

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2737

(1) Agency

Department of Environmental Protection

(2) I.D. Number (Governor's Office Use)

#7-424

(3) Short Title

Mine Subsidence Insurance Fund

(4) PA Code Cite

25 Pa. Code Chapter 401

(5) Agency Contacts & Telephone Numbers

Primary Contact: Michele Tate 772-4768

Secondary Contact: Lawrence Ruane 783-9590

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

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 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 structures owned as a condominium, cooperative or conventionally but having multiple units; (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 will be amended to be consistent with current practice. Finally this proposal will establish new regulations: (1) codifying the procedures and standards for the submission of MSI policy 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) State the statutory authority for the regulation and any relevant state or federal court decisions.

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.

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(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.

No.

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

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 must adhere to the Board's practice of preserving the confidentiality of all information provided by MSI applicants and policyholders. 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.

(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.)

There are currently more than 57,000 structures insured, more than 100,000 policyholders, more than one million structures located over mine voids that could potentially be insured, and there are more than 1,500 insurance producers submitting MSI applications.

(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.

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(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.)

MSI applicants (about 5,000 annually), policyholders (currently over 100,000), and insurance producers submitting MSI application (currently over 1,500) will be required to comply with the regulations.

(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.

Historically, owners of structures partially used for residential purposes have complained about the existing restrictions for insuring their structures at the lower residential rates. The insurance producers have been surveyed concerning the retention of commissions and are unanimous in their agreement with payment of commissions by retaining a portion of the premiums when the MSI applications are submitted rather than invoicing the Board and waiting for the Commonwealth to pay commissions through the State Treasury.

(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. All the costs of the MSI Program are paid by the Special MSI Fund (86) and not DEP's General Fund (35).

(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 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.

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

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(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	\$8,000	\$8,500	\$9,000	\$9,500	\$10,000	\$10,500
Total Savings	\$8,000	\$8,500	\$9,000	\$9,500	\$10,000	\$10,500
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.

Requiring insurance producers to retain their commissions and eliminating the commission payment process results in cost savings to the Fund. It practically eliminates the time, effort and costs that DEP, the Comptroller's Office and the State Treasury expend to process commission payments. The MSI Fund pays for all its administrative costs and reimburses other agencies for their services. Reduced administrative procedures and services from external agencies results in cost savings to the MSI Fund.

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

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

These amendments will not have adverse effects will not impose additional costs on MSI applicants or policyholders, insurance producers, local governments or state agencies. There will be a 2/3 reduction in the cost of MSI policies covering structures that are at least 50% residential in use and consist of more than 4 units. However, there are very few of these structures. As a result, any reduction to premium income will be minimal and will likely be offset by increased subscriptions that will be encouraged by lower coverage costs. The retention of commissions by insurance producers will provide annual savings to state government by reducing the administrative costs of the Fund, which will approximately range from \$8,000 in savings in the first year implemented to \$10,500 in the sixth.

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

The proposed amendments: (1) clarifying the issuance of MSI policies to structures owned as a condominium, cooperative, or conventionally with multiple units; (2) clarifying the issuance of MSI policies to damaged structures; (3) clarifying when the loss deductible will be waived; and (4) codifying procedures and standards for accepting MSI applications from insurance producers could all continue to be implemented pursuant to the Board's discretionary authority. Codifying these standards does not impose any additional costs on the regulated community. Continuing use of the Board's discretionary authority to clarify these issues was rejected because codifying the standards as regulations provides the regulated community with greater certainty of consistent application.

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(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?

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 eliminating delays in receiving their commissions.

(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.

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

No.

(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.

Insurance producers will no longer need to submit an invoice to be paid their commissions.

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(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.

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 by providing their commissions instantaneously. This benefits the MSI Fund, the Comptroller's Office and the State Treasury by reducing workloads and costs. The expansion of coverage to include appurtenances benefits all policyholders. Relaxing the presales conditions helps applicants who have great need for coverage. Providing loans and grants will assist institutions that are developing goods and services that are also beneficial to the MSI Fund.

(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 PA 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.

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REVIEW COMMISSION

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Copy below is hereby approved as to form and legality.
Attorney General

By: Amy M. Elliott
(Deputy Attorney General)

NOV 25 2008

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 September 4, 2008

BY John Hanger

TITLE JOHN HANGER
ACTING CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY Andrew C. Clark

DATE OF APPROVAL

SEP 30 2008
(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 PROPOSED RULEMAKING

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

Mine Subsidence Fund

25 Pa. Code, Chapter 401

SEP 8 1968

CONFIDENTIAL

Notice of Proposed Rulemaking
Department of Environmental Protection
Coal and Clay Mine Subsidence Insurance Board
[25 Pa. Code, CH. 401]
Mine Subsidence Fund

Preamble

The Coal and Clay Mine Subsidence Insurance Board (Board) proposes to amend Chapter 401 (relating to mine subsidence fund), regarding the administration of the Mine Subsidence Insurance Fund (Fund), to read as set forth in Annex A. The proposed amendments will clarify the regulations concerning issuance of Mine Subsidence Insurance (“MSI”) policies. It will also adopt new regulations codifying the insurance producer program, as well as, explicitly authorizing the issuance of grants and loans to assist in developing new technologies or services.

This proposal was adopted by the Board at its meeting of September 4, 2008.

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. Information regarding submitting comments on this proposal appears in Section J 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.depweb.state.pa.us>).

C. Statutory Authority

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

D. Purpose and Background

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 Fund is administered by a Board consisting of the Secretary of the Department of Environmental Protection (Department) as Chairperson, the State Treasurer and the Insurance Commissioner. *See*, section 3 of the Act, 52 P.S. § 3203. A listing of Board members is available upon request from Lawrence Ruane, whose name, address and phone number appears in Section B of this preamble. The Board's responsibilities include, *inter alia* approving: insurance premiums, the terms of insurance, the amount of commission to be paid to insurance producers, approving funds for administering the MSI Program and the adoption of implementing regulations. *See*, Sections 3, 10 and 19 of the Act, 52 P.S. §§ 3203, 3210 and 3219. The Department is responsible for the day-to-day administration of the MSI Program. *See*, sections 4, 10 and 22 of the Act, 52 P.S. §§ 3204, 3210 and 3222.

The 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 structures owned either as a condominium, cooperative or conventionally but having multiple units; (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. Finally, this proposal will establish new regulations: (1) codifying the submission of MSI applications by insurance producers; and, (2) explicitly 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.

E. Summary of Regulatory Requirements

There are no companion Federal laws or regulations that govern the provisions of mine subsidence insurance. The proposed regulatory changes are as follows.

§ 401.1. Definitions.

There will be new definitions for "Association," "Common Elements," "Commissions," "Condominium," "Cooperative," "Insurance Producers," and "Units." The terms "Commission" and "Insurance Producers" are used in proposed §§ 401.41 - .45 (relating to insurance producers). The terms "Association," "Common Elements," "Condominium," "Cooperative," and "Units" are used in the amendment to § 401.11 (relating to eligibility) clarifying the issuance of MSI policies covering structures owned either as a condominium, cooperative or conventionally but having multiple units.

The definitions for “Mine Subsidence” and “Structure” are amended to ensure consistency with the MSI insuring agreement. In particular, the definition for “structure” will include appurtenances as defined in the insurance policy. At its December 2006 meeting, the Board expanded the MSI policy’s coverage by amending the insuring agreement’s definition of “structures” to include some of the appurtenances associated with the building to be covered. By referencing appurtenances as defined in the MSI insuring agreement, the Board is left the flexibility to modify the scope of this coverage as experience indicates.

§ 401.11. Eligibility.

Many of the amendments to this section are for the purpose of simplicity and clarity of language. However, the following amendments establish substantive changes. The amendment to subsection (b) adds new standards specifying how MSI policies are to be issued for structures owned as a condominium or cooperative. The different ownership rights associated with structures owned as a condominium or cooperative have been the source of confusion concerning to whom the policy is to be issued, *i.e.* the condominium association, cooperative or the individual unit owner, and what part of the structure the policy can cover. These amendments are based on the Uniform Condominium and Real Estate Cooperative Acts (68 Pa.C.S. §§ 3101 3414 and 4401 – 501) and will eliminate that confusion. It is anticipated that eliminating this confusion will facilitate the sale of MSI policies, especially by the submission of MSI applications through insurance producers.

Subsection (c) is simplified to focus on insurance rates for structures partially used for residential purposes. The requirement that there cannot be more than 4 units is being dropped, leaving the requirement that at least half the structure must be used for residential purposes. In the Board’s experience, the key issue in determining whether such a mixed use structure is to be insured as a residential structure is the percentage of the structure used for residential purposes.

The requirement in subsection (d) that a double home is insured as one structure is deleted. This issue is now covered by the new subsection (f). Subsection (e) becomes subsection (d) and is amended to codify the Board’s recently developed policy for issuing MSI policies to damaged structures. This codification provides insurance producers with clear standards for accepting MSI applications for damaged structures, and implements the Board’s commitment to maximizing the availability of MSI policies.

The new subsection (e) clarifies that the Board can refuse to issue an MSI policy covering a structure that is being damaged. Until the damage event is completed it is impossible to either repair the damage or meet the requirements for issuing a policy to a damaged structure.

The new subsection (f) specifies how a conventionally owned structure comprised of multiple units can be covered. These standards will ensure a consistent approach for insuring these structures.

§ 401.13. Coverage Limits and Insurance Premiums.

The amendment to subsection (a) deletes the requirement that the Board sets rates for MSI policies covering individual structures. This can be read as a limitation on the Board's authority to set policy rates, which is inappropriate.

The amendment to subsection (b) deletes the requirement that the premium check must be submitted within 80 days of the filing of the MSI application. This restriction was added to ensure that the MSI policy is purchased before a structure is damaged. In the Board's experience this restriction is unnecessary.

§ 401.22. Loss Deductible Amount.

The last sentence is rewritten to accurately state the Board's long-standing practice of waiving the Loss Deductible when the amount of the loss suffered exceeds the coverage limit.

§ 401.41. Submission of Applications.

This section codifies the current practice of requiring insurance producers to submit MSI applications via the MSI web site.

§ 401.42. Commission Rates.

This section restates the Board's statutory authority for annually setting the insurance producer's commission rates.

§ 401.43. Payment of Commission.

The insurance producer will retain its commission from the MSI policy premium to be paid. This is a change from current practice, which calls for the Board to separately pay the insurance producer its commission. It takes 3 months for the Department to pay the commission. Having the insurance producer retain its commissions from premium payments is consistent with industry practice, reduces the Department's operating costs, and facilitates the insurance producer's cash flow.

§ 401.44. Repayment of Commission.

This section addresses repayment of commissions that have become unearned due to either the MSI policy application being rejected or the MSI policy being canceled. Failure to repay an unearned commission may result in the insurance producer's exclusion from submitting MSI applications. The Board's exclusion of an insurance producer from submitting applications is an action of the Department appealable to the Environmental Hearing Board.

§ 401.45. Confidentiality of policyholder information.

Insurance producers are required to adhere to the Board's policy of maintaining the confidentiality of all applicant and policyholder information. Failure to maintain this confidentiality may result in the insurance producer's exclusion from submitting MSI applications. The Board's exclusion of an insurance producer from submitting MSI applications is an action of the Department appealable to the Environmental Hearing Board.

§ 401.51. Loans and Grants.

This section gives the Board the explicit authority to make loans and grants to entities to encourage the development of technologies or services that will benefit the fund. These are technologies and services such as robotic sensing devices or geographic information systems that provide value to the MSI program's policy, application and claim investigation processes. A grant or loan, rather than a service purchase contract, is the appropriate vehicle for providing financial assistance to encourage the development of these technologies and services. The limitation on the amount of excess monies that can be used to finance loans or grants ensures the Fund's financial integrity.

F. Benefits, Costs and Compliance

Benefits - The amendment to § 401.11(c) (relating to eligibility) makes the residential rate, about 1/3 of the commercial rate, available to more structures used for both residential and commercial purposes. Section 401.43 (relating to payment of commissions) benefits insurance producers because the commission is retained from the premium payment, *i.e.* 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 proposed rulemaking.

Compliance Assistance Plan - DEP 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 proposed rulemaking. Finally, a link to the Pa Bulletin Notice of Proposed Rulemaking will be placed on the MSI web site.

Paperwork Requirements - This proposed rulemaking will not impose any additional paperwork requirements on MSI policyholders or insurance producers.

G. Pollution Prevention

The regulations affected by this Proposed Rulemaking address the administration of the Commonwealth's Mine Subsidence Insurance Program. They do not address 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

In accordance with section 5(a) and (f) of the Regulatory Review Act (71 P.S. §§ 745.1 – 745.15), the Department submitted a copy of the proposed amendments on December 10, 2008, to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (Commission). In accordance with section 5(f) of the act (71 P.S. § 745.5(f)), the Department will submit 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) no later than the second Monday after the date by which both Committees designations have been published in the *Pennsylvania Bulletin*. In addition to submitting the proposed amendments, the Department has provided the Commission and will provide the Committees with a copy of detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendation or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendation or objects raised.

J. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed rulemaking to the Coal and Clay Mine Subsidence Insurance Board, P.O. Box 8462, Harrisburg, PA 17105-8462 (express mail: Rachel Carson State Office Building, 5th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 20, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by January 20, 2009. The one-page summary will be provided to each member of the

Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by January 20, 2009. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,
Acting Chairman

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.

* * * * *

Association - The unit owners' association organized under the Real Estate Condominium Act, 68 Pa.C.S. §3301 (relating to organization of unit owners' association) or the proprietary lessees' association organized under the Real Estate Cooperative Act, 68 Pa.C.S. §4301 (relating to organization of association).

* * * * *

Commissions - Fees paid 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 the requirements of the Real Estate Condominium Act, 68 Pa.C.S. §§ 3101 – 3414.

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 the Real Estate Cooperative Act, 68 Pa.C.S. §§ 4101 – 5100.

* * * * *

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 to the earth, **and its appurtenances as defined in the insurance policy.**

Units - 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. For the purposes of the definition of "common elements" and § 401.11(b)(2) a:

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

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

* * * * *

§ 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 Pennsylvania 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.**

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

(2) If the structure is owned as a condominium or cooperative:

(i) The Association is the policyholder if the policy covers all common elements and units.

(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.

(iii) A unit owner may purchase coverage for their unit and common elements if the Association will not purchase insurance, however, the Unit Association shall be the named policyholder with the unit owner being listed in the application. 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 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) First repairs the damages to the Board's satisfaction.

(2) 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).

* * * * *

§ 401.22. Loss deductible amount.

Every insurance policy shall 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.**

* * * * *

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 will annually establish commission rates.

§ 401.43. Payment of commissions.

The insurance producer shall retain the commission from the premium collected. The Board may authorize other forms of payment.

§ 401.44. Repayment of commissions.

Commissions in excess of five dollars (\$5.00) that are unearned due to the Board's rejection of an MSI 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 the Board may result in their exclusion from participation with the Fund.

§ 401.45. Confidentiality of policyholder information.

Insurance producers are responsible to safeguard all applicant and policyholder information and are responsible for the misuse of information that is under their control. Failure by an insurance producer to safeguard applicant and policyholder information may result in their exclusion from participation with the Fund.

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
December 10, 2008

Policy Office

717-783-8727

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

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

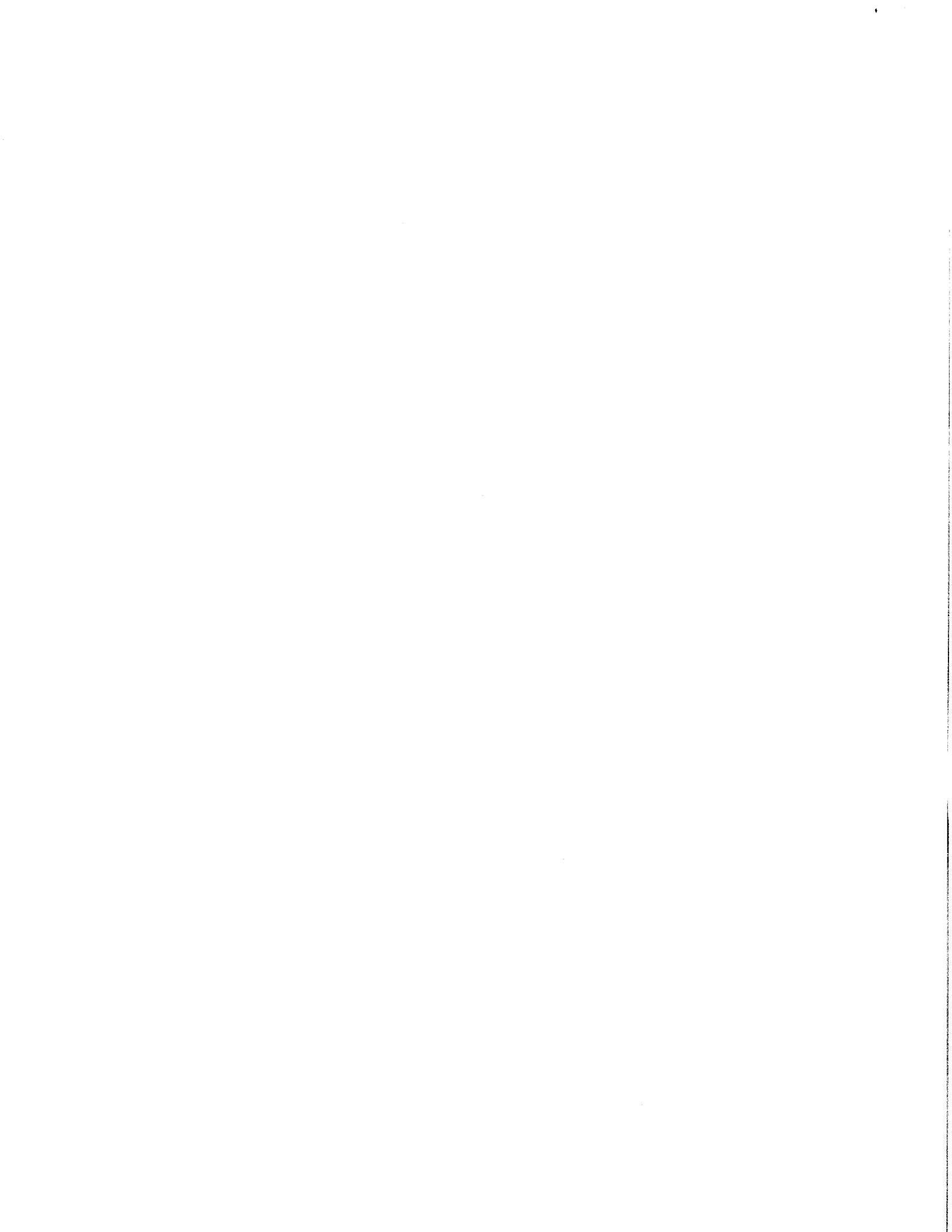
Dear Mr. Kaufmann:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on December 20, 2008, with a 30-day public comment period. Pursuant to section 5(f) of the Regulatory Review Act, the Department will submit the proposed regulations and required materials to the Chairpersons of the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee no later than the second Monday after the date by which both Committees designations have been published in the *Pennsylvania Bulletin*. The Coal and Clay Mine Subsidence Insurance Board adopted this proposal on September 4, 2008.

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 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 structures owned as a condominium, cooperative or conventionally but having multiple units; (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 will be amended to be consistent with current practice. Finally this proposal will establish new regulations that will codify the procedures and standards for the submission of MSI policy applications by insurance producers and will explicitly authorize the issuance of grants and loans to assist in developing new technologies or services which can assist in the Fund's administration.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any





Kim Kaufmann, Executive Director

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December 10, 2008

comments, recommendation or suggestions submitted by the Commission, as well as the Committees and public commentators, prior to final adoption of the regulation.

Please contact me at 717-783-8727 if you have any questions or need additional information.

Sincerely,

Michele L. Tate

Michele L. Tate
Regulatory Coordinator

Enclosures





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

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

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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
_____	_____	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
_____	_____	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
_____	_____	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
_____	_____	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
12/10/08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

