

PROPOSED RULEMAKINGS

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 77]

Noncoal Mining Fees

The Environmental Quality Board (Board) proposes to amend Chapter 77 (relating to noncoal mining) to read as set forth in Annex A. This proposed rulemaking addresses the fees paid by noncoal mine operators.

This proposed rulemaking was adopted by the Board at its meeting of June 15, 2010.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Tom Callaghan, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 783-1659; or Richard S. Morrison, 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 Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us.

C. *Statutory Authority*

The amendments are proposed under sections 7(a) and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P. S. §§ 3307(a) and 3311(a)) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background and Purpose*

The purpose of this proposed rulemaking is to establish fees as authorized by the act. Section 7(a) of the act states: "The department is authorized to charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit." The act thus authorizes the Department to collect fees from noncoal mining permit applicants and permittees in an amount sufficient to cover the Department's costs of administering the noncoal mining regulatory program, so long as the amount of fees collected does not exceed those costs. The Department calculated its costs of administering the noncoal mining program and will establish fees through this proposed rulemaking sufficient to cover most of its costs.

The proposed rulemaking implements the statutory authorization of the act to collect a reasonable filing fee through two kinds of fees—the permit application fee and the administrative fee. The permit application fee is intended to cover only the Department's cost to review noncoal mining permit applications. The permit fees have been set according to the type of permit application submitted; the amounts of these fees are based on the number of hours typically required to review a specific type of permit application. A large noncoal surface mining permit where mining will take place below the water table is substantially more complex and requires signifi-

cantly more review time than a small noncoal surface mining permit. The amount of the respective permit fees reflects the average review time for each type of permitting action.

The annual administrative fee is intended to cover the Department's cost of administering the permit. These include, among other things, the cost of performing inspections of noncoal mining operations, compliance assistance and other compliance related activities, as well as tracking of required reporting and monitoring by permittees. As with the permit fees, the annual administrative fees have been set based on workload analyses. A large surface mining permit with blasting activity necessitates substantially more administrative activity by the Department; the annual administrative fee reflects the differences between types of operations based on the Department's respective administrative workload.

The assessment of the two kinds of fees is necessary to fairly represent the cost to the Commonwealth for reviewing and administering a noncoal mining permit. This proposed rulemaking has become necessary in large part due to recent funding cuts. General appropriation funds to support the Department's regulatory/permitting programs were significantly reduced in Fiscal Year 2009-10 so it has become necessary to pay for the noncoal mining program through collection of fees paid by the regulated industry. The cost of implementing this program is \$2.5 million per year.

Permit Application Fee

The permit application fee amounts were calculated based on a workload analysis that the Department uses to manage the work force. The workload analysis assigns a certain number of hours for the review time for each type of application. Other factors, including the wage rate for the employee classification that reviews the application, benefits and overhead are included in the fee calculation. The result of this calculation was then rounded off.

Permit applications vary in their complexity based on a number of factors. The primary factor relates to hydrologic impacts. Applications that propose to mine below the water table take more time to review. Therefore, the application fee for these permits is higher. Similarly, if blasting is proposed, then the blasting inspector is involved in the review of the blast plan for the application. Therefore, a fee is being proposed for blast plans.

Annual Administration Fee

The annual administration of a noncoal mining permit is accomplished through routine inspections to assure that the mining activities are in compliance with the permit requirements. The Department established inspection frequencies based upon the type of permit and the status of the activity.

There are two types of permits—small and large. Small permits authorize up to 10,000 tons per year in production. Large permits are needed for production that exceeds 10,000 tons per year. The inspection frequency for large permits is four per year. For small permits, the frequency is two per year.

For large permits that authorize blasting, one inspection per year by the blasting inspector is needed. This results in a higher annual administrative fee amount for the large noncoal permits where blasting is authorized.

There is not an advisory board for the noncoal mining program. However, the Department has engaged in extensive outreach with the regulated community. Feedback from the industry was considered in the drafting of this proposed rulemaking.

E. *Summary of Regulatory Requirements*

The following sections are included in this proposed rulemaking:

§ 77.1. *Definitions*

This section is being amended to add definitions of “annual administration fee,” “large noncoal permit,” “major permit revision,” “minor permit revision,” “permit application fee,” “permit status” and “small noncoal permit.” These definitions are needed for clarity in implementing the fee schedules.

§ 77.51. *License requirement*

Subsection (e) is being amended to require an operator to pay fees to be eligible for a renewal of a mining license.

§ 77.106. *Fees*

This section is being renamed from “permit fees” to “fees” and amended to include fee schedules for the permit application fees and annual administration fees. This section also specifies the intended use of the funds collected from the fees to support the Department’s costs of reviewing applications and administering and enforcing permits.

§ 77.126. *Criteria for permit approval or denial*

Subsection (c) is being added to include the requirement that an applicant pay all fees before a permit application may be approved by the Department.

F. *Benefits, Costs and Compliance*

Benefits

The money generated by these fees will enhance environmental protection by assuring that the Department has the funds needed to review permit applications to prevent problems from occurring and administer the permits to assure compliance.

Compliance costs

The proposed rulemaking will impose increased compliance costs on the regulated community. There are about 1,500 noncoal mining permit holders in this Commonwealth. It is expected that the fees will cost the industry \$2.5 million per year.

Compliance assistance plan

The Department will revise forms used by the industry when the fees are finalized.

G. *Pollution Prevention*

The proposed rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in Chapter 77.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 18, 2010, 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 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 must 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.

J. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th 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 on or before September 27, 2010. 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 the Board on or before September 27, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board on or before September 27, 2010. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,
Chairperson

Fiscal Note: 7-460. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 77. NONCOAL MINING

Subchapter A. GENERAL PROVISIONS

§ 77.1. *Definitions.*

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

* * * * *

Annual administration fee—A nonrefundable filing fee assessed on an annual basis for the cost to the Department of inspecting a permitted activity or facility in order to administer the permit.

* * * * *

Large noncoal permit—A mining permit that authorizes the extraction of greater than 10,000 tons per year of noncoal materials

Major permit revision—A revision to a permit that requires public notice.

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Minor permit revision—A revision to a permit that does not require public notice.

* * * * *

Permit application fee—A nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.

* * * * *

Permit status—An indicator of the level of progress of mining activity at a permitted facility. Permit statuses are as follows:

(i) **Not started.** Mine sites where the mining permit has been issued, but mining activities have not begun.

(ii) **Active.** Mine sites that do not qualify for inactive status, not started status or released status.

(iii) **Inactive.** Mine sites where mineral extraction activity has been completed but final bond release has not been completed.

(iv) **Released.** Mine sites where the final bond release has been completed.

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Small noncoal permit—A mining permit that authorizes the extraction of up to 10,000 tons of noncoal minerals per year.

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Subchapter B. SURFACE MINING OPERATOR'S LICENSE

§ 77.51. License requirement.

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(e) **Refusal to issue or renew license.** The Department will not issue a noncoal surface mining operator's license or renew or amend a license if it finds, after investigation and an opportunity for informal hearing, that a person, partner, associate, officer, parent corporation or subsidiary corporation has been subject to a bond forfeiture under the act and environmental acts or has failed to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree under the act and environmental acts. The Department will not renew a license for an operator who uses the provisions for payment in lieu of bond unless the operator submits his annual payment with the license renewal application. **The Department will not renew a noncoal mining operator's license for an applicant who has not made full payment of the annual administration fee required under § 77.106(f) (relating to fees).** A person who opposes the Department's decision on issuance or renewal of a license has the burden of proof.

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Subchapter C. PERMITS AND PERMIT APPLICATIONS

GENERAL

§ 77.106. [Permit fees] Fees.

[If required, a permit application for noncoal mining activities shall be accompanied by a check, payable to the "Commonwealth of Pennsylvania" in the amount set forth by the Department. The Department may require other fees set by the act, the environmental acts, this title or the Secretary.]

(a) A permit application for noncoal mining activities shall be accompanied by a nonrefundable payment for the permit application fee payable to the "Commonwealth of Pennsylvania." The applicable permit application fee amount is specified in subsection (e). For purposes of this subsection, permit applications include all of the applications listed in subsection (e).

(b) The Department will assess an annual administration fee for each permitted activity and facility. For licensed mine operators, this annual administration fee will be assessed annually, will be collected as part of the mine operator's license renewal application and will include the appropriate annual administration fee for each of the licensee's permitted facilities. If the permittee is not required to maintain a mining license, a notice of the annual administration fee will be sent to the permittee for all of the permittee's permitted facilities and the fee must be paid within 30 days of receipt of the notice. The applicable fee amounts are specified in subsection (f).

(c) Fees collected under this section and all enforcement cost recovery funds will be deposited in the Noncoal Surface Mining Conservation and Reclamation Fund. The fees collected under this section will be used by the Department for the purposes specified by the act.

(d) At least every 3 years, the Department will recommend regulatory changes to the fees in this section to the EQB to address any disparity between the program income generated by the fees and program costs. The regulatory amendment will be based upon an evaluation of the program fees income and the Department's costs of administering the program.

(e) The permit application fee schedule is as follows:

(1) New Permits	Fee
Large Surface Mining Permit—Mining below water table.....	\$20,225
Large Surface Mining Permit—Not mining below water table.....	\$13,500
Small Surface Mining Permit.....	\$525
General Permit	\$525
Underground Mining Permit	\$20,225
(2) Major Amendments	Fee
Large Surface Mining Permit—Mining below water table.....	\$3,850
Large Surface Mining Permit—Not mining below water table.....	\$1,600

Underground Mining Permit	\$2,650
(3) Minor Amendments	Fee
Large Surface Mining Permit.....	\$700
Small Surface Mining Permit.....	\$175
(4) Transfers.....	Fee
Large Surface Mining Permit.....	\$900
Underground Mining Permit	\$900
Small Surface Mining Permit	\$175
(5) Other Actions	Fee
Bonding Increment	\$450
Completion Report Application.....	\$600
Blast Plan.....	\$475
Notice of Intent to Explore	\$60
Preapplications	\$3,375

(f) The annual administration fee schedule will be as follows:

<i>Permit Category—Permit Status</i>	<i>Annual Fee</i>
Large Surface Mining Permit—Active	\$1,450
Large Surface Mining Permit—Active with blasting.....	\$1,850
Small Surface Mining Permit—Active	\$200
Small Surface Mining Permit—Active with blasting.....	\$300
Underground Mining Permit—Active.....	\$1,450
General Permit—Short Term Construction.....	\$200
All Permits—Not Started.....	\$100
All Permits—Inactive	\$100

REVIEW, PUBLIC PARTICIPATION, ITEMS AND CONDITIONS OF PERMIT APPLICATIONS

§ 77.126. Criteria for permit approval or denial.

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(c) A permit, permit renewal or revised permit application will not be approved, unless the applicant has made full payment of the permit application fee required under § 77.106(e) (relating to fees) and the annual administration fee required under § 77.106(f) for all of the applicant's permitted mining facilities.

[Pa.B. Doc. No. 10-1584. Filed for public inspection August 27, 2010, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 118a]

Property and Casualty Actuarial Opinion

The Insurance Department (Department) proposes to add Chapter 118a (relating to property and casualty actuarial opinion) to read as set forth in Annex A. The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929, regarding the general rulemaking authority of the Department; sections 320 and 655 of The Insurance Company Law of 1921 (40 P. S. §§ 443 and 815), regard-

ing the authority of the Insurance Commissioner (Commissioner) to require insurance companies, associations and exchanges to file statements concerning their affairs and financial condition; sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.205 and 1600.206), regarding the specific regulatory and rulemaking authority of the Department regarding financial reporting by the Pennsylvania Fair Plan; and section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731), regarding the Pennsylvania Professional Liability Joint Underwriting Association.

Purpose

The purpose of this proposed rulemaking is to establish by regulation the requirements for statements of actuarial opinion and related documents filed by property and casualty insurers with the Department. Establishing these requirements by regulation for property and casualty insurers is consistent with the approach used to establish similar requirements for actuarial review of the reserves of life and health insurers under Chapter 84b (relating to actuarial opinion and memorandum). Section 320(a)(1) of The Insurance Company Law of 1921 requires insurers to file annual financial statements with the Department and additional statements concerning their affairs and financial condition as the Commissioner may, in the Commissioner's discretion, require. Section 320(a)(2) of The Insurance Company Law of 1921 further requires insurers to adhere to the instructions and accounting practices and procedures prescribed by the National Association of Insurance Commissioners (NAIC) unless otherwise provided by law, regulation or order of the Commissioner. Under this authority, the Commissioner requires property and casualty insurers to include statements of actuarial opinion with annual financial statements filed on or before the first day of March and domestic property and casualty insurers to file an actuarial opinion summary on or before the 15th day of March each year. These filings must be prepared as prescribed by the NAIC's annual statement instructions and include the actuary's opinion with respect to the proper establishment and adequacy of the insurer's reserves. If requested by the Department, domestic insurers shall also submit the supporting actuarial report and workpapers on or before the 1st day of May each year. The Department reviews this information in conducting financial analyses and onsite financial examinations of domestic insurers.

Specifically, Chapter 118a will clarify requirements for the filing of the actuarial opinion summary, which became effective for financial statements reporting an insurer's condition as year-end 2005. The actuarial opinion summary provides the Department with information needed to quickly identify insurers with potential reserving problems and then focus heightened solvency monitoring efforts on those insurers. Therefore, Chapter 118a will strengthen the Department's financial regulation tools to the extent it clarifies and supplements the Department's statutory authority and related NAIC instructions for actuarial opinions and related documents filed by property and casualty insurers doing business in this Commonwealth.

Background

In 2006, the Department proposed a similar rulemaking at 36 Pa.B. 3276 (July 1, 2006). In response to comments on the proposed rulemaking regarding the statutory and legal foundations for the confidentiality of work product supporting the statement of actuarial opinion, the Department withdrew the initial rulemaking, pending enactment of a legislative initiative to address those concerns.

See section 1 of the act of March 22, 2010 (P. L. 145, No. 14) amending section 320 of The Insurance Company Law of 1921. The current proposed rulemaking includes updates consistent with the Department's strengthened statutory authority and other clarifications in response to comments submitted by the Independent Regulation Review Commission (IRRC) on the initial rulemaking published at 36 Pa.B. 5836 (September 16, 2006).

Explanation of Regulatory Requirements

Section 118a.1 (relating to purpose) declares that the purpose of this chapter is to set forth requirements regarding statements of actuarial opinion and related documents filed with the Commissioner by insurers licensed to transact property or casualty insurance, or both, in this Commonwealth.

Section 118a.2 (relating to definitions) defines terms for purposes of the chapter. The definitions of "domestic insurer," "insurer" and "foreign insurer" clarify the scope and application of the regulation with respect to the various types of insurers writing property and casualty insurance in this Commonwealth. The definitions of "appointed actuary" and "qualified actuary" describe the qualification requirements for individuals who prepare statements of actuarial opinion, actuarial opinion summaries and related documents required under the chapter.

Section 118a.3 (relating to statement of actuarial opinion and supporting documentation) establishes annual filing requirements, with required time frames, for statements of actuarial opinion and actuarial opinion summaries with respect to domestic and foreign insurers and requires the preparation, maintenance and availability of supporting actuarial reports and underlying work papers.

Section 118a.4 (relating to general requirements for domestic insurers) establishes the standards for qualified actuaries with regard to statements of actuarial opinion and actuarial opinion summaries. Specifically, subsection (a) establishes the procedure for requesting the Department's approval of an individual as a "qualified actuary" when the individual is not a member of the Casualty Actuarial Society or the American Academy of Actuaries. The Department included provisions for approval of these individuals to provide the flexibility that may be needed to meet the particular needs of smaller domestic insurers. Subsection (b) requires that the members of a domestic insurer's board of directors be provided with the annual filings made under this chapter and that the receipt of these documents be documented in the board meeting minutes. Subsection (c) establishes notification requirements when an actuary is replaced by a domestic insurer's board of directors, including notice to the Department of disagreements with the former actuary relating to the content of filings and other documents required under the chapter. Subsection (d) establishes notice requirements when an error is discovered after a filing is made with the Department and defines what types of errors must be reported. Subsection (e) establishes procedural requirements for reporting errors under subsection (d), including time frames for providing the required notice. Subsection (f) prescribes actions to be taken by an actuary and domestic insurer when an actuary learns that data or other information relied upon in preparing filings under the chapter were factually incorrect and the actuary cannot immediately determine whether changes must be made in filings required under the chapter.

Section 118a.5 (relating to confidentiality) clarifies the distinction between public filings and related confidential

work product and states the circumstances under which the Commissioner may share confidential information filed under the chapter.

Section 118a.6 (relating to exemptions) provides for exemptions consistent with the NAIC instructions.

Section 118a.7 (relating to penalties) refers to the imposition of penalties as provided by law for failure to comply with the chapter.

Affected Parties

The proposed rulemaking applies to insurers licensed to write property and casualty insurance in this Commonwealth as provided under the scope and definitions of the authorizing statutes.

Fiscal Impact

State government

The proposed rulemaking will clarify and strengthen existing requirements. Department costs in monitoring the financial condition of insurers will not increase as a result of this proposed rulemaking.

General public

The public will benefit to the extent the proposed rulemaking strengthens financial solvency requirements for property and casualty insurers, thereby promoting the ability of those insurers to meet obligations under insurance policies and the Department's ability to minimize the number and impact of insurer insolvencies.

Political subdivisions

The proposed rulemaking will not impose additional costs on political subdivisions.

Private sector

The strengthened filing requirements in this proposed rulemaking are consistent with NAIC standards that became effective for annual financial statements as of year-end 2005. The information needed for the actuarial opinion summary due March 15 should be known to the insurer's appointed actuary when preparing the statement of actuarial opinion due March 1. Therefore, the rulemaking should impose no significant additional costs on insurers in obtaining annual actuarial reviews and required supporting documentation.

Paperwork

The proposed rulemaking will not impose significant additional paperwork on the Department. Since the information required in the actuarial opinion summary should be included in the work done by actuaries in preparing actuarial reports and workpapers for statements of actuarial opinion already required to be filed with insurers' annual financial statements, additional paperwork requirements for affected insurers will be minimal.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120 within 30 days following the publication in the *Pennsylvania*

nia Bulletin. Questions or comments also may be e-mailed to psalvatore@state.pa.us or faxed to (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 16, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Senate Banking and Insurance Committee and the House Insurance 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 must 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.

JOEL SCOTT ARIO,
Insurance Commissioner

Fiscal Note: 11-245. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 118a. PROPERTY AND CASUALTY ACTUARIAL OPINION

Sec.	Purpose.
118a.1.	Definitions.
118a.2.	Statement of actuarial opinion and supporting documentation.
118a.3.	General requirements for domestic insurers.
118a.4.	Confidentiality.
118a.5.	Exemptions.
118a.6.	Penalties.

§ 118a.1. Purpose.

This chapter sets forth requirements relating to statements of actuarial opinion and related documents filed under section 320 of The Insurance Company Law of 1921 (40 P. S. § 443) with the Commissioner by insurers licensed to transact property or casualty insurance, or both, in this Commonwealth.

§ 118a.2. Definitions.

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

Appointed actuary—A qualified actuary appointed by an insurer in accordance with the property and casualty annual statement instructions relating to actuarial opinions prescribed by the NAIC.

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Domestic insurer—An insurer incorporated or organized under the laws of the Commonwealth.

Insurer—The term includes the following entities licensed to transact property or casualty insurance, or both, in this Commonwealth:

- (i) An insurance company, association or exchange.
- (ii) A reciprocal or interinsurance exchange.
- (iii) An employers' mutual liability insurance association.
- (iv) The Industry Placement Facility under The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502).
- (v) The Pennsylvania Professional Liability Joint Underwriting Association under section 731 of the Medical Care Availability and Reduction of Error (Mcare) Act (40 P. S. § 1303.731).

Foreign insurer—An insurer not incorporated or organized under the laws of the Commonwealth.

NAIC—The National Association of Insurance Commissioners, or successor organization.

Qualified actuary—An individual who meets the following requirements:

- (i) Is one or more of the following:

(A) A member in good standing of the Casualty Actuarial Society.

(B) A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

(C) Approved by the Commissioner as otherwise having demonstrated competency in loss reserve evaluation for property or casualty insurance, or both, to the Commissioner's satisfaction under § 118a.4(a) (relating to general requirements for domestic insurers).

- (ii) Has not been found by the Commissioner, following appropriate notice and hearing, to have done one or more of the following:

(A) Violated any provision of, or any obligation imposed by, this chapter or other laws or regulations in the course of the individual's dealings as a qualified actuary.

(B) Been found guilty of fraudulent or dishonest practices.

(C) Demonstrated incompetence, lack of cooperation or untrustworthiness to act as a qualified actuary.

(D) Prepared a statement of actuarial opinion or actuarial opinion summary that was submitted to the Commissioner during the past 5 years and rejected for failure to adhere to provisions of this chapter, including acceptable actuarial standards.

(E) Resigned or been removed as an actuary within the past 5 years as a result of acts or omissions identified in a report by the Department or other regulatory or law enforcement official of this Commonwealth or other jurisdiction pursuant to an investigation or examination, or as a result of failure to adhere to generally acceptable actuarial standards.

(iii) Has not failed to notify the Department of any action taken against the individual by a regulatory or law enforcement official of this Commonwealth or other jurisdiction relating to activities similar to those described in subparagraph (ii).

§ 118a.3. Statement of actuarial opinion and supporting documentation.

(a) *Statement of actuarial opinion.* Unless exempted under § 118a.6 (relating to exemptions), an insurer shall annually file with the Department an opinion of an appointed actuary entitled "Statement of Actuarial Opinion." Under section 320 of The Insurance Company Law

of 1921 (40 P.S. § 443), the statement of actuarial opinion shall be prepared in accordance with the property and casualty annual statement instructions prescribed by the NAIC and filed as instructed by the Department on or before the first day of March.

(b) *Actuarial opinion summary.* A domestic insurer required to file a statement of actuarial opinion under subsection (a) shall annually file with the Department a document entitled "Actuarial Opinion Summary" written by the insurer's appointed actuary and supporting the statement of actuarial opinion. The actuarial opinion summary shall be prepared in accordance with the property and casualty annual statement instructions prescribed by the NAIC and filed as instructed by the Department on or before the 15th day of March. The Department may require a foreign insurer to file an actuarial opinion summary by providing 60 days' advance notice to the insurer.

(c) *Actuarial report and workpapers.* An actuarial report and underlying workpapers shall be prepared and maintained to support a statement of actuarial opinion as required by the property and casualty annual statement instructions prescribed by the NAIC and provided to the Department upon request.

§ 118a.4. General requirements for domestic insurers.

(a) The following requirements apply to a request by a domestic insurer for the Commissioner's approval of an individual under subparagraph (i)(C) of the definition of "qualified actuary" in § 118a.2 (relating to definitions):

(1) The domestic insurer shall file the request with the Department at least 90 days prior to the filing of the domestic insurer's annual financial statement.

(2) Requests filed under paragraph (1) must contain the following:

(i) A properly completed biographical affidavit in the form adopted by the NAIC. The NAIC biographical affidavit form is available on the Department's web site at www.insurance.pa.gov or upon request from the Department.

(ii) A list of the loss reserve opinions for property or casualty insurance, or both, issued by the individual in the past 3 years.

(iii) Other information that the Commissioner in the Commissioner's discretion may require to determine the individual's qualifications. The Department will provide the domestic insurer with a written request for the information, describing the type of information required and why the information is needed.

(b) The appointed actuary shall annually provide the domestic insurer's board of directors with the statement of actuarial opinion and actuary opinion summary, and the receipt of these documents shall be recorded in the meeting minutes of the board of directors.

(c) If an actuary who was the appointed actuary for the immediately preceding filed statement of actuarial opinion is replaced by an action of the domestic insurer's board of directors, the domestic insurer shall:

(1) Notify the Department in writing within 5 business days of the board's action.

(2) Provide the Department with a separate written notice within 10 business days of providing notice under paragraph (1) stating whether, in the 24 months preced-

ing the appointed actuary's replacement, there were any disagreements with the former appointed actuary relating to the content of the statement of actuarial opinion, actuarial opinion summary, actuarial report or underlying workpapers on matters of the risk of material adverse deviation, required disclosures, scope, procedure, or data quality. The disagreements required to be reported include both those resolved to the former appointed actuary's satisfaction and those not resolved to the former appointed actuary's satisfaction. The notice must include a written letter addressed to the domestic insurer by the former appointed actuary stating whether the appointed actuary agrees with the statements in the domestic insurer's notice and, if not, stating the reasons why the appointed actuary does not agree.

(d) The domestic insurer shall require its appointed actuary to notify the domestic insurer's board of directors or audit committee in writing within 5 business days after a determination by the appointed actuary that the statement of actuarial opinion or actuarial opinion summary filed with the Department was in error if:

(1) The error is as a result of reliance on data or other information (other than assumptions) that, as of the balance sheet date, were factually incorrect.

(2) The determination is made between the date the statement of actuarial opinion is issued and the balance sheet date for which the next statement of actuarial opinion will be issued.

(3) The statement of actuarial opinion or actuarial opinion summary would not have been issued or would have been materially altered had the correct data or other information been used; except that the statement of actuarial opinion or actuarial opinion summary will not be considered to be in error if it would not have been issued or would have been materially altered solely because of data or information concerning events subsequent to the balance sheet date or because actual results differ from those projected.

(e) Notification provided by an appointed actuary to a domestic insurer under subsection (d) must include a summary of the appointed actuary's findings and an amended statement of actuarial opinion and actuarial opinion summary. The domestic insurer shall forward a copy of the summary and amended statement of actuarial opinion and actuarial opinion summary to the Commissioner within 5 business days of receipt and provide the appointed actuary with a copy of the information forwarded to the Commissioner. If the appointed actuary does not receive a copy of the information forwarded to the Commissioner within the 5 business day period, the appointed actuary shall provide the Commissioner with the information within the next 5 business days, including a statement whether the Department should rely upon the statement of actuarial opinion or actuarial opinion summary filed under this chapter.

(f) If an appointed actuary learns that data or other information relied upon in rendering a statement of actuarial opinion or actuarial opinion summary under this chapter were factually incorrect, but the appointed actuary cannot immediately determine what, if any, changes are needed in the statement of actuarial opinion or actuarial opinion summary, the appointed actuary and the domestic insurer shall take the actions necessary for the appointed actuary to make the determination. If the

domestic insurer does not provide the necessary data corrections and other support (including financial support) within 10 business days, the appointed actuary should provide the Commissioner with notice of the situation within the next 5 business days.

§ 118a.5. Confidentiality.

(a) The statement of actuarial opinion shall be filed with an insurer's annual statement in accordance with the property and casualty annual statement instructions prescribed by the NAIC and shall be treated as a public document.

(b) The documents, materials or other information prepared or provided by an insurance company, association or exchange solely in support of the statement of actuarial opinion filed under this chapter, including actuarial reports, workpapers or actuarial opinion summaries and other material solely prepared by the insurance company, association or exchange for the purpose of providing it to the Department in connection with actuarial reports, workpapers or actuarial opinion summaries are treated as confidential and privileged as provided under section 420 of The Insurance Company Law of 1921 (40 P. S. § 443).

(c) The Commissioner may share confidential information received under this chapter with regulatory or law enforcement officials of this Commonwealth or other jurisdictions and the NAIC under sections 201-A and 202-A of The Insurance Department Act of 1921 (40 P. S. §§ 65.1-A and 65.2-A) and section 320 of The Insurance Company Law of 1921 (40 P. S. § 443), including the release of documents to the Actuarial Board for Counseling and Discipline (ABCD) if the material is required for the purpose of professional disciplinary proceedings and the ABCD establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents. A waiver of any applicable privilege or claim of confidentiality in the documents, materials or information will not occur as a result of sharing information under this subsection.

§ 118a.6. Exemptions.

(a) A domestic insurer may annually submit a written request to the Commissioner for approval of an exemption from the requirement to file a statement of actuarial opinion in the manner set forth by the property and casualty annual statement instructions prescribed by the NAIC.

(b) A foreign insurer exempted from filing a statement of actuarial opinion by the chief insurance regulatory official in its domiciliary jurisdiction is exempt from filing a statement of actuarial opinion under this chapter if the foreign insurer files a copy of the approved exemption with the Commissioner in accordance with the property and casualty annual statement instructions prescribed by the NAIC.

§ 118a.7. Penalties.

Failure to file the statement of actuarial opinion, actuarial opinion summary and additional statements, letters, workpapers or reports required under this chapter will subject the insurer to the penalties provided by law.

[Pa.B. Doc. No. 10-1585. Filed for public inspection August 27, 2010, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE. CH. 31]

Dental Procedures

The State Board of Veterinary Medicine (Board) proposes to amend §§ 31.1, 31.31 and 31.39 (relating to definitions; scope of practice; and grounds for disciplinary proceedings) and to add § 31.31a (related to performance of dental procedures on companion animals, excluding equines, by certified veterinary technicians, VTSs and veterinary assistants) to read as set forth in Annex A. The proposed rulemaking provides needed guidance regarding the dental procedures that may lawfully be performed by licensees and unlicensed assistants.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 11 of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.11) requires the Board to promulgate by regulation the requirements for the regulation of veterinary technicians. Section 3(14) of the act (63 P. S. § 485.3(14)) defines a veterinary assistant as an individual who is not certified as a veterinary technician and who performs limited tasks involved in the care and treatment of animals as defined by regulation if requested to do so by the assistant's employing veterinarian. Section 21(22) of the act (63 P. S. § 485.21(22)) authorizes the Board to discipline a licensee who has in the licensee's employment an unlicensed person to practice veterinary medicine contrary to the act or the Board's regulations.

Background and Purpose

The practice of veterinary technology includes, by definition in section 3 of the act, performing dental prophylaxis. This proposed rulemaking intends to clarify the procedures that constitute dental prophylaxis for certified veterinary technicians (CVTs), veterinary technician specialists (VTSs) and veterinary assistants. The Board began developing this proposed rulemaking in 2005. A public hearing was held on October 27, 2005, at which the Board sought the input of veterinarians and CVTs involved in dentistry. Six veterinarians and two CVTs participated; one dental technician who practices on humans also participated.

Description of Proposed Rulemaking

To conform the regulations to amendments to the act made by the act of December 9, 2002 (P. L. 1370, No. 167), the Board proposes to replace the term "noncertified employee" with the term "veterinary assistant."

Section 31.31(a)(1)(ii) and (b)(1)(ii) allows both CVTs and veterinary assistants to "perform dental prophylaxis" under direct veterinary supervision. The term "dental prophylaxis" does not have a commonly accepted definition within the veterinary profession. The Board proposes to provide needed clarity through a new regulatory section that specifically describes the dental prophylactic procedures that may be performed by individuals. Proposed § 31.31a addresses the performance of dental procedures by CVTs, VTSs and veterinary assistants. The Board considered the education and training of CVTs and VTSs in developing the list of procedures that each group would be authorized to perform. The licensed veterinarian

employing the CVT, VTS or veterinary assistant would remain responsible for ensuring that these individuals are competent to perform the assigned tasks. The Board also proposes to amend § 31.31(c) to prohibit both CVTs and veterinary assistants from performing dental procedures that invades hard or soft oral tissue or that alters the shape, structure or position of teeth including malocclusions, except those procedures specifically authorized in § 31.31a.

In § 31.31a, the Board proposes to provide detailed description of the dental procedures that may be performed by CVTs, VTSs and veterinary assistants. Subsection (a) applies to CVTs, subsection (b) applies to veterinary assistants and subsection (c) applies to VTSs.

The proposed rulemaking would be the most restrictive for veterinary assistants because these individuals do not have formal training. Under § 31.31a(b)(1), a veterinary assistant whom the supervising veterinarian has determined is competent in providing dental care may perform supra- or subgingival tooth (root) scaling using manual, ultrasonic or high speed dental cleaning equipment, manual plaque removal, polishing and application of fluoride or other recognized topical agents to teeth that are to be retained. In addition, § 31.31a(b)(2) authorizes veterinary assistants to perform dental charting and dental radiographs. Finally, § 31.31a(b)(3) authorizes veterinary assistants to perform dental extractions of a single-rooted tooth that is loose, mobile or diseased using a gauze sponge. If instruments are needed to free the tooth, a veterinary assistant may only use an elevator or dental forceps after consulting with the supervising veterinarian and after the supervising veterinarian has examined the animal and instructed the veterinary assistant to proceed.

The proposed rulemaking permits CVTs, who have completed a 2- or 4-year educational program accredited by the American Veterinary Medical Association, taken a National examination and been certified by the Board, to perform the procedures permitted for a veterinary assistant. In addition, the proposed rulemaking permits CVTs to perform dental extractions of a single-rooted tooth that is loose, mobile or diseased using a gauze sponge and, if instruments are needed to free the tooth, use an elevator or dental forceps after consulting with the supervising veterinarian. The Board further proposes, in § 31.31a(4), to authorize CVTs to perform appropriate skin gingival closure after consultation with the supervising veterinarian.

The proposed rulemaking allows VTSs who hold current certification in dentistry to perform additional advanced procedures. Section 31.31a(c) authorizes a VTS to perform single or multiple-rooted tooth extractions that require dental instrumentation or sectioning; prepare dental impressions and models; assist with dental nerve blocks; identify normal dentition and eruption schedules; identify abnormal oral pathology; perform sub-gingival scaling, root planing and curettage; prepare instruments in sequence; prepare dental stone laboratory models; position for intra-oral radiology; maintain hand instruments, equipment and dental delivery systems; and assess and manage pain in consultation with the treating veterinarian.

Fiscal Impact

The proposed rulemaking should not have fiscal impact on the Commonwealth, the Board's licensees, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking does not create additional paperwork for the Board, the Board's licensees or the general public.

Sunset Date

The Board continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 17, 2010, 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 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 comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must 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, suggestions or objections regarding this proposed rulemaking to Michelle Roberts, Administrative Assistant, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-5718, Dental Procedures, when submitting comments.

ROBIN J. BERNSTEIN, Esq.,
Chairperson

Fiscal Note: 16A-5718. 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:

* * * * *

[*Noncertified employee*—An employee of a veterinarian who does not hold certification as 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.]

* * * * *

Veterinary assistant—An employee of a veterinarian who does not hold certification as a veterinary technician to whom the employing veterinarian assigns tasks in accordance with § 31.31 (relating to scope of practice).

VETERINARY TECHNICIANS AND [**NONCERTIFIED EMPLOYEES**] VETERINARY ASSISTANTS

§ 31.31. Scope of practice.

(a) *Certified veterinary technicians.* A certified 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 veterinary technician of a service which is not listed in this subsection if the service is within the certified 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 veterinary technician to whom a duty is assigned is competent to perform it.

(1) A certified veterinary technician may do the following only under direct veterinary supervision:

(i) Administer anesthesia[—] **ordered by the veterinarian**, including induction, intubation, maintenance, extubation and recovery and intravenous sedation.

(ii) Perform dental [**prophylaxis**] **procedures as set forth in § 31.31a(a) (relating to performing dental procedures on companion animals, excluding equines, by certified veterinary technicians, VTSS and veterinary assistants).**

* * * * *

(b) [**Noncertified employees**] **Veterinary assistants.** [**Noncertified employees**] **Veterinary assistants** 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 employee**] **veterinary assistant** from administering medication or rendering auxiliary or other supporting assistance which is not listed in this subsection if the service is within the [**noncertified employee's**] **veterinary assistant's** skills and is requested by the supervising veterinarian. The veterinarian bears ultimate responsibility for assuring that the [**noncertified employee**] **veterinary assistant** to whom a duty is assigned is competent to perform it.

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

* * * * *

(ii) Perform dental [**prophylaxis**] **procedures as set forth in § 31.31a(b).**

* * * * *

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

* * * * *

(3) Emergency treatment by [**noncertified employees**] **veterinary assistants** 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 [**noncertified employee**] **veterinary assistant** 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)(i)—(iv).

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

* * * * *

(6) **Perform any dental procedure that invades hard or soft oral tissue or that alters the shape, structure or position of teeth including malocclusions, except procedures authorized in § 31.31a.**

§ 31.31a. Performance of dental procedures on companion animals, excluding equines, by certified veterinary technicians, VTSS and veterinary assistants.

(a) *Certified veterinary technician.* In addition to the procedures in § 31.31 (relating to scope of practice), a certified veterinary technician may, under the direct supervision of a veterinarian perform the following procedures on companion animals, excluding equines:

(1) Supragingival or subgingival tooth (root) scaling using manual, ultrasonic or high speed dental cleaning equipment; manual plaque removal; polishing; and application of fluoride or other recognized topical agents to teeth that are to be retained.

(2) Dental charting and dental radiographs.

(3) Dental extractions of a single-rooted tooth that is loose, mobile or diseased using a gauze sponge. If instrumentation is needed to free the tooth from gingival attachments, a certified veterinary technician may use an elevator or dental forceps only after consulting with the supervising veterinarian.

(4) Appropriate skin gingival closure if authorized after consultation with the supervising veterinarian.

(b) *Veterinary assistant.* A veterinary assistant whom the supervising veterinarian has determined is competent in providing dental care may, under the direct supervision of a veterinarian, perform the following procedures on companion animals, excluding equines:

(1) Supragingival or subgingival tooth (root) scaling using manual, ultrasonic or high speed dental cleaning equipment; manual plaque removal; polishing; and application of fluoride or other recognized topical agents to teeth that are to be retained.

(2) Dental charting and dental radiographs.

(3) Dental extractions of a single-rooted tooth that is loose, mobile or diseased using a gauze sponge. If instrumentation is needed to free the

tooth from gingival attachments, a veterinary assistant may use an elevator or dental forceps only after consulting with the supervising veterinarian and after the supervising veterinarian has examined the animal and instructed the veterinary assistant to proceed.

(c) **VTS.** A certified veterinary technician who holds current certification as a VTS in dentistry may, under direct veterinary supervision, perform additional ancillary dental services or procedures on companion animals, excluding equines. Advanced procedures may include:

- (1) Performing single-rooted tooth extractions.
- (2) Performing multiple-rooted tooth extractions after consultation with and under the immediate supervision of a veterinarian.
- (3) Preparing dental impressions or models, including whole-mouth alginate impressions.
- (4) Assisting the supervising veterinarian with dental nerve blocks.
- (5) Identifying normal dentition and eruption schedules.
- (6) Identifying abnormal oral pathology.
- (7) Performing subgingival scaling, root planing and curettage.
- (8) Preparing instruments in sequence for use in pulpotomy, pulpectomy, surgical and nonsurgical extractions, periodontal surgery and oral surgery.
- (9) Preparing dental stone laboratory models.

(10) Positioning for intra-oral radiology.

(11) Maintaining hand instruments, equipment and dental delivery systems.

(12) Assessing and managing pain in consultation with the treating veterinarian.

§ 31.39. Grounds for disciplinary proceedings.

* * * * *

(b) Certified veterinary technicians, **VTSs** and **[noncertified employees] veterinary assistants** who deviate from the permitted scope of practice as set forth in § 31.31 (relating to scope of practice) or § 31.31a (relating to performance of dental procedures on companion animals, excluding equines, by certified veterinary technicians, **VTSs** and **veterinary assistants**) 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 veterinary technicians, **VTSs** or **[noncertified employees] veterinary assistants** to perform duties which are not authorized by § 31.31 or § 31.31a (relating to performance of dental procedures on companion animals, excluding equines, by certified veterinary technicians, **VTSs** and **veterinary assistants**) will be subject to disciplinary action by the Board under section 21 of the act (63 P. S. § 485.21).

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[Pa.B. Doc. No. 10-1586. Filed for public inspection August 27, 2010, 9:00 a.m.]
