

CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: **Ohio Department of Insurance**
Regulation/Package Title: **Ohio fair plan - plan of operation; risk modification plans.**
Rule Number(s): **3901-1-18 and 3901-1-22**

Date: **June 9, 2017**

Rule Type:

☐ New
 ☒ 5-Year Review
☒ Amended
 ☒ No Change
☐ Rescinded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.

Rule 3901-1-18 - The Ohio fair plan underwriting association (OFP) is an entity created by statute which provides an option for Ohioans to purchase homeowners insurance for properties that are denied coverage through the regular market. All companies authorized to write basic property and homeowners' coverage in the state of Ohio are members of OFP. The insurers members fund OFP losses (and profits) in direct proportion to their premium volume of business in the state.

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Per statute the association submits a proposed plan of operation to the superintendent of insurance for approval, which the superintendent adopts by rule.

Proposed amendments remove references to outdated federal programs and address other minor technical matters.

Rule 3901-1-22 - A risk modification plan applies to commercial insurance policies in non-quantifiable rating scenarios. The rule allows “schedule rating” programs to establish judgment debits or credits based upon the risk. An example would be a manufacturer implementing a workers safety program to reduce or prevent accidents from happening. A twenty-five per cent maximum debit or credit may be applied to the premium or rate, based on the effectiveness and/or existence of the plan/program. There are no proposed amendments for this rule.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Sections 3901.041 and 3929.43 of the Revised Code.

3. Does the regulation implement a federal requirement? ☐ Yes ☒ 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?

☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

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)?

The OFP is beneficial to member insurers to spread the cost of homeowners and property coverage for high risk property and provide a mechanism for consumers to obtain that coverage.

The use of risk and expense modification plans provides insurers an option to appropriately account for risk that fosters reduced premiums and a competitive market.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success is measured by adequate access to insurance coverage through the OFP for high risk property owners.

Success of the risk modification plan rule is evident through indications that insurers are continuing to develop commercial rating plans, and maintain supporting documentation in accordance with the rule. Overall, the use of such plans contributes to a competitive premium rate and market.

Development of the Regulation

7. 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.*

In early spring 2017, the department spoke with OFP at the quarterly board meeting and informed the board that rule 3901-1-18 was undergoing the five year rule review. During review, the department corrected references to out of date federal programs and provided a copy of proposed revisions to OFP. Additionally, OFP thoroughly reviewed the rule and provided additional technical amendments.

On May 5th, 2017, the department sent an email to industry stakeholders including insurance companies and trade groups. This list included the Ohio Fair Plan, the American Fraternal Alliance, Ohio Insurance Institute, the Association of Ohio Life Insurance companies, Ohio Association of Health Plans, Property Casualty Insurers of America, and National Association of Mutual Insurance Companies among others.

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

The department worked directly with the OFP to address all suggested amendments. Proposed amendments address the use out-of-date terminology and standards and practices, as well as other technical corrections.

No additional comments were received regarding this rule packet.

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?

The OFP reviewed the plan of operations to update and modernize the rule. The amendments are all technical in nature and were based on determinations made by OFP staff and members.

The risk modification plan rule was modernized in 2012 and underwent substantial amendments. At that time, appropriate standards were reached and implemented into the

rule through thorough vetting with industry stakeholders and evaluating similar regulations and other states. Prior to that, the rule was not amended since promulgation in 1973. As a result, there are no proposed amendments at this time.

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?

No alternative regulations were deemed appropriate as the sole purpose of the OFP rule is to implement the plan of operation, as required by statute.

The risk modification plan rule has remained in effect since 1973 and underwent a significant modernization review in 2012 through stakeholder input. Therefore no alternative regulations are deemed necessary by industry at this time.

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

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No. Performance-based regulation would not be applicable as the rule deals entirely with the OFP insurance policy coverage details and requirements.

The risk modification plan rule is a performance based regulation, the rule provides for the establishment of individual plans that are to meet "satisfactory specifications" and do not need to meet a defined set of standards.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The OFP is the sole entity required to administer the program covered by the plan of operation, and the department is the sole agency required to review and approve the plan of operation, as well as risk modification plans. There are no duplicative rules.

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.

OFP implements the plan of operations and will continue to do so. The proposed amendments are all technical in nature and will not significantly affect the current operation.

With no proposed amendments insurers will continue to operate under the modification plan guidelines as already in force, should they so choose.

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;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

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.

Rule 3901-1-18- The rule affects high-risk homeowners seeking coverage through the OFP, insurers writing basic property/homeowners insurance in Ohio and Ohio insurance agents. The impacted insurers are required by statute to be members of OFP. Agents are required, upon request, to assist qualified homeowners in applying for coverage through the program. The rule sets the processes and requirements in administering the program, as well as for applying for coverage through the program. Impacted carriers and their respective agents should familiarize themselves with the operation and requirements of participation in the OFP occasionally as a part of maintaining business requirements. As there are no substantial amendments, this rule filing should not increase time necessary for compliance.

Rule 3901-1-22 - The rule impacts insurers that participate in writing commercial insurance policies in non-quantifiable rating scenarios. Employees must familiarize themselves with the general guidelines established within the rule before making product filings to the department. There are no suggested amendments, therefore this rule filing will not increase time necessary for compliance.

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

Impact is generally positive for applicable homeowners. Statute requires an OFP association to assist applicants in urban areas to secure basic property/homeowners insurance, and to formulate and administer a program for the equitable apportionment of homeowners insurance which cannot be obtained in the normal insurance market.

The rule allows insurance companies greater flexibility in regards to commercial rating plans.

Regulatory Flexibility

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

The OFP of operations deals with the insurance coverage it is required to provide and the procedures and qualifications required to secure coverage. All insurers authorized to provide homeowners insurance in this state, regardless of size, are statutorily required to participate in the program as members.

The risk modification plan rule provides for the establishment of individual plans that do not need to meet a defined set of standards.

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?

Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis. Minor errors would be handled by advising the agent or company and giving them an opportunity to cure the omission or irregularity.

18. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to answer questions and provide assistance as needed, regardless of the size of the business.