

CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: *Ohio Department of Insurance*
Regulation/Package Title: *Agent Rules*
Rule Number(s): *3901-5-01 to 3901-5-07, and 3901-5-09*

Date: **August 19, 2019**

Rule Type:

 New

☒ Amended

☐ Rescinded

☐ 5-Year Review☐ No Change

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.

The rules included in this package set forth requirements in regards to the regulation of; agent pre-licensing education, agent continuing education (CE), qualifications of CE courses, and establishes requirements and market practices for CE providers.

This package also includes rules regarding; agent education violations, the regulation of agent education fees, and the general specifications of agent licensing and appointment procedures.

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All of these rules, with the exception of rule 3901-5-06 have recommended changes that better align each rule with current insurance industry best practices.

Many of the changes are intended to ease regulation on insurance agents and modernize current practices. For example, changes to rule 3901-5-07 remove the requirement that agent examinations be proctored for self-study exams. Many other states have already removed this requirement in order to provide more flexibility in agent licensing.

Rule 3901-5-06 has no recommended changes.

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

Sections 3901.041, 3901.043, 3901.20, 3905.16, 3905.486, 3905.95, 3905.481, 3905.484, 3905.12, 3905.04, and 3905.20 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 is to establish uniformity through common business practices and requirements in order to create a fair and competitive marketplace for the sale and purchase of insurance products.

These regulations establish the licensing standards that insurance agents must follow to remain compliant with statutory requirements. These requirements establish basic consumer protections for agents to assist consumers in selecting insurance products necessary for their individual or group needs.

These rules also set forth guidance in regards to required fees, as well as potential violations. Collectively, these rules work to ensure consumer protection.

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

These regulations provide transparent guidance for businesses and individuals engaging in the sale of insurance products. The department will see a decrease in confusion surrounding such requirements as well as a decrease in complaints and or damages to consumers, given that the agent or business has completed their own education and licensing requirements established in these regulations.

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 one comment from the Ohio Bail Bonds Agents Association regarding the rules in this chapter. The Association seeks to work with the department to change the date that is required for licensure renewal and regulated by the department to allow for congruency with separate filing requirements regulated and determined by the clerks of courts.

The filing requirements currently observed by bail bond agents are outlined in the Ohio Revised Code and would require legislative change to make the requested adjustment to filing dates. The department has expressed willingness to collaborate with Ohio Bail Bonds Agents Association to make the changes to the required deadline to improve ease of compliance for this specific type of license. Due to the necessity of statute change, the rules would be reviewed and changed for consistency upon passage of legislation.

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 rules follow national models that have been adopted by the National Association of Insurance Commissioners (NAIC). When developing a model, the NAIC works with broad industry stakeholders including consumer advocates, agents and insurers. Stakeholders

provide comment on a range of issues as to find the right balance between consumer protection and ease of compliance.

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?

The structure of the requirements set forth in these rules was established by evaluating NAIC model regulations and discussions with stakeholders. The current processes for agent licensing are widely accepted as the industry standard and adequately meet industry needs.

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 insurers and agents to follow to assure that they properly licensed and maintain proper education requirements. By creating a specific set of requirements the department is able to assure that consumers are protected through adequate credentialing of agents. 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 many years and those impacted by the rules are familiar with the requirements. These rules are applied consistently. Many of the changes requested are intended to provide better ease of understanding by aligning language used in the provider handbook to match the terminology of the rules. The changes to the rules may evoke questions from those impacted and the department intends to continue dialogue and facilitate questions to ensure compliance.

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. The impacted business community consists of individual insurance agents, business entities engaging in the sale of insurance products, agent education providers, and insurers.

B. The nature of this impact is contained in the time to comply with education requirements for licensee's and the established fees associated with complying with pre-licensing and CE requirements, as well as company compliance with appointing agents.

C. Both the cost and time requirements vary in regard to the line of business in which the individual is participating. The CE provider fee structure as outlined in paragraph (D) of rule 3901-5-06 of the Administrative Code allows the provider to select which fee structure works best with their business plan, dependent on the course type and quantity the provider will offer. CE providers can chose between three fee structures; flat, individual, and limited. The flat fee provider option is one thousand dollars per year, which covers the provider application fee and course application fees for all course applications submitted during the calendar year. The individual fee provider is one hundred dollars for the submission of the provider application, plus forty dollars for each course application. The limited fee option is twenty-five dollars for submission of the provider application, plus twenty-five dollars for each course application. A provider electing this status is limited to offering no more than three courses of no more than three credit hours each, during the calendar year.

Additional CE provider's fees include the filing of a course roster which is to list all licensees enrolled for continuing education credit at a fee of one dollar per agent/per course approved credit hour. Additionally, for a licensee's filing of a publication or author of written material for CE credit, one dollar per approved credit hour.

For pre-licensing education providers both the course and instructor initial and renewal application fees are as follows: provider application fee is one hundred dollars, provider's course application fee for each course is two hundred dollars, the fee for each subject matter category requested on the course application is twenty-five dollars. An instructor application fee is twenty-five dollars.

Other fees referenced throughout the agent rules are established in Chapter 3905. of the Revised Code.

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

The regulatory intent set forth in these rules is to establish uniformity through common business practices and requirements in order to create a fair and competitive marketplace for the sale and purchase of insurance products. The guidelines set forth consist of national standards established by the NAIC which has become the national standard for licensing and appointment laws.

The department agent licensing staff monitor agents compliance with these CE requirements. It is the intent of these regulations to establish a predictable regulatory framework for the agent and CE provider community. This is important in order to maintain educated and compliant professionals and avoid potential harm to consumers.

Generally, the changes that were made to the rules were recommended to align current industry practice and update language to match the terms used by the NAIC in order to create better ease of understanding. Some changes were made to update practices for the purpose of modernization. For example, the removal of the requirement that exams be proctored and the removal of the requirement for facsimile stamps on certifications allows for greater flexibility and discontinues outdated practices.

Regulatory Flexibility

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

The regulations set forth in this rule package are in place to create uniformity among insurance agents doing business in the state of Ohio. The specific education requirements, standards of practice for providers, associated fees and violations, as well as appointment standards must remain consistent for all individuals and businesses accordingly in order to sustain a uniform and competitive marketplace for agents and consumers alike. Regardless of size, it is essential that these regulations are applied consistently to maintain consumer protections.

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?

Minor errors would be handled by advising the insurance company and/or agent and giving them an opportunity to remedy the omission.

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.