

Regulatory Analysis Form

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2002 JUL -2 AM 9:43

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 proposal 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 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.

(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 undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission 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

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

2279

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

By

(Deputy Attorney General)

JUN 26 2002

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:

Insurance Department

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-210

DATE OF ADOPTION:

BY:

M. Diane Koken

Insurance Commissioner

TITLE:

(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

Copy below is hereby approved as to form and
legality. Executive or Independent Agencies

By

6/17/02
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 PROPOSED RULEMAKING

INSURANCE DEPARTMENT

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

Workers' Compensation Security Fund

Preamble

The Insurance Department (Department) proposes to adopt Title 31, Chapter 165, §§165.1 to read as set forth in Annex A. The proposal 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).

Purpose

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.

Explanation of Regulatory Changes

Section 1 establishes the purpose of the regulation.

Section 2 establishes the scope of the regulation.

Section 3 establishes the applicability of the regulation.

Section 4 defines the terms to be used throughout the chapter unless the context requires otherwise.

Section 5 determines the process utilized to administer the Fund and secure actuarial services.

Section 6 establishes the formula to be used in calculating the assessment in order to bring the fund to the minimum amount necessary to ensure a \$500 million fund balance. This formula includes liabilities for the next year, the expenses to administer the fund for the next year and takes into account investment earnings of the fund.

Section 7 establishes how the contributions shall be made to the Fund and how the Fund shall be administered.

Section 8 establishes the penalties for failing to comply.

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

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on **July 2, 2002**, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days after the close of the Committees' review. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the

Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN
Insurance Commissioner

Annex A

TITLE 31. INSURANCE. PART III. MISCELLANEOUS PROVISIONS. Chapter 165,

Workers' Compensation Security Fund.

§ 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 shall be necessary.

§ 165.3. Applicability.

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

§ 165.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context requires 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 (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) The Fund shall maintain a minimum balance of \$500million.

(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, shall 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 the Commonwealth, shall be assessed, based on a pro-rata 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, shall be billed by December 31 of the year subsequently used in the actuarial study.

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

§165.8. Failure to Comply.

(a) In the event any carrier shall fail to file any return, or make any payment required by this act, or in case the Commissioner shall have cause to believe that any return or other statement

filed is false or inaccurate in any particular, or that any payment made is incorrect, the Commissioner shall have full authority to examine all the books and records of the carrier for the purpose of ascertaining the facts, and shall determine the correct amount to be paid, and may proceed in any court of competent jurisdiction to recover for the benefit of the Fund any sums shown to be due upon such examination and determination.

(b) Any carrier that fails to make any statement as required by the act, or to pay any contribution when due, shall thereby forfeit to the Fund a penalty of five per centum of the amount of unpaid contribution determined to be due, as provided by the act, plus one per centum of such amount for each month of delay or fraction thereof after the expiration of the first month of such delay.

(c) The Commissioner shall revoke the certificate of authority to do business in this Commonwealth of any carrier which shall fail to comply with the provisions of the act or to pay any penalty imposed in accordance with the act.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 705-3873
E-mail: psalvato@ins.state.pa.us

July 2, 2002

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

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

Dear Mr. Nyce:

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

The purpose of this proposed 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, reading "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

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

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

TYPE OF REGULATION

- X Proposed Regulation
- 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

2002 JUL -2 AM 9:43
DEPARTMENT OF INSURANCE
REGULATORY REVIEW ACT

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/12/02	<i>R. Hapberger</i>	HOUSE COMMITTEE ON INSURANCE
7/02/02	<i>ME Mitchell</i>	
7/12/02	<i>Deise Patton</i>	SENATE COMMITTEE ON BANKING & INSURANCE
7/12/02	<i>Ronald Perle</i>	
4/2/02	<i>Elena Ragan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
7/2/02	<i>Mayra Caras</i>	LEGISLATIVE REFERENCE BUREAU

June 28, 2002