



Common Sense Initiative

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Business Impact Analysis

Agency Name: Department of Commerce, Division of Unclaimed Funds

Rule Contact Name and Contact Information:

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

"Examination of Accounts"

Rule Number(s): OAC 1301:10-3-04

Date of Submission for CSI Review: 3/8/2023

Public Comment Period End Date: 3/16/2023

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_X_ rules (FYR? _X_)

Rescinded/___ rules (FYR?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.
See attached Exhibit A.

Rule sets out process for examination of holders required to report unclaimed funds to Commerce pursuant to ORC §§ 169.01, 169.02 & 169.03. Holders are required to report annually to the Ohio Division of Unclaimed Funds (“Division”) pursuant to ORC §169.03, whether or not they have unclaimed monies to remit to the Division. 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 §169.03(G)(1). Proposed amendments do not change the law or examination process, but they clarify law and practice already in effect:

Section (E)(5) is amended to correct a reference to statutory reference to R.C. 169.03(D) that did not conform with subsequent statutory amendment which resulted to provision being found at R.C. 169.03(E).

Section (F)(4) is amended to correct a reference to statutory reference to R.C. 169.03(F)(6) that did not conform with subsequent statutory amendment which resulted to provision being found in R.C. 169.03(G)(6).

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Section (I)(2) is amended to correct a reference to statutory reference to R.C. 169.03(D) that did not conform with subsequent statutory amendment which resulted to provision being found at R.C. 169.03(E).

Section (I)(5) is amended to provide greater flexibility in scheduling a closing review following the completion of an unclaimed funds examination from “within thirty days” of the expiration of the 120-day remediation period to “within thirty but no more than 45 calendar days.” The purpose of the amendment is to provide greater flexibility to the examiner and holder in finding a mutually agreeable time to conduct the closing review and afford the holder additional time to identify and submit documentation to potentially eliminate audit findings.

Section (K) is amended to correct a reference to statutory reference to R.C. 169.03(F)(7) that did not conform with subsequent statutory amendment which resulted to provision being found at R.C. 169.03(G)(7).

Section (M) is amended to clarify that a holder who is eligible to participate in a voluntary compliance program must comply with the report and remission of unclaimed funds requirements of section 169.03 at the time of initial report and remission and annually thereafter.

Finally, amendments to the language used in the rule are proposed to remove unnecessary regulatory restrictions in conformity with R.C. 121.95(B).

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.** ORC §§ 119.03 and 169.09.

4. **Does the regulation implement a federal requirement?** No.

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. N/A

If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement. N/A

5. **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)?** Ohio Revised Code (ORC) §169.03(A) requires that: “[e]very holder of unclaimed funds . . . shall report to the director of commerce with respect to the unclaimed funds.” Holders are required to report annually to the Division of Unclaimed Funds (“Division”) pursuant to ORC §169.03, whether or not they have unclaimed monies to remit to the Division. Ohio law 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 §169.03(G)(1). This rule sets out the examination process and the appeal process for the holders of unclaimed funds required to be reported and remitted to the Division.

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- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The success of this regulation will be measured by a reduction in inquiries by holders regarding addressed aspects of the examination process. The amendments are responsive to questions and inquiries from holders about the holder review and examination process and to correct statutory references found in the rule that are inaccurate because of amendment(a) made to ORC 169.03. The amendments are designed to provide clarification to assist holders participating in the examination process or seeking to participate in voluntary compliance program. Additionally, some proposed amendments are necessary to provide updated accurate statutory cross references and comply with ORC 121.95(B) and reduce the number of regulatory restrictions.
- 7. 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.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio Credit Union League	Ohio Manufacturers' Association
Community Bankers' Association of Ohio	Ohio Chamber of Commerce
Ohio Council of Retail Merchants	Ohio Access To Justice Foundation
Ohio State Bar Association	Ohio Board of Embalmers & Funeral Directors
Ohio Bankers' League	Ohio Association of Realtors
National Federation of Independent Businesses	

- 10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** Only one of the stakeholders provided input to the agency's proposed revisions during the drafting stage. The Division considered the suggestions and responded to the stakeholder in writing to explain why its suggestions would not be included in the proposed amendments at this time.
- 11. What scientific data was used to develop the rule or the measurable outcomes of the rule? N/A How does this data support the regulation being proposed? N/A**
What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? None If none, why didn't the Agency consider regulatory alternatives?

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No. None. The Division of Unclaimed Funds is the only agency charged with collecting unclaimed funds, regulating holders with respect to the collection of unclaimed funds, and examining the records of holders related to unclaimed funds reporting. Further, this regulation is necessary to carry out the statutory mandates contained in ORC §§ 169.01, 169.02 and 169.03 with respect to holder reporting and to provide holders subject to regulation with information and guidance on the examination and appeal process.

Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply. The Division is not considering performance-based regulations. The requirements for holder reporting are mandated in Ohio Revised Code Chapter 169, including §§169.01, 169.02 and 169.03. The Ohio General Assembly expressly provided for regulation and oversight of holders through the examination process set out in ORC §169.03.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? Commerce has exclusive jurisdiction for the administration and enforcement of Ohio's Unclaimed Funds Law codified in Chapter 169 of the Revised Code. Therefore, no opportunity exists for duplication by other agencies or regulations outside of OAC Chapter 1301:10.

13. 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 rule and the procedures in place have been implemented for years. However, the rule is being amended to be response to inquiries raised by holders regarding the examination and voluntary compliance processes. The Division's Compliance Section, which administers the examination process and voluntary compliance program, will provide guidance to holders in writing and on the telephone. The staff will continue to be sensitive to the concerns and questions of holders and their representatives with respect to these procedures.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community:** This rule applies to all "holders." ORC §169.01(D) defines "holder" broadly to encompass a wide range of industries, public and private entities, companies, and agencies. The revised rule imposes no new requirements, fees, or penalties, makes no substantive changes to the reporting or examination processes, and places no new responsibilities on holders in either of these processes. It only serves to eliminate regulatory restrictive language and provide information to explain current examination procedures, the voluntary compliance program, and is responsive to inquiries or questions raised by holders over time.

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- b. **Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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.

This rule sets out the process for the examination of holders as authorized in ORC §169.03. Businesses and other holders are therefore impacted by the examinations. The revised rule, however, imposes no new requirements, fees, or penalties; makes no substantive changes to the reporting process; and places no new responsibilities on holders in either the reporting or examination processes. It only provides information to clarify current examination procedures and the availability of voluntary compliance and is responsive to inquiries or questions raised by holders over time.

ORC §169.01(D) defines “holder” broadly to encompass a wide range of industries, companies, and other entities. Issues regarding the internal accounting processes of these holders as it relates to annual unclaimed funds reporting would vary significantly based on factors such as the type of business, its operations and policies, number of accounts, types of unclaimed property in the holder’s possession (e.g., checks, wages, securities, deposits, rebates, etc.), and many other factors. Therefore, 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 and activities. This rule impacts businesses because it sets out the unclaimed funds examination process expressly authorized under ORC Chapter 169. With the annual reporting mandate specified in ORC §§169.01, 169.02 and 169.03, and the examination authorization contained in ORC 169.03, this rule is necessary. The amendments to the rule are in response to holder inquiries and are recommended to clarify long-standing reporting requirements and the examination process. The amendments do not change the law but provide clarification of what already is in effect.

- 15. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Yes, amendment proposed to **Section (I)(5)** is expected to provide greater flexibility for holders in scheduling a closing review following the completion of an unclaimed funds examination and additional time to eliminate audit findings.

Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? The Ohio Department of Commerce Division of Unclaimed Funds is the sole agency in the State of Ohio charged with the collection, protection, and payment of unclaimed funds to the rightful owners. ORC §169.03 authorizes the Division to examine the books of holders to carry out the responsibilities specified in ORC Chapter 169 with respect to the required reporting of unclaimed funds. The law also

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authorizes the adoption of rules to carry out this charge. Any adverse impact in the rule applies to all holders and derives from the reporting and regulatory mandates set out in ORC Chapter 169. The Department has acted to be continually responsive to holder questions regarding its reporting and examination processes, and the recommended amendments are meant to provide transparency, accuracy, and clarity to holders regarding their compliance responsibilities.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. Small businesses, like any other business, organization, entity, or person within the meaning of “holder” in ORC §169.01 must comply with the mandated unclaimed funds reporting requirements contained in ORC Chapter 169. There are no exemptions or alternative means of compliance set forth in the statutes for small businesses. The Division, however, remains steadfastly sensitive to the inquiries and concerns raised by regulated persons and entities. The recommended amendments result from issues or questions raised by regulated entities or to ensure compliance with the law..
- 17. 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 ORC §119.14 when a holder has no unclaimed funds to report (commonly known as a “none report” of unclaimed funds). When unclaimed monies are required to be remitted with a report, the report does not qualify as a first-time paperwork violation 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, due to its long-standing, priority focus on obtaining holder compliance with reporting requirements by educating holders about the Unclaimed Property Act. Notwithstanding, 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.
- 18. What resources are available to assist small businesses with compliance of the regulation?** The Division’s Compliance Section annually sends information regarding the reporting of unclaimed funds to holders. The Compliance staff members are accessible through e-mail and telephone. In addition, information forms for holders are available on the Division’s website. Through the website, small businesses and other holders have 24-hour access to user-friendly reporting software and job aids, free of charge, to enable easy electronic filing of unclaimed funds reports.