



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Commerce, Division of Financial Institutions

Rule Contact Name and Contact Information:

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

Recordkeeping requirements for licensed precious metal dealers

Rule Number(s): 1301:8-6-03

Date of Submission for CSI Review: 7/14/2021

Public Comment Period End Date: N/A

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/\_\_\_1 rules (FYR? \_No\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

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.*

This rule expands upon and clarifies the recordkeeping requirements imposed on licensed precious metal dealers by R.C. 4728.06. The rule is being amended to better address electronic recordkeeping.

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.**

This rule is authorized by R.C. 4728.10, and it amplifies R.C. 4728.04, 4728.05, 4728.06, and 4728.09.

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? No.**  
*If yes, please briefly explain the source and substance of the federal requirement.*

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

Not applicable.

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)?**

This rule is needed to enforce and carry out the purposes of R.C. 4728.06, which sets for the recordkeeping requirements applicable to licensees of the Precious Metal Dealer Act. The rule provides licensees with additional detail and clarity regarding those requirements.

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

Success will be measured by the clarity and more detailed explanation this regulation will bring to licensees as it pertains to their recordkeeping responsibilities. The proposed amendment expressly permitting electronic record keeping should result in improved efficiency for the Division and licensees.

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? No.**

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

### **Development of the Regulation**

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** No stakeholders were included for this non-substantive revision.

The Division has historically allowed electronic recordkeeping despite the outdated rule language.

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

10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** Not applicable.

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?** Not applicable.

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?** The rule was thoroughly reviewed. However, alternatives are limited by the fact the rule merely expands upon the express recordkeeping requirements of R.C. 4728.06. **If none, why didn't the Agency consider regulatory alternatives?**

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**13. 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.*

This rule is largely performance based. The rule provides general parameters for the manner and form of how records must be kept but does not dictate specifics.

**14. 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 this industry and is not aware of any duplicative regulations.

**15. 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 proposed rule amendment will not result in any change in regulatory process or procedure for licensees. However, all stakeholders will be notified of the rule amendment once it's effective.

**Adverse Impact to Business**

**16. 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;** This rule applies to licensees under the precious metal dealer act. **and**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,);** The rule's two-year record preservation requirement may result in a minimal storage cost to licensees. However, the rule is being amended to allow licensees the flexibility to maintain records in electronic form. **and**
- 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.*

The dollar cost of record storage and maintenance varies depending on the volume and manner in which the records are stored.

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

Any minimal adverse impact of this rule is outweighed by the additional clarification the rule provides licensees, as well as the consumer protection benefits it provides.

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### **Regulatory Flexibility**

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

No. This rule must be applied uniformly so that the Division may properly examine licensees and to best protect the interests of consumers.

**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?**

This rule does not expressly provide for any fines or penalties for paperwork violations. The consideration of any discretionary fines or penalties for violations of the rule will take into account the provisions of R.C. 119.14.

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

The proposed amendment will not result in a change of regulatory process or procedure. However, Division staff is available via phone or email to assist with compliance, and that fact is widely publicized to licensees. The Division also conducts routine examinations of licensees, at which time examiners can provide assistance or answer questions. Division staff is also available to meet directly with any licensee outside of an exam, should the need arise.

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