

Common Sense
Initiative

Mike DeWine, Governor

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Business Impact AnalysisAgency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: 614-644-0239Regulation/Package Title (a general description of the rules' substantive content):
3901-3-02 and 3901-3-03Rule Number(s): Regulation and registration of insurers under the Insurance
Holding Company Regulatory Act
Transactions subject to prior notice - notice filingDate of Submission for CSI Review: January 25, 2023Public Comment Period End Date: February 9, 2023 12:00AMRule Type/Number of Rules:

- | | | | |
|--|---------------------------|-------------------------------------|---------------|
| <input type="checkbox"/> New/ | rules | <input type="checkbox"/> No Change/ | rules (FYR?) |
| <input checked="" type="checkbox"/> Amended/ | 2 rules (FYR? <i>no</i>) | <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 Rescinded/ | rules (FYR?)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 3901-3-02, 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.

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.

The National Association of Insurance Commissioners ("NAIC") recently amended Model Law 440 and Model Regulation 450. Ohio recently implemented the amendments to Model Law 440 by enacting Senate Bill No. 256 (134th General Assembly), which modifies certain provisions in R.C. 3901.32 to 3901.37. The proposed amendments to both 3901-3-02 & 3901-3-03 seek to implement corresponding amendments to Model Regulation 450.

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 3901-3-02: 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.

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 implements a federal requirement, but 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)?

3901-3-02: The purpose of this rule is to interpret certain terms, establish standards, and to promulgate forms to be adhered to in the regulation and registration of insurers authorized to do business in the State of Ohio. Compliance will 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: The purpose of this rule is to set the standard content and form that each insurer must use in order to give notice of a proposed transaction under R.C. 3901.341. This framework requires an insurer to notify the Department of certain transactions with affiliated entities.

The NAIC created the Accreditation Program to develop and maintain national standards to promote effective insurance company financial solvency regulation. The purpose of the accreditation program is for state insurance departments to meet baseline standards of solvency regulation, particularly with respect to regulation of multi-state insurers. Both rules 3901-3-02 and 3901-3-03 are accreditation standards.

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

Success is described as the continued and consistent information reporting required by these regulations, which enable the Department to monitor and regulate insurance entities to protect policyholders and the public.

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.*

Throughout the drafting and implementation of the corresponding statute, the department worked closely with stakeholders. The department vetted both rules via 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, and National Association of Mutual Insurance Companies among others. Both rules remain posted on the Department website for many months.

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 recieved.

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 NAIC. 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? *Alternative regulations may include performance based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

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. 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.

14. 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. Proposed amendments to the rule have been discussed and shared during the process of amending the corresponding statute and vetting of both draft rules. The department will be available to assist with any industry questions.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community; and
- b. Quantify and identify the nature of the adverse impact (e.g., fees, fines, employer time for compliance).

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.

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

3901-3-03: This rule impacts any insurer as defined in section 3901.32 of the Revised Code that desires to engage in certain transactions with affiliated entities. The company desiring to c transaction needs to complete the appropriate application, which is only used as needed and is not an annual requirement. Form D takes an average of 6 hours to complete, but only required if the company is completing specific transactions.

16. Are there any proposed changes to the rule(s) that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors.*)

Amendments to both rules will not reduce regulatory burden, however by maintaining the rule with NAIC uniformity the regulated community will have consistent regulation, particularly in the case of multi state business.

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

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

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

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.

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?

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, propose an alternative solution, or will withdraw the filing. Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis due to the fact that these types of violations could impact the consumer. There is no fine or penalty for paperwork violations under this rule.

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

Should an entity have any questions about achieving compliance with this rule, department staff will be available to answer any questions.