

**25 Pa. CODE CHAPTER 401**  
**PROPOSED RULEMAKING**

## Executive Summary

### Proposed Rulemaking: Mine Subsidence Fund

The proposed rulemaking will amend 25 Pa. Code Chapter 401 relating to the administration of the Coal and Clay Mine Subsidence Insurance Fund (Fund). Chapter 401 regulations are promulgated by the Mine Subsidence Insurance Board (Board) and not the Environmental Quality Board. The Department of Environmental Protection (DEP) is mandated to serve as the agent of the Board and to administer the operations of the Coal and Clay Mine Subsidence Insurance Program. In that capacity, DEP has developed this proposed rulemaking to reflect the Chapter 401 amendments that the Board directed to be made at the two most recent Board meetings that were held on December 18, 2002 and May 13, 2003. The amendments are deemed to be minor and uncontroversial. Therefore, public meetings or hearings are not planned. A 30-day public comment will be provided.

In summary, the proposed amendments to Chapter 401 are as follows:

#### § 401.1

The term “Mine Subsidence” is being revised to reflect the definition in the insurance policy. The definition in the insurance policy more clearly identifies that subsidence must result from the partial or complete cave-in, fracturing or collapse of mine workings and not mining operations. This change eliminates the potential for an interpretation of the term “Mine Subsidence” to be broadened to include losses caused by surface operations associated with underground mining operations and precisely identifies that losses must be caused by the partial or complete cave-in, fracturing or collapse of underground mine workings.

The term “Mine Workings” is added because it is used to replace the term “mine operations,” the term used in the old definition of “Mine Subsidence” and that created the ambiguity related to the compensable source of damage.

#### § 401.13

Coverage limits, premium surcharges and policy durations are being deleted from the regulations and will continue to be established in the insurance policy. Such dynamic provisions of the insurance policy need to be continually reviewed and amended by the Board. Therefore, they should be established by the Board, approved by the Attorney General, and promulgated through the insurance policy, a process that is prescribed in section 19 of the Act of August 23, 1961 (P.L. 1068, No. 484), as amended, (52 P.S. §§ 3201-3225), and that is more expedient and less expensive than it is to establish provisions of the insurance policy through regulations. Establishing dynamic provisions of the insurance policy in the insurance policy and not through regulations also eliminates the potential for conflicting provisions to be in the regulations and the insurance policy.

The effective date of coverage is also being revised to make it clear that coverage is effective when the Board receives a completed application and receives the premium payment. The current language does not state that a completed application is needed.

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

**Preamble**

The Coal and Clay Mine Subsidence Insurance Board (Board) proposes to amend 25 Pa. Code, Chapter 401 relating to the administration of the Mine Subsidence Insurance Fund (Fund) and Program (Program). These amendments are proposed to revise ambiguous terms and provisions contained in Chapter 401 and to remove from Chapter 401 dynamic provisions of the insurance policy, i.e., coverage limits, premium surcharges and policy durations. Such dynamic provisions of the insurance policy are established by the Board and are contained in Insuring Agreement, which is the contract between the Fund and its policyholders and which is a part of the insurance policy, so that they can expeditiously be modified by the Board as needed.

This proposed rulemaking was adopted by the Board at its meeting of December 18, 2003.

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

### **C. Statutory Authority**

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

### **D. Background and Purpose**

The Fund was created in 1961 to provide a reliable source of compensation for losses caused by coal and clay mine subsidence, a risk excluded from standard homeowners insurance policies. The Fund is vital to the economic well being of Pennsylvania's coal mining regions because it underwrites potential losses to real property and thereby facilitates the collateralization of real property that is needed for economic growth in the housing industry.

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

Chapter 401 codifies terms and definitions used by the Fund, establishes procedures that are followed in the administration of the Fund and Program and establishes static provisions of coverage, such as eligibility criteria, that are not expect to be routinely changed. In prior amendments to Chapter 401, more dynamic provisions of the insurance policy, i.e., coverage limits, premium surcharges and policy durations, which are coverage provisions that are continually reviewed and revised by the Board, have inappropriately been added to Chapter 401. This proposed rulemaking would remove the dynamic provisions of coverage from Chapter 401 and thereby facilitate the Board's efforts to provide policyholders with relevant coverage while safeguarding the solvency of the Fund. It will also eliminate conflicts and the potential for conflicts between provisions in Chapter 401 and provisions in the insurance policy.

## **E. Summary of Proposed Amendments**

This rulemaking proposes changes to 25 Pa. Code Chapter 401. There are no companion federal laws or regulations that govern the administration of the Fund and Program.

The specific regulatory changes are discussed as follows.

### **§ 401.1 Definitions.**

The term “Mine Subsidence” is being revised to reflect the definition in the insurance policy. The definition in the insurance policy more clearly identifies that subsidence must result from the partial or complete cave-in, fracturing or collapse of mine workings and not mining operations. This change eliminates the potential for an interpretation of the term “Mine Subsidence” to be broadened to include losses caused by surface operations associated with underground mining operations and precisely identifies that losses must be caused by the collapse of underground mine voids.

The term “Mine Workings” is added because it is used to replace the term “mine operations,” the term used in the old definition of “Mine Subsidence,” which created the ambiguity related to the compensable source of damage.

### **§ 401.13 Coverage limits and premiums for insurance.**

Coverage limits, premium surcharges and policy durations are being deleted from the regulations and will continue to be established in the insurance policy as is provided in Section 19 of the Act. Such dynamic provisions of the insurance policy need to be continually reviewed and amended by the Board. Therefore, they should be established in the insurance policy and then approved by the Attorney General, a process that is prescribed by law. This process is much more expedient and much less expensive than it is to establish dynamic provisions of the insurance policy through regulations. Adherence to establishing dynamic provisions of the insurance policy in the insurance policy and not through regulations also eliminates the potential for conflicting provisions.

The effective date of coverage is also being revised to make it clear that coverage is effective when the Board receives a completed application and receives the premium payment in full. The current language is ambiguous because it does not state the need for a completed application.

## **F. Benefits, Costs and Compliance**

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

### **Benefits**

This proposed rulemaking will bring the provisions of Chapter 401 into conformance with the provisions contained in Insuring Agreement, which is the contract between the Fund and the policyholders and is a part of the insurance policy. By eliminating dynamic provisions of the insurance policy from Chapter 401, the Board will be more expedient in making provisions of the insurance policy, as is prescribed in Section 19 of the Act. Most significantly, it will be more agile when making adjustments to coverage limits, which is what the Act intends.

### **Compliance Costs**

There are no costs associated with the proposed rulemaking. However, removing the dynamic provisions of the insurance policy from Chapter 401 will eliminate the need to promulgate regulations when changing such provisions of the insurance policy, and that will result in significant cost savings. Ultimately, those efficiencies will be conveyed to policyholders in the form of low cost premiums.

### **Compliance Assistance Plan**

This proposed rulemaking does not require a compliance assistance plan because it does not propose any new or modify any existing compliance provisions.

### **Paperwork Requirements**

Executive Order 1982-2 requires a statement of the need for, and a description of, any forms, reports or other paperwork requirements that may be required as a result of proposed regulations. No additional paperwork will result from this proposed rulemaking.

## **G. Sunset Review**

No sunset date is proposed for these regulations. These regulations will be reviewed in accordance with a schedule established by the Department of Environmental Protection.

## **H. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Department submitted a copy of the proposed rulemaking on (blank) to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of the regulation.

## **I. Public Comments**

**Written Comments** - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation 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 within 30 days of publication in the *Pennsylvania Bulletin*. 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 within 30 days following publication in the *Pennsylvania Bulletin*. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which time the final regulation will be considered.

**Electronic Comments** - Comments may be submitted electronically to the Board at [RegComments@A1.dep.state.pa.us](mailto:RegComments@A1.dep.state.pa.us) and must also be received by the Board within 30 days following publication in the *Pennsylvania Bulletin*. 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.

**J. Public Hearing**

The amendments are deemed to be so minor and uncontroversial that public meetings or hearings are not planned. All comments should be made as provided in Section J. of this preamble.

BY:

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Department of Environmental Protection



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

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

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

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§ 401.13. Coverage limits and premiums for insurance.

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

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

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

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

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

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

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

**(d) An insurance policy [will not be] is effective [until] when a complete application is received by the Board or its agents and the premium associated with that application [has been] is received by the Board or its agents [and the maximum term for all insurance policies will be 1 year, unless otherwise specified by a Board resolution and disclosed to the policyholders].**

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