

**EXECUTIVE SUMMARY**  
**25 Pa. Code Chapter 401**  
**Mine Subsidence Fund**

This rulemaking amends 25 Pa. Code Chapter 401, which are the regulations concerning the administration of the Coal and Clay Mine Subsidence Insurance (MSI) Fund (Fund). The MSI Board (Board) is authorized by Section 19 of the Act of August 23, 1961, (P.L. 1068, No. 484), as amended, (52 P.S. §§ 3201-3225) (Act) to promulgate regulations for the administration of the Fund. The Department of Environmental Protection (Department) is mandated to administer the MSI Program. There are no companion federal regulations. The proposed amendments were adopted by the Board at its September 4, 2008, Board meeting and were published in the *Pennsylvania Bulletin* on December 20, 2008.

The amendments benefit potential and current policyholders. They codify provisions that have been established by the Board and codify provisions that are currently contained in the insurance policy, which consists of the application for insurance, the Insuring Agreement and the Certificate of Insurance. The final-form regulations clarify that many buildings that were previously uninsurable because of pre-existing damage are now insurable once the damages are identified and the cost to repair is established or the damages are repaired. The final-form regulations also extend low cost residential coverage to any structure with at least 50% residential usage. Previously, any structure containing more than four units, no matter its use, was insured at nonresidential coverage rates. The savings to policyholders are significant because, although nonresidential rates were recently reduced by over 60%, they are still twice that of residential rates. Other provisions in the final-form regulations codify and clarify insurance coverage for multiple unit structures whether owned conventionally or as a condominium or cooperative.

The Fund and the insurance producers (insurance agents and brokers licensed with property and casualty authority in Pennsylvania) who submit MSI applications will benefit from the efficiency and economy provided by the final rulemaking. Whereas previously sales commissions were provided to insurance producers through an invoice-payment system, the final rulemaking includes procedures to enable insurance producers to retain a portion of sales commissions upfront. These revised procedures will enable producers to receive immediate payment, while eliminating the need and costs associated with the processing of commission invoices and payment checks. The Fund will also benefit from the loan and grant provisions of the amendments. They replace cumbersome contracting procedures with more efficient mechanisms to finance the development of technologies and services that improve the operations of the Fund.

There was a 31 day public comment period for the proposed regulations that was followed by a 30 day comment period of the Independent Regulatory Review Commission (IRRC). Comments were received from the Insurance Agents and Brokers Association (IA&B), the trade association for the insurance industry, and from IRRC.

Comments from IA&B recommended modifications to terms used in the proposed regulations to make them more consistent with standard terminology used in the insurance industry. Those

recommendations have been incorporated into the final-form regulations. IA&B also noted that the retention of commissions is a standard practice in the insurance industry and stated their support for that payment process. IA&B commented that more clarity needed to be provided for the provisions regarding insurance coverage for condominiums and cooperatives. The proposed provisions have been modified in the final-form regulations to reflect those comments. They clarify the Board's intention to make coverage available first to the associations, who may purchase one policy to cover the entire structure. Associations may also purchase individual policies to cover all the individual units and common elements unless the units are stacked vertically. When the association does not purchase coverage, individual unit owners may purchase coverage for their unit and its related common elements that are necessary for the use and value of the unit, such as exterior walls.

Both IA&B and IRRC commented that the "confidentiality of policyholder information" provision provided in the proposed regulations was overly broad. The final-form regulations have narrowed this provision to require compliance with the confidentiality clause provided by Insurance Department, as recommended by the IA&B.

IRRC found that the criteria for insuring structures with preexisting damage was vague. Other comments address the need to provide more clarity for the proposed regulations concerning the payment, repayment and the revision of insurance producer commissions. The final-form regulations have been amended to address these issues. Finally, IRRC questioned the legal authority for the loan and grant provisions and recommended that more detail be provided for the administration of loans and grants. The Attorney General's office also questioned this authority before it approved the proposed regulations for form and legality. Although the Act does not expressly authorize loans and grants, the Board's rulemaking authority is broad enough to authorize these regulations. The proposed regulations are deemed to contain sufficient detail for the prudent administration of the loans and grants. Specific criteria will be developed for and applied to loans and grants on a case by case basis. The diversity of technologies, products and services that can be financed by the loans and grants as well as the variety of possible partnering arrangements under which they will be developed make further limiting criteria in the regulations impractical. The criteria already provided that limits the spending to a small portion of unreserved funds and to projects that benefit the Fund make them unnecessary.

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

**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](http://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 buy 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](http://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

## 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.