

Common Sense
Initiative

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Business Impact Analysis

Agency Name: Ohio Department of Insurance

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Regulation/Package Title (a general description of the rules' substantive content):
2020 FYR Hazardous Conditions and Accounting, Actuarial and Reinsurance
Requirements, and Definition of Work Paper Rules

Rule Number(s): 3901-3-01, 3901-3-02, 3901-3-03, 3901-3-04, 3901-3-07,
3901-3-08, and 3901-3-09

Date of Submission for CSI Review: December 23, 2020

Public Comment Period End Date: January 8, 2021 12:00AM

Rule Type/Number of Rules:

- | | |
|--|--|
| <input type="checkbox"/> New/ rules | <input checked="" type="checkbox"/> No Change/ 6 rules (FYR? 2020) |
| <input checked="" type="checkbox"/> Amended/ 1 rules (FYR? 2020) | <input type="checkbox"/> Rescinded/ rules (FYR?) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 requires agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- ☒ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☐ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 3901-3-01, requirement for approval of the proposed acquisition of control of or merger with a domestic insurer, is to establish the form to be used in the application for approval of a proposed transaction with an insurer domiciled in Ohio, also referred to as a domestic insurer. Section 3901.321 of the Revised Code requires any person who wishes to engage in any transaction described in division (B)(1) of section 3901.321 of the Revised Code to file with the superintendent an information statement, also referred to as "form A". "Form A" is established by the National Association of Insurance Commissioners and is used nationally for consistency across the industry. No change is recommended.

Rule 3901-3-02, regulation and registration of insurers under the insurance holding company regulatory act, provides the regulatory structure of insurance holding company systems, including filing reports to provide for transparency of financial transactions within a holding company structure per statutory requirement. One amendment is recommended to correct a citation of the Ohio Revised Code.

Rule 3901-3-03, transactions subject to prior notice - notice filing, provides the NAIC prescribed form for an insurer to give notice of a proposed transaction under section 3901.341 of the Revised Code. No change is recommended.

Rule 3901-3-04, hazardous financial condition standards, facilitates surveillance of insurers' financial condition by setting out the standards which the department may use for identifying insurers whose condition is such as to render the continuance of their business

hazardous to their policyholders, creditors or the general public. No change is recommended.

Rule 3901-3-07, credit for life reinsurance agreements, establishes accounting requirements for reducing liability or establishing assets in financial statements filed with the department based on ceded insurance. The requirements in the rule ensure proper use of reinsurance reserve credits. No change is recommended.

Rule 3901-3-08, definition of work papers, defining work papers, is used to clearly establish that the information gathered during an examination or surveillance of an insurance company is deemed confidential. No change is recommended.

Rule 3901-3-09, requirements for domestic insurers employing the services of reinsurance intermediaries, establishes the minimum contractual terms between domestic insurers, domestic reinsurers and reinsurance intermediaries. No change is recommended.

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

Rule 3901-3-01: Section 3901.041 and 3901.321 of the Revised Code.

Rule 3901-3-02: Section 3901.041 and 3901.32 to 3901.37 of the Revised Code.

Rule 3901-3-03: Section 3901.041 and 3901.341 of the Revised Code.

Rule 3901-3-04: Section 3901.041, 3903.09 and 3903.71 of the Revised Code.

Rule 3901-3-07: Section 3901.041, 3901.62 and 3901.77 of the Revised Code.

Rule 3901-3-08: Section 3901.041 and 3901.48 of the Revised Code.

Rule 3901-3-09: Sections 3901.041, 3901.07 and 3901.77 of the Revised Code.

4. 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.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. 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)?

3901-3-01: To set the standard content and form each insurer must use in order to apply for approval for an acquisition or merger with an Ohio domiciled insurance company.

3901-3-02: *To provide transparency of the financial conditions of companies within a holding company structure, enabling the department to accurately monitor insurers' solvency and ability to keep commitments to policyholders.*

3901-3-03: *To set the standard content and form each insurer must use in order to propose a transaction.*

3901-3-04: *To enable the department to effectively monitor insurers' financial condition and to enable intervention if conditions indicate a potential financial hazard to policyholders, creditors and/or the general public.*

3901-3-07: *To facilitate the department's ability to accurately examine life insurers' financial information related to reinsurance and ensure that appropriate levels of surplus relief are in place when risk of loss is transferred to reinsurers.*

3901-3-08: *To define what information constitutes as "work papers" during the examination of the financial affairs of an insurance company.*

3901-3-09: *To ensure adequate agreements are in place when reinsurance intermediaries are employed, so that appropriate safeguards are in place to protect policyholder interests when risk is transferred through intermediaries.*

In order to retain the department's accreditation with NAIC, one of the mandatory standards is for the department to adopt the insurance holding company system model regulation with reporting forms and instructions (model #450.) This model is part of the NAIC system to ensure solvency from state to state.

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

Success is described as the continued consistent regulation the department holds all insurers to when proposing a transaction, acquisition, or merger, as well as accurate financial reporting.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? ☐ Yes ☒ No

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. 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 June 2020, an email requesting comment on these rules were sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Ohio Insurance Institute (OII), 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.

10. 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.

11. 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. When developing a model, the NAIC works with a subgroup consisting of representatives from multiple states. Stakeholders also provide comment as to find the right balance between consumer protection and ease of compliance.

12. 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 based upon current NAIC models and publications which represent nationwide industry standards. These rules provide consistent regulatory requirements for insurance carriers. Therefore, no other alternatives were considered.

13. 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 to follow to assure that they properly maintain a sufficient reserve balance to remain solvent. In addition, the rules provide guidance on the information required to be submitted to the department so that the agency may adequately measure the financial health of an insurance company. Performance based regulations are not appropriate for these rules.

14. 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.

15. 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 department'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, as it is required for all insurance companies to provide sufficient evidence of financial health which in turn, serves as an important consumer protection.

Adverse Impact to Business

16. 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. Not applicable.

b. Not applicable.

c. 3901-3-02: Insurers within holding company systems are impacted by the regulation, as part of their annual financial filing requirements. The staff and/or legal resource costs of compiling and submitting the information would vary based on the complexity of the organization and its transactions.

3901-3-01 and 3901-3-03: Any insurer as defined in section 3901.32 of the Revised Code that desires to engage in a transaction. The company desiring to complete a transaction needs to complete the appropriate application, which is only used as needed and is not an annual form. The form A in rule 3901-3-01 of the Administrative Code takes an average of 25-30 hours to complete and the form D in rule 3901-3-03 of the Administrative Code takes an average of 6 hours to complete, but are only used if the company is completing these specific transactions.

3901-3-04: The rule impacts all domestic insurers. The rule identifies conditions that indicate hazardous financial condition, which is derived from information that the companies already file pursuant to other statutes or rules. The rule itself does not require the companies to file this information.

3901-3-07: *The rule impacts domestic life insurers and domestic property and casualty insurers with accident and health business, as well as any of the same types of non-domestic insurers that do not have substantially similar regulation in their home states. The rule applies accounting standards and procedures for insurers to follow when showing how assets and liabilities are affected by reinsurance, and therefore does not have a direct filing cost or fee. It is expected that these requirements are absorbed into the natural workflow of the insurers' overall accounting processes.*

3901-3-08: *This rule provides guidelines for how the department must define and handle confidential and privileged information. There is no quantifiable impact on business as there is no impact on the business community.*

3901-3-09: *The rule impacts domestic insurers and reinsurance intermediaries, only when an insurer contracts with a reinsurance intermediary. The nature of the impact is to require the minimum provisions that must be in those contracts. There is no anticipated cost, but rather the minimum standards are meant to prevent adverse impact.*

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

The department has implemented each of the rules due to statutory requirement and/or to adopt model regulations that are part of NAIC accreditation standards. Additionally, the justification for any adverse impact on the regulated community is clarified below:

3901-3-01: *This rule provides the NAIC prescribed form for an insurer to give notice of a proposed transaction under section 3901.341 of the Revised Code. Implementing national standards and forms extends consistency and predicatability to regulated entities.*

3901-3-02: *The requirement is statutory, and the transparency of financial transactions within a holding company is vital for the department's ability to ensure the solvency of the insurer and that the non-insurance financial investments of companies within the same system do not create negative impact on the insurer.*

3901-3-03: *This rule provides the NAIC prescribed form for an insurer to give notice of a proposed transaction under section 3901.341 of the Revised Code. Implementing national standards and forms extends consistency and predicatability to regulated entities.*

3901-3-04: *Per statutory requirement and regulatory responsibility, the department must regularly review insurers' financial conditions for any indications that policyholder and/or public interests are threatened by potential solvency issues.*

3901-3-07: *The department relies on accurate financial accounting procedures in order to facilitate its responsibility to assess financial condition of the insurers doing business in Ohio.*

3901-3-08: This rule simply defines the information required to be submitted by insurers during financial examination. Therefore, there is no adverse impact as there is no applicable impact on the business community.

3901-3-09: The rule has no anticipated financial or burdensome impact and provides guidance for creating appropriate contracts.

Regulatory Flexibility

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

These rules spell out the form and content of applications that are only used by an insurer, as needed by them. The use of these forms and reporting of the outlined financial information is a mandatory piece of the NAIC accreditation program. Therefore, the completion of the form is necessary, no matter of size.

However, the department will assist the insurer if the company needs assistance with completing these requirements.

19. 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 department will apply section 119.14 of the Revised Code into the implementation of this regulation by working with businesses on first-time violations of this rule.

20. 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 website.