

PROPOSED RULEMAKING

COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD

[25 PA. CODE CH. 401]
Mine Subsidence Fund

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) and the Mine Subsidence Insurance Program (Program). The rulemaking is proposed to revise ambiguous terms and provisions in Chapter 401 and to remove dynamic provisions of the insurance policy—that is, coverage limits, premium surcharges and policy durations. The dynamic provisions of the insurance policy are established by the Board and are contained in the Insuring Agreement, the contract between the Fund and its policyholders and 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

The proposed rulemaking will go into effect upon final-form 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. 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 (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

C. Statutory Authority

Section 19 of the act of August 23, 1961 (P. L. 1068, No. 484) (52 P. S. § 3219) (Act 484) 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 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. § 3201) created the Board. It consists of the Secretary of the Department as Chairperson 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 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 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 added to Chapter 401. This proposed rulemaking removes the dynamic provisions of coverage from Chapter 401 and thereby facilitates 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.

E. Summary of Proposed Amendments

This proposed rulemaking amends Chapter 401. There are no companion Federal laws or regulations that govern the administration of the Fund and the Program.

The specific regulatory changes are 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 or the collapse of mine workings and not mining operations. This amendment 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 "mining operations," the term used in the existing 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 this section and will continue to be established in the insurance policy as is provided in section 19 of Act 484. The 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 establishing dynamic provisions of the insurance policy through regulations. Adherence to establishing dynamic provisions of the insurance policy in the policy itself, 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*

Benefits

This proposed rulemaking will bring the provisions in Chapter 401 into conformance with the provisions in the 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 revisions to the insurance policy, as is prescribed in section 19 of Act 484. Most significantly, it will be more agile when making adjustments to coverage limits, which is what Act 484 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 provisions of the insurance policy, which will result in significant cost savings. Ultimately, those efficiencies will be conveyed to policyholders in the form of lower premium rates.

Compliance Assistance Plan

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

Paperwork Requirements

No additional paperwork will result from this proposed rulemaking.

G. *Sunset Review*

This proposed 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.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 25, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. 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, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

I. *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 April 5, 2004. 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 April 5, 2004. 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@state.pa.us and must also be received by April 5, 2004. A subject heading of the proposal and a return name and address must be included in each transmission.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-389. No fiscal impact; (8) recommends adoption.

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:

* * * * *

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 or the collapse of underground coal or clay mine workings.**

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

* * * * *

INSURANCE POLICIES

§ 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 [has been] associated with that application is 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] by the Board or its agents.

[Pa.B. Doc. No. 04-369. Filed for public inspection March 5, 2004, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Implanting Electronic Identification; Veterinary Technician

The State Board of Veterinary Medicine (Board) proposes to amend § 31.1, 31.31—31.33, 31.35 and 31.38—31.41 to read as set forth in Annex A. The proposed rulemaking would permit a certified veterinary technician to implant electronic identification under indirect veterinary supervision and would permit a noncertified employee to implant electronic identification under direct veterinary supervision.

The Board also proposes to change the term “certified animal health technician” in existing regulations to “certified veterinary technician,” consistent with the act of December 9, 2002 (P. L. 1370, No. 167) (Act 167).

Effective Date

The proposed rulemaking would become effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3(10)(viii) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.3(10)(viii)) provides that the practice of veterinary medicine includes the practice by any person who “implants electronic identification, as determined by the Board.” Section 5(2) of the act (63 P. S. 485.5(2)) authorizes the Board to adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

Background and Need for the Proposed Rulemaking

The Board currently does not have a regulation to address section 3(10)(viii) of the act, which was added when the act was amended by Act 167, effective on February 9, 2003. The proposed rulemaking is necessary to allow certified veterinary technicians and noncertified employees, under either indirect or direct supervision, to implant electronic identification.

Act 167 amended the act to change the term “animal health technician” to “veterinary technician,” which is

consistent with Nationwide terminology. Consistent with § 31.1 (relating to definitions) and National practice, the Board will continue to refer to these licensed individuals as certified veterinary technicians rather than veterinary technicians.

Description of Proposed Rulemaking

The Board proposes to amend § 31.31 (relating to scope of practice) to authorize certified veterinary technicians and noncertified employees to implant electronic identification under appropriate supervision. In determining the level of supervision necessary to ensure the safety and welfare of animals, the Board considered the large gauge needle necessary to implant electronic identification and how the use of a large gauge needle compared to the scope of practice of certified veterinary technicians and noncertified employees already set forth in § 31.31. The Board determined that implanting electronic identification might raise the same types of risks associated with intravenous catheterization, which is done with a smaller gauge needle, but directly into a vein. Therefore, the Board determined, consistent with the scope of practice of certified veterinary technicians and noncertified employees already in § 31.31, that certified veterinary technicians should be permitted to implant electronic identification under indirect veterinary supervision and noncertified employees should be permitted to implant electronic identification under direct veterinary supervision. Direct and indirect veterinary supervision are defined in § 31.1.

Direct veterinary supervision means that a veterinarian has given either oral or written instructions, is on the premises and is easily and quickly available to assist. Indirect veterinary supervisions means the veterinarian is not on the premises but is acquainted with the keeping and care of the animal by virtue of an examination of the animal and has given written or oral instructions for treatment of the animal. This will allow a noncertified employee, who generally has less formal education in veterinary technology, to implant electronic identification when a veterinarian is on the premises and easily and quickly available to assist. A certified veterinary technician, who has graduated from an approved school of veterinary technology, has passed a National licensing examination and has obtained licensure, need only have orders from the veterinarian who has examined the animal to implant electronic identification.

This proposed rulemaking also amends all sections of the Board's regulations that address certified animal health technicians to change the nomenclature of these licensees to certified veterinary technician, consistent with Act 167.

Finally, this proposed rulemaking would conform the Board's regulations to the amended act by including as grounds for disciplining a veterinary technician the conviction of a misdemeanor related to the profession or a crime of moral turpitude. See section 21(15) of the act (63 P. S. § 485.21(15)).

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have financial impact on licensees, the Board or any other State entity. The proposed rulemaking will have a positive financial impact on those members of the public who wish to have their animals implanted with electronic identification by expanding to paraprofessional personnel the ability to undertake the practice of implanting electronic identification.

The Board has already amended its licensing and biennial renewal applications to reflect the change in nomenclature. There are no additional paperwork requirements associated with the proposed rulemaking.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 24, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. 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, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Robert Kline, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BRIAN V. HARPSTER, V.M.D.,
Chairperson

Fiscal Note: 16A-5715. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

GENERAL PROVISIONS

§ 31.1. Definitions.

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

* * * * *

Certified [animal health] veterinary technician—
[An animal health] A veterinary technician certified by the Board.

* * * * *

*Direct veterinary supervision—*A veterinarian has given either oral or written instructions to the certified **[animal health] veterinary technician** or noncertified

[employe] employee, is on the premises and is easily and quickly available to assist the certified **[animal health] veterinary technician** or the noncertified **[employe] employee**.

* * * * *

*Indirect veterinary supervision—*A veterinarian is not on the premises but is acquainted with the keeping and care of the animal by virtue of an examination of the animal or medically appropriate and timely visits to the premises where the animal is kept, and has given written or oral instructions to the certified **[animal health] veterinary technician** for treatment of the animal patient.

* * * * *

*Noncertified [employe] employee—*An **[employe] employee** of a veterinarian who does not hold certification as **[an animal health] a veterinary technician** and whom the veterinarian deems competent to administer medication or render auxiliary or supporting assistance under direct veterinary supervision or immediate veterinary supervision.

* * * * *

[ANIMAL HEALTH] VETERINARY TECHNICIANS AND NONCERTIFIED EMPLOYEES

§ 31.31. Scope of practice.

(a) *Certified [animal health] veterinary technicians.* A certified **[animal health] veterinary technician** may perform the duties enumerated in this subsection under direct veterinary supervision or indirect veterinary supervision as indicated. While some of the enumerated duties may be applicable primarily to small animal practices, the intended scope of this subsection is both large and small animal practices. This subsection does not prohibit the performance by a certified **[animal health] veterinary technician** of a service which is not listed in this subsection if the service is within the certified **[animal health] veterinary technician's** skills, forms a usual component of the veterinarian's scope of practice, and is requested by the supervising veterinarian. The veterinarian bears ultimate responsibility for assuring that the certified **[animal health] veterinary technician** to whom a duty is assigned is competent to perform it.

(1) A certified **[animal health] veterinary technician** may do the following only under direct veterinary supervision:

* * * * *

(2) Except as provided in paragraph (3), a certified **[animal health] veterinary technician** may do the following under indirect veterinary supervision:

* * * * *

(x) Implant an electronic identification device.

(3) If an animal is under anesthesia, a certified **[animal health] veterinary technician** may perform the services listed in paragraph (2) only under direct veterinary supervision.

(4) Emergency treatment by certified **[animal health] veterinary technicians** is permitted without veterinary supervision when an animal has been placed

in a life-threatening condition and immediate treatment is necessary to sustain the animal's life. The certified [animal health] veterinary technician shall immediately take steps to secure the direct supervision of a veterinarian. Emergency treatment may only consist of those duties enumerated under paragraphs (1) and (2).

(b) Noncertified [employes] employees. Noncertified [employees] employees may perform the duties enumerated in this subsection under direct veterinary supervision or immediate veterinary supervision, as indicated. While some of the enumerated duties may be applicable primarily to small animal practices, the intended scope of this subsection is both large and small animal practices. This subsection does not prohibit a noncertified [employe] employee from administering medication or rendering auxiliary or other supporting assistance which is not listed in this subsection if the service is within the noncertified [employe's] employee's skills and is requested by the supervising veterinarian. The veterinarian bears ultimate responsibility for assuring that the noncertified [employe] employee to whom a duty is assigned is competent to perform it.

(1) A noncertified [employe] employee may do the following under direct veterinary supervision:

* * * * *

(xi) Implant an electronic identification device.

(2) A noncertified [employe] employee may do the following under immediate veterinary supervision:

* * * * *

(c) Prohibited acts. Neither certified [animal health] veterinary technicians nor noncertified [employes] employees may do the following:

* * * * *

§ 31.32. Certification.

(a) As a prerequisite to original certification as [an animal health] a veterinary technician, an applicant shall submit the following documentation to the Board:

(1) A completed and signed application for [animal health] veterinary technician certification.

* * * * *

(3) Evidence of satisfactory completion of an approved program for the training and education of [animal] veterinary technicians.

(4) A letter of good standing from the licensure board of each state where the applicant has held a license as [an animal health] a veterinary technician, if any, reporting the outcome of disciplinary actions taken against the applicant in that state.

* * * * *

§ 31.33. Applications.

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(b) An applicant for certification as [an animal health] a veterinary technician by endorsement shall complete and file with the Board an application for certification by endorsement on forms prescribed by the Board. The application form may be obtained from the Administrative Office of the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania

17105-2649 or by accessing the Board's web page at www.dos.state.pa.us/bpoa/vetbd/mainpage.htm.

§ 31.35. Examinations.

(a) The examination required for certification as [an animal health] a veterinary technician is the Veterinary Technician National Examination (VTNE).

* * * * *

§ 31.38. Code of ethics for certified [animal health] veterinary technicians.

(a) The certificate of a certified [animal health] veterinary technician will only be valid for use when the holder is in the employ of or under the supervision of a veterinarian licensed in this Commonwealth.

(b) The holder of a certificate may not accept a direct fee for services rendered as a certified [animal health] veterinary technician from other than the [certificateholders'] certificateholder's employer.

(c) A certified [animal health] veterinary technician may not compromise the confidentiality of the doctor-client relationship.

(d) A certified [animal health] veterinary technician who deals or communicates directly with a client shall explain to the client that the certified [animal health] veterinary technician is not a veterinarian.

(e) A certified [animal health] veterinary technician shall be responsible to the client and to the veterinarian in the following respects:

* * * * *

(f) A certified [animal health] veterinary technician may not undertake an assignment that the certificateholder is not capable of performing.

§ 31.39. Grounds for disciplinary proceedings.

(a) The Board may suspend or revoke certification of [an animal health] a veterinary technician or otherwise discipline a certified [animal health] veterinary technician or refuse to certify an applicant, or, upon certification, restrict the practice of an applicant who is found guilty by the Board or by a court of one or more of the following:

* * * * *

(4) Revocation [or], suspension or other discipline by another state of the certification of the person as an animal health technician or a veterinary technician on grounds similar to those which in this Commonwealth allow disciplinary proceedings, in which case the revocation [or], suspension or other discipline shall be conclusive evidence.

* * * * *

(6) Conviction of a felony, a misdemeanor related to the profession or a crime of moral turpitude in the courts of this Commonwealth or of a state, territory or country [which, if committed in this Commonwealth, would be deemed a felony] and suspension [or], revocation [of certification] or other discipline is in the best interest of the public health and the general safety and welfare of the public. A record of conviction in a court of competent jurisdiction shall be

sufficient evidence for disciplinary action to be taken as may be deemed proper by the Board.

* * * * *

(b) Certified [**animal health**] **veterinary** technicians and noncertified [**employees**] **employees** who deviate from the permitted scope of practice as set forth in § 31.31 (relating to scope of practice) will be subject to prosecution and the levying of a civil penalty by the Board under section 28(c) of the act (63 P. S. § 485.28(c)). Veterinarians who permit, order or direct certified [**animal health**] **veterinary** technicians or noncertified [**employees**] **employees** to perform duties which are not authorized by § 31.31 will be subject to disciplinary action by the Board under section 21 of the act (63 P. S. § 485.21).

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§ 31.40. Continuing education provider approval.

(a) The Board will approve without application to the Board and the fee required under § 31.41 (relating to schedule of fees), continuing education courses offered by the following providers as long as the programs are specifically designed to increase the skills, knowledge and competence of certified [**animal health**] **veterinary** technicians:

* * * * *

(c) Organizations approved under subsections (a) and (b) shall provide certification of attendance to the certified [**animal health**] **veterinary** technician which includes

the name of the sponsor, the name of the licensee, the title of the course, the date of the course, the number of credit hours and the signature of the person authenticating attendance. Organizations approved under subsection (b) shall also provide the Pennsylvania approval number.

(d) Instructors of continuing education programs may include:

* * * * *

(2) Licensed doctors of veterinary medicine in this Commonwealth or in another state who are not faculty members of those schools covered under paragraph (1) if, by virtue of their professional activities and achievements in a particular field, the doctors are recognized by the Board as qualified to speak on subjects of pertinent value to [**animal health**] **veterinary** technicians.

* * * * *

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

* * * * *

[**Animal health**] **Veterinary technicians:**

* * * * *

[Pa.B. Doc. No. 04-370. Filed for public inspection March 5, 2004, 9:00 a.m.]
