

Common Sense
Initiative

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

Ohio fair plan - plan of operation, Risk modification plans, Inland marine risks,
Group insurance regulations.Rule Number(s): 3901-1-18, 3901-1-22, 3901-1-23, 3901-1-31Date of Submission for CSI Review: June 15, 2022Public Comment Period End Date: June 30, 2022 12:00AMRule Type/Number of Rules:☐ New/ rules☒ No Change/ 2 rules (FYR? 2022)☒ Amended/ 2 rules (FYR? 2022)☐ Rescinded/ rules (FYR?)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 3901-1-18: 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. 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 will remove a timeline requirement of thirty days for a policyholder to commence repairs, as well as modernize language regarding fidelity bonds and forms mail service.

Rule 3901-1-22: A risk modification plan applies to commercial insurance policies in nonquantifiable 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. Proposed amendments will correct a citation.

Rule 3901-1-23: This rule defines inland marine risks by adopting the nation-wide marine definition, approved and recommended by the National Association of Insurance

Commissioners (NAIC). Inland marine insurance is a form of insurance for property in transit over land which can include certain types of moveable property such as jewelry, fine arts, or communication devices. The definition serves as guidance for insurance companies to follow when filing insurance product policy forms and rating plans with the department. There are no proposed amendments.

Rule 3901-1-31: The purpose of the rule is to specify limited circumstances in which insurers may write property/casualty (p&c) insurance on a group basis. These circumstances include inland marine products and certain insurance products offered as an employee benefit as specified in the rule. Group policies are typically issued to an employer or business that enrolls members to the group, as opposed to issuing a policy to an individual person or business. There are no proposed amendments.

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

Sections 3901.041 and 3929.43 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)?

3901-1-18: 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.

3901-1-22: 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.

3901-1-23 and 3901-1-31: Both rules establish product filing and underwriting guidelines for p&c insurance companies. This guidance assists insurers in offering appropriate insurance products to Ohioans.

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

3901-1-18: Success is measured by adequate access to insurance coverage through the OFP for high risk property owners.

3901-1-22: 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.

3901-1-23 and 3901-1-31: Both rules will substantively remain the same and therefore will continue to allow for understanding and compliance during product review as performed by the department.

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 early spring, 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.

On April 28th, 2022, the department sent an email to industry stakeholders including insurance companies and trade groups. This list included, the American Fraternal Alliance, Ohio Insurance Institute, the Association of Ohio Life Insurance companies, Ohio Association of Health Plans, Property Casualty Insurers of America, OFP, and National Association of Mutual Insurance Companies among others.

10. 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 remove the requirement for repair timeline.

No additional comments were received regarding 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?

3901-1-18: *The OFP reviewed the plan of operations to update and modernize the rule. The amendment were based on determinations made by OFP staff and members.*

3901-1-22: *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 had not been amended since promulgation in 1973.*

3901-1-23: *Inland marine risks are continually evolving to include items not easily insurable with traditional property policies. The risks and properties covered under an inland marine policy evolve as additional technologies and products become available that need this type of insurance coverage. Therefore, the NAIC developed the inland marine definition to encompass a broad range of possible filings.*

3901-1-31: *The appropriateness of group p&c policies for offering insurance is limited, so the rule provides guidance as to when and how the policies can be offered in a compliant manner. Insurers rely on this guidance to expedite approval of innovative product filings. Both rules use data gathered through a thorough vetting process at the NAIC.*

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?

3901-1-18: *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 department maintains communication with OFP to ensure the plan of operation is functioning as needed.*

3901-1-22: *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.*

3901-1-23: *The group insurance rule is currently drafted to allow for innovation so an alternative did not seem appropriate.*

3901-1-31: *This NAIC developed, nation-wide inland marine definition remains the industry standard in determining inland marine risks. Over thirty states have promulgated similar rules to adopt the definition, as a result, continuing to follow the NAIC's definition is appropriate for uniformity.*

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.

3901-1-18: *No. Performance-based regulation would not be applicable as the rule deals entirely with the OFP insurance policy coverage details and requirements.*

3901-1-22: 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.

3901-1-23 and 3901-1-31: These rules are performance-based because they permit the development of innovative insurance products designed to meet consumers' needs without specifying actual insurance policy language.

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

3901-1-18: 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. There are no duplicative rules.

3901-1-22, 3901-1-23, and 3901-1-31: The regulation of these insurance products is exclusive to the department of insurance, these rules do not duplicate any other rule or regulation.

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.

3901-1-18: OFP implements the plan of operations and will continue to do so. The proposed amendments will not significantly impact the current operation.

3901-1-22: With no proposed substantive amendments, insurers will continue to operate under the modification plan guidelines as already in force, should they so choose.

3901-1-23 and 3901-1-31: Both rules remain in effect without substantive amendments. The department's product regulation and actuarial staff are available to answer any questions insurance companies may have about the provisions of the rule.

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 3901-1-18: The rule impacts the OFP, 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.

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 substantive amendments, therefore, this rule filing will not increase time necessary for compliance.

3901-1-23 and 3901-1-31: Both rules apply to property and casualty insurance companies. Any adverse impact would be employee time and training. Given that the rules remain in effect with no substantial amendments, there is no quantifiable impact.

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

3901-1-18: 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.

3901-1-22: The rule allows insurance companies greater flexibility in regards to commercial rating plans.

3901-1-23: The inland marine rule simply adopts a definition as a guideline for submitting filings to the department, applicable to all p&c insurers.

3901-1-31: Although the "group" rule limits the writing of group p&c policies, it does specify certain exceptions where group policies are appropriate. These guidelines reflect industry wide trends and applicability.

Regulatory Flexibility

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

3901-1-18: 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.

3901-1-22: The risk modification plan rule provides for the establishment of individual plans that do not need to meet a defined set of standards.

3901-1-23 and 3901-1-31: For both rules, all insurers regardless of size are required to comply when submitting product filings. This works to ensure a level field in the market.

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. Minor errors would be handled by advising the agent or company and giving them an opportunity to cure the omission or irregularity.

Non-compliant filings are identified in the review process and discussed with the company. Generally, companies agree to change a filing as requested by the department, or the department will work with the company to propose another solution. No monetary fines or penalties exist for the submission of a non-compliant product filing.

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, regardless of the size of the business.