

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

Department of Environmental Protection

(2) Agency Number: 35

Identification Number: #7-424

IRRC Number:

2737

(3) Short Title: Coal and Clay Mine Subsidence Insurance (MSI) Fund (Fund)

(4) PA Code Cite: 25 PA. Code Chapter 401

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate

Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
(717) 772-4768

Secondary Contact: Lawrence Ruane

Department of Environmental Protection
Mine Subsidence Program
Rachel Carson State Office Building
P.O. Box 8462
Harrisburg, PA 17105-8462
(717) 783-9590

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

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INDEPENDENT REGULATORY REVIEW COMMISSION

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- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulations found in Chapter 401 address the administration of the Fund. The proposed amendments will clarify the regulations concerning issuance of MSI policies by: (1) revising some of the definitions to ensure consistency with the MSI insuring agreement; (2) codifying standards for issuing MSI policies for multiple unit structures; (3) simplifying and expanding the criteria for covering multiple purpose structures; (4) codifying the Board's policy for issuing coverage for damaged structures. The standard for waiving the Loss Deductible will be amended to be consistent with current practice. Finally this proposal will establish new regulations: (1) addressing the submission of insurance applications by insurance producers; and (2) explicitly authorize the issuance of grants and loans to assist in developing new technologies or services which can assist in the Fund's administration.

(9) Include a schedule for review of the regulation including:

- | | |
|---|-------------------|
| A. The date by which the agency must receive public comments: | <u>01/20/2009</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>10/31/2009</u> |
| D. The expected effective date of the final-form regulation: | <u>10/31/2009</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>10/31/2009</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

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

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

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Section 19 of the Act of August 23, 1961, (P.L. 1068 No. 484), as amended, (52 P.S. §§ 3201-3225) (Act) provides, *inter alia*, that the Board shall have the power to make rules and regulations.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Fund was created in 1961, to provide a reliable source of compensation for damage to structures caused by underground coal and clay mine subsidence, a risk excluded from standard property and casualty insurance policies. This insurance pool of monies for compensating owners of structures damaged by underground coal or clay mine subsidence is vital to the economic well being of the Commonwealth's coal mining regions. The amendments affecting the issuance of MSI policies will increase the availability of MSI policies for protecting persons from the risk of their structures being damaged by underground coal or clay mine subsidence. The insurance producer provisions codifying the Board's procedures and standards for accepting MSI applications from insurance producers insures equal treatment for all insurance producers. In addition, these regulations will codify a new requirement that insurance producers follow the Insurance Department's standards for preserving policyholder confidentiality. Finally, the authority to issue grants and loans is necessary because there are instances where it is in the Board's interest to foster the development of new technologies or services, e.g. robotic mine sensors or computerized mine map libraries, without having to purchase these technologies or services. Those who may benefit are the insurance producers licensed with property and casualty authority in Pennsylvania who register to sell MSI coverage (about 2,500), policyholders (over 100,000), applicants (about 8,000 annually) and potential applicants (over 2 million).

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the regulation. All parties benefit from it.

(16) 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.

Insurance producers licensed with property and casualty authority in Pennsylvania who register to sell MSI coverage (about 2,500), policyholders (over 100,000), applicants (about 8,000 annually) and potential applicants (over 2 million).

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

These amendments to Chapter 401 will not result in new costs but will virtually eliminate the costs and efforts associated with processing commission payments and thereby provide cost savings to the Fund. The MSI Program is funded by policyholder premiums and not tax receipts. The MSI Fund is self-sufficient. Both its administrative and claim payment operations are supported from the special, proprietary MSI Fund (86 Fund) and not the General Fund

(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. Explain how the dollar estimates were derived.

There would be no local government 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. Explain how the dollar estimates were derived.

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Savings provided by the retention of commissions by insurance producers and the elimination of the processing of commission payment checks will result in annual savings of about \$10,000 to the Fund. This is based on 2,000 insurance producer policy sales a year that would result in the processing of 2,000 commission payments by the MSI Program, Comptroller's Office and State Treasury at a cost of \$5 per payment.

(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.

	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	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Total Savings	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
COSTS:	\$0 to all					
Regulated Community						
Local Government						
State Government						
Total Costs	\$0 to all					
REVENUE LOSSES:	\$0 to all					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0 to all					

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

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Program	FY -3	FY -2	FY -1	Current FY
Coal and Clay Mine Subsidence Insurance Fund (086 Fund)				
General Operations (20103)	\$2,926,000	\$2,930,000	\$3,351,000	\$3,424,000
Payment of Claims (20104)	\$2,000,000	\$636,000	\$2,000,000	\$2,000,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

These amendments will not have adverse effects and will not impose additional costs on MSI applicants or policyholders, insurance producers, local governments or state agencies. The elimination of the restriction of the number of units from the criteria used to define residential structures will reduce the premiums for the affected policies by 50%. Although this will result in reduced premiums for those policies, the Fund's experience demonstrates that it will be offset by the increased premiums generated by the increase to subscriptions and coverage amounts that will result. The retention of commissions by insurance producers will provide annual savings to state government by reducing the administrative costs of the Fund, which will be approximately \$10,000 a year.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Department routinely receives comments on the policies and procedures of the MSI Fund from its policyholders, applicants, and the insurance producers who are registered to sell MSI coverage. Formal input on the regulations was provided by Claire Pantoloni and Jason Ernest from the Insurance Agents and Brokers of Pennsylvania, Inc. (IA&B), the trade association that represents the insurance producers.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Final-form regulations are in essence the provisions that were originally considered. Minor modifications have been made to provide greater clarification to the provisions. The regulation that describes the requirements of the insurance producers to safeguard the confidentiality of policyholder and applicant information was modified to be less burdensome by requiring compliance with the Insurance Department's requirements rather than the Board's. In all cases the Final-form Regulations are deemed to be the least burdensome practices that can be crafted to meet the required policies.

(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 regulations.

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No, there are not companion federal regulations.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

These amendments will not put Pennsylvania at a competitive disadvantage with other states. As explained above, the amendments will reduce the cost of MSI policies for some individuals and will make the participation of insurance producers more attractive by expediting the payment of their commissions.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

These regulations do not result in additional paperwork or create other increased efforts. On the contrary, they reduce efforts and cost because insurance producers will no longer need to submit an invoice to be paid their commissions and state government will no longer have to process invoices and commission checks.

(28) 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 simplified and broader criteria for determining if a structure is residential or nonresidential benefits many small businesses by allowing them to pay the less expensive residential premium. The replacement of commission payments by invoice with the retention of commissions benefits insurance producers, many of whom are small business, by providing their commissions instantaneously. Many applicants at lower income levels owning structures with limited pre-existing damages benefit from the ability to purchase coverage, which was previously excluded.

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

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
COMMISSION

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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. 7-424

DATE OF ADOPTION July 29, 2009

BY John Hanger

TITLE JOHN HANGER
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY Andrew C. Clark

DATE OF APPROVAL AUG 19 2009

(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 FINAL RULEMAKING

**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 CH. 401]
Mine Subsidence Fund

The Mine Subsidence Insurance (MSI) Board (Board) by this order amends 25 Pa. Code Chapter 401 (relating to mine subsidence fund). Chapter 401 addresses the administration of the MSI program. The amendments clarify the regulations concerning issuance of MSI policies. There are new regulations codifying the insurance producer program, as well as, explicitly authorizing the issuance of grants and loans to foster the development of new technologies or services that will benefit the Board and the Department of Environmental Protection (Department or DEP).

This order was adopted by the Board at its meeting of July 29, 2009.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as 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 A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This notice of final rulemaking is available electronically through the DEP web site www.depweb.state.pa.us.

C. Statutory Authority

The final-form rulemaking is being made under the authority of section 19 of the act of August 23, 1961, (P. L. 1068, No. 484) (52 P. S. § 3219) (Act) which provides, inter alia, that the Board shall have the power to make rules and regulations.

The Fund was created in 1961, to provide a reliable source of compensation for damage to structures caused by underground coal and clay mine subsidence, a risk excluded from standard property and casualty insurance policies. This insurance pool of moneys for compensating owners of structures damaged by underground coal or clay mine

subsidence is vital to the economic well being of this Commonwealth's coal mining regions.

D. Background of the Amendments

The amendments clarify the regulations concerning issuance of MSI policies by: (1) revising some of the definitions to ensure consistency with the MSI insuring agreement and insurance industry standards; (2) codifying standards for issuing MSI policies for multiple unit structures owned either conventionally, or as a condominium, or cooperative; (3) simplifying and expanding the criteria for covering multiple purpose structures at the residential rate; and (4) codifying the Board's recently adopted policy for issuing MSI policies for damaged structures. The standard for waiving the loss deductible is amended to be consistent with current practice. This final-form rulemaking also establishes new regulations: (1) codifying the submission of MSI applications by insurance producers; and (2) authorizing the issuance of grants and loans to foster the development of new technologies or services which can assist the Board and Department in administering the Fund.

The Board adopted the proposed rulemaking at its meeting of September 4, 2008. The proposed rulemaking was subsequently published in the *Pennsylvania Bulletin* on December 20, 2008, with a 31-day comment period that concluded on January 20, 2009. The Insurance Agents and Brokers of Pennsylvania (IA&B), the trade association representing insurance producers, submitted comments. 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 December 10, 2008. IRRC provided its comments to the Board on February 19, 2009.

E. Summary of Changes to the Proposed Rulemaking

§401.1. Definitions.

The proposed definition for "commissions" and the proposed revision to the definition for "structure" are revised. The proposed definition for "commissions" is modified to be a payment to insurance producers rather than fees paid to insurance producers. This change was made for clarity. A commentator expressed the concern that using the term "fees" could be confusing because insurance producers receive fees for a number of different services. The same commentator also noted that the proposed amendment to the definition for "structure" created circularity because the term structure was being used in the revised definition. This circularity has been removed.

§401.11. Eligibility.

There are a number of revisions to subsection (b). First, in subparagraph (b) (1) the term "policyholder" is changed to "insured". The term "policyholder" was used to identify the person to be responsible for billing. One commentator noted that this

proposed revision improved the regulation's clarity. However, the commentator suggested using the term "insured" because it better defines the insurance relationship. To ensure consistency, the term "policyholder" is changed to "insured" throughout the regulations. Also, the requirement to list all additional owners in the application is revised to clarify that the additional owners are to be listed as an additional insured. This revision is for consistency with the Board's practice of insuring all owners of a structure.

Second, subsection (b)(2) is revised to accurately state who is eligible to acquire insurance covering a structure owned as either a condominium or cooperative. Where the association is insuring the structure, it must insure the entire structure, *i.e.* all common elements and units. Requiring an association to insure all the units, as well as the common elements, is the most effective method of ensuring a structure owned as a condominium or cooperative from subsidence damage. Subsidence damage primarily occurs to the structure's roof, foundation, walls and floors. Usually, some or all of the walls, foundation, roof, and floors related to a particular unit, as well as the appurtenances, are owned by the association as common elements.

Another change is that only the association can buy insurance coverage if the structure is vertically configured with units stacked on top of each other. This change ensures consistency with subsection (f) which requires that vertically configured multiple unit structures be covered by one policy.

This subsection is further revised to clarify that where the association is not requiring insurance and the structure is not vertically configured, a unit owner can only insure their unit and the common elements that are closely related to the unit's value and use, *e.g.* the unit's walls, floors roof and foundation. Other common elements such as common rooms and laundry facilities are for the benefit of all the members of the association. This clarification is in response to the concerns raised by one commentator that it is highly unusual for a unit owner to insure common elements to the benefit of the whole association. The coverage is now limited to those common elements that are critical to the unit's value and use. It is recognized that it is unusual for a unit owner a unit owner insurance covering common elements. However, the Board believes that, where the association does not acquire the insurance coverage, a unit owner should be able to acquire insurance coverage equivalent to a person owning a unit in a conventionally owned multiple unit structure such as a row home.

Finally, the unit owner and not the association will be the named insured when the unit owner purchases coverage. This is because it is the unit owner who is acquiring and maintaining the insurance coverage. However, the association must be listed as an additional insured in the application if the unit has related common elements. This is because the common elements are owned by the association and only a structure owner can own mine subsidence insurance. These revisions are in response to a commentator questioning making the association the insured and asking what was meant by naming the unit owner in the application. Originally, the association was to be the policyholder/insured because of concerns relating to insuring common

elements. The unit owner was to be listed in the application because that is the mechanism for naming an additional owner as an additional insured. This revised approach of naming the unit owner as the insured and only listing the association as an additional insured to the extent the unit has related common elements is the better method of issuing insurance coverage to unit owners.

Subsection (d) is revised in two ways. First, the process for insuring structures with pre-existing damage is clarified. The Board, based upon an inspection, will identify to the structure owner the repairs to be made or whose cost is to be estimated. As noted by a commentator, the proposed amendment was vague and did not provide any guidance as to the repairs to be made or whose cost is to be estimated. Second, structures with preexisting damage that jeopardizes the structures integrity must be repaired before insurance will be issued. Where the structure's integrity is jeopardized, either the damage will become more extensive over time and/or any subsequent subsidence damage will be more significant.

§401.15. Cancellation of an insurance policy and §401.32. Obligations after claim settlement.

The term "policyholder" has been changed to "insured" in these sections to be consistent with the change that was made in §401.11. Eligibility for insurance. As previously noted, the term "insured" better defines the insurance relationship. The changes are being made in response to comments and for consistency in the regulations to avoid ambiguity or confusion.

§401.42. Commission rates.

This section is revised by clarifying that the Board's approval of a change in commission rates will be made at a Board meeting. Also, commission rates will be posted on the Fund's web site. These changes are made in response to a commentator's concern as to how the Board establishes commission rates and how the regulated community will be notified.

§401.43. Payment of Commissions.

This section is revised to clarify that the Board's decision to make an alternative method of payment available to insurance producers will be made at a Board meeting. Also, the availability of an alternative method of payment will be placed on the Fund's web site. These changes are made in response to a commentator's concern as to how the Board will make its determination and how the regulated community will be notified.

§401.44. Repayment of commissions.

This section is revised to specify that repayment of commissions for canceled policies shall occur within 60 days of the issuance of a written demand. This change is in

response to one commentator's concern that the regulation should specify the amount of time an insurance producer has to submit the repayment.

§401.45. Confidentiality of Policy Holder Information

This section is revised by limiting the insured's confidentiality requirement to compliance with the Department of Insurance confidentiality requirements. To require absolute confidentiality is an unnecessary burden on the insurance producer. Also, the term "policyholder" is revised to "insured." Both commentators were concerned that the proposed regulation was too broad.

F. Summary of Other Comments to the Proposed Rulemaking

§401.11(f). Eligibility.

This subsection addresses the issuance of policies for multiple unit structures. With respect to non-vertically configured multiple unit structures, one commentator asked whether there is an intent to have single policy coverage for the entire structure or will individual policies for individual units be sought. Also, how will this work when applied to structures owned as condominiums or cooperatives? The Department is equally willing to sell either one policy covering the entire structure or individual policies covering individual units. Where the structure is owned as a condominium or cooperative and the association will not by coverage, individual unit owners can acquire coverage for their units and any related common elements, such as the walls, floors, foundation and roof.

§401.51. Loans and Grants.

One commentator questions the statutory authority for this regulation. It also recommended that the regulation should be revised to provide more detail on how the loan and grant program is to be administered, *i.e.* application process, review criteria and time frames. This issue was also raised by the Office of the Attorney General before it approved the proposed regulations for form and legality. In approving the proposed regulations for form and legality the Office of the Attorney General agreed that the Board has the authority to adopt regulations authorizing the issuance of loans and grants.

The statutory authority for the Board to issue grants and loans is implied in the Board's rulemaking authority. The power and authority of an administrative agency must be conferred by the legislature, and it must be either expressly conferred or given by necessary implication. *See e.g.* Butler County Mushroom Farm v. DER, 454 A.2d 1 (Pa. 1982). The Board is authorized to promulgate such rules and regulations as the Board deems just and expedient to fulfill the purposes of the act. The general grant of rulemaking authority extends, by necessary implication, to authorize the promulgation of regulations to allow the issuance of grants and loans. *See Section 19 of the Act, 52 P.s. §3219.*

Regulations authorizing the issuance of grants and loans to foster the development of new technologies will assist the Board and the Department in administering the Fund. These are technologies and services such as robotic sensing devices or geographic information systems that DEP may wish to make use of to evaluate a claim of subsidence damage, but do not want to own. A grant or loan, rather than a service purchase contract, can provide financial assistance to encourage the development of these technologies and services and provide DEP with access to these new technologies and services. The limitation on the amount of excess monies that can be used to finance such loans or grants ensures the Fund's financial integrity will be maintained.

The Board does not believe that this regulation needs to be revised to specify additional administrative procedures, criteria or timeframes. The regulatory language provides the criteria for the types of technologies and services whose development can be funded through a grant or loan. As an initial matter, the Department will follow the Commonwealth's policies for issuing grants and loans. The Department needs the flexibility to develop the appropriate administrative process, any additional criteria, and timeframes based on the types of services or technologies being sought.

G. Benefits, Costs and Compliance

Benefits

The amendment to § 401.11(c) makes the residential rate, about 1/2 of the commercial rate, available to more structures used for both residential and commercial purposes. Section 401.43 (relating to payment of commission) benefits insurance producers because the commission is retained from the premium payment, that is, immediately paid, rather than waiting 3 months to receive a payment from the Board. Learning institutions and other entities developing technologies and services potentially valuable to the Board will benefit from the availability of grants or loans to foster those developments.

Compliance Costs

There are no costs associated with this final-form rulemaking.

Compliance Assistance Plan

The Department will notify policyholders at the time of policy renewal of the broader application of residential rates to mixed-use structures. Insurance producers registered to submit MSI applications will also be notified of changes in procedures and their obligations due to this final-form rulemaking. Finally, a link to the *Pennsylvania Bulletin* Notice of final rulemaking will be placed on the MSI web site (www.paMSI.org).

Paperwork Requirements

This final-form rulemaking will not impose any additional paperwork requirements on MSI policyholders or insurance producers.

H. Pollution Prevention

The regulations affected by this final rulemaking address the administration of the Commonwealth's Mine Subsidence Insurance Program. They do not address pollution prevention.

I. 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.

J. Regulatory Review

In accordance with section 5(a) and (f) of the Regulatory Review Act (71 P.S. §§745.1-745.15), on December 10, 2008, the Department submitted a copy of the notice of proposed rulemaking, published at 38 *Pa. B.* 6931, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and to the Independent Regulatory Review Commission (IRRC). In accordance with section 5(f) of the act (71 P.S. § 745.5(f)), on February 9, 2009, the Department submitted the proposed regulations and the required material to the Chairpersons of the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee (Committees).

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on _____, 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 _____ and approved the final-form regulations.

K. Findings of the Board

The Board finds that:

- (1) Public notice of 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 regulations promulgated thereunder at 1 Pennsylvania Code §§ 7.1 and 7.2.

- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 38 *Pa.B.* 6931 (December 20, 2008).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

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

- (a) The regulations of the Department of Environmental Protection, 25 Pennsylvania Code, and Chapter 401 are amended to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House 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:

John Hanger,
Chairperson
Coal and Clay Mine Insurance Board

Comment and Response Document
Rulemaking on 25 Pa. Code Chapter 401
Mine Subsidence Fund

This document presents comments submitted to the Coal and Clay Mine Subsidence Insurance Board concerning the proposed rulemaking (25 Pa. Code Chapter 401) and the Department's responses to those comments. The Coal and Clay Mine Subsidence Insurance Board approved publication of the proposed amendments at its meeting on September 4, 2008. The proposed rulemaking was published in the *Pennsylvania Bulletin* on December 20, 2008, (38 Pa. B. 6931) commencing a 31-day public comment period that concluded on January 20, 2009.

List of Commentators:

1. Jason F. Ernest, Esq.
Vice President – Advocacy, and
Claire P. A. Pantaloni, CISR
Industry Affairs Director
Insurance Agents and Brokers (IA&B)
P.O. Box 2023
Mechanicsburg, PA 17055

2. Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

1. Section 401.1. Definitions.

Comment: In the definition for “commissions” replace the term “fees” with the term “payment”. The term “fee” is potentially confusing because it is used throughout the industry to refer to different types of compensation. Commentator 1

Response: The Department agrees and the definition in the final-form regulations will be revised.

Comment: The definition for “structure” is circular because the term “structure” is used in the definition. Commentator 1

Response: The Department agrees. The definition for “structure” will be revised in the final-form regulations to eliminate the use of “structure” as part of the definition.

Comment: Is the deletion of the phrase “partial or complete cave-in” from the definition of “mine subsidence” being made because this phrase is considered synonymous with “collapse?” Commentator 1

Response: Yes, the phrase is unnecessary and therefore a potential source of confusion.

2. Section 401.11. Eligibility for Insurance.

Comment: The proposed use of the term “policyholder” improves the regulation by better defining the insurance relationship. However, as with condominium/cooperative associations, the term “insured” better defines the insurance relationship where there are multiple parties to the insurance agreement. Commentator 1

Response: The Department agrees. The final-form regulations will be revised by replacing “policyholder” with “insured.”

Comment: Under Subparagraph (b)(2) an owner of a unit in a structure owned as a condominium/cooperative can buy insurance covering the unit and common elements. Under what scenarios would a unit owner purchase insurance covering common elements? It is unusual for a unit owner to insure common elements for the benefit of the whole association. Commentator 1

Response: Usually the most significant mine subsidence damage to a structure occurs to the structure’s walls, floors, foundation, and roof. This damage is significant both in its effect on the structure and the cost of repair. The Department understands that the load bearing walls, floors, roof, and foundation can be either part of the individual units owned by the unit owners or part of the common elements owned by the association. The Department also recognizes that it is unusual to issue to a unit owner insurance covering common elements. However, the Department believes that, where the association does not acquire the insurance coverage, a unit owner should be able to

acquire insurance coverage equivalent to a person owning a unit in a conventionally owned multiple unit structure, such as a row home. Therefore, in the final-form regulation subparagraph (b)(2)(iii) will be revised to clarify that insurance purchased by a unit owner covers the unit and only those common elements, *e.g.* load bearing walls, foundation or roof, that are related to the unit's value and use.

Comment: Why should the association be the policyholder where the unit owner is buying the insurance? Commentator 1

Response: The association was to be the policyholder/insured because of concerns relating to insuring common elements. The unit owner was to be listed in the application because that is the mechanism for naming an additional owner as an additional insured. Upon review, the Department agrees that the unit owner, not the association, should be the policyholder/insured when the unit owner is buying the insurance. This is because the unit owner and not the association is acquiring the insurance. However, if the insurance covers common elements related to the unit, then the association must be listed in the application as an additional insured because only an owner can be an insured.

Comment: There are two subsection (e)s. Commentator 1

Response: This is incorrect. The proposed amendments delete the text in subsection (d). The text in subsection (e) becomes subsection (d) and there is a new subsection (e).

Comment: The phrase "to the Board's satisfaction" found in subsection (d)(1) and (2) is vague and contains no guidance for the regulated community. The final-form regulations should include the criteria for meeting the Board's satisfaction. Commentator 2

Response: Subparagraphs (d)(1) and (2) address circumstances under which the Board will issue a policy covering structure with pre-existing damaged. The applicant must identify whether the structure has pre-existing damage. A structure with pre-existing damage will be inspected by the Department to determine the extent of damage and the necessary repairs to be made or whose cost is to be estimated. The Department will then notify the applicant of the extent of damages and the necessary repairs. As a result, the phrase "to the Board's satisfaction" means that either the structure has been repaired in accordance with the Department's notification or the estimated cost of repairs accurately reflects the cost of making the repairs identified by the Department. The final-form regulations will clarify the standard.

Comment: Under subsection (f) for a structure with multiple units that are not vertically configured, the Department will issue either a single policy covering the entire structure or separate policies for each unit. The commentator wishes to clarify whether the intent is to have single policy coverage or will individual policy coverage be sought. How will this work when applied to structures owned as a condominium/cooperative?
Commentator 1

Response: For multiple unit structures where the units are not vertically configured, the Department will sell to the structure owner either one policy covering the entire structure or individual policies covering the individual units. If the structure is owned by a condominium/cooperative association, the association must ensure all common elements and units in the structure. Section 401.11(b)(2) will be revised in the final-form regulations accordingly.

3. Section 401.42. Commission rates.

Comment: How will the Board establish annual commission rates and how will the regulated community be notified? The final-form regulations should provide this information. Commentator 2

Response: Section 10(d) of the coal and Clay Mine Subsidence Insurance Act, 52 P.S. §3210(d), expressly directs the Board, without additional qualification, to determine the amount of compensation. The Board makes this determination at an open meeting, usually the December meeting. In making this determination the Board will take into account industry practice and affect on the Mine Subsidence Insurance Fund's solvency. Since the Act does not place criteria or limitations on the Board's authority concerning commission rates, it is inappropriate to place such criteria on the Board by regulation. However, it is appropriate to revise the final-form regulations to state that the commission rate will be placed on the Fund's web site.

4. Section 401.43. Payment of commissions.

Comment: How will the Board authorize an independent producer to use an alternative method of payment, and what alternative methods of payment would be approved by the Board? Commentator 2

Response: The industry practice is for payment of commissions to be retained by the independent producer at the time of purchase. At this time the Department is not aware of any alternative methods of payment that are equally convenient for the Department and insurance producers. The purpose of this regulation is to allow the board to rapidly implement a future method of payment if one develops. Any alternative method of payment, and procedure for obtaining authorization to use the alternative method of payment, will be posted on the Fund's web site. In addition, it is the Department's practice to directly notify all insurance producers authorized to accept applications for Mine Subsidence Insurance of any changes to commission or payment methods.

5. Section 401.44. Repayment of commissions.

Comment: In what time frame should an insurance producer repay unearned commissions? This should be specified in the final-form regulations. Commentator 2

Response: The final-form regulations will specify that unearned commissions are to be repaid within 60 days of the Board issuing written notification.

6. Section 401.45. Confidentiality of policy holder information.

Comment: The policyholder confidentiality requirement imposed on Insurance Producers is overly broad. It was suggested that it is appropriate to require insurance producers to comply with the Pennsylvania Insurance Department's confidentiality regulations found at 31 Pa. Code Chapters 146a, 146b, and 146c. Commentators 1 and 2

Response: The Department agrees. The final-form regulations will be revised to require Insurance Producers to comply with the Insurance Department's confidentiality regulations found at 31 Pa. code chapters 146a and 146c. Chapter 146b is not applicable because it applies to health insurance .

7. Section 401.51. Loans and grants.

Comment: What is the Board's authority for promulgating regulations authorizing the issuance of grants or loans? Commentator 2

Response: This issue was also raised by the Office of the Attorney General before it approved the proposed regulations for form and legality. In approving the proposed regulations for form and legality the Office of the Attorney General agreed that the Board has the authority to adopt regulations authorizing the issuance of loans and grants.

The statutory authority for the Board to issue grants and loans is implied in the Board's rulemaking authority. The power and authority of an administrative agency must be conferred by the legislature, and it must be either expressly conferred or given by necessary implication. *Butler County Mushroom Farm v. DER*, 454 A.2d 1 (Pa. 1982) (Power and authority to issue administrative orders given by necessary implication.); *Department of Transportation v. Beam*, 788 A.2d 357 (Pa. 2002) (Power and authority to seek injunctive relief given by necessary implication.); *Pennsylvania Association of Life Underwriters v. Department of Insurance*, 393 A.2d 1131 (Pa. 1978) (Rulemaking authority given by implication.). The Board is authorized to promulgate such rules and regulations as the Board deems just and expedient to fulfill the purposes of the Act of August 23, 1961, P.L. 1068 No. 484, as amended, 52 P.S. §§ 3201- 3226 ("Act"). See, Section 19 of the Act, 52 P.S. § 3219. The general grant of rulemaking authority extends, by necessary implication, to authorize the promulgation of regulations to allow the issuance of grants and loans.

Regulations authorizing the issuance of grants and loans to foster the development of new technologies or services will assist the Board and the Department in administering the Coal and Clay Mine Subsidence Insurance Fund. These are technologies and services such as robotic sensing devices or geographic information systems that the Department may wish to make use of to evaluate a claim of subsidence damage, but does not want to own. A grant or loan, rather than a service purchase contract, can provide financial assistance to encourage the development of these technologies and services and provide DEP with access to these new technologies and services. The limitation on the amount of

excess monies that can be used to finance such loans or grants ensures the Fund's financial integrity will be maintained.

Comment: It is recommended that the regulations be amended to provide more details on how the loan and grant program is to be administered. In particular the application process, review criteria and time frames should be codified. Commentator 2

Response: The Department disagrees. There is no intent to establish a regular loan and grant program. The intent is to give the Board and the Department the ability to, on an ad hoc basis, use grants and loans to foster the development of a technologies or services that meet a particular need. The proposed regulatory language provides the criteria for the types of loans and grants that will be considered. The Department's actions with respect to grants and loans are subject to the Commonwealth's policies concerning these issues. In implementing these policies, the Department needs the flexibility to develop and refine the specific processes for soliciting, accepting, reviewing and granting requests for loans or grants.

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:

* * * * *

Association - One of the following:

(i) The unit owners' association organized under 68 Pa.C.S. §3301 (relating to organization of unit owners' association) for condominiums.

(ii) The proprietary lessees' association organized under the 68 Pa.C.S. §4301 (relating to organization of association) for cooperatives.

* * * * *

Commissions - ~~[Fees paid]~~ PAYMENT to insurance producers as compensation for the applications they submit to the Board.

Common Elements - All portions of a condominium or cooperative other than the units.

Condominium - Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Ownership of the real estate is in accordance with 68 Pa.C.S. Subpart B (relating to Uniform Condominium Act).

Cooperative - Real estate owned by an association, each of whose members is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit. Ownership of the real estate is in accordance with 68 Pa.C.S. Subpart C (relating to Real Estate Cooperative Act).

* * * * *

Insurance Producer - A person that sells, solicits or negotiates contracts of insurance.

* * * * *

Mine subsidence - 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.

* * * * *

Structure - A complete building, [that] **which** contains a roof, walls and a foundation [which] **that** firmly attaches the [structure] **BUILDING** to the earth, **and its appurtenances as defined in the insurance policy.**

Units -

(i) Specific areas of a building that are separate and distinct from other areas of the building, having an individual entrance accessing either a common entry or the building's exterior.

(ii) For the purposes of the definition of "common elements" and § 401.11(b)(2) (relating to eligibility for insurance), the following apply:

(A) Units in a condominium are portions of the condominium designated for separate ownership, the boundaries of which are described in the condominium declaration.

(B) Units in a cooperative are physical portions of the cooperative designated for separate occupancy under a proprietary lease.

INSURANCE POLICIES

§ 401.11. Eligibility for insurance.

(a) [To be eligible for a mine subsidence insurance policy, the insured shall be the owner of a structure within the anthracite or bituminous coal or clay mine regions, the territorial extent of which will be designated by the Board. The Board may add to, subtract from or change the territorial classifications.] **Structures located within the coal and clay regions of this Commonwealth are eligible for coverage.**

(b) Only [a title] **an** owner of a structure may be named as the [insured in an insurance policy and an insurance policy will not be issued to another person] [**policyholder**] **INSURED.**

(1) If there [are several owners of one structure, they] is more than one owner of a structure, the owners shall designate one owner whose name shall appear on the insurance policy FOR BILLING PURPOSES. The other [owners] [policyholders] OWNERS shall be listed in the application for insurance AS ADDITIONAL INSUREDS.

(2) [If the] FOR A structure owned as a condominium or a cooperative:

(i) [The Association is the policyholder if the policy] THE INSURANCE MUST cover[s] all THE common elements and units WHEN THE ASSOCIATION IS ACQUIRING THE INSURANCE.

(ii) [The unit owner shall be the policyholder if the policy only covers the unit and there is a separate policy covering the common elements.] ONLY AN ASSOCIATION CAN ACQUIRE INSURANCE COVERING A STRUCTURE COMPRISED OF VERTICALLY STACKED UNITS.

(iii) [A] FOR OTHERWISE CONFIGURED STRUCTURES WHERE THE ASSOCIATION DOES NOT ACQUIRE INSURANCE COVERAGE, A unit owner may purchase coverage for [the]THEIR unit and THE RELATED common elements [if the association will not purchase insurance] NECESSARY FOR THE OWNER'S USE OF THE UNIT. RELATED COMMON ELEMENTS INCLUDE THE UNIT'S ROOF, WALLS, FLOORS, FOUNDATION, AS WELL AS, A FENCE, RETAINING WALL, PAVED OR IMPROVED PATIO, WALK, OR DRIVEWAY. However, the [Unit] association shall be [the named policyholder with the unit owner being] listed in the application AS AN ADDITIONAL INSURED. Renewals will be sent to the unit owner.

(c) [An individual, corporation or group of individuals holding title to more than one structure within the anthracite or bituminous coal or clay mine regions may insure these structures.] Structures which are at least 50% residential [and have at most four residential units] are eligible for residential rates. [Other structures shall be insured at commercial rates.]

(d) [A double home shall be considered one structure if both sides of the home are owned by the same person.]

(e) The Board, or its agents, may refuse to issue an insurance policy for] If a structure [previously] is damaged by mine subsidence or by another cause, [if this] and the Board, BASED UPON AN INSPECTION OF THE STRUCTURE, determines that[the damage could not be separated or apportioned from subsequent damage,] [until the previous damage has been repaired to the satisfaction of the Board, or its agents.] [the Board will issue a policy if the applicant] either:

(1) THE DAMAGE JEOPARDIZES THE STRUCTURE'S INTEGRITY, THE BOARD WILL NOT ISSUE A POLICY UNTIL THE DAMAGES IDENTIFIED BY THE INSPECTION HAVE BEEN REPAIRED AS DIRECTED BY THE BOARD.

(2) THE DAMAGE COULD NOT BE SEPARATED OR APPORTIONED FROM SUBSEQUENT DAMAGE AND THE DAMAGE DOES NOT JEOPARDIZE THE STRUCTURE'S INTEGRITY, THE BOARD WILL ISSUE A POLICY IF THE APPLICANT EITHER:

(i) First repairs the damages [~~to the Board's satisfaction~~] IDENTIFIED BY THE INSPECTION AS DIRECTED BY THE BOARD.

(ii) Submits to the Board an estimate, prepared by a reputable expert, of the cost to repair the damages to the Board's satisfaction. The cost to repair, adjusted for inflation, would be excluded from any damage claim settlement. However, a policy would not be issued if the cost to repair exceeded the replacement cost of the structure or the policy limit, which ever is less, because the policy would have no value.

(e) The Board may refuse to issue a policy while the structure to be covered is being damaged by mine subsidence or by another cause, until the Fund determines that the cause of damage has ceased.

(f) Multiple unit structures are insured as follows:

(1) Structures comprised of vertically stacked units are only insurable under a single policy.

(2) Other unit configurations are insurable under a single or multiple policy at the owner's discretion.

§ 401.13. Coverage limits and premiums for insurance.

(a) The maximum amount of insurance [**for a single covered structure**], the term or duration of the policy, and the premium rate shall be determined by the Board.

(b) An insurance policy is effective upon the date a complete application **and its premium** is received by the Board or its agent [**provided the premium associated with that Application is received by the Board or its agent within the next 80 days**] and provided that the applicant and structure meet the eligibility requirements in the act and in § 401.11 (relating to eligibility for insurance).

§ 401.15. Cancellation of an insurance policy.

An insurance policy cannot be canceled by the Board, or its agents, or by the insured during the term of coverage except as provided in the insurance policy or the act. When the Board, or its agents, cancels an insurance policy, it will send a written notice of the cancellation to the **[policyholder] INSURED**.

INSURANCE COVERAGE

§ 401.22. Loss deductible amount.

Every insurance policy **[shall] must** include a loss deductible amount for which the Fund is not liable. The amount will be determined by the Board and may be changed as experience may warrant, and will be included in the schedule of premium rates adopted by the Board. **[The Fund will be liable for only a specified percentage of a loss in excess of the deductible amount as will be adopted in the schedule of premium rates.] The loss deductible will be waived if the cost to repair the damage exceeds the amount of coverage under the policy.**

CLAIMS

§ 401.32. Obligations after claim settlement.

[Policyholders] INSUREDS shall contact the Board, or its agents, within 1 year of the claim settlement and permit an inspection of the insured structure to verify that the damage described in the claim settlement has been repaired. If the **[policyholder] INSURED** fails to contact the Board, or its agents, or refuses to permit the inspection the Board or its agents, may refuse to issue or renew an insurance policy for the insured structure.

INSURANCE PRODUCERS

§ 401.41. Submission of applications.

Insurance producers may only submit applications for mine subsidence insurance to the Board electronically from the Board's web site.

§ 401.42. Commission rates.

The Board, AT AN OPEN MEETING, will annually establish commission rates. THE COMMISSION RATE WILL BE POSTED ON THE FUND'S WEB SITE (WWW.PAMSI.ORG).

§ 401.43. Payment of commissions.

The insurance producer shall retain the commission from the premium collected. The Board, AT AN OPEN MEETING, may authorize other forms of payment. ALTERNATIVE FORMS OF PAYING COMMISSIONS WILL BE POSTED ON THE FUND'S WEB SITE (WWW.PAMSI.ORG).

§ 401.44. Repayment of commissions.

Commissions in excess of \$5 that are unearned due to the Board's rejection of a mine subsidence insurance application or the cancellation of a policy shall be repaid to the Board upon its demand. Failure by an insurance producer to [promptly] repay commissions [as directed by] WITHIN SIXTY (60) DAYS OF the [Board] BOARD'S WRITTEN REQUEST may result in exclusion from participation with the Fund. THE BOARD'S DECISION TO EXCLUDE AN INSURANCE PRODUCER FROM PARTICIPATING WITH THE FUND IS APPEALABLE TO THE ENVIRONMENTAL HEARING BOARD PURSUANT TO THE ENVIRONMENTAL HEARING BOARD ACT (35 P.S. §§ 75.11-75.16).

§ 401.45. Confidentiality of [policyholder] INSUREDS information.

Insurance producers are responsible to safeguard all applicant and [policyholder] INSUREDS information [~~and are responsible for the misuse of information that is under their control~~] IN ACCORDANCE WITH THE REQUIREMENTS OF THE PENNSYLVANIA INSURANCE DEPARTMENT'S REGULATIONS FOUND AT 31 PA. CODE CHAPTERS 146A (RELATING TO PRIVACY OF CONSUMER INFORMATION) AND 146C (RELATING TO STANDARDS FOR SAFEGUARDING INFORMATION). Failure by an insurance producer to safeguard applicant and [policyholder] INSUREDS information may result in exclusion from participation with the Fund. THE BOARD'S DECISION TO EXCLUDE AN INSURANCE PRODUCER FROM PARTICIPATING WITH THE FUND IS APPEALABLE TO THE ENVIRONMENTAL HEARING BOARD PURSUANT TO THE ENVIRONMENTAL HEARING BOARD ACT (35 P.S. §§ 75.11-75.16).

LOANS AND GRANTS

§ 401.51. Loans and grants.

Each year the Board may authorize up to 1% of the Fund's Unreserved Fund Balance, as declared by the Board under section 10(c) of the act (52 P.S. §3210(c)), to be used to provide loans and grants to entities that develop technologies, perform services or engage in other activities that benefit the Fund by improving its ability to provide mine subsidence insurance coverage or to improve the efficiency, economy and effectiveness of the Fund's operations.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

September 18, 2009

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

Re: Final Rulemaking: Mine Subsidence Fund
(25 Pa. Code, Chapter 401) (#7-424)

Dear Mr. Kaufmann:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy of a final-form rulemaking for review and comment by the Independent Regulatory Review Commission. The Coal and Clay Mine Subsidence Insurance Board approved this final-form rulemaking at its July 29, 2009, meeting.

The regulations found in Chapter 401 address the administration of the Coal and Clay Mine Subsidence Insurance (MSI) Fund (Fund) by the Coal and Clay Mine Subsidence Insurance Board (Board) and the Department. The final-form rulemaking includes amendments that clarify several provisions concerning the issuance of MSI policies by: (1) revising several of the definitions to ensure consistency with the MSI insuring agreement; (2) codifying standards for issuing MSI policies for multiple unit structures whether owned conventionally or as a condominium or cooperative; (3) simplifying and expanding the criteria for covering multiple purpose structures at the residential rate; and (4) codifying the Board's recently adopted policy for issuing MSI policies for damaged structures. The standard for waiving the Loss Deductible is also amended to be consistent with current practices. Finally this rulemaking establishes new provisions that codify the procedures and standards for the submission of MSI policy applications by insurance producers and explicitly authorizes the issuance of grants and loans to assist in developing new technologies or services which can assist in the Fund's administration.

The proposed rulemaking was published in the December 20, 2008, edition of the *Pa Bulletin*, which opened a 30-day public comment period. During the comment period, the Insurance Agents and Brokers of Pennsylvania and the Independent Regulatory Review Commission provided comments on the proposal. Their comments centered on three issues including the clarity of the regulatory provisions which explain the coverage applicable to common elements, such as condominiums and cooperatives; the Board's legal authority to promulgate regulations to make loans and grants; and the breadth of the confidentiality language that defined the producers' responsibility to safeguard applicant information. In





response to the comments received, the Department has made modifications to the rulemaking, which are elaborated on in the Comment/Response document, which accompanies the final rulemaking.

The Department will provide assistance as necessary to facilitate the Commission's review of this final-form rulemaking under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate
Regulatory Coordinator

Enclosures



RECEIVED

SEP 18 PM 2:30

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

INDEPENDENT REGULATORY
REVIEW COMMISSION

I.D. NUMBER: 7-424
SUBJECT: *mine subsidence fund*
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- 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 Tolloed Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<i>9/18/09</i>	<i>[Signature]</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>9-18-09</i>	<i>[Signature]</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>9-18-09</i>	<i>[Signature]</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>9-18-09</i>	<i>[Signature]</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>9/18/09</i>	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

