

Common Sense
Initiative

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Regulation/Package Title (a general description of the rules' substantive content):

Mortgage Guaranty Insurance, Ohio mine subsidence insurance underwriting
association and fund, Public insurance adjusters, and Misconduct by insurance
license applicants and licenseesRule Number(s): 3901-1-13, 3901-1-24, 3901-1-48, 3901-5-12Date of Submission for CSI Review: July 20, 2021Public Comment Period End Date: August 3, 2021 12:00AM

Rule Type/Number of Rules:

☐ New/ rules☒ No Change/ 1 rules (FYR? 2021)☒ Amended/ 3 rules (FYR? 2021)☐ Rescinded/ rules (FYR?)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 3901-1-13: The purpose of this rule is to implement the section of Ohio Revised Code which pertains to the writing and servicing of mortgage guaranty insurance. The rule outlines procedural and structural guidelines such as: policy forms, coverage limitations, advertising, and reserving requirements. Recommended amendments will update references to federal programs and offices.

Rule 3901-1-24: The public insurance adjuster rule provides the baseline guidance for oversight of public insurance adjuster conduct and common consumer protection concerns including: Public insurance adjuster prohibitions, record-keeping, contract requirements, and insurer restrictions. Recommended amendments will remove gender references throughout the rule.

Rule 3901-1-48: This rule implements the plan of operation of the “Ohio Mine Subsidence Insurance Underwriting Association,” (OMSIUA), pursuant to Ohio Revised Code. Recommended amendments remove the superintendent of insurance from the board of governors, this reflects changes to the ORC in 2017.

Rule 3901-5-12: This rule establishes standards of conduct and responsibility that apply to insurance license applicants, licensees, and/or insurance companies. The rule outlines practices that would be deemed unfair and deceptive in the sale of insurance. There are no suggested amendments to this rule.

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

3901-1-13: Section 3901.041 of the Revised Code.

3901-1-24: Section 3901.041 of the Revised Code.

3901-1-48: Section 3901.041 of the Revised Code.

3901-5-12: Sections 3901.041, 3905.14 and 3905.85(D) 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)?

Rule 3901-1-13: Mortgage Guaranty insurance reduces risk to mortgage lenders and provides opportunities for home purchasers who may not otherwise qualify under traditional lending criteria. This rule establishes the regulatory framework for this type of coverage.

Rule 3901-1-24: Public insurance adjusters represent policyholders by assisting with interpretation of the insured's policy and negotiates with the insurance company on a claim. The public purpose of the rule is consumer protection, accomplished by setting prohibitions and standards of conduct for public insurance adjusters.

Rule 3901-1-48: Mine subsidence occurs when the foundation of a structure is compromised due to lateral or vertical ground movement caused by a failure in an abandoned mine. Homes located in areas of Ohio with a presence of abandoned mines are at risk for mine subsidence. Mine subsidence insurance coverage is available to eligible Ohioans as an endorsement to a basic property or homeowners policy. Coverage is mandatory in counties with a high concentration of abandoned mines, and optional in counties where a small concentration of abandoned mines are present. Insurers who write basic property or homeowners policies in the eligible counties are required to become members of the OMSIUA and offer this coverage to all eligible applicants. This rule specifies how OMSIUA will operate.

Rule 3901-5-12: This rule works to protect consumers from being misled or harmed by prohibiting unfair and deceptive acts on behalf of insurance license applicants, licensees and companies.

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

The success of rules 3901-1-13 and 3901-1-48 remains evident in the continuing market and consumer protections in the coverage they establish.

For rules 3901-1-24 and 3901-5-12, success is measured generally through the absence of complaints, or allegations that lead to a need to investigate or penalize licensed individuals and applicants for misconduct, or for the need to take action against non-licensed individuals.

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 May 2021, 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 Ohio Mine Subsidence Insurance Underwriting Association (OMSIUA), the Ohio Land Title Association, 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?

No comments were received during or after the vetting of this rule packet.

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?

Rules 3901-1-13, 3901-1-24, and 3901-5-12 were drafted pursuant to the National Association of Insurance Commissioners (NAIC) model regulations which were created and vetted through a committee process that includes research and input from various state regulators and stakeholders. The NAIC maintains subgroups that continually monitor trends and conditions of the industry.

Rule 3901-1-48 was established to govern the OMSIUA in order to guarantee eligible Ohioans would be provided an opportunity for mine subsidence coverage. Research determined the specific areas of Ohio that are at risk for mine subsidence activity.

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?

Rules 3901-1-13 and 3901-1-48: The purpose of these rules is to establish the regulatory framework of mortgage guaranty insurance, and establish the function and governing of the OMSIUA board, alternatives are not appropriate.

Rules 3901-1-24 and 3901-5-12: The practices outlined in both rules were gathered after reviewing trends in the industry and common areas of consumer complaint, these areas are reviewed by the NAIC regularly and alternatives are not appropriate at this time.

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.

No. Performance-based rules would not apply as the purpose and scope of these rules are to establish the regulatory framework of mortgage guaranty insurance, to establish the function of the OMSIUA board, and proscribe requirements and list prohibited activities. A defined process provides clarity to the regulated community.

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

The Ohio department of insurance is the sole agency regulating insurance and there are no duplicative rules.

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.

All rules included in this packet have remained in effect for many years and are understood by the regulated community. All proposed amendments are technical and will not impact any requirements.

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-c.

Rule 3901-1-13: Mortgage guaranty insurers are impacted by the requirements of this rule. Compliance requirements include maintaining minimum reserves. Additionally, companies are required to notify the department when five per cent or more of their net annual premium is received from policies having a loan to value ratio of greater than ninety-five per cent. If a mortgage guaranty insurance company receives more than twenty per cent of their net annual premium from policies written by affiliates, they are required to notify the superintendent. Generally this data is readily available based on the internal underwriting and accounting practices of the companies.

Rule 3901-1-24: The impacted business community is primarily licensed public insurance adjusters. The rule's scope focuses on standards of conduct and, therefore, does not impose a direct cost or adverse impact for compliance. Statute requires licensure before acting as a public insurance adjuster, which includes a \$100 initial application fee and a \$50 annual renewal fee.

Rule 3901-1-48: Insurers who write basic property or homeowners policies for family dwellings in the defined eligible counties are required to become members of the OMSIUA and offer mine subsidence coverage to all eligible applicants. Member insurers are required to submit quarterly reports and maintain certain agreements with the OMSIUA. Completing these requirements would take no longer than a few hours a year.

Rule 3901-5-12: This rule impacts insurance license applicants, licensees, and/or companies licensed or authorized to transact the business of insurance. Adverse impact is not imposed as the rule addresses only areas of misconduct. It is the responsibility of the individual and or company to comply with the rule as a matter of every day business practices. In cases where an insurance company has reasonable cause to believe that there has been a violation or is a continuing violation of this rule, and the details thereof which are known, the department shall be notified. The department maintains both the market conduct and agent licensing divisions to address such matters, informing the department may require minimal to moderate communications to determine the extent of any investigation.

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

The guidelines established in these rules assist in maintaining a stable and competitive industry and collectively provide important consumer protections. The prohibited actions for public insurance adjusters and license applicants are in place to protect consumers from conflicts of interests or other actions that may cause financial harm.

Regulatory Flexibility

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

Rule 3901-1-13: The requirements apply equally to any company engaged in the sale of mortgage guaranty products in order to ensure a balanced market.

Rule 3901-1-24: The requirements apply equally to any licensed public insurance adjuster, most of which are individual practitioners or small-business agencies.

Rule 3901-1-48: The rule applies equally to insurers who met the requirements of OMSIUA.

Rule 3901-5-12: The rule establishes straight-forward business standards to serve as crucial consumer protection. Consistent compliance across the industry provides predictability for both the industry and consumers.

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?

Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis to determine whether the violation could have a serious impact on the consumer or the general public. Minor errors would be handled by advising the company and giving them an opportunity to cure the omission or irregularity. For rule 3901-1-24 the superintendent may suspend, revoke, or refuse to renew a public adjusters license for a conduct violation, and any such action would be conducted under a Chapter 119. Administrative hearing process.

20. 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.