

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 165]

Workers' Compensation Security Fund

The Insurance Department (Department) proposes to add Chapter 165 (relating to Workers' Compensation Security Fund) 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).

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

Explanation of Proposed Rulemaking

Section 165.1 (relating to purpose) establishes the purpose of the chapter.

Section 165.2 (relating to scope) establishes the scope of the chapter.

Section 165.3 (relating to applicability) establishes the applicability of the chapter.

Section 165.4 (relating to definitions) defines the terms to be used throughout the chapter unless the context requires otherwise.

Section 165.5 (relating to administration) determines the process utilized to administer the Fund and secure actuarial services.

Section 165.6 (relating to amount of Fund) establishes the formula to be used in calculating the assessment 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 165.7 (relating to assessment) establishes how the contributions shall be made to the Fund and how the Fund shall be administered.

Section 165.8 (relating to failure to comply) 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 proposed rulemaking may result in a savings of \$1 million to the private sector (insurance industry) over a 5-year period.

Paperwork

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

Effectiveness/Sunset Date

The proposed 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

Fiscal Note: 11-210. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART III. MISCELLANEOUS PROVISIONS

CHAPTER 165. WORKERS' COMPENSATION SECURITY FUND

Sec.	Purpose.
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 the actuarial study.

(d) Payment of the assessment, when applicable, is 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.

[Pa.B. Doc. No. 02-1200. Filed for public inspection July 12, 2002, 9:00 a.m.]