

Regulatory Analysis Form		This space for use by IRRC RECEIVED	
(1) Agency Department of Environmental Protection		2005 FEB -4 PM 12:38 IRRC REGULATORY REVIEW COMMISSION	
(2) I.D. Number (Governor's Office Use) 7-389		IRRC Number: 2392	
(3) Short Title Mine Subsidence Fund			
(4) PA Code Cite 25 Pa. Code Chapter 401		(5) Agency Contacts & Telephone Numbers Primary Contact: Marjorie Hughes 783-8727 Secondary Contact: John Dernbach 783-8727	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>This rulemaking amends Chapter 401 regulations, which provide information used by the Coal and Clay Mine Subsidence Insurance (MSI) Board (Board) in the administration of the Coal and Clay Mine Subsidence Insurance Fund (Fund). The Board is comprised of the designees of the Secretary of the Department of Environmental Protection as Chairman, and the Insurance Commissioner and the State Treasurer as members. Chapter 401 provides definitions of commonly used terms, and codifies permanent provisions of the insurance policy (provisions that should not change, that are static). Static provisions of the insurance policy include provisions describing the eligibility criteria for coverage, the losses that are covered, and the rules governing the processing of claims. However, other provisions of the insurance policy that are dynamic and that the Board must often review and revise, such as coverage limits, premium surcharges, and policy durations, have been added to Chapter 401. This rulemaking removes the dynamic provisions of the insurance policy from the regulations. The Board, under its authority, will promulgate those provisions in the insurance policy itself. In addition to the elimination of the dynamic provisions of the insurance policy from Chapter 401, this rulemaking amends the definition of "mine subsidence" to more clearly state that mine subsidence is the movement of the ground surface that results from the collapse of underground coal or clay mine workings. Two new terms, "mine workings" and "agent" are then defined. Finally, the effective date of coverage is revised to make it clear that coverage is effective upon the date the completed application is submitted if the Board receives a premium payment in full within eighty (80) days of the receipt of the application if all the statutory and regulatory eligibility requirements are met.</p>			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <p>Section 19 of the Act of August 23, 1961 (P.L. 1068 No. 484), as amended, (52 P.S. §§ 3201-3225) (Act) provides that the Board shall have the power to make rules and regulations and other conditions of the policies.</p>			

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.

This rulemaking is not mandated by federal or state law or by court order.

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

Since the Board reviews and revises the dynamic provisions of the insurance policy in its public meetings, as described in section 8 of this analysis, establishing those provisions in Chapter 401 leads to periodic discrepancies between the provisions contained in the insurance policy and the provisions contained in Chapter 401. Such discrepancies could lead to disputes between policyholders and the Fund (there are currently more than 53,000 policies in force and approximately 100,000 policyholders). Removing the dynamic provisions of the insurance policy from Chapter 401 eliminates their potential for conflicts with provisions that are best contained in only the insurance policy. The potential for conflicts between the Fund and its policyholders is further reduced by the improvements made to the definition of "Mine Subsidence," the additional definitions provided for "Mine Workings" and "Agent," and the improvements made to the effective date of coverage provisions.

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

There are none. The Commonwealth is required by the act to establish and maintain the Fund. Chapter 401 facilitates the prudent operations of the Fund.

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

The improvements to the Fund's operations derived from these regulations will ultimately benefit the MSI policyholders and the operations of the Fund. There are currently more than 53,000 structures insured, approximately 100,000 policyholders, and more than one million structures located over mine voids that could potentially be insured.

Regulatory Analysis Form

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

No one would be adversely affected by the regulations.

(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.)

Other than the requirement that claimants must contact the Fund within one year of the date of settlement to allow the Fund to inspect the repairs as a condition of continued coverage, a provision that is not being amended by this rulemaking, there are no compliance provisions in Chapter 401. There are approximately 100,000 policyholders who currently subscribe to MSI.

(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.

Numerous policyholders have recommended increases to coverage limits and have requested that the coverage limits be revised on a more routine basis. The Board also reviews market conditions, such as real property appreciation and changes to building material costs as well as the financial position of the Fund when it routinely reviews limits of coverage and premium surcharges. The Board identified the need to remove all the dynamic provisions of the insurance policy from Chapter 401, amend the definition of "mine subsidence," add the term "mine workings," and revise language related to the effective date of coverage.

(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.

There are no costs associated with this rulemaking. The amendments will facilitate the Board's efforts to keep coverage limits at levels that meet the needs of the policyholders as they are balanced against the Board's mandate to protect the solvency of the Fund.

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 would be no such efforts or costs.

(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.

These amendments to Chapter 401 will not result in new costs but will eliminate the costs associated with revising the coverage limit, premium surcharges, and policy durations through regulations. Although the savings will not be measurable, the Board and its agent, the Department of Environmental Protection, may use the time they save by avoiding the regulatory process to focus on other aspects of the Fund's operations that may result in improvements and measurable savings.

Regulatory Analysis Form

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

This rulemaking has no measurable financial impacts on the Fund.

Regulatory Analysis Form

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

Program	FY-3 (2001-2002)	FY-2 (2002-2003)	FY-1 (2003-2004)	Current FY (2004-2005)
General Operations (291)	\$1,999,000	\$2,426,000	\$2,357,000	\$3,001,000*
Payment of Claims (292)	\$796,000	\$636,000	\$1,153,000	\$2,000,000*
TOTAL: Coal and Clay Mine Subsidence Insurance Fund (086)	\$2,795,000	\$3,062,000	\$3,510,000	\$5,001,000*

Please Note:

All costs of the Mine Subsidence Insurance Program are paid by the Coal and Clay Mine Subsidence Insurance Fund (086), which is a special fund funded from two appropriations: General Operations (291) and Payment of Claims (292). The amounts indicated for the current Fiscal Year (2004-2005), which are highlighted with an asterisk mark (*), reflect authorized amounts, not actual amounts, which are provided above for FY-3, FY-2, and FY-1.

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

As noted in Section (20a) of this report, these regulations are expected to be revenue neutral. Additionally, all the costs of the MSI Program are paid by the Coal and Clay Mine Subsidence Insurance Fund, which is a special fund constituted from MSI policyholder premiums and not from tax receipts.

The MSI Program is funded from two appropriations, General Appropriations (291) and Payment of Claims (292). The 291 Appropriation pays for administrative costs. The 292 Appropriation pays for damage claim settlements and the refund of premiums. Due to the nature of mine subsidence, expenditures for claims can vary significantly from year to year, as demonstrated by comparing expenditures in FY-3 and FY-2 with those in FY-1. Increased subsidence activity can also increase administrative costs, but less significantly. Currently, the Coal and Clay Mine Subsidence Insurance Fund reserve is approximately \$40,000,000 and the value of the underwritten coverage, which constitutes the maximum loss for which the fund has liability, exceeds \$5,000,000,000. Over the past 10 years, the Coal and Clay Mine Subsidence Insurance Fund reserves have grown at a rate of about 12% per year.

All the expenditure amounts were provided directly from the Comptroller's Office. Expenditure amounts represent only costs incurred during a given fiscal year. They do not include costs incurred in a previous year and paid in the given fiscal year.

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

In effect, these amendments will eliminate the need for future rulemakings to modify coverage limits, premium surcharges and policy durations. There are no costs associated with the Board making those provisions of the insurance policy during its meetings.

Regulatory Analysis Form

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

There are no practical alternatives to this rulemaking.

(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.

There are no companion federal statutes or regulations.

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

Other states that operate mine subsidence insurance programs also establish the conditions of coverage in their insurance policies. The states providing mine subsidence coverage do not compete for subscriptions. Individual states only provide coverage in their own state. The amendments in this regulation will not have a financial impact on the Fund.

(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 government agencies will be affected by these regulations.

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

DEP presented the proposed rulemaking to the Board at a meeting held on December 18, 2003, wherein it was adopted by the Board. It was subsequently published in the *Pennsylvania Bulletin* on March 6, 2004, with a 30-day comment period that concluded on April 5, 2004. Due to the minor and uncontroversial nature of the proposed amendments, no public meetings or hearings were held. The proposed rulemaking was provided to the Independent Regulatory Review Commission (IRRC) on March 31, 2004. Two comments were received on the proposed rulemaking. One comment was from the Insurance Agents and Brokers of Pennsylvania, a trade association representing independent producers licensed in Pennsylvania who noted their support for the rulemaking. The other was from IRRC who recommended a definition be provided for the term "agent", which is incorporated into the final rulemaking and addressed in the final-form Annex A.

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.

These amendments to Chapter 401 will not change any paperwork requirements.

(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.

These amendments to Chapter 401 impact all policyholders equally. In addition to information included as part of subsequent MSI policies, these revisions will be highlighted on the MSI website (www.pamsi.org), and with the assistance of the mortgage insurance industry, other mass media avenues such as newspaper and radio announcements will be utilized.

(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?

These regulations will become effective on the date they are published as a final rulemaking in the *Pennsylvania Bulletin*. There are no compliance or permitting deadlines.

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

The Board reviews Chapter 401 on an annual basis or more often when necessary.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

2005 FEB -4 PM 12: 38

LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

2392

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 true and
correct copy of a document issued, prescribed or
promulgated by:

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION
COAL AND CLAY MINE SUBSIDENCE
INSURANCE BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-389

DATE OF ADOPTION 12/15/04

BY *Kathleen A. McGinty*

TITLE **KATHLEEN A MCGINTY
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY *[Signature]*
DATE OF APPROVAL 1.3.05

EXEC. (Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

ORDER ADOPTING REGULATIONS

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD**

Mine Subsidence Fund

25 Pa. Code, Chapter 401

**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD
25 Pa. Code Chapter 401
Mine Subsidence Fund**

Order

The Coal and Clay Mine Subsidence Insurance (MSI) Board (Board) by this order amends Chapter 401 pertaining to the administration of the MSI Fund, to read as set forth in Annex A. The amendments will improve the understanding of MSI policyholders and applicants relevant to terms and provisions of insurance coverage.

This order was adopted by order of the Board at its meeting of December 15, 2004.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin* as a final rulemaking.

B. Contact Persons

For further information contact Lawrence Ruane, Administrator, Mine Subsidence Program, P.O. Box 8462, Rachel Carson State Office Building, Harrisburg, PA 17105-8462, (717) 783-9590, or Marc Roda, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.dep.state.pa.us>), direct link: Participate.

C. Statutory Authority

The final rulemaking is being made under the authority of Sections 19 of the Act of August 23, 1961 (P.L. 1068 No. 484), as amended, (52 P.S. §§ 3201-3225) (Act), which provides that the Board shall have the power to make rules and regulations and other conditions of the policies.

D. Background and Summary of the Amendment

The Fund was created in 1961 to provide a reliable source of compensation for losses caused by coal and clay mine subsidence, a risk excluded from standard homeowners insurance policies. The Fund is vital to the economic well being of

Pennsylvania's coal mining regions because it underwrites potential losses to real property and thereby facilitates the collateralization of real property that is needed for economic growth in the housing industry.

Section 1 of the Act created the Board. It consists of the Secretary of the Department of Environmental Protection (Department) as Chairperson, and the State Treasurer and the Insurance Commissioner as Members. A listing of the Board members is available upon request from Lawrence Ruane, whose name, address and phone number appear in Section B of this preamble. Section 19 of the Act provides that "the Board may make such rules and regulations and such other conditions of the policies as it deems just and expedient in keeping with the fulfillment of the purposes herein set out, . . ."

Chapter 401 codifies terms and definitions used by the Fund, establishes procedures that are followed in the administration of the Fund and Program, and establishes static provisions of coverage, such as eligibility criteria, that are not expected to be routinely changed. In prior amendments to Chapter 401, more dynamic provisions of the insurance policy, i.e., coverage limits, premium surcharges and policy durations, which are coverage provisions that are continually reviewed and revised by the Board, were inappropriately added to Chapter 401. This rulemaking will remove the dynamic provisions of coverage from Chapter 401 and thereby facilitate the Board's efforts to provide policyholders with relevant coverage while safeguarding the solvency of the Fund. It will also eliminate confusion and the potential for conflicts between provisions in Chapter 401 and provisions in the insurance policy. This rulemaking also serves to define that agents of the Board are employees of DEP who work on behalf of the Board. Finally, it codifies the established practice of the Board to make coverage effective upon the date of the Board's receipt of a completed application if the corresponding premium in full is also received within eighty (80) days of the receipt of the application and all the statutory and regulatory eligibility requirements are met.

DEP presented the proposed amendments to the Board at a meeting held on December 18, 2003 wherein the Board adopted them. The proposed rulemaking was subsequently published in the *Pennsylvania Bulletin* on March 6, 2004, with a 30-day comment period that concluded on April 5, 2004. Due to the minor and uncontroversial nature of the proposed amendments, no public meetings or hearings were held. The proposed rulemaking was provided to the Independent Regulatory Review Commission (IRRC) on March 31, 2004. IRRC provided its comments to the Board on May 5, 2004.

E. Summary of Changes to the Proposed Rulemaking

The Board revised proposed § 401.1 by adding a definition of the term "Agent" to establish that throughout Chapter 401 the term agent refers to employees of DEP who work on behalf of the Board. The Board also revised proposed § 401.13 to clarify that coverage is effective retroactive to the date of the submission of a completed application if the corresponding premium-in-full is received within 80 days of the receipt of a completed application.

F. Summary of Comments and Responses on the Proposed Rulemaking

Two comments were received on the proposed rulemaking. One comment was from the Insurance Agents and Brokers of Pennsylvania, a trade association representing independent insurance producers licensed in Pennsylvania, who expressed support for the rulemaking. The other was from the Independent Regulatory Review Commission, who recommended a definition be provided for the term “agent,” which is incorporated into the final rulemaking and addressed in the final-form Annex A.

G. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the final regulation.

Benefits

This final rulemaking benefits the Fund and its policyholders by eliminating conflicts between insurance coverage provisions contained in § 401.13 and those contained in the insurance policy, which is the contract between the Fund and its policyholders. Those conflicts are eliminated by removing from § 401.13 provisions of insurance coverage that periodically change, such as coverage limits, because they are more appropriately provided in the insurance policy, where they may be adopted by the Board in open public meetings. As a result, the Board will be more agile when making adjustments to the provisions of coverage, which is what the Act intends. The Fund and its policyholders will also benefit from clarity that this rulemaking provides through improvements made to definitions in § 401.1 and through clarifications in § 401.13, concerning effective date of coverage.

Compliance Costs

There are no costs associated with the final rulemaking. However, removing the coverage provisions from § 401.13 so that they are only provided in the insurance policy will not only eliminate conflicts but it will also eliminate the need to promulgate regulations when changes in the insurance policy are implemented. These efficiencies will result in significant cost savings, which ultimately may be conveyed to policyholders in the form of lower premium rates.

Compliance Assistance Plan

This proposed rulemaking does not require a compliance assistance plan because it does not propose new or modify existing compliance provisions. In addition to information included as part of subsequent MSI policies, these revisions will be highlighted on the MSI website (www.pamsi.org), and with the assistance of the mortgage insurance industry, other mass media avenues such as newspaper and radio announcements will be utilized.

Paperwork Requirements

No additional paperwork will result from this proposed rulemaking.

Pollution Prevention

This rulemaking does not result in pollution or pollution prevention.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5 (a) of the Regulatory Review Act, The Act of June 30, 1989 (P.L. 73, No. 19), 71 P.S. §§745.1-745.15, the Department submitted a copy of the proposed regulation on March 31, 2004, to the Independent Regulatory Review Commission (IRRC), and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. The objections and concerns expressed by IRRC have been addressed by the final amendments, as is explained within this preamble.

Under Section 5 (c) of the Regulatory Review Act, the Department IRRC and the committees with copies of the comments received during the public comment period, as well as other documentation when requested. The Department has considered all comments received from IRRC, the committees and the public in preparing these final-form regulations.

Under Section 5.1 (j.2) of the Regulatory Review Act, on (blank), these final-form regulations were deemed approved by the House and Senate Committees. Under Section 5.1 (e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

(1) Public notice of the proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations promulgated there under at 1 Pa. Code §§7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications to the amendments do not enlarge the purpose of the proposed amendments published at 34 *Pa. B.* 1329 (March 6, 2004).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order and in the public interest.

K. Order of the Board

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

(a) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapter 401 are amended by revising §§ 401.1 and 401.13 as set forth in Annex A.

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

(c) The Chair person shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House of Environmental Resources and Energy committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

Kathleen A. McGinty
Chairperson
Coal and Clay Mine Subsidence Insurance Board

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART III. COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD

CHAPTER 401. MINE SUBSIDENCE FUND

GENERAL PROVISIONS

§ 401.1 DEFINITIONS

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

* * * *

AGENT— EMPLOYEES OF THE DEPARTMENT WHO WORK ON BEHALF OF THE BOARD.

* * * *

Mine subsidence—[The lateral or vertical subsidence of the earth resulting from past or present underground coal or clay mining operations.] The movement of the ground's surface as a result of the partial or complete cave-in or the collapse of underground coal or clay mine workings.

Mine workings— The roof, floor, or pillars within an underground coal or clay mine.

* * * *

INSURANCE POLICIES

§ 401.13. Coverage limits and premiums for insurance.

(a) The maximum amount of insurance for a single covered structure [is \$150,000 for a residential structure and \$250,000 for a commercial structure or the current market value of the structure, whichever is less], **the term or duration of the policy, and the premium rate shall be determined by the Board.**

(b) [The premium charged on a policy, for an amount of coverage which is less than 70% of the current market value of the covered structure, shall, by resolution of the Board, be subject to a surcharge

based upon the difference between the amount of available insurance purchased and the current market value of the structure.

(c) The premium charged on a policy shall, by resolution of the Board, be subject to additional surcharges of up to 25%, in accordance with the degree of risk, for each of the following conditions:

(1) The location of the covered structure in an area subject to subsidence from active mining.

(2) The location of the covered structure in an area scheduled for underground flushing operations.

(3) The location of the covered structure in an area having a high risk of subsidence damage.

(4) The covered structure having a history of subsidence damage.

(d) An insurance policy [will not be] is effective [until] [when] UPON THE DATE a complete application is received by the Board or its agent[s and] PROVIDED the premium [has been] associated with that application is received [and the maximum term for all insurance policies will be 1 year, unless otherwise specified by a Board resolution and disclosed to the policyholders] by the Board or its agent[s] WITHIN THE NEXT 80 DAYS AND PROVIDED THAT THE APPLICANT AND STRUCTURE MEET THE ELIGIBILITY REQUIREMENTS SET FORTH IN THE ACT AND IN 25 PA. CODE § 401.11 (RELATING TO ELIGIBILITY FOR INSURANCE).

* * * * *

**MINE SUBSIDENCE FUND AMENDMENTS
COMMENT AND RESPONSE DOCUMENT**

List of Commentators

1. Timothy P. Lyden
Vice President of Public Affairs
Insurance Agents and Brokers of Pennsylvania
5050 Ritter Road
Mechanicsburg, PA 17055
2. Independent Regulatory Review Commission

COMMENTS AND RESPONSES

1. **Comment:** We fully support the proposed amendments to Chapter 401. (1)

Response: Thank you for your support.

2. **Comment:** The term “agent” is used throughout Chapter 401 and is undefined. It is unclear who are agents of the Board. (2)

Response: We agree. The term agent is defined in the final-form Annex A as the employees of the Department who work on behalf of the Board.



**Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
February 4, 2005**

Policy Office

717-783-8727

Mary S. Wyatte, Esq.
Acting Director
Independent Regulatory Review Commission
14th Floor, Harrisstown #2
333 Market Street
Harrisburg, PA 17120

RE: Final Rulemaking: Chapter 401, Mine Subsidence Fund (#7-389)

Dear Ms. Wyatte:

Enclosed is a copy of a final regulation for review and comment by the Independent Regulatory Review Commission (Commission) pursuant to Section 5(a) of the Regulatory Review Act. The Coal and Clay Mine Subsidence Insurance (MSI) Board (Board) approved this final-form rulemaking December 15, 2004.

This rulemaking improves sections of Chapter 401 that provide definitions of terms and that describes provisions of insurance coverage and provides substantial benefits to Mine Subsidence Fund (MSI) policyholders and applicants by clarifying the risk of loss that is covered under an MSI policy. The most compelling reason to amend Chapter 401 is to eliminate a conflict between the \$150,000 limit of residential insurance coverage provided in Chapter 401 and the \$250,000 limit of residential coverage established by the MSI Board in an open public meeting. Removing coverage limits as well as other provisions of coverage that, by their nature, are dynamic and need to be periodically revised due to changes in financial markets, will not only eliminate current conflicts but also prevent future conflicts. The residents of the coal regions will benefit economically and financially from expanded coverage limits and from the MSI Board's ability to expediently make other policy changes that respond to their coverage needs.

Section 401.1 of this rulemaking revises the definition of "Mine Subsidence" and provides a definition for a new term, "Mine Workings," to clarify that the only source of damage compensable under an MSI policy is subsidence resulting from underground coal and clay mines. In response to the comment submitted by the Independent Regulatory Review Commission, a definition for the term "Agent" has also been added to the final regulations. An agent, as used in Chapter 401, is an employee of DEP who works on behalf of the Board. The coverage limit, premium surcharge, and policy term limit provisions of §401.13 were removed because they conflict with corresponding provisions of the insurance policy that the Board periodically

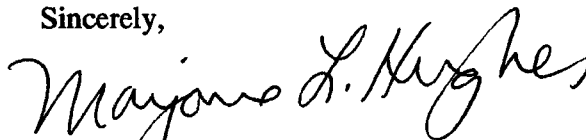
revises. Further revisions were made to the language in §401.13 concerning the effective date of an insurance policy. This additional language further clarifies the established practice of the MSI Board to make coverage effective upon the date of a completed application if the Board receives the corresponding full premium within the next eighty (80) days and if all the statutory and regulatory eligibility requirements are met.

DEP presented the proposed rulemaking to the MSI Board at a meeting December 18, 2003, wherein the Board adopted it. It was subsequently published in the *Pennsylvania Bulletin* on March 6, 2004, with a 30-day comment period that concluded on April 5, 2004. There were no public meetings or hearings requested or held.

Two comments were received on the proposed rulemaking. One comment was from the Insurance Agents and Brokers of Pennsylvania, a trade association representing independent producers licensed in Pennsylvania who noted their support for the rulemaking. The other was from the Commission who recommended a definition be provided for the term "agent," which is incorporated into the final rulemaking.

The Department will provide assistance as necessary to facilitate the Commission's review of this final-form regulation under Section 5.1(e) of the Regulatory Review Act. This review is tentatively scheduled for March 10, 2005.

Sincerely,



Marjorie L. Hughes
Regulatory Coordinator

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 7-389
SUBJECT: Mine Subsidence Fund
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

2005 FEB -4 PM 12: 38

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/4/05	<i>Vicki Hoffman</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
2/4/05	<i>Batricia Carnathan</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
2/4/05	<i>St. Melvett</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

