

**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 \_\_\_\_\_.

**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.dep.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 damage 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**

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.

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 comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

#### **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 (blank) (within \_\_\_\_ 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 by (blank) (within \_\_\_\_ 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 the final regulation will be considered.

**Electronic Comments** - Comments may be submitted electronically to the Board at [RegComments@state.pa.us](mailto:RegComments@state.pa.us) and must also be received by the Board by \_\_\_\_\_, 2008. 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.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Lawrence Ruane directly at (717) 783-9590 or through the Pennsylvania

AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

**JOSEPH R. POWERS**  
Acting Chairperson