

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Division of Unclaimed Funds

Regulation/Package Title: Unclaimed Funds January 2014 Review Filings

Rule Number(s): 1301:10-3-07(Rescind); 1301:10-3-07 (New); 1301:10-3-08(Amend); 1301:10-5-03(Amend); OAC 1301:10-3-01(No Change); 1301:10-3-03 (No Change).

Date: November 7, 2013

Rule Type:

Amended
 New

5-Year Review
 Rescinded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.

OAC 1301:10-3-07, Funds constituting unclaimed funds (Rescind). This rule describes when service charges imposed by a financial organization constitute unclaimed funds. Amendment is proposed to more clearly state when any holder may impose a reasonable charge due to the owner's failure to claim property within a specified time. It is recommended that the old rule be rescinded and a new rule with the same number, but new title, be adopted. The proposed changes would not impose new requirements on holders.

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CSIOhio@governor.ohio.gov

OAC 1301:10-3-07, Lawful claims or charges by holder (*New*). This rule will replace old rule OAC 1301:10-3-07 titled “Funds constituting unclaimed funds.” The new rule describes when a holder, before reporting unclaimed funds, may impose a reasonable service charge due to the owner’s failure to claim property within a specified time period. A holder may deduct such a charge if it is included in a valid, written contract between the holder and owner or if a financial organization holder properly discloses the charge in advance pursuant to applicable law or regulations; the holder regularly imposes the charge; the charge is not regularly reversed, and the amount deducted is not unconscionable or otherwise prohibited by law. It further states that no holder may impose such a charge to avoid the reporting requirements of the Ohio Unclaimed Property Act. This new rule, which clarifies “less any lawful claims” language contained in ORC §169.02, does not implement new reporting requirements or processes.

OAC 1301:10-3-08, Instruments representing ownership (*Amend*). Amendment is recommended solely to define more clearly “underlying share” and also to make more understandable the reporting requirements for registered securities and bonds, non-dividend-paying securities, and bearer bonds in accordance with ORC §169.02. The proposed rule would not impose new requirements on holders. The language of this rule does not require a license, permit or any other prior authorization to engage in or operate a line of business; does not impose a criminal or civil penalty, or other sanction; does not create a cause of action for failure to comply with its terms; and does not require specific expenditures or the report of information as a condition of compliance.

OAC 1301:10-5-03, Safe deposit box contents (*Amend*). Amendment is recommended to define “tangible” and “intangible” property and more clearly describe the current reporting process regarding the unclaimed contents of safe deposit boxes.

NO CHANGE RULES

OAC 1301:10-3-01, Search of records (*No Change*). No changes are recommended for this rule, which is due for five-year review. The rule requires holders, before the reporting of unclaimed funds, to examine the records at their offices to verify they have no documentation on the owner’s whereabouts or information that the owner has transacted with the holder regarding other matters. The statutory mandate for “sufficient investigation” of records by holders is set forth in ORC §169.03(G).

OAC 1301:10-3-03, Holder reports, enforcement (*No Change*). No changes are recommended for this rule, which is due for five-year review. The rule requires holders to report unclaimed funds on forms and in the manner prescribed by the director and to file a negative report if the holder has no unclaimed funds to report. It also includes notice to holders of the

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director's authority to bring a court action and to impose interest and penalties for failure to report unclaimed funds. The mandate for reporting is set forth in ORC §169.03.

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

- ORC §§119.03 and 169.09 are the authorizing statutes for each of the rules specified above.

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 to both questions.

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

This does not apply.

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 promulgated for the administration of the Ohio Unclaimed Funds Law, ORC Chapter 169, and provide necessary guidance for holders required to report unclaimed funds to the Division of Unclaimed Funds. None of these rules adds new requirements to the Unclaimed Funds Law. They do, however, provide needed clarification in response to questions raised by holders about statutory mandates regarding the report of unclaimed funds specified in ORC §§169.02 and 169.03.

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

The success of these rules will be measured by their responsiveness to specific questions for clarification raised by holders regarding the statutory mandates in ORC §§169.02 and 169.03, anticipated time savings for holders who can be guided by the rules, and reduced staff time responding to the frequent and/or repeated questions on the same topics.

Development of the Regulation

6. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Ohio Credit Union League; Community Bankers' Association of Ohio; Ohio Council of Retail Merchants; Ohio State Bar Association; Ohio Banker's League; National Federal of

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Independent Business; Ohio Manufacturers' Association; Ohio Chamber of Commerce; Ohio Association of Realtors. Outreach was sent during the drafting stage on September 17 for the amended rules and on October 30, 2013 for the "no change" rules.

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

The Ohio Credit Union League ("OCUL") was the only entity that responded with specific drafting comments. OCUL noted a financial institution relies on account agreements, not verified by the account holder, and supplemented by notices of changes in agreement terms as required under applicable regulations. It, therefore, asked for language in OAC 1301:10-3-07 specifying that a lawful charge may be imposed if properly disclosed to the owner/account holder in advance. The Division incorporated the suggested change raised by OCUL into OAC 1301:10-3-07(A). OCUL also recommended that OAC 1301:10-5-03 be revised to reflect that sometimes the tax identification number may not be available to the holder. The Division added the words "if available" after the requirement for the tax identification number in OAC 1301:10-5-03(B)(1). This wording mirrors the "if available" language in ORC §169.03(A)(2)(e). The rules, with these new revisions, were then sent again to the financial institution stakeholders (OCUL, Community Bankers Association, and Ohio Bankers League) for comment. OCUL responded that the "changes appear to fairly address the concerns we raised." Community Bankers Association provided no additional comment. The Ohio Bankers League requested a phone call to discuss the reason for the changes, was informed about the suggestions from the OCUL and the related reasoning, and then confirmed that it had no changes to the proposed revisions.

8. What scientific data were used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

None. 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?

OAC 1301:10-3-07 includes language based on Section 5 of the Uniform Unclaimed Property Act, 1995, Section 5, "Dormancy Charge."

10. Did the Agency specifically consider a performance-based regulation? Please explain.

No. These regulations are necessary to carry out the statutory mandates contained in ORC §§169.01, 169.02 and 169.03 related to holder reporting. The regulations only provide needed clarification of current law and procedures in response to holder inquiries. They do not implement any new requirements or processes.

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

The Division of Unclaimed Funds is the only state agency administering unclaimed funds pursuant to ORC Chapter 169, the Ohio Unclaimed Property Law. It is therefore not necessary to take steps to avoid duplication by other agencies or other regulations outside of OAC Chapter 1301:10.

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.

None of the regulations add new requirements or make substantive changes regarding unclaimed fund processes or procedures. The amended rules will be made available to stakeholders and the public through the JCARR process. Once the rules are finalized and effective, they will be available to holders and the public through a link on the Department’s website, and through e-mail transmission at request. In addition, Division staff will be provided with the updated rules to assist staff in responding to telephone and other inquiries.

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 all “holders.” ORC §169.01(D) defines "holder" broadly to encompass a wide range of industries, entities, and companies. They impose no new requirements, fees or penalties and make no substantive changes to the reporting procedures for holders. They only provide information to clarify current reporting requirements and processes pursuant to ORC Chapter 169 and are responsive to inquiries or questions raised by holders over time.

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

OAC 1301:10-3-07, Lawful charges [title changed from “Instruments representing ownership”]. This rule clarifies the meaning of “lawful charges” which a holder is permitted to deduct from reportable unclaimed funds. Holders must apply time and resources to completing unclaimed funds reports and remitting funds. The rule, however, does not create these requirements. They are mandated in Revised Code §§169.01, 169.02 and 169.03, which require holders to file unclaimed funds reports. *OAC 1301:10-3-08, Instruments representing ownership interest.* Amendment is recommended to define more clearly “underlying share” and also to make more understandable the reporting requirements for registered securities and bonds, non-dividend-paying securities, and bearer bonds in accordance with ORC §169.02. The

change to “quarterly” in paragraph (E) is to correct the word “annually” to match the express “quarterly” language in ORC §169.02(R)(2). Holders must apply time and resources to completing unclaimed funds reports and remitting funds. The rule, however, does not create the reporting requirements. They are created by and mandated in Revised Code §§169.01, 169.02 and 169.03.

OAC 1301:10-5-03, Safe deposit box contents. Holders must expend time and resources for the purpose of preparing and filing unclaimed funds reports as mandated by ORC §§169.01, 169.02 and 169.03.

OAC 1301:10-3-03, Holder reports, enforcement. This rule requires holders to report unclaimed funds on forms and in the manner prescribed by the director of commerce, and also requires the filing of a negative report if there are no unclaimed funds. No changes are recommended for this rule.

OAC 1301:10-3-01, Search of records. The rule requires holders to examine the records at their offices to verify they have no documentation on the owner’s whereabouts or information that the owner has transacted with the holder regarding to other matters. The requirements for sufficient investigation of holder records before reporting unclaimed funds are mandated by ORC §169.03(G). No changes are recommended for this rule.

c. Quantify the expected adverse impact from the regulation.

ORC §169.01(D) defines "holder" broadly to encompass a wide range of industries, entities, and companies. Issues regarding the internal accounting processes for these holders as it relates to annual unclaimed funds would vary significantly based on factors such as the type of business, business operations and policies, number of accounts, types of unclaimed property in the holder’s possession (e.g., checks, wages, securities, deposits, etc.), and many other factors. It would not be possible to generalize across industries or specifically assess costs or other factors due to the significant variety and volume of holders and the distinct nature of their businesses. All of the rules impact businesses; however, the impact is necessitated by the requirements for holder reporting mandated by Revised Code §§169.01, 169.02 and 169.03. In addition, these rules assist holders by clarifying long-standing reporting requirements contained in the statutes. These rules do not add new requirements or processes.

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

Ohio Revised Code Chapter 169 requires holders to review their records and file/remit unclaimed funds to the Department of Commerce annually in accordance with ORC §§169.01, 169.02 and 169.03.

Regulatory Flexibility

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

No. Small businesses are not exempt from the definition of “holder” contained in ORC §169.01, nor are they exempt from the reporting requirements contained in ORC §169.02 and §169.03. These rules only provide needed clarification of current law and procedures. They do not implement any new requirements or processes for businesses, and most of the inquiries to which these rules respond come from small businesses required to report unclaimed funds under ORC Chapter 169.

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?

The Division considers it a “first-time paperwork” violation eligible for waiver under the ORC §119.14, when a holder has no unclaimed funds to report (commonly known as a “none report”) and the holder, for the first time, has failed to file the “none report.” Reports due in which funds must be remitted are not first-time paperwork violations under ORC §119.14. However, the Division has not imposed fines or penalties against holders for failure to report and remit unclaimed funds since the September 16, 2008 effective date of ORC §119.14, and some years prior to that date, due to its long-standing, priority focus on obtaining holder compliance with reporting requirements by educating them about the Unclaimed Property Act. Fines and penalties authorized under ORC §169.12 may be assessed in egregious cases of persistent failure and refusal to report unclaimed funds due property owners as mandated by ORC §169.03.

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

Information regarding the reporting of unclaimed funds is sent to holders annually by the Division’s Compliance Section. The Division’s staff members are accessible through e-mail and telephone, and information and forms for holders are also available on the Division’s website. Through the website, small businesses also have access to user-friendly reporting software to enable easier electronic filing of reports.