

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Stock Workers' Compensation Security Fund

Proposed New Rules: N.J.A.C. 11:1-46

Authorized By: Holly C. Bakke, 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 2004-288

Submit comments by October 1, 2004 to:

Douglas A. Wheeler, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

N.J.S.A. 34:15-103 et seq. established the Stock Workers' Compensation Security Fund (Stock Security Fund or Fund) for the purpose of paying valid claims for compensation or death benefits made pursuant to N.J.S.A. 34:15-1 et seq. or 33 U.S.C. §§ 901 et seq., and remaining unpaid, in whole or in part, by reason of the default, after March 26, 1935, of an insolvent stock workers' compensation insurer. Initial funding of the Stock Security Fund was made pursuant to N.J.S.A. 34:15-107, which required that every stock worker's compensation insurer pay to the Fund on September 1, 1935, an amount equal to one percent of its net written premiums as shown on its financial statements for the period ending June 30, 1935, and continuing thereafter,

in an amount equal to one percent of its net written premiums for each six-month period as reported in its semi-annual financial statement. Pursuant to N.J.S.A. 34:15-108, the original assessment ceased when the Stock Security Fund equaled five percent of the loss reserves of all stock carriers for payment of benefits under N.J.S.A. 34:15-1 et seq. or 33 U.S.C. §§ 901 et seq. That statute further provides that, whenever the amount of the Fund shall be reduced below five percent of the loss reserves by reason of payments from and known liabilities of the Fund, the contributions to the Fund may be resumed and may continue until the Fund, over and above its known liabilities, shall be equal to not less than three percent nor more than five percent of such reserves. While assessments have been made in the past, no assessments have been made for several years, until 2004. Pursuant to Order No. A04-126, the Commissioner of Banking and Insurance (Commissioner) found that, as of December 31, 2003, the amount of the Fund was equal to 1.39 percent of the applicable loss reserves, well below the three percent minimum required by the statute. The Commissioner ordered that each stock worker's compensation insurer pay an amount equal to one percent of its net written premiums as reported in its annual statement for the period ending December 31, 2003, with such payments due by July 1, 2004.

The Department of Banking and Insurance (Department) is now proposing these new rules to reflect and codify the procedures set forth in N.J.S.A. 34:15-108 and Order No. A04-126, 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.

Proposed N.J.A.C. 11:1-46.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-46.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:1-46.3 sets forth the procedures for contributions to the Stock Fund. The rule provides that the Department shall periodically evaluate the amount of funds in the Stock Fund, and when the aggregate amount of all payments into the Stock Fund, together with accumulated interest thereon, less all its expenditures and the 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 payment of benefits under applicable law by reason of payments from and known liabilities of the Fund, the Commissioner shall, by order, require that contributions to the Fund be made based on the net written premiums of each stock workers' compensation carrier. The contributions shall 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. The proposed rules further provide that payments shall be made in the amount specified in and pursuant to the order of the Commissioner.

Proposed N.J.A.C. 11:1-46.4 sets forth penalties for violations of the subchapter.

The proposed new rules thus set forth procedures to implement N.J.S.A. 34:15-108 with respect to the process by which the Commissioner shall determine whether contributions to the Stock Fund are required to be made, and the procedures by which such contributions shall be made.

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 new rules codify procedures for the implementation of N.J.S.A. 34:15-108 with respect to required contributions to the Stock Security Fund in order to maintain the Fund at levels required by the statute. The proposed new rules will further advise stock workers' compensation insurers of the procedures for the payment of such contributions otherwise required by law. The Fund acts as a safety net for injured workers to ensure that they receive the workers' compensation benefits, on which they typically rely to pay their day-to-day living expenses, in the event their stock worker's compensation carrier becomes insolvent. These proposed rules thus implement the intent of the Legislature to maintain this safety net.

Economic Impact

Stock workers' compensation insurers will be required to pay assessments as may be required by order of the Commissioner necessary to replenish the Stock Security Fund to minimum levels required pursuant to N.J.S.A. 34:15-108. The primary impact of such assessments is not, however, imposed by these rules, but by N.J.S.A. 34:15-108, which requires that stock workers' compensation insurers pay such contributions when the Stock Security Fund is reduced below three percent of applicable loss reserves.

Federal Standards Statement

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

Jobs Impact

The Department does not believe that the proposed new rules will result either in the generation or the loss of jobs in this State. The proposed new rules merely establish procedures by which the Commissioner shall order stock workers' compensation insurers to pay contributions to the Stock Security Fund when the Fund is reduced below requisite levels as established by statute. The requirement that stock workers' compensation insurers make such contributions has existed since 1935.

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 new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules will apply to "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The small businesses to which the rules will apply are stock workers' compensation insurers authorized or admitted to transact business in this State. As noted above, the proposed new rules do not directly impose reporting, recordkeeping or other compliance requirements on small businesses. Rather, the proposed new rules merely set forth procedures by which the Commissioner shall order insurers to pay contributions to the Stock Security Fund when required by N.J.S.A. 34:15-108. The requirement that insurers make such contributions has existed since the law was originally

enacted in 1935. The proposed new rules do not require the utilization of additional professional services.

The proposed new rules do not provide any differentiation in compliance requirements based on business size. As noted above, the proposed new rules do not directly impose any compliance requirements, but rather reflect the statutory requirement that all stock workers' compensation insurers make contributions to the Stock Security Fund when the level of the Fund falls below requisite levels as set forth by statute. It should be noted, however, that assessments will be made based on the net written premiums of insurers, which is indicative of business size.

Smart Growth Impact

The proposed new rules 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 proposed new rules follows:

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 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.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"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 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) All payments shall be made in the amount specified in and pursuant to the Order of the Commissioner.

11:1-46.4 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties authorized pursuant to N.J.S.A. 34:15-109.