

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Rules Relating to Check-Cashing Businesses

Rule Number(s): 1301:8-8-01 (Rescind); 1301:8-8-01 (New); 1301:8-8-02 (Amend); 1301:8-8-03 (Rescind); 1301:8-8-03 (New); 1301:8-8-04 (Amend); 1301:8-8-06 (Rescind); 1301:8-8-06 (New)

Date: May 2, 2016

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Rescinded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.

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

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1301:8-8-01, Definitions (Rescind)(New) – This rule sets forth definitions for purposes of sections 1315.21 to 1315.30 of the Revised Code. It is being rescinded and a new rule is being proposed in order to clarify existing definitions, as well as to add new definitions.

1301:8-8-02, Licenses (Amend) – This rule expands on the requirements for check-cashing businesses applicants and licensees set forth in sections 1315.21 to 1315.30 of the Revised Code. The rule is being amended to clarify some of the requirements from the current rule, and to clarify certain other requirements that are already part of the Division's regulatory and licensing scheme for check-cashing businesses.

1301:8-8-03, Recordkeeping (Rescind)(New) – As required by section 1315.27 of the Revised Code, this rule sets forth the specific recordkeeping requirements for check-cashing businesses. It is being rescinded and a new rule is being proposed to better clarify and modernize the recordkeeping requirements for licensed check cashing businesses.

1301:8-8-04, Business Practices (Amend) – As required by section 1315.27(B) of the Revised Code, the rule sets forth the acceptable business practices for check-cashing businesses. The rule is being amended to strike division (C)(5), as this provision was held invalid and unenforceable by *Fast Cash of America, Inc. v. Ohio Department of Commerce*, 10CVH04-6308, Court of Common Pleas of Franklin County (March 8, 2011). For this reason, the rule is also being amended to strike division (C)(6), as it is closely related to the aforementioned provision.

1301:8-8-06, Advertising (Rescind)(New) – This rule sets forth the required regulatory information that must be included in the advertisements of licensed check-cashing businesses. It is being rescinded and a new rule is being proposed in order to streamline and render more concise the required regulatory information that must be included in the advertisements of licensed check-cashing businesses.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Revised Code Section 1315.27 is the authorizing statute for each of the aforementioned rules.
3. **Does the regulation implement a federal requirement?** Yes. The proposed new rule OAC 1301:8-8-03, in division (F), requires licensed check-cashing businesses to comply with two federal consumer protection laws in order to reduce the risk of consumer fraud. **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.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** Not applicable.
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)?** These rules are required by section 1315.27 of the Revised Code. Changes are being proposed in order to modernize and clarify certain provisions, as a result of litigation, and so that the Division can better administer Chapter 1315 of the Revised Code as it pertains to check-cashing businesses licensed under that chapter. The rules will provide guidance and clarification on a number of issues that have come to the Division's attention since the previous five year rule review.
6. **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 guidance that these regulations will bring to stakeholders as it pertains to their regulatory interactions with the Division going forward.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** The stakeholders set forth in the attached spreadsheet were contacted and given draft regulations for review and comment as part of this rule review process.
8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** The Division did not receive any stakeholder feedback.
9. **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.
10. **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?** Given that these regulations are subject to their five year rule review, every rule was reviewed and numerous alternatives were considered as part of the process.
11. **Did the Agency specifically consider a performance-based regulation? Please explain.** No, these regulations are necessary to carry out the check-cashing provisions of Chapter 1315 of the Revised Code. However, any amendments or proposed rules resulting from the

five year rule review are being made for purposes of clarifying existing law or as a result of stakeholder input.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The Division is the primary regulators of check-cashing businesses, and is not aware of any duplicative regulations.
- 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 regulations have been available to stakeholders throughout the rule review process, and will continue to be available to them through the Division’s website 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

- 14. 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 check-cashing businesses subject to licensure by the Ohio Division of Financial Institutions.

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

- b. 1301:8-8-01, Definitions** – This proposed rule will not impact the cost of compliance, as it would merely clarify existing definitions, as well as add new definitions.

1301:8-8-02, Licenses – The nature of the adverse impact of division (A) of the rule consists of license-related fees. The proposed amendment to division (A) does not impact the cost of compliance. Division (B) of the proposed rule amendment may require, at the most, a minimal expenditure of time and resources, as it merely requires, as part of the licensing process, documentation demonstrating that a check-cashing business is either in compliance with, or exempt from, the federal registration requirements of the U.S. Treasury's Financial Crimes Enforcement Network. Additionally, the rule will merely be clarifying what is already required by the Division's licensing process.

Division (C) may require, at the most, a minimal expenditure of time and resources, as it merely requires written notification to the Division when a licensee's net worth

falls below a certain amount. The proposed amendment to division (C) does not impact the cost of compliance.

The existing language of division (D) may require, at most, a minimal expenditure of time and resources, as it requires a licensee to provide the Division with written notification before relocating a licensed location. Additionally, a licensee is not permitted to cash checks at the new location until it complies with the notification requirement, which could result in an additional cost. The proposed amendments to division (D) do not impact the cost of compliance.

1301:8-8-03, Recordkeeping – This rule does not impact the cost of compliance, as the records it requires are standard business records. Additionally, this rule is required by section 1315.27 of the Revised Code, and is otherwise ensures accurate and complete records such that the Division may effectively carry out its licensing and examination function. The proposed revisions to proposed division (B) may require a minimal expenditure of time and resources for those licensed check-cashing business that need to convert paper records to electronic. However, proposed division (E) of the proposed rule greatly enhances alternate storage methods/means for licensees. Proposed division (F) does not impact the cost of compliance, as check-cashing businesses are already required to comply with these federal statutes and regulations.

1301:8-8-04, Business practices – As required by section 1315.27(B) of the Revised Code, the rule sets forth the acceptable business practices for check-cashing businesses, and generally does not have a direct impact on the cost of compliance. Division (D), however, would require a minimal expenditure of time and resources to provide the required customer receipt.

Additionally, the proposed rule amendments to former divisions (C)(5) and (C)(6) actually remove certain fee restrictions previously in place.

1301:8-8-06, Advertising – Compliance with this proposed rule will require a minimal expenditure of time and resources in order to comply with its advertising requirements. However, this rule is merely restating the advertising requirements of the rule to be rescinded, and is necessary to ensure the customers of licensed check-cashing businesses are accurately informed. **and**

c. Quantify the expected adverse impact from the regulation.

1301:8-8-02, Licenses - Division (A) of the rule clarifies the required initial licensing fees due to the Division by a check-cashing business' main office and any of its additional business locations. This provision impacts the cost of compliance as follows: a \$750 fee for a check-cashing business' main office and for each additional

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business location if the license is issued between January 1 and June 30 (\$500 if the license is issued between July 1 and December 31). These fees merely cover the Divisions licensing costs.

The remaining adverse impacts described in Question 14b, if they exist at all, are minimal in terms of a financial cost, and are necessary for the Division to carry out its delegated responsibility to license check-cashing businesses under Chp. 1315 of the Revised Code.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** As explained in the response to Question 14c above, the license fees are necessary to cover the Division's licensing costs, and any other adverse impact from the remaining rules, if any, is minimal, and is necessary for the Division to carry out its delegated responsibility to license check-cashing businesses under Chp. 1315 of the Revised Code.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. These rules must be applied evenly in order for the Division to effectively license check-cashing businesses, and to protect the interests of their customers.
- 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 does not impose administrative fines or penalties on check-cashing businesses for paperwork violations.
- 18. 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, many of the most commonly requested forms and applications are available from the Division's website.