

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Workers' Compensation Security Fund

Proposed Amendments: N.J.A.C. 11:1-46.1 through 46.3

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 34:15-103 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2007-258

Submit comments by October 5, 2007 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) originally adopted N.J.A.C. 11:1-46 to address contributions to the Stock Workers' Compensation Security Fund established pursuant to N.J.S.A. 34:15-103 et seq. A separate Mutual Workers' Compensation Security Fund was also created by that statute. The statute was amended by P.L. 2004, c. 179, enacted December 22, 2004, to merge the Stock Security Fund and the Mutual Security Fund together, (hereinafter referred to as the Security Fund or Fund). The Department now proposes to amend N.J.A.C. 11:1-46 to reflect the current operation of the Security Fund as one entity, as opposed to two separate entities. A summary of the proposed amendments follows.

The subchapter heading is proposed to be amended to read Workers' Compensation Security Fund.

N.J.A.C. 11:1-46.1(a) is proposed to be amended to delete the word "Stock."

N.J.A.C. 11:1-46.1(b) is proposed to be amended to delete the term "stock insurer" and replace it with "carriers."

N.J.A.C. 11:1-46.2 is proposed to be amended to replace the definitions of "stock carrier" and "stock fund" with definitions of "carrier," and "fund" to reflect the comparable definitions in N.J.S.A. 34:15-104, as amended by P.L. 2004, c. 179. The definition of "insolvent carrier" is amended to delete the word "stock."

N.J.A.C. 11:1-46.3(a) is proposed to be amended to delete the word "stock" and to change the word "insurer's" to "carrier's" to reflect the applicable statutory language governing the Security Fund.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments do not independently impose any new requirements, but rather reflect the existing statutory scheme as set forth in N.J.S.A. 34:15-103 et seq. regarding the Security Fund, as that statute was amended by P.L. 2004, c. 179. Accordingly, conforming the rules to the existing statutory scheme should help avoid any confusion regarding contributions to the Security Fund and the application of the rules to all carriers, rather than only to stock carriers.

Economic Impact

The proposed amendments independently do not impose any new costs on insurers. The proposed amendments reflect the statutory scheme as currently set forth in N.J.S.A. 34:15-103 et seq. As a practical matter, mutual carriers, which heretofore were not required to pay the costs related to stock insurer insolvencies, have been required to do so since December 22, 2004, and in fact have been assessed for those costs in accordance with the statutory scheme since that time. Mutual, as well as stock, carriers will continue to be subject to these costs until such time as the newly combined Security Fund is funded to the prescribed minimum amount set forth in N.J.S.A. 34:15-108. The assessments that have been imposed since 2004 have equaled one percent of a carrier's net written premium for the immediately preceding calendar year. The Department anticipates that this assessment will continue into the foreseeable future. No new additional professional services should be required in order to comply with the proposed amendments.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments do not impose any new reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted above, the proposed amendments will merely revise the rules to reflect the current statutory scheme for the administration of the Security Fund, including the fact that all carriers are now subject to assessment to maintain the Security Fund monies at the minimum amount set forth in N.J.S.A. 34:15-108. As set forth above, the proposed amendments do not independently impose any new requirements on any carrier, but merely reflect the current statutory scheme, which provides no differentiation in compliance requirements specifically based on business size. The Department notes that assessments are based on net written premium, which is indicative of insurer size.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 46. [STOCK] WORKERS' COMPENSATION SECURITY FUND

11:1-46.1 Purpose and scope

(a) This subchapter sets forth procedures for the assessment of [stock] carriers for purposes of making contributions to the [Stock] Workers' Compensation Security Fund pursuant to N.J.S.A. 34:15-108.

(b) This subchapter shall apply to all [stock insurers] **carriers** authorized or admitted to transact workers' compensation insurance in this State pursuant to Title 17 of the Revised Statutes.

11:1-46.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Carrier" means any stock corporation, reciprocal or association organized and operating on the mutual plan, authorized or admitted to transact workers' compensation insurance in this State, except an insolvent carrier.

"Fund" means the Workers' Compensation Security Fund established pursuant to N.J.S.A. 34:15-103 et seq.

"Insolvent [stock] carrier" means a [stock] carrier which has been determined to be insolvent, or for which, or for the assets of which, a receiver has been appointed by a court or public officer of competent jurisdiction and authority.

["Stock carrier" means any stock corporation authorized or admitted to transact workers' compensation insurance in this State, except an insolvent stock carrier.

"Stock fund" means the Stock Workers' Compensation Security Fund established pursuant to N.J.S.A. 34:15-103 et seq.]

11:1-46.3 Contributions to [stock] fund

(a) The Department shall periodically evaluate the amount of funds in the [stock] fund. When the aggregate amount of all payments into the [stock] fund, together with accumulated interest thereon, less all its expenditures and known liabilities of all [stock] carriers for the payment of benefits, shall be reduced below three percent of the loss reserves of all [stock] carriers for the payment of benefits under N.J.S.A. 34:15-1 et seq. or 33 U.S.C. §§ 901 et seq. by reason of payments from and known liabilities of the fund, then the Commissioner shall by Order require that contributions to the fund be made based on the net premiums of each [stock] carrier, as shown on the [insurer's] **carrier's** most recently filed annual statement and that such contributions continue until the [stock] fund, over and above its known liabilities, shall be equal to not less than three percent nor more than five percent of such reserves.

(b) (No change.)