

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Captive insurance company requirements.
Rule Number(s): 3901-11-01, 3901-11-02, 3901-11-03, 3901-11-04, 3901-11-05,
and 3901-11-06

Date: June 16, 2019

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☐ Rescinded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 3901-11-01 provides the required information to be filed by an applicant to form and license a captive insurance company domiciled in Ohio. No change is recommended.

Rule 3901-11-02 establishes the procedure by which the superintendent may require additional capital and surplus of a captive insurance company. This process would occur after review of the company's financial condition and a determination is made that additional capital and surplus is necessary for the company to maintain solvency. No change is recommended.

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Rule 3901-11-03 establishes that process by which a captive insurance company is required to appoint an independent certified public accountant and file annual financial statements with the superintendent. A technical change is recommended to correct a legal reference within the rule.

Rule 3901-11-04 provides captive insurance companies with a procedure to notify the department and reconcile misstated information regarding its financial condition report to the superintendent. No change is recommended.

Rule 3901-11-05 establishes requirements to allow companies flexibility in the types of reserve methodology used when determining adequacy of reserve amounts for special purpose financial captive insurance companies. No change is recommended.

Rule 3901-11-06 establishes the information that a special purpose financial captive insurance company is required to provide to the superintendent for the purpose of determining adequate capital and surplus amounts. No change is recommended.

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

Sections 3901.041, 3964.03, 3964.07 and 3964.21 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 purpose for these regulations establish the requirements by which captive insurance companies domiciled in Ohio must form and operate. These rules ensure that captive insurance companies maintain adequate capital and reserves for the overall financial health of the companies and in turn, protect consumers.

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

The success of the regulations included in the packet is judged based on the ease of use for

entities applying to be a licensed captive, the number of entities that apply, the length of time the department requires to review each application and the success of the entities over time. Given that this type of insurance has only been operating in Ohio since 2014, department staff has closely monitored these outcomes for potential areas of improvement. Thus far, the rules appear to allow for both adequate regulation and flexibility for insurance companies.

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 April 2019, an email requesting comment on the rule was sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurance (ACLI), the National Association of Insurance and Financial Advisors (NAIFA), Ohio Association of Health Plans (OAHP), and the Professional Independent Agents Association (PIAA), among others. Additionally, these rules were also posted on the department's web site for review.

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

These rules were reviewed as part of the five year rule review. The department received no comments on the rules from industry or the general public during the comment period.

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?

These regulations were established after extensive reviews of captive programs and laws currently operating in other states. Department staff that assisted in drafting the captive legislation established in section 3964.21 of the Revised Code also drafted the rules. In addition, the department worked extensively with stakeholders to develop reasonable standards.

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?

These rules are driven by the language of the statute which requires the superintendent to establish a prescriptive process for captive applicants and licensed entities to follow. By creating such processes, captive managers and entities will be certain of what is required to maintain compliance. Further, the standards are typical of nationwide standards by which

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captive insurance companies are required to adhere. These rules do specify alternatives where appropriate to allow companies greater flexibility in reserve determination methods.

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.

These rules establish a set of requirements for captive insurers to follow to assure that they properly rate insurance products to maintain a sufficient reserve balance and remain solvent. Performance based regulations are not appropriate for these rules.

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

The department, which serves as the sole regulator of the insurance industry in Ohio, reviewed Ohio statutes and rules and determined that it does not duplicate other 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 agency's implementation of these regulations have been in place for several years and those impacted by the rules are familiar with the requirements. These rules are applied consistently.

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.

A. These rules impact any entity applying to form a captive insurance company or special purpose captive. Only Ohio domiciled parent or affiliated companies authorized to transact business in this state are eligible to apply. There is no requirement to apply and establishing a captive is purely elective.

B. Entities applying for a captive license will need to complete an application. The application as outlined in rule 3901-11-01, requires the submission of reports and information to support the financial soundness of the entity which will take time to gather and submit.

C. Entities will need to pay a five hundred dollar application fee as well as a fifty dollar fee for each additional entity established under the licensed captive. In addition, SPFC are required to provide documentation produced by a qualified actuary. To complete the captive application, the applicant will need to spend an estimated twenty-four working hours gathering financial reports to support application. Most of the information that is required to be submitted should already be on file for general and on-going business operations. Therefore, the exact time will depend on how the entity maintains financial records and information. For the special financial purpose captives, the cost to secure a qualified actuary varies and is dependent upon the complexity of the review and proposed structure relative to industry standards.

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

Applying for and establishing a captive is elective. Captive insurance companies are domiciled and operate in over thirty states and multiple other jurisdictions. By establishing the capability to domicile in Ohio, entities may now form in their home state, and/or place of choice. Standards and requirements set forth in these rules aid in maintaining market solvency, and aim to protect the assets of the regulated entity.

Regarding the special purpose financial captives, the guidance established within these rules was developed in consultation with interested stakeholders with the dual objective of ease of use and promoting solvency of both the SPFC and the parent life insurance company. The scope of these regulations is narrow and specific to those entities that elect to apply for licensure as a SPFC.

Regulatory Flexibility

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

No, the rules provide important procedures to ensure and maintain solvency to which all insurance companies must adhere, regardless of size.

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?

Non-compliant filings or filing submission with inappropriate tables or other information are identified in the review process and discussed with the company. Generally, companies agree to change a filing as requested by the department, or propose an acceptable alternative. In the event that a company would refuse to revise a filing, the department proceed with the administrative remedies available.

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

Department staff is available to answer questions, regardless of the size of business. Furthermore, the department provides filing information and instructions on its web site. The department intends to continue dialogue with stakeholders through the implementation process to ensure compliance and facilitate questions.