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3901-1-48 "Ohio mine subsidence insurance underwriting association" and "mine subsidence insurance fund" plan of operation.

(A) Purpose

The purpose of this rule is to implement sections 3929.50 to 3929.53 and 3929.55 to 3929.56 and 3929.58 to 3929.61 of the Revised Code which:

- (1) Establishes the "Ohio Mine Subsidence Underwriting Association,"
- (2) Provides for the transfer of risk from member insurers to the association, and
- (3) Creates the "Mine Subsidence Insurance Fund."

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under section 3901.041 of the Revised Code.

(C) Definitions

- (1) "Basic property insurance" means insurance against direct loss to property as defined and limited in dwelling fire, homeowners, and farm policies and extended coverage endorsements thereon, and insurance for such types, classes and locations of property against the perils of vandalism, malicious mischief, burglary or theft, as the superintendent of insurance shall designate.
- (2) "Board" means the four-member board of governors, empowered by division (C) of section 3929.51 of the Revised Code to govern the "Ohio Mine Subsidence Insurance Underwriting Association" and the "Ohio Mine Subsidence Insurance Fund."
- (3) "Homeowners insurance" means insurance on owner-occupied dwellings providing personal multi-peril property and liability coverages, commonly known as "homeowners insurance."
- (4) "Farm insurance" means insurance providing property coverage on farm dwelling buildings.
- (5) "Dwelling fire insurance" means a policy providing property coverage on residential buildings for the perils of fire and lightning and additional coverages.
- (6) "Member" means all insurers authorized to write and engaged in writing within the state, on a direct basis, basic property insurance or any component thereof in multi-peril and policies.
- (7) "Mine subsidence" means loss caused by the collapse or lateral or vertical movement of structures resulting from the caving in of underground mines, including coal mines, clay mines, limestone mines, and salt mines. Mine subsidence does not include loss caused by earthquakes, landslide, volcanic eruption, or collapse of strip mines, storm

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and sewer drains or rapid transit tunnels.

- (8) "Mine subsidence coverage" means the limits and type of coverage as defined by the mine subsidence insurance governing board in the coverage form and approved by the superintendent.
- (9) "Mine Subsidence Insurance Underwriting Association," hereinafter referred to as "association" means the association of members formed pursuant to section 3929.51 of the Revised Code.
- (10) "Mine Subsidence Insurance Fund," hereinafter referred to as "fund," means the fund formed pursuant to section 3929.52 of the Revised Code which is administered by the board for the purpose of making available insurance coverage against mine subsidence. The state treasurer is the custodian of the fund.
- (11) "Plan of operation," hereinafter referred to as "plan," means the plan of operation approved by the superintendent for the economical, fair and nondiscriminatory administration of the requirements identified in sections 3929.50 to 3929.53 and 3929.55 to 3929.56 and 3929.58 to 3929.61 of the Revised Code.
- (12) "Strip mines" means any surface mine.
- (13) "Structure" means any one to four-family dwelling as defined and limited in dwelling fire, homeowners, and farm policies and other structures as described, defined, or limited in the mine subsidence insurance form.
- (14) "Superintendent" means the superintendent of insurance of the state of Ohio.
- (15) "Treasurer" means the treasurer of the state of Ohio.
- (16) "Auditor" means the auditor of the state of Ohio.

(D) Board of governors

- (1) The association and fund shall be administered by the board consisting of the director of natural resources or the director's designee, as chairperson, the treasurer of the state or the treasurer of state's designee, ~~the superintendent of insurance or the superintendent's designee,~~ and one representative from member companies. The representative from the member companies shall be an Ohio-domiciled member of the association.
- (2) The board shall approve all actions of the association, have the responsibility of administering the association and fund.
- (3) The board shall meet as often as is required to perform the duties of administration, and shall meet upon the request of any single member of the board. In no event shall the board meet less than two times per year.

(E) Meeting of members

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- (1) Members shall elect their authorized representative every three years. The member company representative elected to the board shall be an Ohio-domiciled company.
- (2) The members may hold meetings as needed and during any such meeting, a quorum shall consist of a simple majority of members present.
- (3) Each member shall be entitled to one vote. Members in the same group of insurers shall be entitled to one vote only.

(F) Liability

Every policy of mine subsidence insurance written hereunder shall provide that such policy does not create any liability on the part of the member issuing such policy, the association, or any organization with which it may contract for administrative or claims services, beyond the net premium on such policies paid into the fund. Such policies shall create no liability beyond the amounts in the fund, on the part of the state of Ohio, the "Ohio Insurance Guaranty Association" and its member companies or any other person or organization.

(G) Notice of availability of mine subsidence insurance

- (1) Every insurer that offers basic property and homeowners insurance insuring on a direct basis a structure located in the counties of Athens, Belmont, Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Scioto, Stark, Trumbull, Tuscarawas, Vinton and Washington shall include mine subsidence coverage provided by the Ohio mine subsidence insurance underwriting association in each policy of basic property and homeowners insurance that is delivered, issued for delivery or renewed in any of such counties.
- (2) The mine subsidence insurance governing board herein designates Delaware, Erie, Geauga, Lake, Licking, Medina, Ottawa, Portage, Preble, Summit and Wayne counties as counties in which mine subsidence coverage must be offered, on an optional basis, by an insurer.
 - (a) Every insurer that offers basic property and homeowners insurance insuring on a direct basis to a structure located in any county designated in paragraph (G)(2) of this rule shall offer to include, on an optional basis, mine subsidence coverage provided by the association in each policy of basic property insurance that is delivered, issued for delivery, or renewed in any such designated county.
 - (b) This offer shall contain language and be in a form approved by the superintendent which includes a description of mine subsidence coverage, a statement that the purchase of the coverage is optional, and the premium charged for the coverage.

(H) Application for coverage

A member insurer who receives a request from a named insured or applicant for mine subsidence shall forward to that named insured or applicant an application for mine

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subsidence coverage. Such application may be included, at the insurer's option, with the offer described in paragraph (G)(2)(a) of this rule. The form of the application shall be approved by the superintendent.

(I) Administration and claims processing

The board may retain a contractor to provide administrative and claims processing. When a contractor is retained, the board may from time to time review:

- (1) The performance of the contractor;
- (2) The procedures and standards used by the contractor for administration and claims processing; and
- (3) The application of those procedures and standards to applicants for insurance and to claims of insureds.

(J) Underwriting

- (1) Mine subsidence coverage will be available on eligible property. Eligible property must be:
 - (a) A structure as defined in this rule;
 - (b) Covered by a valid basic property or homeowners insurance policy.
- (2) The member may refuse to provide mine subsidence coverage on an otherwise eligible property where:
 - (a) The structure evidences un-repaired subsidence damage; or
 - (b) The structure evidences any mine subsidence damage in progress.
- (3) The limit of liability for direct loss caused by mine subsidence under this plan of operation shall not exceed an amount equal to the coverage on the dwelling provided by a basic property or homeowners policy, or three hundred thousand dollars, whichever is less, and shall not exceed the amount expressed in the mine subsidence coverage form as approved by the mine subsidence insurance governing board and approved by the superintendent of insurance.
- (4) All coverage provided pursuant to this plan of operation is subject to a deductible as expressed in the mine subsidence coverage form as approved by the mine subsidence insurance governing board and approved by the superintendent of insurance, but at no time shall the deductible be less than two hundred fifty dollars, or more than five hundred dollars.

(K) Rates and forms

- (1) Rates. The board shall periodically review the premium level and experience data and recommend to the superintendent a rate or schedule of rates sufficient to satisfy:

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- (a) All foreseeable claims;
- (b) Normal cost of operation; and
- (c) A reserve for unexpected contingencies.

However, the premium level for mine subsidence coverage in a county designated for optional coverage shall not exceed an annual rate that is greater than twenty dollars. The premium level for mine subsidence coverage in a county as designated in paragraph (G)(1) of this rule shall not exceed an annual rate that is greater than five dollars.

- (2) Forms. The policy forms and language shall be approved by the superintendent.

(L) Audits

The auditor shall audit the affairs of the fund in accordance with section 3929.55 of the Revised Code at least once each year. The auditor shall ascertain the expenses incurred in making any such audit and shall certify the amount to the board for payment from the fund.

(M) Reporting and statistics

- (1) Claim reports. Members shall, upon receipt of notice of claims from policyholder(s), confirm coverage and provide formal notice of claim to the association.
- (2) Financial reports:
 - (a) The fiscal period shall be the calendar year.
 - (b) Members reports are required quarterly and shall be due on the forty-fifth day following the close of the quarter.
 - (c) Members' reports shall be in forms approved by the board and shall include, at minimum:
 - (i) Gross written premium on a per county basis.
 - (ii) Premium cancelled/returned on a per county basis.
 - (iii) Ceding commission withheld (for optional counties only).
 - (d) Members reports shall be accompanied by the appropriate remittance which shall be full premium collected for mine subsidence coverage in the counties denoted in paragraph (G)(1) of this rule and the net premium (gross premium written, less ceding commission) in the counties denoted in paragraph (G)(2) of this rule less any cancellation/returns. In the event a balance is due to the insurer, that balance shall be carried forward as a credit against future written premiums. An insurer may apply for a refund only if it ceases to issue basic property or homeowner insurance coverage.

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- (e) Members shall report and pay premium taxes as required.
 - (f) The association shall review, verify and reconcile members' reports and research, and rectify any inconsistencies.
 - (g) The association shall remit receipts to the fund, said remittance to be supported by a summary report of premium written, cancelled/non-renewed, net premium written and commission taken.
- (3) Statistical reports. Members shall compile and file, on a quarterly basis with the financial reports, a summary report of statistics in a form approved by the board. Such reports shall, at minimum, contain:
- (a) Quarter and year-to-date policy count by county and in total;
 - (b) Quarter and year-to-date premium written by county.
- (N) "Mine Subsidence Insurance Fund"
- The fund shall receive all revenues, appropriations and investment earnings pursuant to this plan of operation. Premiums collected will be considered program income in accordance with the uniform administrative requirements for grants to state and local governments and be used:
- (1) To enable the fund to be self-sustaining, with the fund invested by the treasurer of state under guidelines established by the board;
 - (2) To provide a reserve for payment of claims for verified claims from all types of mine subsidence, including non-coal mining, post-1977 underground mines and active underground mines;
- (O) Investment of custodial funds
- With the approval of the board, the treasurer of state may invest any monies in the fund that are in excess of the amounts required to meet the immediate cash needs and operating expenses of the fund. The board shall not provide guidelines for the investment of excess funds that are broader or more liberal than the investment provisions for property casualty insurance companies set forth in Chapter 3925. of the Revised Code.
- (P) Reinsurance agreement
- (1) Every insurer authorized and engaged in writing on a direct basis any property coverages in the state of Ohio shall execute a reinsurance agreement with the association. The form of the reinsurance agreement shall be in a form approved by the board.
 - (2) An insurer may request exemption from the requirements of paragraph (P) of this rule by filing the exemption form with the superintendent. The exemption shall be effective after review and approved by the superintendent of insurance.

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(3) Any insurer who has received an exemption shall notify the association of any change in any circumstances that would be reason to revoke the exemption.

(Q) Effective date of the plan

This plan of operation shall be effective upon the effective date of this rule.

(R) Amendments

Amendments to the plan may be requested by the board or superintendent of insurance in accordance with the provisions of section 3929.53 of the Revised Code.

(S) Meeting notice

(1) The board and each of its committees and subcommittees shall provide notice of regular, special, and emergency meetings as the same are scheduled by posting the dates, times, locations, and agendas (if applicable) on the board's official web site.

(2) The board maintains a list of individuals who have requested individual notice of each meeting. Individual notice may be given via mail, electronic mail, or facsimile.

(a) Any person who desires individual mail notice of the meetings described in paragraph (S)(1) of this rule shall make the request in writing to the board at its business address. The board may refuse to honor a request for individual mail notice unless the person requesting such notice has first supplied the board with a self-addressed, stamped envelope for the transmission of each requested notice.

(b) Any person who desires individual electronic mail notice of the meetings described in paragraph (S)(1) of this rule shall make a request in writing to the board at its business address. The board shall maintain a list of all persons who have requested individual electronic mail notice in this manner. The board may purge the list of all entries as it deems appropriate provided, however, that the board shall first provide notice to any individual whose contact information will be purged at least thirty days in advance.

(c) Any person who desires individual facsimile mail notice of the meetings described in paragraph (S)(1) of this rule shall make a request in writing to the board at its business address. The board shall maintain a list of all persons who have requested individual facsimile notice in this manner. The board may purge the list of all entries as it deems appropriate provided, however, that the board shall first provide notice to any individual whose contact information will be purged at least thirty days in advance.

(d) The board may, at its sole option, provide for an electronic means of requesting individual electronic mail or facsimile notice of the meetings described in paragraph (S)(1) of this rule.

(3) A representative of the news media may obtain notice of all special or emergency meetings of the council, its committees or its subcommittees by requesting such in

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writing to the "Ohio Mine Subsidence Insurance Governing Board" at its business address.

- (a) The request must provide the name of the person to be contacted, the agency whom the person represents, and shall state whether the person wishes to be notified of regular, special, or emergency meetings, or any combination thereof. Additionally, the request shall specify whether the person wishes to be notified by mail, electronic mail, or facsimile, and shall include the appropriate contact information.
- (b) The board shall maintain a list of all news media representatives requesting notice of special meetings. The board may purge the list of all entries as it deems appropriate provided, however, that the board shall first provide notice to an individual whose contact information will be purged at least thirty days in advance.
- (c) Notice of special meetings shall be provided to news media representatives at least twenty-four hours prior to the special meeting. Notice of emergency meetings shall be provided to news media representatives by telephone or electronic means as soon as practicable.
- (4) Notice given by mail is effective upon mailing. Notice given by telephone is effective upon providing actual notice, leaving a message containing the meeting information with any individual who answers the number provided by the requestor or leaving a recorded message, or, if the board makes three unsuccessful attempts to contact the requestor directly or to leave a voice message. Notice given by electronic means shall be complete upon transmission.

(T) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.