



Common Sense Initiative

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Business Impact Analysis

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Regulation/Package Title (a general description of the rules' substantive content):	<u>Captive Insurer Rules</u>
Rule Number(s):	<u>3901-11-01, 3901-11-02, 3901-11-03, 3901-11-04, 3901-11-05,</u> <u>3901-11-06</u>
Date of Submission for CSI Review:	<u>June 14, 2024</u>
Public Comment Period End Date:	<u>June 28, 2024, 11:59 p.m.</u>
Rule Type/Number of Rules:	
<input type="checkbox"/> New/ rules	<input type="checkbox"/> No Change/ rules (FYR?)
<input checked="" type="checkbox"/> Amended/ 6 rules (FYR? Yes)	<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 Rescinded/ rules (FYR?)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 require 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 3901-11-01 provides the required information to be filed by an applicant to form and license a captive insurance company domiciled in Ohio. Recommended amendments will reduce regulatory restrictions.

Rule 3901-11-02 establishes the procedure by which the superintendent may require additional capital and surplus of a captive insurance company. This process would occur after review of the company's financial condition and a determination is made that additional capital and surplus is necessary for the company to maintain solvency. Recommended amendments will reduce regulatory restrictions.

Rule 3901-11-03 establishes that process by which a captive insurance company is required to appoint an independent certified public accountant and file annual financial statements with the superintendent. Recommended amendments will reduce regulatory restrictions and make technical amendments. New paragraph (K) allows the superintendent to grant an exemption from compliance with any provision of the rule if the superintendent finds, upon review of the application, that compliance with the rule would constitute a hardship upon the insurer.

Rule 3901-11-04 provides captive insurance companies with a procedure to notify the department and reconcile misstated information regarding its financial condition report to the superintendent. Recommended amendments will reduce regulatory restrictions.

Rule 3901-11-05 establishes requirements to allow companies flexibility in the types of reserve methodology used when determining adequacy of reserve amounts for special purpose financial captive insurance companies. Recommended amendments will reduce regulatory restrictions.

Rule 3901-11-06 establishes the information that a special purpose financial captive insurance company is required to provide to the superintendent for the purpose of determining adequate capital and surplus amounts. Recommended amendments will reduce regulatory restrictions.

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

Sections 3901.041, 3964.03, 3964.07, and 3964.21 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)?

These regulations are designed to set standards for captive insurance companies based in Ohio regarding their formation and operation. By doing so, they aim to guarantee that these companies have sufficient capital and reserves. This ensures the financial stability of these companies, which ultimately safeguards consumers who rely on them. In essence, these regulations provide a framework for maintaining the financial health of captive insurance companies and protecting the interests of their customers.

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

These regulations are being assessed based on several factors:

1. *****Ease of use for entities applying to be a licensed captive*****: This suggests that the regulations are evaluated on how straightforward the application process is for companies seeking to become licensed captives. If the process is user-friendly, it can encourage more companies to apply.
2. *****Number of entities that apply*****: The volume of applications can indicate the attractiveness and viability of the captive insurance option under the current regulations. A higher number of applications may suggest that the regulations are favorable to businesses.
3. *****Length of time the department requires to review each application*****: This factor evaluates the efficiency of the regulatory process. A shorter review time can indicate that the regulations are well-structured and that the regulatory body is responsive to applicants' needs.
4. *****Success of the entities over time*****: This refers to the performance of the licensed captives after they are established. If the captives are successful in achieving their insurance objectives and maintaining financial stability over time, it reflects positively on the regulations in place.

Since the introduction of captive insurance regulations in Ohio in 2014, the department has been closely monitoring these outcomes to identify areas for improvement. So far, the regulations seem to strike a balance between effective regulation and providing flexibility for insurance companies. This indicates that the regulations are achieving their intended goals while also allowing room for adaptation and refinement if necessary.

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.*

On Friday March 22nd the department sent an email to industry stakeholders vetting the draft rules. The comment period remained open for four weeks and all rules have remained on the department web site. Stakeholders included insurance companies and associations such as: Nationwide, 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 Ohio Insurance Agents (OIA), 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 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 regulations were established after extensive reviews of captive programs and laws currently operating in other states. Department staff that assisted in drafting the captive legislation established in section 3964.21 of the Revised Code also drafted the rules. In addition, the department worked extensively with stakeholders to develop reasonable standards.

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 driven by the language of the statute which requires the superintendent to establish a prescriptive process for captive applicants and licensed entities to follow. By creating such processes, captive managers and entities will be certain of what is required to maintain compliance. Further, the standards are typical of nationwide standards by which captive insurance companies are required to adhere. These rules do specify alternatives where appropriate to allow companies greater flexibility in reserve determination methods.

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 agency's implementation of these regulations have been in place for several years and those impacted by the rules are familiar with the requirements. These rules are applied consistently.

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.

These rules impact any entity applying to form a captive insurance company or special purpose captive. Only Ohio domiciled parent or affiliated companies authorized to transact business in this state are eligible to apply. There is no requirement to apply and establishing a captive is purely elective.

Entities applying for a captive license will need to complete an application. The application as outlined in rule 3901-11-01, requires the submission of reports and information to support the financial soundness of the entity which will take time to gather and submit. Entities will need to pay a five hundred dollar application fee as well as a fifty dollar fee for each additional entity established under the licensed captive. In addition, SPFC are required to provide documentation produced by a qualified actuary.

To complete the captive application, the applicant will need to spend an estimated twenty-four working hours gathering financial reports to support application. Most of the information that is required to be submitted should already be on file for general and on-going business operations. Therefore, the exact time will depend on how the entity maintains financial records and information. For the special financial purpose captives, the cost to secure a qualified actuary varies and is dependent upon the complexity of the review and proposed structure relative to industry standards.

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.)

Proposed amendments will reduce regulatory restrictions.

Rule 3901-11-03 adds paragraph (K) which allows the superintendent to grant an exemption from compliance with any provision of the rule if the superintendent finds, upon review of the application, that compliance with the rule would constitute a hardship upon the insurer.

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

Applying for and establishing a captive is elective. Captive insurance companies are domiciled and operate in over thirty states and multiple other jurisdictions. By establishing the capability to domicile in Ohio, entities may now form in their home state, and/or place of choice.

Regarding the special purpose financial captives, the guidance established within these rules was developed in consultation with interested stakeholders with the dual objective of ease of use and promoting solvency of both the SPFC and the parent life insurance company. The scope of these regulations is narrow and specific to those entities that elect to apply for licensure as a SPFC.

Regulatory Flexibility

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

No, the rules provide important procedures to ensure and maintain solvency to which all insurance companies must adhere, regardless of size.

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 or filing submission with inappropriate tables or other information are identified in the review process and discussed with the company. Generally, companies agree to change a filing as requested by the department, or propose an acceptable alternative. In the event that a company would refuse to revise a filing, the department proceed with the administrative remedies available.

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 web site. The department intends to continue dialogue with stakeholders through the implementation process to ensure compliance and facilitate questions.