

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Precious Metal Dealer Act Rules 2017

Rule Number(s): 1301:8-6-01 (No Change); 1301:8-6-02 (No Change); 1301:8-6-03 (Amend); 1301:8-6-04 (No Change); 1301:8-6-05 (No Change); 1301:8-6-06 (No Change).

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Date: \_\_\_\_\_

**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☐ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117  
[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

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

This rule package contains 6 rules amplifying the Precious Metal Dealers Act which is codified in sections Chapter 4728. of the Revised Code.

**1301:8-6-01 Definitions. (No Change):** This rule contains definitions of terms used in the Revised Code and in the rules contained in this package.

**1301:8-6-02 Licenses. (No Change):** This rule restricts the use of names that are not contained in the licenses, clarifies that licenses are nontransferable, and requires notification to the superintendent when a business location is moved.

**1301:8-6-03 Books and records. (Amend):** This rule details the types of records that a licensee is required to maintain, the manner in which those records must be kept, and the length of time that the records must be retained. This rule is being amended to comply with the decision of the United States Court of Appeals for the Sixth Circuit in Liberty Coins, LLC v. Goodman, 880 F.3d 274 (6th Cir. 2018)

**1301:8-6-04 Stolen property. (No Change):** This rule requires that every licensee under Chapter 4728. shall post a visible notice that the licensee will not retain stolen property.

**1301:8-6-05 Posting business hours. (No Change):** This rule requires every licensee to keep posted hours and notify the division of any change in the hours of operation.

**1301:8-6-06 Temporary permit. (No Change):** This rule sets forth guidelines for application and use of temporary permit issued under section 4728.04(C).

**Please list the Ohio statute authorizing the Agency to adopt this regulation.** Section 4728.10 of the Revised Code.

2. **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?** No.

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

Not applicable.

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

Not applicable.

4. **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)?** These rules are needed to enforce and carry out the purposes of Chapter 4728. of the Revised Code, and are necessary to provide precious metal dealers with clarity regarding the requirements and responsibilities set forth in the Precious Metals Dealers Act.
5. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The Division will measure the success of these regulations by continuing to receive industry feedback on the licensing and regulation of precious metal dealers and by reviewing consumer complaints submitted to the Division.

#### **Development of the Regulation**

6. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** The proposed rules were sent to all of licensees for review and comment, consisting of approximately 107 individuals. Please see the attached spreadsheet for a complete list. Additional stakeholders include the following:

Ohio State Bar Association  
Ohio Council of Retail Merchants  
Baird Law Offices, LLC  
Bricker & Eckler  
Dickinson Wright  
Dreher Tomkies  
K&L Gates  
Kohrman Jackson & Krantz  
McGlinchey Staffor  
Policy Matters Ohio  
Baker Law  
Compass Consulting dba TitleMax

*If applicable, please include the date and medium by which the stakeholders were initially contacted.* The Division emailed draft regulations for review and comment to the above-

mentioned stakeholders on June 15, 2017, and they were given until June 26, 2017 to provide input either by email or phone.

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

The agency received one response, in which a licensee expressed approval of the rule package and thanked the Division for the opportunity to review the rules.

**8. 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.

**9. 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?**

These regulations are subject to their five-year rule review; therefore, every rule was reviewed and numerous alternatives were considered as part of the process.

**10. 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.* No, these rules are for carrying out the processes that stakeholders must follow in order to comply with the provisions of sections Chapter 4728. of the Revised Code.

**11. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The Division is the primary regulator of licensees under the Precious Metal Dealers Act, and is not aware of any duplicative regulations.

**12. 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 regulations have been available to stakeholders throughout the rule review process, and will continue to be available to them through the Division's website

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

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throughout the JCARR process. Once finalized, the regulations will be brought to the attention of stakeholders at every available opportunity. Additionally, Division staff will be trained on the regulations to ensure their consistent application.

### **Adverse Impact to Business**

**13. 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 precious metal dealers subject to licensure by the Ohio Division of Financial Institutions. There are currently 107 licensed precious metal dealers.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

**1301:8-6-01 Definitions. (No Change):** This rule does not create an adverse impact as it simply defines the terms that are used throughout chapter 4728. of the Revised Code, and the Administrative Code.

**1301:8-6-02 Licenses. (No Change):** This rule requires a minimal expenditure of time to provide notice to the Division that a licensee intends to relocate and a minimal amount of funds for postage if the notice is mailed. The division does not charge any fees in addition to those that are required by statute to license each location.

**1301:8-6-03 Books and records. (Amend):** This adverse impact of this rule is minimal because the required records are merely standard business records. The only expenditure is the minimal time spent making and storing the record. Additionally, this rule is required by section 4728.06 of the Revised Code in order to enable the division to determine whether the licensee is complying with Chapter 4728. of the Revised Code and otherwise ensures accurate and complete records are kept.

**1301:8-6-04 Stolen property. (No Change):** The adverse impact of this rule is minimal, limited to copying paper and the employee's time spent to hang a sign in the main lobby of the licensee's place of business.

**1301:8-6-05 Posting business hours. (No Change):** This rule imposes no adverse impact on the business as keeping posted hours of employment is a standard practice

among businesses. If the business did not previously post the required hours, the adverse impact will be a minimal expenditure of an employee's time.

**1301:8-6-06 Temporary permit. (No Change):** Section 4728.04(C) requires businesses to apply for temporary exhibition permits. The adverse impact imposed is a minimal expenditure of time to fill out the application for the temporary permit and a small application fee. The division does not charge any fees in addition to those that are required by statute for the permit.

**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.*

**1301:8-6-01 Definitions. (No Change):** This rule does not create an adverse impact as it simply defines the terms that are used throughout Chapter 4728. of the Revised Code, and the Administrative Code.

**1301:8-6-02 Licenses. (No Change):** This rule requires a minimal expenditure of time to provide notice to the Division that a licensee intends to relocate, approximately ten minutes, and a minimal amount of funds fees in addition to those that are required by statute to license each location. If a licensee moves to a new municipality, the licensee will be required to pay a new licensing fee of \$200. This fee is required by section 4728.03 of the Revised Code. The division does not charge any fees in addition to those required by statute.

**1301:8-6-03 Books and records. (Amend):** This adverse impact of this rule is minimal because the required records are merely standard business records. This rule is required by section 4728.06 of the Revised Code and enables the division to determine whether the licensee is complying with Chapter 4728. of the Revised Code and otherwise ensures accurate and complete records are kept.

**1301:8-6-04 Stolen property. (No Change):** The adverse impact of this rule is minimal, limited to copying paper, and the employee's time spent to post a notice in the main lobby of the licensee's place of business.

**1301:8-6-05 Posting business hours. (No Change):** The requirement that business hours be posted imposes no adverse impact on the business as keeping posted hours

of employment is a standard practice among businesses. Notifying the Division of a change in business hours requires a minimal expenditure of time.

**1301:8-6-06 Temporary permit. (No Change):** Section 4728.04(C) of the Revised Code requires businesses to apply for temporary exhibition permits. The adverse impact imposed is a minimal expenditure of time to fill out the application for the temporary permit.

- 14. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** Any adverse impacts to licensed precious metal dealers are justified in order to reduce crimes such as theft, money laundering and the fencing of stolen goods and to facilitate the return of stolen goods to the victims of theft.

### **Regulatory Flexibility**

- 15. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. These rules must be applied evenly for the Division to effectively regulate short-term loan businesses, and to protect the interests of their consumers.
- 16. 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?** Prior to initiating any action under chapter 119. of the Revised Code, the Division will waive any fine for a first-time violation if the error is corrected in a reasonable period of time.
- 17. What resources are available to assist small businesses with compliance of the regulation?** The Division widely publicizes to stakeholders the fact that its staff is available directly via phone or email. Additionally, the Deputy Superintendent and senior staff regularly attend industry meetings in order to answer questions in person.