

3901-11-03

Auditor appointment, audited financial statements, actuarial opinion, and annual statements.**(A) Purpose**

The purpose of this rule is to establish the process and procedure for a captive insurance company to appoint an independent certified public accountant and file audited annual financial statements, an actuarial opinion on policy reserves, and annual statements with the superintendent of insurance pursuant to section 3964.07 of the Revised Code.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under section 3964.21 of the Revised Code.

(C) Definitions

- (1) "Audited Financial Report" means the annual report defined in the items specified in paragraph (E) of this rule.
- (2) "Accountant" and "Independent Certified Public Accountant" mean an independent certified public accountant or accounting firm, as defined by the general standards of the "American Institute of Certified Public Accountants," in good standing with the "American Institute of Certified Public Accountants" and in all states in which it is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
- (3) "Department" means the department of insurance.
- (4) "Statutory accounting practices" has the meaning defined in the current editions of "Annual Statement Instructions" and the "Accounting Practices and Procedures Manual" published by the "National Association of Insurance Commissioners," or as otherwise prescribed by the insurance department of the captive insurance company's state of domicile.
- (5) "Superintendent" means the superintendent of insurance of the state of Ohio.
- (6) "Work papers" means the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her audit of the financial statements of a captive insurance company. Work papers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representations, abstracts of company documents, and schedules of commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of a captive insurance company and, which supports his or her

opinion thereof.

(D) Appointment

- (1) No later than ninety days after receiving a certificate of authority to do the business of a captive insurance company in the state of Ohio, a captive insurance company shall report to the superintendent of insurance, in writing, the name and address of the independent certified public accountant retained to conduct the annual audit required by section 3964.07 of the Revised Code.
- (2) If a captive insurance company terminated the appointment of an independent certified public accountant retained to conduct the annual audit required by section 3964.07 of the Revised Code, the captive insurance company shall:
 - (a) Within ten days of the termination notify the superintendent of insurance, in writing, of the fact of the termination, and a detailed account as to the reasons for the termination; and
 - (b) Within thirty days of the termination, report to the superintendent of insurance, in writing, the name and address of the new independent certified public account retained by the company.

(E) Annual audit certification

- (1) All captive insurance companies shall have an annual audit by an independent certified public accountant, and shall file such audited financial reports with the superintendent of insurance on or before June first for the immediately preceding year ending December thirty-first. The annual audit report must include:
 - (a) A report of an independent certified public accountant;
 - (b) Financial statements filed pursuant to this rule shall be prepared in accordance with generally accepted accounting principles, unless the superintendent of insurance has required, approved, or accepted in writing the use of statutory accounting principles or any other comprehensive basis of accounting;
 - (c) The financial statements shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards as determined by the American institute of certified public accountants;
 - (d) The report of the independent certified public accountant shall cover all years presented; and
 - (e) The report shall be addressed to the captive insurance company on

stationary of the accountant showing the address of issuance, and shall be signed and dated.

(2) Captive insurance companies shall also file a report by the independent certified public accountant of the evaluation of internal controls.

(a) The report shall include an evaluation of the internal controls of the captive insurance company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the segregation of duties.

(b) The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the superintendent of insurance.

(3) The accountant shall furnish the captive insurance company, for inclusion in the filing of the annual audit report, a letter stating:

(a) That the accountant is independent with respect to the captive insurance company and conforms to the standards of the profession, as contained in the "Code of Professional Conduct" of the American institute of certified public accountants and the "Rules of Professional Conduct" of the accountancy board of Ohio;

(b) The general background and experience of the staff engaged in the audit, including experience in auditing captives or other insurance companies;

(c) That the accountant understands that the annual audit report and the accountant's opinions thereon will be filed in compliance with this rule with the department of insurance;

(d) That the accountant consents to the requirements in paragraph (F) of this rule and that the accountant consents and agrees to make available for review by the superintendent of insurance, the superintendent of insurance's designee or appointed agent, the work papers prepared in the conduct of the audit and any communications related to the audit between the accountant and the captive insurance company; and

(e) That the accountant is properly licensed by an appropriate state licensing authority and the accountant is a member in good standing in the American institute of certified public accountants.

(4) Audited financial statements shall include:

(a) Balance sheet reporting assets, liabilities and equity;

- (b) Statements of gain or loss from operations;
 - (c) Statements of changes in equity;
 - (d) Statements of cash flow; and
 - (e) Notes to financial statements shall be those required by generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the captive insurance company and approved by the superintendent of insurance, and shall include:
 - (i) A reconciliation of differences, if any, between the audited financial report and the annual statement of its financial condition filed with the superintendent of insurance;
 - (ii) A summary of ownership and relationship of the captive insurance company and all affiliated companies insured by the captive insurance company; and
 - (iii) A narrative explanation of all transactions that involve three per cent or more of a captive insurance company's assets as of the previous December thirty-first, and ending balances with the captive insurance company.
- (5) The audited financial statements shall be comparative, presenting the amounts as of December thirty-first of the current year and amounts as of the immediately preceding year ending December thirty-first. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted); and amounts may be rounded to the nearest thousand dollars.
- (F) Every captive insurance company required to file an audited financial report pursuant to this rule shall require the accountant to make available for review by department examiners the work papers prepared in the conduct of his or her audit and any communications related to the audit between the accountant and the captive insurance company, at the offices of the captive insurance company, at the department, or at any other reasonable place designated by the superintendent of insurance. The captive insurance company shall require that the accountant retain the work papers and communications until the department has filed a report on examination covering the period of the audit, but for no longer than seven years from the date of the audit report.
- (G) Conduct of captive insurance company in connection with the preparation of required reports and documents
 - (1) No director, officer, or member of a captive insurance company shall, directly

or indirectly:

- (a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this rule; or
 - (b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this rule.
- (2) No officer or director of a captive insurance company, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this rule if that person knew or should have known that the action, if successful, could result in rendering the captive insurance company's financial statements materially misleading.
- (3) Actions that, "if successful, could result in rendering the captive insurance company's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:
 - (a) To issue or reissue a report on a captive insurance company's financial statements that is not warranted in the circumstances (due to material violations of any accounting principles prescribed by the superintendent, generally accepted auditing standards, or other professional or regulatory standards);
 - (b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;
 - (c) Not to withdraw an issued report; or
 - (d) Not to communicate matters to a captive insurance company's audit committee.
- (H) Notwithstanding paragraphs (D), (E), (F), and (G) of this rule, special purpose financial captive insurance companies shall be subject to the requirements of rule 3901-1-50 of the Administrative Code.
- (I) Certification of policy reserves and other liabilities
 - (1) The captive insurance company's annual statement shall be filed with a

statement of actuarial opinion evaluating the captive insurance company's policy reserves and other liabilities. The individual who prepares the statement of actuarial opinion shall be a member in good standing of the American academy of actuaries.

- (2) Certification shall be in the form proscribed in rule 3901-3-11 of the Administrative Code.

(J) Annual statement

In preparing the annual statement of financial condition as required by division (B) of section 3964.07 of the Revised Code:

- (1) Every pure and protected cell captive insurance company shall complete and file form INS7021 made available on the department website.
- (2) Every special purpose financial captive insurance company shall complete and file its annual statement using the forms and instructions of the national association of insurance commissioners for life, accident and health companies using the accounting method identified under division (C) of section 3964.07 of the Revised Code. Such filing shall be made directly to the department and may be filed electronically with an affidavit of electronic filing authenticity.

(K) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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| Promulgated Under: | 119.03 |
| Statutory Authority: | 3901.041, 3964.21 |
| Rule Amplifies: | 3964.07 |