

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION****RECEIVED**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

**Department of State, Bureau of Professional and Occupational
Affairs, State Board of Veterinary Medicine**

NOV - 7 2018

Independent Regulatory
Review Commission

(2) Agency Number: 16A

Identification Number: 16A-5727

IRRC Number: 3221

(3) PA Code Cite:

49 Pa Code §§ 31.1, 31.31, 31.32, 31.34, 31.35, 31.36, 31.38, 31.39 and 31.41

(4) Short Title:

Certified Veterinary Technicians and Veterinary Assistants

(5) Agency Contacts (List Telephone Number and Email Address):

**Primary Contact: Thomas Davis, Board Counsel, State Board of Veterinary Medicine; P.O. Box
69523, Harrisburg, PA 17106-9523; (phone 717-783-7200) (fax 787-0251); tmdavis@pa.gov****Secondary Contact: Cynthia K. Montgomery, Regulatory Counsel, Department of State, P.O. Box
69523, Harrisburg, PA 17106-9523; 717-783-7200 (fax 787-0251); cymontgome@pa.gov**

(6) Type of Rulemaking (check applicable box):

☒ **PROPOSED REGULATION**☐ Final Regulation☐ Final Omitted Regulation☐ Emergency Certification Regulation;☐ Certification by the Governor☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed regulation would remove the 10-year automatic bar on certification for veterinary technicians convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act, and place these applicants on a level playing field with other applicants with criminal backgrounds, which are reviewed by the Board on a case-by-case basis. The regulation will also authorize students who are in their final year of an approved program to sit for the Veterinary Technician National Examination (VTNE), which is used in all states for licensure. The regulation would add to the existing rules of professional conduct for certified veterinary technicians by mirroring existing provisions for veterinarians. It also streamlines and simplifies the process of applying for reactivation by eliminating the need for a notarized affidavit. Finally, the regulation would "clean up" outdated provisions and terminology.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 5 of the Veterinary Medicine Practice Act (act) (63 P.S. § 485.5) authorizes the Board to adopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of the act. Further, section 11 of the act (63 P.S. § 485.11) provides that it is the responsibility of the Board to promulgate by regulation the qualifications and requirements for the certification and regulation of veterinary technicians, including grounds for disciplinary action.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any federal or state law, court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Executive Order 2017-3 Report, issued on June 12, 2018, revealed that Pennsylvania is one of only two states (along with Delaware) within the Northeast region, in which an applicant is barred from licensure or certification if they have a felony drug conviction. Further, Pennsylvania is the only state that extends this proscription by regulation to a class (i.e., certified veterinary technicians) that is not expressly required by the relevant provision of the act. The Governor therefore recommended that the Board consider promulgating amendments to the regulations to repeal those provisions extending the automatic 10-year bar to certification as a veterinary technician. Instead, applicants with such convictions will be reviewed by the Board on a case-by-case basis to determine the applicant's suitability for practice, as is currently the case for other applicants with criminal backgrounds. This will create less barriers to certification in Pennsylvania.

The regulation is further needed to bring Pennsylvania into alignment with other states which allow veterinary technician students to sit for the Veterinary Technician National Examination (VTNE) prior to graduation, thereby limiting the time after graduation before which an individual can obtain certification and begin practice.

The regulation would update existing provisions and add to the rules of professional conduct for certified veterinary technicians. The updated rules of professional conduct will help protect the public from unprofessional or incompetent practitioners.

Applicants, the Board and the entire profession will benefit from the amended regulation as there will be less barriers to certification and certified veterinary technicians will be certified sooner because they are able to sit for the VTNE while in their final year of an approved program. These amendments will allow more applicants to become certified and allow for more professionals in the field of veterinary medicine, while continuing to protect the public and animal health, safety and welfare. Currently, there are approximately 2,700 veterinary technicians certified by the Board, and the Board gets approximately 250 new applications each year.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Because the veterinary profession is regulated at the State level, there are no federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not adversely affect Pennsylvania's ability to compete with other states. Pennsylvania is one of only two states within the Northeast region, where the Board of Veterinary Medicine either imposes automatic suspension or refusal to grant licensure/certification for a conviction of a drug-related offense. Further, Pennsylvania is the only state that extends this proscription by regulation to a class (i.e., certified veterinary technicians) that is not expressly required by the relevant provision of the act. The following states in our region do not have an automatic drug crime bar: Ohio, West Virginia, Maryland, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine. Delaware is the only other state in the Northeast region that has an automatic drug crime bar.

A growing number of states permit veterinary technician students to sit for the VTNE prior to graduation, including New York in the Northeast region. The proposal will make Pennsylvania more competitive with other states in attracting recent graduates seeking licensure. Provisions related to professional conduct are consistent with other states.

Based on a review of the regulations from other states, this regulation will not place Pennsylvania at a competitive disadvantage.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, the regulation will not affect any other regulations of the Board or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Prior to the Executive Order 2017-3 Report, the Board sent a draft proposal to identified stakeholders and interested parties, including the Pennsylvania Veterinary Medical Association and the National Association of Veterinary Technicians requesting comments and suggestions. The comments and suggestions have been incorporated.

The proposal made pursuant to the Executive Order 2017-3 Report and the recommendation of the Governor to remove the automatic 10-year drug crime bar for certified veterinary technicians has not been sent out for informal comment, however it has been discussed during public board meetings on July 13, 2018 and September 21, 2018. Board meetings are routinely attended by representatives of the regulated community.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are approximately 2,700 certified veterinary technicians actively practicing in the Commonwealth. According to the Pennsylvania Department of Labor and Industry's Center for Workforce Information and Analysis, the vast majority of certified veterinary technicians are employed by veterinarians. A small amount (less than 10%) work in social advocacy organizations, pharmaceutical and medicine manufacturing, scientific research and development services and colleges, universities and other schools.

For the business entities listed above, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR § 121.201 for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where certified veterinary technicians work, a small business in the categories of veterinary services are ones with \$7.5 million or less in average annual receipts. Thus, it is probable that most of the certified veterinary technicians work for small businesses.

Veterinary businesses will not be adversely affected by the regulation. In fact, veterinary businesses may benefit from the regulation because of the earlier availability of newly certified veterinary technicians and the likely increase in the number of qualified certified veterinary technicians who are able to be certified due to the lack of the 10-year automatic bar.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

Certified veterinary technicians, who are employed by veterinarians, and applicants for certification will be required to comply with the regulation. Currently, there are approximately 2,700 veterinary technicians certified by the Board, and the Board gets approximately 250 new applications each year. Thus, there could be as many as 2,700 small businesses impacted by the regulations. However, the businesses that employ certified veterinary technicians will not have any additional requirements due to the regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The proposed rulemaking will have a positive financial effect on veterinary technicians who wish to obtain certification in Pennsylvania because they will be able to begin practicing as soon as possible after completing their educational program, in that the regulation would allow veterinary technician students to take the VTNE prior to graduation. There will be a small savings to applicants for reactivation due to the elimination of the requirement to submit a notarized affidavit. There will be no impact on the small businesses that employ certified veterinary technicians, and no impact on business and labor communities or other public or private organizations.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no anticipated costs or adverse effects to the Board, the regulated community or the public; accordingly, the benefits associated with the proposed rulemaking outweighs the costs.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no anticipated costs to the regulated community imposed by the regulation. There may be some "savings," (or more accurately - opportunity costs avoided) to the regulated community associated with being able to take the examination during the final year of training, thus eliminating unnecessary delays in certification and subsequent employment as a veterinary technician. There may also be costs avoided by the change no longer requiring an affidavit be notarized, however those savings are minimal. Under 4 Pa. Code § 161.1 (related to schedule of fees), notaries are authorized to charge a \$5 fee to notarize an affidavit. Assuming an average of 250 reactivation applications each year, the savings to the regulated community would be \$1,250.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no known costs or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no known costs to the state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The Board is unaware of any legal, accounting or consulting procedures which might be required by the rulemaking.

(22a) Are forms required for implementation of the regulation?

There are no forms required for the implementation of the proposed regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 18-19	FY +1 19-20	FY +2 20-21	FY +3 21-22	FY +4 22-23	FY +5 23-24
SAVINGS:						
Regulated Community	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250
Local Government						
State Government						
Total Savings	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 15-16 (actual)	FY -2 16-17 (actual)	FY -1 17-18 (projected)	Current FY 18-19 (budgeted)
State Board of Veterinary Medicine	\$ 895,835.74	\$1,055,906.79	\$971,000	\$1,068,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There are no adverse impacts on small business.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Board has not identified any group that need any special provisions or accommodations.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Board crafted the rulemaking for the benefit of certified veterinary technicians, veterinarians and the public. The Board believes that the proposal represents the least burdensome acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Because the proposed rulemaking does not adversely impact small businesses, the Board did not conduct a regulatory flexibility analysis.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The Executive Order 2017-3 Report was used as a basis for the proposed amendments to § 31.32 (relating to certification). The following is a link to the Report:

<http://www.dos.pa.gov/ProfessionalLicensing/Documents/EO2017-03-Executive-Report-Occupational-Licensing.pdf>

No other data served as the basis for this proposed rulemaking.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: **30 days after publication in the Pennsylvania Bulletin.**
- B. The date or dates on which public meetings or hearings will be held: **The Board considered this proposed rulemaking at public meetings on March 17, 2017 and May 12, 2017, and again on July 13, 2018 and September 21, 2018. The Board will consider any comments received on this proposed rulemaking during its regularly scheduled public meetings (see item (30) below).**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Spring of 2019**
- D. The expected effective date of the final-form regulation: **Spring of 2019**
- E. The date by which compliance with the final-form regulation will be required: **Upon publication as final**
- F. The date by which required permits, licenses or other approvals must be obtained: **Upon publication as final**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continuously evaluates the effectiveness of the Board's regulations and implementation of regulations. The Board discusses all regulatory proposals at its regularly scheduled public meetings, generally 6-7 meetings a year. The Board's remaining meeting date in 2018 is November 16, 2018. The Board's 2019 meeting schedule is as follows: January 11, March 15, May 10, July 12, September 13 and November 15, 2019.

The State Board of Veterinary Medicine (Board) proposes to amend §§ 31. 1, 31.31, 31.32, 31.34, 31.35, 31.36, 31.38, 31.39 and 31.41 to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

Statutory Authority

Section 5 of the Veterinary Medicine Practice Act (act) (63 P.S. § 485.5) authorizes the Board to adopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of the act. Further, section 11 of the act (63 P.S. § 485.11) provides that it is the responsibility of the Board to promulgate by regulation the qualifications and requirements for the certification and regulation of veterinary technicians, including grounds for disciplinary action.

Background and Purpose

On October 24, 2017, Governor Wolf signed Executive Order 2017-3, requiring the Commissioner of Professional and Occupational Affairs to comprehensively review and catalog the processes, fees, training requirements, criminal history policies, portability, and continuing education requirements for occupational and professional licensure within the purview of the 29 licensing boards and commissions under the Commissioner's authority. The order further directed the Commissioner to benchmark that data against regional averages from twelve states with similar or equivalent licenses that comprise the Northeast geographic region (including Ohio, West Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont, and Maine) to identify requirements or functions that presented unnecessary burdens to licensure and occupational employment within the Commonwealth.

That report, issued on June 12, 2018, revealed that Pennsylvania is one of only two states (along with Delaware) within the Northeast region, in which the Board of Veterinary Medicine either imposes automatic suspension of or refusal to grant licensure for convictions of drug-related offenses. Further, Pennsylvania is the only state that extends this proscription by regulation to a class (i.e., certified veterinary technicians) that is not expressly required by the relevant provision of the act. The Governor therefore recommended the Board consider promulgating amendments to the regulations to repeal those provisions extending the automatic 10-year bar to certified veterinary technicians who have been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (Drug Act) (35 P.S. §§ 780-101—780-144). This rulemaking implements the Governor's recommendation.

In addition, the Board recognizes that in many licensed professions, students nearing completion of their educational program may sit for all or a portion of the National licensure examination prior to graduation. National trends for the licensure of veterinary technicians embrace this practice, and the Pennsylvania Association of Veterinary Technicians requested that

the Board consider allowing Pennsylvania students to follow this practice. After examining the issue, the Board determined that students in the final half of their educational programs should be authorized, should they choose, to take the examination prior to graduation. Individuals who take the examination prior to graduation would still be required to graduate from their educational program prior to licensure. Therefore, the proposed regulation would authorize students in their final year of an approved program to take the Veterinary Technician National Examination prior to graduation, provided they have completed at least half of the credits required for completion of the program.

Finally, the proposed regulations will replace references to “noncertified employee” with the term, “veterinary assistant” throughout the regulations. This term was changed by amendments to the act in 2002, and the Board is now making the regulations consistent with that change.

Description of Proposed Amendments

The Board proposes to amend § 31.1 (relating to definitions) to replace the definition of “noncertified employee” with a definition for “veterinary assistant” and to update the definition for “direct veterinary supervision” by replacing the outdated term “noncertified employee” and by adding to the provision a reference to “other licensed professionals.” This latter amendment clarifies the supervision level already required under § 31.21, Principle 6(b) (related to professional relationships), which allows veterinarians to seek the assistance of other licensed professionals to enhance the quality of veterinary medical services provided and requires other licensed professionals to be under the direct supervision of the attending veterinarian when providing services to animals. Likewise, the Board is amending the definition of “immediate veterinary supervision” to replace “noncertified employee” with “veterinary assistant.” The Board is also adding definitions for AAVSB (the American Association of Veterinary State Boards) to include a successor organization and VTNE (the Veterinary Technician National Examination) to include a successor examination.

The proposed amendments to § 31.31 (related to scope of practice) update the regulations to use the 2002 statutory term “veterinary assistant” in lieu of “noncertified employee.”

The proposed amendments to § 31.32 (related to certification) remove the requirement that the applicant submit a statement that applicant has not been convicted of a felony under the Drug Act, as set forth above. Instead, the amendments would require an applicant to submit other relevant documents, as requested by the Board. For example, if an applicant had been disciplined in another state, or had been convicted of crimes related to the profession, the Board may request additional relevant documentation to permit a comprehensive review of the applicant’s qualifications. The proposed amendments also provide the name of the National examination for veterinary technicians (VTNE) in place of the current reference to the “proficiency examination.”

The proposed amendments to § 31.34 (related to qualification for examination) would provide veterinary technician students the ability to sit for the VTNE when they are enrolled in the final year of an approved program for the training and education of veterinary technicians and have completed at least half of the credits required for completion of the program.

The proposed amendments to § 31.35 (related to examinations) add language to subsection (b) to clarify that an applicant failing to pass the examination may be reexamined, in accordance with the policies of the AAVSB. For example, the AAVSB has a policy that requires an applicant who has failed the examination five times to seek prior approval of the AAVSB for subsequent attempts. At § 31.35(c)(3), the Board proposes to add details related to waiver of the exam requirement for individuals licensed, registered or certified as an animal health technician or veterinary technician in another state (i.e., reciprocity), to specify that requirements in another state which are “at least equal to those of the Commonwealth” include completion of an approved education program and passage of the VTNE or an examination equivalent to the VTNE if the examination was taken before the VTNE was offered. The Board proposes to add subsection (d) to require applicants applying by reciprocity to submit a copy of their credential from the other state and proof that it is currently in good standing.

The proposed amendment to § 31.36(c) (related to renewal of certification, inactive status and reactivation of certification) would delete the requirement that a notarized affidavit of non-practice be submitted with an application to reactivate certification. Instead, each applicant is required to certify that all materials submitted in support of an application are true and correct, subject to the penalties for unsworn falsification under 18 Pa.C.S. § 4904 (related to unsworn falsification to authorities) and possible disciplinary action for fraud or deceit under § 31.39 (related to ground for disciplinary proceedings). This is proposed to streamline and simplify the process for reactivation and to be consistent with all applications that are now being processed online through the Pennsylvania Licensing System (PALS).

In § 31.38 (related to code of ethics for certified veterinary technicians), the Board proposes to amend subsection (c) to refer to the veterinarian-client-patient relationship, the term defined in the act instead of the current “doctor-client” relationship. At subsection (d), the Board proposes to change the requirement that a certified veterinary technician “explain” to clients that the individual is not a veterinarian with the requirement that the certified veterinary technician “notify” the client that the individual is a certified veterinary technician. The Board believes that the general public is now familiar enough with the profession that it is not necessary to explain that the individual is not a veterinarian. In subsection (g) the Board would include an amendment to provide for the possibility of a successor organization to the National Association of Veterinary Technicians in America. In addition, the Board proposes new subsections (h)-(k) to § 31.38, to set out further ethical conduct rules for certified veterinary technicians. Subsection (h) would prohibit a certified veterinary technician from engaging in conduct which a reasonable person would believe is intended to coerce, pressure or intimidate another person to file, not file, or withdraw a complaint made to the Board or law enforcement officials. Subsection (i) would prohibit a certified veterinary technician from abusing, harassing or intimidating a client, former client, colleague or associate in the course of professional practice. Subsection (j) would prohibit a certified veterinary technician from abusing or neglecting any animal, as defined in § 31.1. Finally, subsection (k) would require a certified veterinary technician to report to the Board any certified veterinary technician or veterinarian who is deficient in professional competence, professional conduct or ethical conduct as described in the Board’s regulations. These provisions mirror existing regulatory provisions for veterinarians in § 31.21 (relating to Rules of Professional Conduct for Veterinarians) at Principle 1(e) and Principle 3 (10), (12), (15) and (16).

In § 31.39, the Board is amending subsection (b) to replace the outdated term “noncertified employees” with the statutory term “veterinary assistants.”

Finally, the Board proposes to delete outdated language related to the effective date of the Board’s last biennial renewal fee regulation in § 31.41 (related to schedule of fees) for veterinarians and certified veterinary technicians and to clarify that the current biennial renewal fee is \$360 for veterinarians and \$100 for certified veterinary technicians.

Fiscal Impact

The Board does not anticipate any fiscal impact relating to these amendments to the general public or the Board. The only fiscal impact to the regulated community in these amendments is related to the elimination of the notarized affidavit requirement for applicants seeking reactivation of a license or certificate.

Paperwork Requirements

The proposed regulations do not create additional paperwork for the Board, the regulated community or the general public. The proposed regulation streamlines and simplifies the process for applying for reactivation by eliminating the need for a notarized affidavit.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. 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 November 7, 2018, 2018, the Board submitted a copy of this proposed regulation and a copy of the 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. 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 and objections raised.

Public Comment

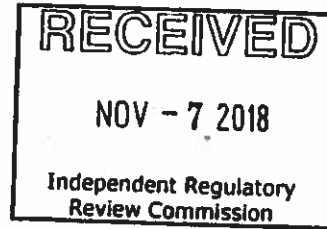
Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Tom Davis, Board Counsel at 2601 North Third Street, P.O. Box 69523, Harrisburg, PA 17106-9523, or by email to RA-STRegulatoryCounsel@pa.gov,

within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-5727 Certified Veterinary Technicians and Veterinary Assistants when submitting comments.

Thomas Garg, V.M.D.
Board Chairman

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

BY:

[Signature]
(DEPUTY ATTORNEY GENERAL)

OCT 22 2018

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

State Board of Veterinary Medicine
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-5727

DATE OF ADOPTION: _____

Tom Garg, VMD

BY: Thomas Garg, V.M.D.

TITLE Board Chair
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form
and legality. Executive or Independent Agencies.

BY:

[Signature]

OCT 02 2018

DATE OF APPROVAL

Deputy General Counsel
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

☐

Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF VETERINARY MEDICINE

TITLE 49 PA CODE CHAPTER 31
§§ 31.1, 31.31, 31.32, 31.34, 31.35, 31.36, 31.38, 31.39 and 31.41

CERTIFIED VETERINARY TECHNICIANS AND VETERINARY ASSISTANTS

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:

AAVSB—The American Association of Veterinary State Boards, or its successor organization.

* * * * *

Direct veterinary supervision—A veterinarian has given either oral or written instructions to the certified veterinary technician [or noncertified employee], veterinary assistant or other licensed professional, is on the premises and is easily and quickly available to assist the certified veterinary technician [or the noncertified employee] veterinary assistant or other licensed professional.

* * * * *

Immediate veterinary supervision—A veterinarian is in visual and audible range to assist the [noncertified employee] veterinary assistant.

* * * * *

[*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.]

* * * * *

VTNE—The Veterinary Technician National Examination, or its successor examination—An examination owned and administered by the AAVSB used to evaluate the competency of entry-level veterinary technicians.

* * * * *

Veterinary assistant—An employee of a veterinarian who does not hold certification as a veterinary technician and whom the veterinarian deems competent to perform the tasks set forth in § 31.31(b) (related to scope of practice) under direct veterinary supervision or immediate veterinary supervision.

* * * * *

CERTIFIED VETERINARY TECHNICIANS AND VETERINARY ASSISTANTS

§ 31.31. Scope of practice.

* * * * *

(b) [Noncertified employees. Noncertified employees] Veterinary assistants. 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:

* * * * *

(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:

* * * * *

§ 31.32. Certification.

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

- (1) A completed and signed application for veterinary technician certification.
- (2) Evidence of satisfactory performance on the [proficiency examination] VTNE as determined by the Board.
- (3) Evidence of satisfactory completion of an approved program for the training and education of veterinary technicians.

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

(5) [A statement from the applicant that the applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country within the last 10 years. An applicant convicted of such a felony more than 10 years ago shall also submit the following:

- (i) Proof that at least 10 years have elapsed from the date of conviction.
- (ii) Satisfactory documentary evidence that the applicant has made significant progress in personal rehabilitation since the conviction so that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations.
- (iii) Satisfactory documentary evidence that the applicant otherwise satisfies the qualifications contained in the Board's regulations] Other relevant documents, as requested by the Board.

(b) The fee for application for certification is as specified in § 31.41 (relating to schedule of fees).

* * * * *

§ 31.34. Qualification for examination.

An applicant for examination shall be a graduate of an approved school or be a student enrolled in the final year of an approved program for the training and education of veterinary technicians

provided that the student shall have completed at least half of the credit hours required for completion of the program.

§ 31.35. Examinations.

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

(b) An applicant failing to pass an examination for which the applicant has previously qualified [shall] may be reexamined at the applicant's request by submitting a new application and by paying the required fee, in accordance with the policies of the AAVSB.

(c) The Board may waive the VTNE if an applicant satisfies the following requirements:

- (1) Has met all requirements provided for in the act.
- (2) Has filed the required application as provided in § 31.33 (relating to applications).
- (3) Has been issued a license, registration or certificate as an animal health technician or a veterinary technician in another state whose requirements [are at least equal to those of the Commonwealth; a copy of this certificate and proof of current good standing shall be submitted] include successful completion of an approved program for the training and education of veterinary technicians and successful completion of the VTNE or a comprehensive examination equivalent to the VTNE if the examination was taken before the VTNE was offered.

(d) Applicants applying under subsection (c) shall include with their application a copy of their state credential (license, registration or certificate) and proof of current good standing.

§ 31.36. Renewal of certification, inactive status and reactivation of certification.

* * * * *

(c) *Reactivation of certification.* Certified veterinary technicians who desire to reactivate certification may do so by complying with the continuing education requirements in effect at the time of reactivation, paying the current renewal fee and submitting [a notarized] an affidavit to the Board setting forth the period of time in which the certificate holder did not practice in this Commonwealth. Certified veterinary technicians who seek to reactivate certification will not be assessed a late renewal fee for the preceding biennial renewal periods in which the certificate holder did not engage in practice in this Commonwealth.

* * * * *

§ 31.38. Code of ethics for certified veterinary technicians.

* * * * *

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

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

* * * * *

(g) A certified veterinary technician may not make a false, deceptive or misleading statement or claim. A false, deceptive or misleading statement or claim includes the statements and claims defined in Principle 5(a) of § 31.21 (relating to Rules of Professional Conduct for Veterinarians) and any representation that the certified veterinary technician is a specialist, or a VTS, unless the certified veterinary technician holds current certification from a specialty organization recognized by the National Association of Veterinary Technicians in America, or its successor organization.

(h) A certified veterinary technician shall not engage in conduct which a reasonable person would believe is intended to coerce, pressure or intimidate another person to file, not file or withdraw a complaint made to the Board or any law enforcement official regarding matters related to the certified veterinary technician's practice.

(i) A certified veterinary technician shall not abuse, harass or intimidate a client, former client, colleague or associate in the course of professional practice.

(j) A certified veterinary technician shall not abuse or neglect any animal, as defined in § 31.1 (relating to definitions), whether or not the animal is a patient.

(k) A certified veterinary technician shall report to the Board any veterinary technician or veterinarian deficient in professional competence, professional conduct or ethical conduct as described in this chapter, in accordance with the rules set forth in § 31.21, Principle 1(e) (related to veterinarian reporting to the Board).

§ 31.39. Grounds for disciplinary proceedings.

* * * * *

(b) Certified veterinary technicians and [noncertified employees] veterinary assistants 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 veterinary technicians or [noncertified employees] veterinary assistants 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).

* * * * *

§ 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:

* * * * *

Veterinarian biennial renewal:

Biennial renewal fee [for biennial period December 1, 2010—November 30, 2012]..... \$345

Biennial renewal fee for biennial period December 1, 2012—November 30, 2014]..... \$360

* * * * *

[*Veterinary*] Certified veterinary technician fees for services:

* * * * *

[*Veterinary*] Certified veterinary technician biennial renewal:

Biennial renewal fee [for biennial period December 1, 2010—November 30, 2012]..... \$85

Biennial renewal fee for the biennial period December 1, 2012—November 30, 2014] \$100

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF VETERINARY MEDICINE

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

November 7, 2018

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Veterinary Medicine
16A-5727: CERTIFIED VETERINARY TECHNICIANS AND VETERINARY
ASSISTANTS

Dear Chairman Bedwick:

Enclosed is a copy of a proposed rulemaking package of the State Board of Veterinary Medicine pertaining to Certified Veterinary Technicians and Veterinary Assistants.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Tom Garg, JMD".

Thomas J. Garg, Chairperson
State Board of Veterinary Medicine

TJG/TMD:rs

Enclosure

cc: Ian J. Harlow, Commissioner of
Professional and Occupational Affairs
Kalonji Johnson, Director of Policy, Department of State
Cynthia K. Montgomery, Deputy Chief Counsel
Department of State
Thomas M. Davis, Counsel
State Board of Veterinary Medicine
State Board of Veterinary Medicine

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-5727

SUBJECT: Certified Veterinary Technicians and Veterinary Assistants

AGENCY: DEPARTMENT OF STATE
Bureau of Professional and Occupational Affairs
State Board of Veterinary Medicine

RECEIVED


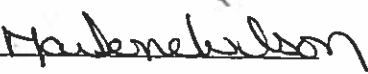




NOV - 7 2018

**Independent Regulatory
Review Commission**

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Disapproved Regulation
- a. With Revisions b. Without Revisions

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>		
11/7/18		MAJORITY CHAIR <u>Mark T. Mustio</u>
11-7-18		MINORITY CHAIR <u>Harry A. Readshaw</u>
<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>		
11/7/18		MAJORITY CHAIR <u>Robt. Tomlinson</u>
11/7/18		MINORITY CHAIR <u>Lisa Boscola</u>
11/7/18		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
<i>ATTORNEY GENERAL (for Final Omitted only)</i>		
11/7/18		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>

October 29, 2018