

**Rule Summary and Fiscal Analysis (Part A)****Department of Commerce**

Agency Name

**Division of Unclaimed Funds**

Division

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**1301:10-3-04**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Examination of accounts.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **R.C. 119.03, 169.09**
5. Statute(s) the rule, as filed, amplifies or implements: **R.C. 169.03**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The rule is due for five-year review. It is being amended as part of the review process.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The amendment clarifies the audit selection process, method and timing of the audit closing review, and how and when a holder may appeal the audit findings. These amendments do not change the law or examination process, but they clarify law and practice already in effect. The changes are responsive to holder inquiries since the rule was last reviewed.

This rule sets out the process for the examination of holders required to report unclaimed funds pursuant to ORC Â§Â§169.01, 169.02 and 169.03. Holders are required to report annually to the Ohio Division of Unclaimed Funds ("Division") pursuant to ORC Â§169.03, whether or not they have unclaimed monies

to remit to the Division. Ohio law defines "holder" broadly in ORC Â§169.01(D) and OAC 1301:10-1-01(E). Ohio law also authorizes the Director of Commerce to "at reasonable times and upon reasonable notice, examine or cause to be examined, by auditors of supervisory departments or divisions of the state, the records of any holder to determine compliance" with ORC Chapter 169. ORC Â§169.03(F)(1). In response to holder inquiries since the rule was last reviewed, an amendment is proposed to add language to clarify various aspects of the holder examination process:

Section (E)(8) is amended to clarify that random selection of holders to be examined does not apply to examinations in response to a complaint regarding a holder's non-compliance with Ohio Revised Chapter 169.

Sections (I)(6) and (J)(1) are amended to clarify that appeal of the examination findings is available to the holder at the completion of the closing review; and that the auditor, at the time of the closing review is required to inform the holder of the holder's appeal rights and provide the holder with the state's appeal form.

Section (L)(2) is amended to clarify that the holder is not subject to an involuntary examination of the same types of unclaimed property for the reporting cycles covered in a prior involuntary examination.

Section (M) is added to clarify that a holder is eligible to participate in a voluntary compliance program prior to being selected for an examination.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date: **11/9/2017**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

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Not applicable. The proposed changes do not impact the budget.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15.

Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Not applicable, because the proposed changes do not impose additional expenditures on holders related to compliance. Also, ORC section 169.01(D) broadly defines "holder" to encompass a wide range of industries, companies, and other entities. The internal processes of these holders related to unclaimed funds reporting vary significantly based

on numerous factors (e.g., nature of business, internal operations, number of accounts, types of unclaimed property, etc.), making it impossible to generalize or specifically measure holder costs across industries. Through the website, holders have access to free, user-friendly software to enable easier electronic filing of the reports mandated by ORC section 169.03. In addition, the revisions do not impose new requirements, but provide clarification of current procedures.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

The rule does not impose a penalty, sanction or cause of action for failure to comply, although it sets out the examination process for holders authorized by ORC section 169.03. ORC Chapter 169 sets out penalties related to unclaimed funds reporting in another part of the code. ORC section 169.12.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

The rule amplifies ORC section 169.03, which requires holders to file reports of unclaimed funds annually with the Director of Commerce. It specifies information regarding the audit process and a holder's right to appeal. The proposed amendments do not change the law. The rule provides information to assist holders in understanding the audit, appeal and voluntary compliance procedures. It is necessary to implement the holder reporting requirements and the examination of holders to assure compliance with ORC section 169.03.