

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD

[25 PA. CODE CH. 401]

#### Mine Subsidence Fund

The Coal and Clay Mine Subsidence Insurance Board (Board) amends 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 final-form rulemaking will improve the understanding of Mine Subsidence Insurance (MSI) policyholders and applicants relevant to terms and provisions of insurance coverage.

This order was adopted by order of the Board at its meeting of December 15, 2004.

#### A. *Effective Date*

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

#### 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. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website: [www.dep.state.pa.us](http://www.dep.state.pa.us) (DEP Keyword: Participate).

#### 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 484), which provides that the Board shall have the power to make rules and regulations and other conditions of the policies.

#### D. *Background and Summary of the Amendment*

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 this Commonwealth'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 Act 484 (52 P. S. § 3219) created the Board. Its members consist of the Secretary of the Department as Chairperson, the State Treasurer and the Insurance Commissioner. A listing of 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 Act 484 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 the Mine Subsidence Program and establishes static provisions of coverage, such as eligibility criteria, that are not expected to be routinely changed. In prior amendments to Chapter 401, more dynamic provisions of the insurance policy, that is, coverage limits, premium surcharges and policy durations, which are coverage provisions that are continually reviewed and revised by the Board, were inappropriately added to Chapter 401. This final-form rulemaking will 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 confusion and the potential for conflicts between provisions in Chapter 401 and provisions in the insurance policy. This final-form rulemaking also serves to define that agents of the Board are employees of the Department who work on behalf of the Board. Finally, it codifies the established practice of the Board to make coverage effective upon the date of the Board's receipt of a completed application if the corresponding premium in full is also received within 80 days of the receipt of the application and all the statutory and regulatory eligibility requirements are met.

The Department presented the proposed rulemaking to the Board at a meeting held on December 18, 2003, wherein the Board adopted it. The proposed rulemaking was subsequently published at 34 Pa.B. 1329 (March 6, 2004) with a 30-day comment period that ended on April 5, 2004. Due to the minor and uncontroversial nature of the proposed rulemaking, no public meetings or hearings were held. The proposed rulemaking was provided to the Independent Regulatory Review Commission (IRRC) on March 31, 2004. IRRC provided its comments to the Board on May 5, 2004.

#### E. *Summary of Changes to the Proposed Rulemaking*

The Board revised proposed § 401.1 (relating to definitions) by adding a definition of the term "agent" to establish that throughout Chapter 401 the term refers to employees of the Department who work on behalf of the Board. The Board also revised proposed § 401.13 (relating to coverage limits and premiums for insurance) to clarify that coverage is effective retroactive to the date of the submission of a completed application if the corresponding premium-in-full is received within 80 days of the receipt of a completed application.

#### F. *Summary of Comments and Responses on the Proposed Rulemaking*

Two comments were received on the proposed rulemaking. One comment was from the Insurance Agents and Brokers of Pennsylvania, a trade association representing independent insurance producers licensed in this Commonwealth, who expressed support for the rulemaking. The other comment was from IRRC, who recommended a definition be provided for the term "agent," which is incorporated into the final-form rulemaking.

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

##### *Benefits*

This final-form rulemaking benefits the Fund and its policyholders by eliminating conflicts between insurance coverage provisions in § 401.13 and those contained in the insurance policy, which is the contract between the Fund and its policyholders. Those conflicts are eliminated

by removing from § 401.13 provisions of insurance coverage that periodically change, such as coverage limits, because they are more appropriately provided in the insurance policy, where they may be adopted by the Board in open public meetings. As a result, the Board will be more agile when making adjustments to the provisions of coverage, which is what Act 484 intends. The Fund and its policyholders will also benefit from clarity that this final-form rulemaking provides through improvements made to definitions in § 401.1 and through clarifications in § 401.13, concerning effective date of coverage.

*Compliance Costs*

There are no costs associated with the final-form rulemaking. However, removing the coverage provisions from § 401.13 so that they are only provided in the insurance policy will not only eliminate conflicts but it will also eliminate the need to promulgate regulations when changes in the insurance policy are implemented. These efficiencies will result in significant cost savings, which ultimately may be conveyed to policyholders in the form of lower premium rates.

*Compliance Assistance Plan*

The final-form rulemaking does not require a compliance assistance plan because it does not propose new or modify existing compliance provisions. In addition to information included as part of subsequent MSI policies, these amendments will be highlighted on the MSI website ([www.pamsi.org](http://www.pamsi.org)) and, with the assistance of the mortgage insurance industry, other mass media avenues such as newspaper and radio announcements will be utilized.

*Paperwork Requirements*

No additional paperwork will result from this final-form rulemaking.

*Pollution Prevention*

This final-form rulemaking does not result in pollution or pollution prevention.

*H. Sunset Review*

This final-form rulemaking 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)), on March 31, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 1329, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

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 the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 9, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 10, 2005, and approved the final-form rulemaking.

*J. Findings*

The Board finds that:

(1) Public notice of the 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 the regulations promulgated there under, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications to the amendments do not enlarge the purpose of the proposed rulemaking published at 34 Pa.B. 1329.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble and in the public interest.

*K. Order*

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

(a) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapter 401, are amended by amending §§ 401.1 and 401.13 to read as set forth in Annex A.

(b) The Chairperson shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House of 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.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 1942 (March 26, 2005).)*

**Fiscal Note:** Fiscal Note 7-389 remains valid for the final adoption of the subject regulations.

**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:

*Act*—The act of August 23, 1961 (P. L. 1068, No. 484) (52 P. S. §§ 3201—3226).

*Agent*—Employees of the Department who work on behalf of the Board.

*Board*—The Coal and Clay Mine Subsidence Insurance Board.

*Fund*—The Coal and Clay Mine Subsidence Insurance Fund established by the act.

*Insurance policy*—An insurance certificate, an insuring agreement, an application for mine subsidence insurance and endorsements to the insurance policy.

*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.

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

*Owner of structure*—A person, corporation, organization or association holding title to a structure within the anthracite or bituminous coal or clay mine region as defined by the Board.

*Structure*—A complete building that contains a roof, walls and a foundation which firmly attaches the structure to the earth.

**INSURANCE POLICIES**

**§ 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 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).

(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 effective until the premium has been received and the maximum term for all insurance policies will be 1 year, unless otherwise specified by a Board resolution and disclosed to the policyholders.

[Pa.B. Doc. No. 05-835. Filed for public inspection April 29, 2005, 9:00 a.m.]

**Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS**

**STATE REAL ESTATE COMMISSION**

**[49 PA. CODE CH. 35]**

**Corrective Amendment to 49 Pa. Code § 35.201**

The State Real Estate Commission has discovered a discrepancy between the agency text of 49 Pa. Code

§ 35.201 (relating to definitions) as deposited with the Legislative Reference Bureau and the official version of 49 Pa. Code § 35.201 as published at 34 Pa.B. 6530, 6534 (December 11, 2004), codified in the February 2005 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 363), and as currently appearing in the *Pennsylvania Code*. When the amendments at 34 Pa.B. 6530, 6534 were codified, the term "real estate school" should have been deleted.

Therefore, under 45 Pa.C.S. § 901: The State Real Estate Commission has deposited with the Legislative Reference Bureau a corrective amendment to 49 Pa. Code § 35.201. The corrective amendment to 49 Pa. Code § 35.201 is effective as of December 11, 2004, the date the defective official text was published in the *Pennsylvania Bulletin*.

The correct version of 49 Pa. Code § 35.201 appears in Annex A, with ellipses referring to the existing text of the regulation.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 35. STATE REAL ESTATE COMMISSION**

**Subchapter B. GENERAL PROVISIONS**

**§ 35.201. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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*Real estate*—An interest or estate in land—whether corporeal or incorporeal, whether freehold or nonfreehold, whether the land is situated in this Commonwealth or elsewhere—including leasehold interests and time share and similarly designated interests.

*Real estate education provider*—A person or institution who offers real estate education regardless of whether the learning is instructor-led or independent, excluding colleges, universities or institutes of higher learning accredited by the Middle States Association of Colleges and Secondary Schools or equivalent accreditation.

*Rental listing referral agent*—An individual or entity that owns or manages a business which collects rental information for the purpose of referring prospective tenants to rental units or locations of rental units. The term does not include an official or employee of a public housing authority that is created under State or Federal law.

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