

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Division of Unclaimed Funds

Regulation/Package Title: Unclaimed Funds April 2013 Review Filings

Rule Number(s): 1301:10-1-01(Amend); 1301:10-2-02 (Amend); 1301:10-3-07 (Rescind);
1301:10-3-07 (New); 1301:10-3-08(Amend); 1301:10-4-01(Amend); 1301:10-4-03(Rescind);
1301:10-5-03(Amend)

Date: _____

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 Rescinded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 1301:10-1-01, Definitions. This rule defines terms related to unclaimed funds reportable under ORC Chapter 169. Amendment to paragraph (A) is proposed to provide clarification to holders that precious metals are included in the definition of “intangible property.” For many years, precious metals typically have been reported as part of the unclaimed contents of safe deposit boxes. Adding “precious metals” to this rule also coordinates with clarifying language being added to OAC 1301:10-5-03 related to the reporting of unclaimed safe deposit box contents. It is also proposed that the first sentence of paragraph (A) be amended to clarify the definition of “intangible property.” These changes do not implement new reporting requirements, but only clarify current requirements and procedures.

OAC 1301:10-2-02, Adjudication hearing, decision of director. This rule describes the administrative appeal process for persons affected by a decision of the director. Amendments are recommended for paragraphs (B) and (C) to explain more clearly that the requirements for requesting and scheduling hearings follow the requirements specified in ORC Chapter 119.

OAC 1301:10-3-07, Funds constituting unclaimed funds. This rule describes when service charges imposed by a financial organization constitute unclaimed funds. It is being rescinded and replaced by a new rule with the same number to clarify the language in response to holder inquiries regarding allowable charges that may be deducted before the reporting of unclaimed funds.

OAC 1301:10-3-07, Lawful claims or charges by holder. This rule will replace OAC 1301:10-3-07, “Funds constituting unclaimed funds.” It 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; 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 rule does not implement new reporting requirements or processes.

OAC 1301:10-3-08, Instruments representing ownership. This rule describes the long-standing reporting requirements related to underlying shares and securities. Amendment is

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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 made to comply with the express requirement in ORC §169.02(R)(2). These changes do not implement any new reporting requirements. They only clarify current requirements and procedures in accordance with ORC §169.02.

OAC 1301:10-4-01, Claim. This rule provides language regarding who may file a claim and how. Changes are recommended to clarify the availability of an internal hearing during the claims payment process. Although this hearing is referenced in ORC §169.08, it is not clearly understood by claimants as available and separate from the Chapter 119 appeals process available after a claim is paid or denied. In addition, proposed new paragraph (F) makes it clear that creditors first must serve an execution order, after which the Division will initiate the claim to facilitate payment of the funds into the court or other authority. This paragraph codifies the current and long-standing procedure for payment of garnishments and levies submitted by creditors.

OAC 1301:10-4-03, Procedure to locate owners. This rule merely states the Division must establish and maintain a procedure to locate owners. The Division is expressly charged by statute (ORC §169.06) with placing newspaper ads to notify and locate owners. It is also required to process claims for unclaimed funds in accordance with ORC §169.08. The rule provides no additional information to enhance or amplify these statutes, and is therefore unnecessary. It is recommended that this rule be RESCINDED.

OAC 1301:10-5-03, Safe deposit box contents. This rule describes the procedure for the reporting of unclaimed safe deposit box contents in accordance with ORC §169.02. The proposed changes to this rule impose no new requirements. Tangible property is not reportable as unclaimed funds under ORC Chapter 169, and holders frequently ask questions regarding such property when reporting unclaimed safe deposit box contents. Amendment is recommended to clarify the distinction between “tangible” and “intangible” property within the meaning of Chapter 169 and to describe more clearly the current reporting process regarding the unclaimed contents of safe deposit boxes.

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.

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, claimants seeking payment of unclaimed funds, and registered finders assisting owners in claiming their 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 and claimants. For example, OAC 1301:10-4-01 is being amended to include language regarding when an internal ORC §169.08(B) hearing may be held during the claims process.

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 raised by holders and claimants, anticipated time savings for holders, finders and claimants who refer to 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.**

On January 30, 2013, a description summarizing the proposed changes to the rules and the proposed text was sent by e-mail transmission to more than 21,200 holders and approximately 30 paid professional finders, who assist claimants in claiming their funds. These stakeholders were given until February 11, 2013 to provide e-mail or written comment on the drafts. In addition, on February 7, 2013, from 9:00 – 10:00 a.m., the Division provided opportunity for any of the contacted stakeholders to appear in person to provide comment on the drafts.

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

No stakeholders responded to the Division's outreach for comment on the drafting. However, as stated above, the proposed changes resulted from inquiries the Division has received over time from holders, claimants, and the registered finders who assist claimants, who made the Division aware of the need for clarification in the rules related to some topics on reporting and claiming unclaimed funds.

8. 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.

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?

These regulations only provide needed clarification of current law and procedures in response to public and business inquiries. They do not implement any new requirements or processes.

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

No. These regulations only provide needed clarification of current law and procedures in response to business and other public 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, finders, 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;

The rules impose no new requirements, fees or penalties and make no substantive changes to the reporting procedures for holders. They only clarify current reporting requirements and processes pursuant to ORC Chapter 169 and respond to inquiries or questions raised by holders or claimants (including registered finders) over time.

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

There is no adverse business impact. These changes only provide clarification to assist holders and claimants and provide additional information in response to inquiries from stakeholders over time.

c. Quantify the expected adverse impact from the regulation.

Not applicable.

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

Not applicable.

Regulatory Flexibility

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

No. These regulations only provide needed clarification of current law and procedures in response to business and other public inquiries. These rules 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 first-time paperwork violation waiver contained in ORC §119.14 does not apply to any of these rules in the context of ORC Chapter 169.

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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 and claimants are also available on the Division's website.