

Regulatory Analysis Form

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2007 OCT 25 PM 3:44

REVIEW COMMISSION

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-210

IRRC Number: 2279

(3) Short Title

Workers' Compensation Security Fund

(4) PA Code Cite

31 Pa. Code, Chapter 165, §§165.1-165.8

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429
Secondary Contact:

(6) Type of Rulemaking (check one)

- ☐ Proposed Rulemaking
☒ Final Order Adopting Regulation
☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No
☐ Yes: By the Attorney General
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of this rulemaking is to administer the Workers Compensation Security Fund Act (Fund) and to establish how contributions are to be made to the Fund. This original statute was adopted in 1937 and amended in 2000 in order to establish standards for the administration of the Fund.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The final-form rulemaking is made under the authority of sections 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Workers Compensation Security Fund Act (77 P.S. §§1051-1066).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Insurance Department seeks to adopt Chapter 165, §§165.1-165.8 to be consistent with the authorizing statute.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environment or general welfare risks associated with this final-form rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Insurers doing the business of Workers' Compensation insurance in the Commonwealth will benefit from the regulation to the extent that it will be consistent with the statute.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the adoption of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all insurers licensed to do the business of Workers' Compensation insurance in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Comments regarding the adoption of this regulation were solicited from the various trade associations representing the insurance industry during a 30-day public comment period. Comments were received from the Alliance of American Insurers, the Insurance Federation of Pennsylvania, Inc. and the Independent Regulatory Review Commission. These comments were considered during the drafting of the final-form regulation.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

The adoption of the regulation will have an impact on costs associated with insurance companies. Please refer to the chart on page 5 of the Regulatory Analysis Form for an estimate of the savings to the regulated community.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

There will be a savings to state government associated with this rulemaking. Please refer to the chart on page 5 of the Regulatory Analysis Form for an estimate of the savings. The savings are expected due to the fact the WCSF will no longer need to prepare, monitor and analyze an annual data call process that has been traditionally used to perform the annual assessment. The only function the WCSF will continue to perform is the invoicing function to all insurers writing workers' compensation coverage in PA for the calendar year being assessed.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	640,000	704,000	774,400	851,840	937,024	1,030,726
Local Government						
State Government	10,000	11,000	12,100	13,310	14,641	16,105
Total Savings	650,000	715,000	786,500	865,150	951,665	1,046,831
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The regulated community savings are an estimate of an average annual savings of \$2,000 per company multiplied by 320 companies (this is the number of insurance companies in PA that write workers' compensation coverage). These companies must maintain a separate record keeping system of written workers' compensation premium by fiscal year as required by the current legislation. They also maintain a calendar year reporting system for recording written workers' compensation premium so they are able to report this information to the Insurance Department on the required annual statement. With the passage of this regulation, companies will no longer need to maintain these dual recording and reporting systems.

The state government savings are expected due to the fact the WCSF will no longer need to prepare, monitor and report an annual data call process that has been traditionally used to perform the annual assessment. The only function the WCSF will continue to perform is the invoicing function to all companies writing workers' compensation coverage in PA for the calendar year being assessed.

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.
N/A.

Program	FY -3	FY -2	FY -1	Current FY
WCSF	\$34,692,068	\$30,390,085	\$26,665,632	\$18,218,868

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Adopting Chapter 165, §§165.1-165.8 is the most efficient method to achieve consistency with the authorizing statute. No other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The adoption of the regulation is the most efficient method of updating the regulatory requirements.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

The adoption of the regulation will reduce costs to insurers and state government by utilizing the standard annual report filed by all insurance companies to perform the assessment process.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will take effect upon approval of the final form regulation by the legislative standing committees, the Independent Regulatory Review Commission and the Office of the Attorney General, and upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

CDL-1 <p style="text-align: center;">FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p style="text-align: center;">(Pursuant to Commonwealth Documents Law)</p>		<p style="text-align: right;">RECEIVED JUL 25 PM 3:44 REVIEW/COMMISSIONARY</p>
# 2279		DO NOT WRITE IN THIS SPACE
Copy below is hereby approved as to form and legality. Attorney General By _____ (Deputy Attorney General) _____ Date of Approval → Check if applicable. Copy not approved. Objections attached.	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: <p style="text-align: center;">Insurance Department</p> <p style="text-align: center;">(AGENCY)</p> DOCUMENT/FISCAL NOTE NO. <u>11-210</u> DATE OF ADOPTION: _____ BY: <u>M. Diane Koken</u> <p style="text-align: center;">M. Diane Koken</p> <p style="text-align: center;">Insurance Commissioner</p> TITLE: _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)	Copy below is hereby approved as to form and legality. Executive or Independent Agencies BY: <u>John V. Turner</u> <u>10/15/02</u> DATE OF APPROVAL (DEPUTY GENERAL COUNSEL) (CHIEF COUNSEL, INDEPENDENT AGENCY) (STRIKE INAPPLICABLE TITLE) → Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF FINAL FORM RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 165
§§ 165.1-165.8

Workers' Compensation Security Fund

PREAMBLE

The Insurance Department (Department) hereby amends 31 Pa. Code to read as set forth in Annex A.

Statutory Authority

The final form regulation is adopted under the authority of sections 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Workers Compensation Security Fund Act (77 P.S. §§1051-1066).

Comments and Response

Notice of proposed rulemaking was published at 32 Pa.B. 3398 (July 13, 2002) with a 30-day comment period. During the 30-day comment period, comments were received from the Alliance of American Insurers (AAI) and the Insurance Federation of Pennsylvania, Inc. (IFP).

During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a response to those comments.

The AAI wanted the Department's regulation, particularly §167.7 (relating to assessment) to be consistent with the statute provisions under 77 P.S. §1055 which limits the assessment on an insurer to one per centum of its net written premiums for the period covered by its annual return. The statute also provides for the elimination of the assessment when the aggregate amount of payments into the fund, along with accumulated interest, less expenditures and known liabilities, is equal to five percent of the loss reserves of all insurers and reciprocal exchanges. AAI then stated that when the amount in the fund is reduced below the five percent of such loss reserves, the assessment on insurers is resumed. And since the remainder of the rule mirrors the statutory provisions, §165.7 should also mirror the statutory provisions relating to the contribution made to the fund by insurers.

Apparently, the AAI was not aware that the intent of the General Assembly was to eliminate an assessment unless absolutely needed. The act indicates that the amendments to sections 5 and 10 of the act would take effect on the effective date of the regulations promulgated under section 9(1) of the act. It is the Department's intent to eliminate the assessment, in accordance to the General Assembly's wishes, until absolutely necessary. The formula that the Department has suggested in §165.7 meets that intention and is appropriate; therefore, the Department has not changed the regulation as requested by the AAI.

The IFP stated that as the Department has closely followed the language of Act 49, the Federation had no comments to the Department's proposed language. The IFP supported the prompt promulgation of the chapter and look forward to working with the Department on areas of mutual concern during its implementation.

The Department thanks the IFP for its support on the regulation.

The IRRC during its review had only 2 concerns. First, in §165.7, relating to assessment, subsection (c) states, “The assessment, when necessary, will be billed by December 31 of the year subsequently, used in the actuarial study.” The reference to “the year subsequently used in the actuarial study” is confusing. It is IRRC’s understanding that the bill will be issued by December 31 of the year in which the actuarial study is completed. This subsection should be amended in the final-form regulation to clearly reflect the timing of the bill. The IRRC also wanted the Department to consider using an example to clarify this subsection.

Second, the IRRC noted that in subsection (d), the word “be” should be deleted in the phrase “is be due by March 31.”

The Department has no problem with the clarification as requested and has changed subsection (c) to read as “The assessment, when necessary, will be billed by December 31 of the year that the actuarial study is completed. (Example: Data from the 2002 calendar year is used, the actuarial study is completed in 2003, then the assessment will be made by December 31, 2003.)”

The Department also corrected subsection (d). This error was due to a change that was made in the publishing of the proposed regulation and was not in the original proposed regulation as submitted by the Department to the Legislative Committees and the IRRC.

Affected Parties

The rulemaking applies to insurance companies doing the business of Workers’ Compensation insurance companies in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department due to the adoption of the proposed rulemaking.

General Public

The adoption of the proposed rulemaking will not impose additional costs on the general public.

Political Subdivisions

The adoption of the proposed rulemaking will not impose additional costs on political subdivisions.

Private Sector

The rulemaking may result in a savings of \$1 million dollars to the private sector (insurance industry) over a 5-year period.

Paperwork

The proposed rulemaking will not result in any additional paperwork requirement on the Department.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin* as a final form regulation. No sunset date has been assigned.

Contact person

Any questions regarding this regulation, should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, phone (717) 787-4429. In addition, questions may be e-mailed to psalvatore@state.pa.us or faxed to (717) 705-3873.

Regulatory review

Under section 5a(c) of the Regulatory Review Act, (71 P.S. §745.5(a)), the agency submitted a copy of this regulation on October 25, 2002 to the Independent Regulatory Review Commission and to the Chairmen of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing this final form regulation, the Department considered all comments received from IRRC, the Committees and the public. This final form regulation was (deemed) approved by the House and Senate Committees on _____. In accordance with section 5a(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), IRRC met on _____ and (deemed) approved the regulation in accordance with section 5a(e) of the Regulatory Review Act (71 P.S. §745.5a(e)).

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No240) (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(1) The regulations of the Department, 31 Pa. Code, are amended by adopting §§165.1-165.8, to read as set forth in Annex A.

(2) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(3) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) The regulation adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. Diane Koken
Insurance Commissioner

Annex A

TITLE 31. INSURANCE. PART III. MISCELLANEOUS PROVISIONS. CHAPTER
165. WORKERS' COMPENSATION SECURITY FUND

Sec.

165.1. Purpose.

165.2. Scope.

165.3. Applicability.

165.4. Definitions.

165.5. Administration.

165.6. Amount of Fund.

165.7. Assessment.

165.8. Failure to comply.

§ 165.1. Purpose.

The purpose of this chapter is to:

(1) Establish how contributions are made to the Fund.

(2) Ensure that a person, entitled to workers' compensation payments from insolvent carriers, will still have a source of funds on which to draw those payments.

§ 165.2. Scope.

This chapter establishes the minimum Fund amount and when contributions are necessary.

§ 165.3. Applicability.

This chapter applies to carriers doing the business of workers' compensation insurance in this Commonwealth.

§ 165.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context indicates otherwise:

Act--The Workers Compensation Security Fund Act (77 P. S. §§ 1051--1066).

Carrier--As defined in section 2 of the act (77 P. S. § 1052).

Certificate of authority--As required by section 208 of The Insurance Department Act of 1921 (40 P. S. § 46).

Commissioner--The Insurance Commissioner of the Commonwealth.

Department--The Insurance Department of the Commonwealth.

Fund--As defined in section 2 of the act.

§ 165.5. Administration.

The Fund may secure, using Commonwealth procurement standards:

(1) A third party administrator to perform claim assessment and handling, and administrative duties and responsibilities.

(2) Actuarial services to provide an annual liability report and to do the analysis described in § 165.6 (relating to amount of fund) to determine the assessment.

§ 165.6. Amount of Fund.

(a) A minimum balance of \$500 million shall be maintained in the Fund.

(b) If, due to the payment of liabilities or claims, the balance of the Fund is reduced below \$500 million, the Department, in order to return the Fund to the \$500 million level, will require contributions sufficient to fund:

(1) The current shortage below \$500 million.

(2) Plus the expected payment of liabilities for the next calendar year.

(3) Plus expenses to administer the Fund for the next calendar year.

(4) Less expected investment earnings on the Fund balance during the next calendar year.

§ 165.7. Assessment.

(a) The amount of an assessment will be determined by using the actuarial services described in § 165.5 (relating to administration).

(b) Every carrier, doing the business of workers' compensation insurance in this Commonwealth, will be assessed, based on a prorata share of the total amount of net-written premiums of workers' compensation insurance reported as written in the previous calendar year's annual statement.

(c) The assessment, when necessary, will be billed by December 31 of the year ~~subsequently~~ ~~used in~~ that the actuarial study is completed. (EXAMPLE: DATA FROM THE 2002 CALENDAR YEAR IS USED, THE ACTUARIAL STUDY IS COMPLETED IN 2003, THEN THE ASSESSMENT WILL BE MADE BY DECEMBER 31, 2003.)

(d) Payment of the assessment, when applicable, is ~~be~~ due by March 31 of the year following the assessment.

§ 165.8. Failure to comply.

(a) If a carrier fails to file a return, or make any payment required by the act, or in case the Commissioner has cause to believe that a return or other statement filed is false or inaccurate in any particular, or that a payment made is incorrect, the Commissioner has full authority to examine all the books and records of the carrier for the purpose of ascertaining the facts and determine the correct amount to be paid. The Commissioner may proceed in any court of competent jurisdiction to recover for the benefit of the Fund any sums shown to be due upon the examination and determination.

(b) A carrier that fails to make a statement as required by the act, or to pay any contribution when due, thereby forfeits to the Fund a penalty of 5% of the amount of unpaid contribution determined to be due, as provided by the act, plus 1% of the amount for each month of delay or fraction thereof after the expiration of the first month of the delay.

(c) The Commissioner will revoke the certificate of authority to do business in this Commonwealth of a carrier which fails to comply with the act or to pay a penalty imposed in accordance with the act.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

SPECIAL PROJECTS OFFICE
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 772-1969
E-mail: psalvatore@state.pa.us

October 25, 2002

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Insurance Department Final Form Regulation No. 11-210, Workers' Compensation
Security Fund Assessment

Dear Mr. Nyce:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your review and approval is final form regulation 31 Pa. Code, Chapter 165, Workers' Compensation Security Fund Assessment.

The purpose of this rulemaking is to administer the Workers Compensation Security Fund Act (Fund) and to establish how contributions are to be made to the Fund. This original statute was adopted in 1937 and amended in 2000 in order to establish standards for the administration of the Fund.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

Comments on the regulation listed below have been received from the following:

Reg #	Regulation Title				
11-210	Workers' Compensation Assesment				
<hr/>					
Ms. Judy Grimes		Date Received	08/12/2002	Date Sent To Cmtes/IRRC	08/13/2002
Policy Manager - Workers Compensation					
Alliance of American Insurers					
3025 Highland Parkway					
Downers Grove, IL 60515					
Phone (630) 724-2100 X00000					
		Letter Co-Author			
		EMail			
<hr/>					
Mr. John Doubman		Date Received	08/13/2002	Date Sent To Cmtes/IRRC	08/13/2002
Secretary and Counsel					
Insurance Federation of Pennsylvania, Inc.					
1600 Market St.					
Philadelphia, PA 19103					
Phone (215) 665-0508 X00000					
		Letter Co-Author			
		EMail	jdoubman@ifpenn.org		

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-210
SUBJECT: Worker's Compensation Security Fund
AGENCY: DEPARTMENT OF INSURANCE

TYPE OF REGULATION

Proposed Regulation
X Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
REGULATORY REVIEW COMMISSION
OCT 25 PM 3:45

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/25/02	<i>B. P. Pagan</i>	HOUSE COMMITTEE ON INSURANCE
10/25/02	<i>[Signature]</i>	
10/25/02	<i>Sen. Pagan</i>	SENATE COMMITTEE ON BANKING & INSURANCE
10/25/02	<i>Ron Deibert</i>	
10/25/02	<i>Elena Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

October 15, 2002