

**MEMORANDUM**

TO: Jacqueline S. Mallett, Division Chief Counsel, Ohio Department of Commerce

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: February 9, 2015

RE: **CSI Review – Ohio Precious Metals Dealers Act Rules – 2014 (OAC §§ 1301:8-6-01; 1301:8-6-02; 1301:8-6-03; 1301:8-6-04; 1301:8-6-05; 1301:8-6-06)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

I. INTRODUCTION AND BACKGROUND

On December 11, 2014, the Ohio Department of Commerce ("Commerce") submitted a rule package containing a total of six (6) no-change rules. Commerce submitted these rules as a result of the five-year review requirement contained in statute. The rules outline the requirements for an individual to operate as a licensed precious metal dealer in Ohio. Commerce cites R.C. § 4728.10 as authority to establish these rules. The official comment period ended December 26, 2014. No comments were submitted during the CSI review period.

II. ANALYSIS**A. ADVERSE IMPACT ON BUSINESS**

According to the BIA submitted by Commerce, the scope of the impacted business community is comprised of licensed precious metal dealers.

The rules require licensed precious metal dealers to issue certain notifications, such as to the

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Department for any change in address, to rightful owners of property concerning their right to recover, and to the Department and customers concerning business hours. The rules contain a fee for any licensee wishing to move their business to any location outside of the municipal corporation or county in which they were initially licensed. The rules also set out certain record keeping requirements for licensees, and the application and notification process for temporary licensees.

The above provisions are enumerated in R.C. § 107.52, and therefore, are considered adverse impacts to business.

B. JUSTIFICATION FOR ADVERSE IMPACT

According to Commerce in the BIA and through discussions with CSI, the Department has been and continues to be a party to litigation involving the Precious Metal Dealers Act, which is codified in R.C. §§ 4728, et seq. Other parties to this litigation are stakeholders who would normally be engaged in early stakeholder outreach during the CSI review process. As explained by Commerce, this early stakeholder engagement is not possible due to the adversarial nature of the parties in litigation. Commerce has indicated, both in the BIA and through discussions with CSI, that although this rule package is being submitted as no-change to satisfy the five-year review requirement in statute, the Department intends to engage stakeholders and refile these rules with CSI having had proper stakeholder input as soon as the Department's part in the litigation is closed. CSI is sensitive to special circumstances and demands encountered by agencies during rule review. It is because of the specific circumstances and the commitment by Commerce to immediately engage in a good-faith stakeholder outreach once the litigation is concluded that CSI is willing to allow this rule package to move forward.

Therefore, and with the caveat that Commerce will place a review date on these rules no later than twenty-four (24) months from the date of this memorandum, CSI agrees that Commerce may file these rules with the Joint Committee on Agency Rule Review without further analysis.

III. RECOMMENDATIONS

After reviewing the BIA, the CSI Office makes the following recommendation regarding the rule package:

1. Commerce should file this rule package with a five-year review date that is no later than twenty-four (24) months from the date of this memorandum, and shall engage in a robust stakeholder review once litigation is concluded in order to determine whether changes to these rules are necessary.

IV. CONCLUSION

Based on the above analysis and recommendation, CSI concludes that Commerce should proceed with the formal filing of the rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office