers Act rules-2014

Rule Number(s): 1301:8-6-01; 1301:8-6-02; 1301:8-6-03; 1301:8-6-04; 1301:8-6-05;
1301:8-6-06

Date: December 9, 2014

Rule Type:

☐ New

☒ 5-Year Review

☐ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

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

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

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This rule package contains 6 rules amplifying the Ohio Precious Metals Dealers Act ("PMDA") which is codified at Ohio Revised Code ("R.C.") Chapter 4728.

The following rules are being filed as a no-change rule package with a review date shorter than 5 years due to ongoing litigation pertaining to the PMDA. As a result of this litigation in which the Department of Commerce and Division of Financial Institutions are parties, the Division is not able to engage its stakeholders. The Division, therefore, submits these rules without changes and intends to begin the process of reviewing these rules with stakeholders in 2017 unless the litigation remains ongoing.

1301:8-6-01, Definitions (No change): This rule defines certain terms found in this rule chapter and in the PMDA.

1301:8-6-02, Licenses (No change): This rule prohibits transacting business under any other name than that contained in the license or at any address other than the address stated on the license; prohibits the transfer or assignment of a license; and prohibits moving a business location without prior notification to the Superintendent of Financial Institutions. The rule also requires payment of an additional license fee if the move to a new location is outside the municipal corporation or county in which a licensee was originally licensed.

1301:8-6-03, Books and records (No change): This rule explains how the information required to be recorded by R.C. 4728.06 is to be maintained, requires records to be available at the licensed location for inspection by the Division, and requires records to be maintained for a period of two years from the date of purchase of property recorded in those records. The rule also prohibits licensees from requiring sellers to sign blank or partially filled-out purchase forms.

1301:8-6-04, Stolen property (No change): This rule requires licensees to conspicuously post a notice that reads: "The licensee at this establishment has no right to retain property stolen from the true owner and the owner may recover any such property or its value from the licensee in an action at law."

1301:8-6-05, Posting business hours (No change): This rule requires licensees to post their business hours and to notify the Division in the event of any change to the posted hours of operations. In the absence of events beyond a licensee's control, the rule provides that the failure of a licensee to keep its posted hours is a violation of the rule.

1301:8-6-06, Temporary permit (No change): This rule sets forth the procedure for licensees to apply for a temporary exhibition permit under R.C. 4728.04(C), explains how to

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apply for a permit, display a permit, and how to notify law enforcement and the Division of the licensee's participation at a temporary location.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4728.10.

3. 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.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable. This no-change rule package contains no provisions that implement or exceed federal requirements.

5. 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 licensing requirement and the close monitoring of those who are licensed under the PMDA exist for the public purpose of protecting the public from theft, fraud, money laundering, and fencing, as well as preventing terrorism and restricting the flow of stolen goods into the marketplace.

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

The rules will not affect the output of PMDA licenses issued by the Division. Rather, the Division will measure the success of these regulations by continuing to receive industry feedback on the licensing and regulation of the industry and reviewing consumer complaints submitted to the Division.

Development of the Regulation

7. 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.

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Due to ongoing litigation involving the PMDA, the Division, which is a party to the case, is unable to reach out to stakeholders at this time.

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

Due to ongoing litigation involving the PMDA, the Division, which is a party to the case, is unable to reach out to stakeholders at this time. Accordingly, the Division has not received input from stakeholders on these no-change rules.

9. 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?

Not applicable.

10. 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?

Due to ongoing litigation involving the PMDA, the Division, which is a party to the litigation, is not able to engage stakeholders and consider other regulatory alternatives concerning the no-change rules.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not applicable.

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

Not applicable because this is a no-change rule package. The Division intends to begin the process of reviewing the regulations with stakeholders in 2017 unless the litigation remains ongoing. At that time, the Division will review all Ohio regulations to ensure there are no duplicative regulations.

13. 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.

The Division will post these rules on the Department of Commerce's website, and send a notice to all licensees advising them of this rule package.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

These rules apply to persons licensed under the PMDA.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

- Notifying the Division before moving a business location requires employer time for compliance. If the business is moving to a different municipality or county, a new license must be issued which requires a licensing fee per R.C. 4728.03(C).
- The books and records rule requires employer time for compliance.
- Posting the “stolen property” notice, which is required by R.C. 4728.04(C), requires employer time.
- Posting business hours and operating the business those hours, absent prior notice to the Division of a change to those hours, incurs the cost of a licensee being open at the times posted. In the event of a change to its hours of operation, there is a cost of employer time in preparing the notice of change to those hours and emailing the notice to the Division.
- Filing the notice to obtain a temporary exhibition permit and the notification to the Division and law enforcement of the licensee’s participation at a temporary location requires employer time.

c. Quantify the expected adverse impact from the regulation.

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.

- From July 1 to Dec. 31, the licensing fee for moving from one municipality or county to another would be \$500; from January 1 to June 30, \$350. There is no fee for moving within the current municipal corporation or county in which a licensee was originally licensed. The fee is required by R.C. 4728.03(C), which states, in part, that fifty percent of license fees “shall be for the use of the state,

and fifty per cent shall be paid to the municipal corporation, or if outside the limits of any municipal corporation, to the county in which the office of the licensee is located.”

- Recordkeeping requirements take approximately 5 minutes to comply with and are required by R.C. 4728.06.
- Posting the stolen property notice in the lobby of the licensee takes 5 minutes of employee time to print and post the notice and is required by R.C. 4728.04(C).
- Keeping each licensed location open during posted business hours requires the cost of being open for business at the times posted, which cost would vary from licensee to licensee, or, in the event of a change to its hours of operation, the minimal cost of approximately 5 minutes of employer time to email the Division of such change.

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

The rules provide clarity to licensees and serve to implement the public policy of the law as set forth in the response to question 5.

Regulatory Flexibility

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

These regulations, which except for OAC 1301:8-6-01 have been effective since 1988 do not provide any exemptions or alternative means of compliance for small businesses.

17. 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 Division waives fines for first-time violations of R.C. 4728.06 when a licensee’s records do not fully and accurately describe the article purchased.

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

The Division is available to answer questions in person, via phone, and email.