

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 63, 77 AND 79]

General Provisions; Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 53 and 63 (relating to Commission property; and general fishing regulations), delete Chapter 77 (relating to reptiles and amphibians) and add Chapter 79 (relating to reptiles and amphibians). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking updates and improves regulations of reptiles and amphibians to provide greater protection of these resources.

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2007.

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendments to §§ 53.7 and 63.7 (relating to use of firearms; and exceptions to limitations on devices) and the proposed regulations in §§ 79.1—79.3 and 79.7—79.10 are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed regulations in §§ 79.4—79.6 (relating to snapping turtle permits; timber rattlesnake and northern copperhead permits; and organized reptile and amphibian hunt permits) are published under the statutory authority of section 2102 of the code and 2904 of the code (relating to permits for protection and management of particular fish).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's reptile and amphibian regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

E. *Summary of Proposals*

The Commission has determined that the existing reptile and amphibian regulations are in need of amendment to provide adequate protection of these resources due to increasing interest in collecting in this Commonwealth. The Commission has also determined that amendments are needed to improve the clarity of regulations pertaining to how reptiles and amphibians are taken, caught, killed and sold and their season and possession limits. The proposed amendments are supported by the Commission's Amphibian and Reptile Technical/Advisory Committee (Committee), a subcommittee of the Pennsylvania Biological Survey.

As a general matter, the Commission believes that the entire chapter dealing with reptiles and amphibians needs to be reorganized in a more logical and understand-

able fashion. The proposed rulemaking therefore deletes Chapter 77 and adds Chapter 79.

(1) *Section 79.1.* Among the organizational changes in this chapter is the addition of a definitions subsection in § 79.1 (relating to definitions). The Commission has included a more explicit definition of "hunt" and has added definitions of "native species," "snake hooks or tongs," "subcaudal scale" and "turtle hooks." The current definitions of "organized reptile and amphibian hunt" and "sacking contest," for the most part, have been left unchanged and are included in proposed § 79.1.

(2) *Section 79.2.* In proposed § 79.2 (relating to taking reptiles or amphibians), the Commission has combined various provisions pertaining to the taking of reptiles and amphibians found throughout Chapter 77 and have placed them in one section. This proposed section describes the means and the devices by which reptiles and amphibians may be lawfully taken and enumerates unlawful practices. It also makes it unlawful to take, catch or kill a reptile or amphibian through use of a firearm. For consistency, the Commission further recommends that § 53.7 be amended to remove the provision allowing the use of .22 caliber rimfire weapons with shotshell to take frogs during the open season unless otherwise posted on Commission owned or controlled property.

(3) *Section 79.3.* Proposed § 79.3 (relating to season and daily possession limits) pertains to season and daily possession limits currently addressed in § 77.6 (relating to season and daily possession limits). Under the current regulations, a sponsor of an organized reptile/amphibian hunt may possess more than the daily limit of timber rattlesnakes if the total number of timber rattlesnakes held in possession during each hunt and for not more than 48 hours thereafter does not exceed the daily limit for timber rattlesnakes times twice the number of persons engaged in the hunt. The proposed section reduces the number from two times the number of persons engaged in the hunt to one.

Other proposed changes to this section include reducing the daily and possession limits for both bullfrogs and green frogs from 15 and 30 to 10 and 20, respectively. The proposed section also includes a prohibition against the taking of 23 species of reptiles and amphibians that are considered to be rare, declining or "at risk" by the Committee. These species have limited ranges in this Commonwealth, are threatened by development and collection pressure and are currently being studied by the Commission. Until these species are considered for formal listing as threatened or endangered species, the Commission proposes "no collection" (that is, no open season and daily and possession limits of 0) as a means of protecting them. Status assessment studies are underway for these species, which could lead to future management decisions.

In addition, the Commission proposes additional restrictions with regard to timber rattlesnakes. Currently, the regulations permit a person to take, catch or kill one timber rattlesnake per calendar year and to possess one timber rattlesnake at a time. Under the proposed rulemaking, it is unlawful for a person to take, catch, kill or possess a timber rattlesnake that is less than 42 inches in length, measured lengthwise along the dorsal surface from the snout to the tail, excluding the rattle, and that possesses less than 21 subcaudal scales. The proposed rulemaking further prohibits a person to hunt timber

rattlesnakes from the South Mountain population (west of Route 15 and south of Interstate 81 to the Maryland line) where there is no open season.

The timber rattlesnake is currently listed as a candidate species in this Commonwealth and is listed as a protected species (threatened or endangered) or species of concern in our neighboring states. Unlike most amphibians and reptiles in this Commonwealth, the timber rattlesnake is sought out by hunters as a game species. Reptile collectors collect them for their variable coloration, large size and unique nature and people have been known to wantonly kill timber rattlesnakes due to their perceived threat to humans. Despite former tightening of the regulations on the collection of this animal (reduced to one possession limit in 1993, and one annual limit in 1996), preliminary results of the Commission's timber rattlesnake population study (2003-present) suggest that the timber rattlesnake is declining in the peripheral parts of its range in this Commonwealth due to development pressure, wanton killing and collecting. Adult female timber rattlesnakes need 8 to 10 years to reach reproductive maturity. Therefore, taking females out of the population is a threat to local populations and the larger Statewide population. A minimum length limit and minimum number of subcaudal scales are proposed to limit timber rattlesnake hunters interested in take/collection to favor collection of mature adult male snakes. This proposed section will protect adult and gravid (pregnant) females and enable their progeny to reach reproductive maturity. In addition, the Commission recommends that the South Mountain population (portions of Adams, Cumberland, Franklin and York Counties) of timber rattlesnake be off-limits to hunting due to the documented decline in numbers in this specific area from hunting and human encroachment pressure and apparent isolation with the North Mountain and Maryland timber rattlesnake populations.

The proposed rulemaking further places a season and catch and possession limits on the northern copperhead. These proposed changes are needed because the status of the northern copperhead is uncertain. Although no comprehensive population studies have been conducted on this species, there is a consensus among herpetologists that the northern copperhead is declining across its range and in this Commonwealth. The Commission also recommends that a permit like the current timber rattlesnake permit be required for northern copperheads. The specifics of this permit requirement are discussed in more detail in paragraph (4). However, the permit requirement will enable the Commission to collect location and harvest information to be used to assess the possible decline of northern copperheads in this Commonwealth. Ultimately, this information will be used for future management of the northern copperhead.

Finally, the proposed rulemaking reduces the daily and possession limits for native species not listed in the regulation from two to one.

(4) *Section 79.4.* In proposed § 79.4 (relating to snapping turtle permits), the Commission proposes a new permit requirement for the taking of common snapping turtles by persons who intend to sell, barter or trade them. In many states across its range, the common snapping turtle is declining. The new permit is proposed to facilitate a better understanding of the numbers of turtles that are being taken for commercial use, where the hunting pressure exists and who is engaged in the activity. Information gleaned from the permit system will enable the Commission to make well-informed decisions about the future management of the snapping turtle.

(5) *Section 79.5.* Proposed § 79.5 (relating to timber rattlesnake and northern copperhead permits) addresses permit requirements for both the timber rattlesnake and the northern copperhead, making it unlawful to hunt, take, catch, kill or possess them without first procuring the necessary permit. The current cost of the timber rattlesnake permit has remained at \$5 for the past 14 years. The Commission proposes increasing the permit fee to \$50 for residents and \$100 for nonresidents to offset costs due to inflation and the costs of permit issuance, processing and data compilation. Fees collected from this permit can also be used as matching funds to obtain other grants to perform additional management activities.

In this section, the Commission also proposes new tagging requirements for persons who hunt, take, catch, kill or possess timber rattlesnakes. Currently, the Commission issues well over 1,000 individual timber rattlesnake permits per year (1,181 permits were issued in 2004) and permit requests have increased approximately 200-300 each year since 1998. Approximately 15% of the hunters are reporting "take" (for harvest or as pets) of snakes. There is evidence to suggest that even more snakes are being taken than are being reported. The Commission proposes a tagging system to provide better accountability of hunters that decide to take timber rattlesnakes alive or dead. The information collected in this program will assist the Commission in the development of management units and associated bag limits for timber rattlesnakes.

(6) *Section 79.6.* Proposed § 79.6 (relating to organized reptile and amphibian hunt permits) pertains to organized reptile and amphibian hunt permits currently addressed in § 77.2. Among the changes is an increase in the fee from the current \$25 to \$100. This increase has been proposed to offset the costs associated with permit review and processing and monitoring/permit compliance of hunts. The Commission also proposes reporting requirements.

(7) *Section 79.7.* Proposed § 79.7 (relating to sale of native species) addresses the sale of reptiles and amphibians currently contained in § 77.3 (relating to taking and selling reptiles or amphibians under section 2102(b) and (c) of the code). This section has been revised to reflect the intent of the Commission to protect the native herptiles of this Commonwealth and their progeny. The demand for both wild caught and captive bred reptiles and amphibians, including several native to this Commonwealth, has increased considerably over the past several years. While waterways conservation officers go through intense training on the identification of species native to this Commonwealth, it can be almost impossible to tell whether an individual animal is captive bred or wild caught. This is especially true for hatchling or juvenile animals, the preferred product for reptile and amphibian dealers. This section helps to eliminate the profit motive for both collection and sale of species native to this Commonwealth and the collection of animals in this Commonwealth for breeding stock for commercial propagation programs.

(8) *Section 79.8.* Proposed § 79.8 (relating to transportation and importation of native species) makes it illegal to transport or import into or within this Commonwealth a native species, as defined in Chapter 79, from another jurisdiction. It also makes it unlawful to receive a native species that was transported or imported into or within this Commonwealth from another jurisdiction.

(9) *Section 79.9.* Proposed § 79.9 (relating to introduction of nonnative species) restates the current provisions of § 77.7 (relating to introduction of nonnative species).

(10) *Section 79.10.* Proposed § 79.10 (relating to natural areas) restates the current provisions of § 77.1 (relating to natural areas).

The Commission proposes to amend the various sections previously discussed to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will increase paperwork and will create new paperwork requirements in that persons who wish to hunt, take, catch or kill snapping turtles for the purpose of sale, barter or trade will be required to complete an application. If approved, the Commission will issue a permit to those persons. Holders of snapping turtle permits also will be required to furnish annual reports on a form prescribed by the Commission.

The proposed rulemaking may increase paperwork by requiring individuals who wish to hunt, take, catch or kill northern copperheads as well as timber rattlesnakes to apply for a permit. The Commission's existing permit covers timber rattlesnakes only, and the Commission may receive additional applications if it adopts a permit requirement for northern copperheads. However, the Commission believes that the number of venomous snake permits that it will issue may actually decrease because of the increased fee. In addition, the proposed rulemaking may slightly increase paperwork in that timber rattlesnake and northern copperhead permittees will be required to meet annual reporting requirements by completing a form prescribed by the Commission. Timber rattlesnake permittees currently must file catch reports each year. The proposed rulemaking also requires persons who take, catch, kill or possess a timber rattlesnake to complete a possession tag that is attached to the permit. This is a new requirement.

With regard to the organized reptile and amphibian hunt permit, the Commission does not expect any increase in paperwork or any new paperwork requirements in that the Commission already requires a permit for organized hunts. Holders of these permits will continue to be required to furnish reports. These reports must be submitted on the form prescribed by the Commission.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. Any costs to the Commission that are associated with the new or revised permit programs will be offset by the fees.

The proposed rulemaking will impose new costs on the private sector and the general public in that the new snapping turtle permit has a fee of \$50 for residents and \$100 for nonresidents. The Commission estimates that it will issue approximately 200 snapping turtle permits during the first year that the permit requirement is in effect with the expectation that the number will increase each year thereafter.

The proposed rulemaking also will impose new costs in that the timber rattlesnake and northern copperhead permit will cost residents \$50 and nonresidents \$100. The current cost of a timber rattlesnake permit has remained at \$5 for the past 14 years. Currently, the Commission issues well over 1,000 individual timber rattlesnake permits per year (1,181 permits were issued in 2004), and permit requests have increased approximately 200-300 each year since 1998. The Commission believes that it

will issue fewer timber rattlesnake and northern copperhead permits annually because of the increase in the price of the permit.

In addition, the proposed rulemaking will impose additional costs on those individuals wishing to obtain an organized reptile and amphibian hunt permit. It is proposed that the fee associated with this permit be increased from \$25 to \$100. The Commission currently issues approximately ten organized hunt permits each year. The Commission estimates that it will continue to issue a similar number of organized hunt permits in the future.

With regard to all three permit types, the Commission will utilize the fees to offset the costs associated with permit issuance and processing and data compilation. In some instances, the Commission will utilize fees that are collected as matching funds to obtain other grants to perform additional management activities.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 90 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted. Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

In addition, the Commission intends to form a working group comprised of interested stakeholders who will meet and discuss the proposals and make suggestions to Commission staff.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-175. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.7. Use of firearms.

It is unlawful for any person to carry or use firearms on Commission owned or controlled properties except for persons:

* * * * *

[(3) Using .22 caliber rimfire weapons with shotshell only to take frogs during the open season unless otherwise posted.]

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.7. Exceptions to limitations on devices.

The limitations on fishing devices contained in this chapter do not:

* * * * *

(4) Apply to the taking, catching or killing of amphibians and reptiles—see Chapter [77] 79 (relating to reptiles and amphibians).

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CHAPTER 77. [REPTILES AND AMPHIBIANS] (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the text of Chapter 77, which appears at 58 Pa. Code pages 77-1—77-7, serial pages (297645) to (297651).)

§§ 77.1—77.8. (Reserved).

CHAPTER 79. REPTILES AND AMPHIBIANS

Sec.	Definitions.
79.1.	Taking reptiles or amphibians.
79.2.	Season and daily possession limits.
79.3.	Snapping turtle permits.
79.4.	Timber rattlesnake and northern copperhead permits.
79.5.	Organized reptile and amphibian hunt permits.
79.6.	Sale of native species.
79.7.	Transportation and importation of native species.
79.8.	Introduction of nonnative species.
79.9.	Natural areas.

§ 79.1. Definitions.

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

Hunt—The act of pursuing reptiles or amphibians in an effort to catch, take, kill or remove them, or to catch, take, kill or remove or attempt to catch, take, kill or remove from any waters or other areas within or bordering on this Commonwealth any reptile or amphibian by any means or method for any purpose whatsoever.

Native species—A reptile or amphibian species that has not been introduced into this Commonwealth and occurs historically within the boundaries of this Commonwealth. The Commission will from time to time publish in the *Pennsylvania Bulletin* a list of reptile and amphibian species that it has determined are native species.

Organized reptile and amphibian hunt—A hunt for reptiles or amphibians involving two or more individuals acting in concert to seek, pursue, catch, take, kill or remove native species of reptiles or amphibians at an event where the reptiles or amphibians are hunted on a competitive basis. When one or more of the following factors are present, an event may be considered an organized reptile and amphibian hunt as the term is used in this chapter:

- (i) The event is sponsored or promoted by a person or organization.
- (ii) The event involves the award of trophies, prizes or other recognition to persons or groups for catching reptiles or amphibians.
- (iii) The sponsors of the events or others publicize the event to encourage attendance of spectators.
- (iv) The sponsors or organizers of the event have their own rules for the conduct of the hunt.

Sacking contest—A competition where participants place reptiles or amphibians in a sack, bag or similar container in a timed event.

Snake hooks or tongs—Implements used to grasp or lift snakes with minimal risk of injury to the animal.

Subcaudal scale—Large flat scales that are located on the rear ventral portion (underside) of a timber rattlesnake between the vent (anal scale) and the base of the rattle.

Turtle hooks—Hooks used for taking turtles that are 3 1/2 inches long with not less than a 1 inch space between the point and the shank.

§ 79.2. Taking reptiles or amphibians.

(a) General.

(1) Except as otherwise provided in this section, reptiles and amphibians may only be taken by hand, hook and line, snake hooks or tongs, turtle hooks, traps, and nets less than 4 feet square or 4 feet in diameter.

(2) It is unlawful to take, catch or kill a reptile or amphibian through use of a firearm.

(3) It is unlawful to take, catch or kill a reptile or amphibian through the use of chemicals, smoke, explosives, winches, jacks or other devices or materials, or manually in a manner that may disrupt, damage or destroy the den or the immediate surroundings thereof. It is unlawful to destroy habitat in the pursuit of a reptile or amphibian.

(4) It is unlawful to damage or disrupt the nest or eggs of a reptile or amphibian or to gather, take or possess the eggs of any reptile or amphibian.

(b) Turtles.

(1) It is unlawful to take, catch or kill a turtle by means of a hook other than a turtle hook as defined in § 79.1 (relating to definitions).

(2) It is unlawful for a person to leave a set line, turtle trap or other device for catching turtles unattended unless the device has attached a tag or other means of identification containing the name, address and telephone number of the owner or user of the device. Traps, nets or devices used for catching turtles must be of a floating or partially submerged design so as to allow for the release of untargeted turtles unharmed.

(c) Frogs.

(1) Frogs may be taken with long bows and arrow, including compound bows, crossbows, spears or gigs. Spears or gigs may not be mechanically propelled, may not have more than five barbed points and may not be used in approved trout waters.

(2) It is unlawful to take, catch or kill a frog by use of artificial light at night.

§ 79.3. Season and daily possession limits.

(a) Except as otherwise provided in subsections (b), (c) and (d), it is unlawful for a person to take, catch or kill more than the daily limit specified in subsection (f) in 1 calendar day or to have in possession more than the possession limit, dead or alive, in whole or in parts, specified in subsection (f); or to hunt, take, catch or kill reptiles or amphibians during the closed season. An amphibian or reptile will not be considered to be in the possession of a person if, after it is taken or caught, it is immediately released unharmed to the exact location from which it was taken and is not confined to a sack, bag or other container.

(b) This section does not prohibit the sponsors of an organized reptile/amphibian hunt conducted under a permit issued under § 79.6 (relating to organized reptile and amphibian hunt permits) from possessing more than the daily limit of the species of reptiles or amphibians hunted

if the total number of reptiles and amphibians held in possession during each hunt does not exceed the daily limit for the species hunted times the number of registered participants in the organized hunt. This subsection applies to possession limits only. It does not permit the sponsors of a hunt or individual hunters to take, catch or kill any number of amphibians and reptiles in excess of the daily limits.

(c) This section does not prohibit possession of numbers of amphibians and reptiles in excess of possession limits by zoos and other institutions or persons for scientific, educational or research purposes or licensed taxidermists for the purpose of mounting for properly permitted customers, licensed wildlife rehabilitators or licensed pest control agents with the written permission of the Executive Director or a designee. These persons shall maintain a current open inventory of and report annually changes in the number of reptiles and amphibians possessed. The Executive Director may limit the number of reptiles and amphibians that a person or institution may possess when the Executive Director or a designee issues permission under this subsection.

(d) In prosecutions for violations of the possession limits, when venomous reptiles have been killed in apparent violation of the limits, it shall be a defense that the person who killed the venomous reptiles acted under a reasonable apprehension of immediate death or bodily harm to himself or other persons in his immediate vicinity, if no more venomous reptiles are killed than necessary to protect life and limb and if the person reported the kills in writing to the Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616, within 5 business days after the kill. It is unlawful for a person to possess a venomous reptile, in whole or in parts, that was killed under this subsection.

(e) When season or annual limits apply, a season or annual limit has been reached once a reptile or amphibian, dead or alive, in whole or in parts, has not been immediately released to the exact location from which taken and is in the possession of a person.

(f) The following seasons, sizes, catch and possession limits apply to amphibians and reptiles except endangered and threatened species:

<i>SPECIES</i>	<i>SEASON</i>	<i>DAILY LIMIT</i>	<i>POSSESSION LIMIT</i>
Bullfrog (<i>Rana catesbeiana</i>) Green frog (<i>Rana clamitans</i>)	July 1 to October 31	10 (combined species)	20 (combined species)
Common snapping turtle (<i>Chelydra serpentina</i>)	July 1 to October 31	15	30
Blanding's turtle (<i>Emys blandingii</i>)	No open season	0	0
Spotted turtle (<i>Clemmys guttata</i>)	No open season	0	0
Wood turtle (<i>Glyptemys insculpta</i>)	No open season	0	0
Box turtle (<i>Terrapene carolina</i>)	No open season	0	0
Broad-headed skink (<i>Eumeces laticeps</i>)	No open season	0	0
Northern coal skink (<i>Eumeces anthracinus</i>)	No open season	0	0
Mudpuppies (<i>Necturus maculosus</i>)	No open season	0	0
Hellbender (<i>Cryptobranchus alleghaniensis</i>)	No open season	0	0
Marbled salamander (<i>Ambystoma opacum</i>)	No open season	0	0
Jefferson salamander (<i>Ambystoma jeffersonianum</i>)	No open season	0	0
Four-toed salamander (<i>Hemidactylium scutatum</i>)	No open season	0	0
Ravine salamander (<i>Plethodon richmondi</i>)	No open season	0	0
Northern cricket frog (<i>Acris crepitans</i>)	No open season	0	0
Mountain chorus frog (<i>Pseudacris brachyphona</i>)	No open season	0	0
Striped chorus frog complex (<i>Pseudacris feriarum feriarum</i> , <i>P. feriarum triseriata</i>)	No open season	0	0
Northern fence lizard (<i>Sceloporus undulates</i>)	No open season	0	0
Queen snake (<i>Regina septemvittata</i>)	No open season	0	0
Short-headed garter snake (<i>Thamnophis brachystoma</i>)	No open season	0	0
Eastern ribbon snake (<i>Thamnophis sauritus</i>)	No open season	0	0

<i>SPECIES</i>	<i>SEASON</i>	<i>DAILY LIMIT</i>	<i>POSSESSION LIMIT</i>
Smooth earth snake (<i>Virginia valeriae</i>)	No open season	0	0
Smooth green snake (<i>Opheodrys vernalis</i>)	No open season	0	0
Eastern hognose snake (<i>Heterodon platirhinos</i>)	No open season	0	0
Eastern worm snake (<i>Carphophis amoenus</i>)	No open season	0	0
Tadpoles	No closed season	15 (combined species)	15 (combined species)
Timber rattlesnake (<i>Crotalus horridus</i>)	Second Saturday in June to July 31*	1 annual limit** (must be at least 42 inches in length, measured lengthwise along the dorsal surface from the snout to the tail, excluding the rattle, and must possess 21 or more subcaudal scales.)	
Northern copperhead (<i>Agkistrodon contortrix</i>)	Second Saturday in June to July 31	1 annual limit**	
Native species not listed in this subsection	No closed season	1	1

* It is unlawful for a person to hunt, take, catch or kill timber rattlesnakes west of Route 15 and south of Interstate 81 to the Maryland line where there is no open season.

** It is unlawful for a person to take, catch or kill more than one timber rattlesnake or northern copperhead per calendar year. It is unlawful for a person to possess more than one timber rattlesnake or northern copperhead at any time.

§ 79.4. Snapping turtle permits.

(a) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the common snapping turtle (*Chelydra serpentina*) that persons who hunt, take, catch or kill this species for the purpose of sale, barter or trade have a permit for the activity. Application for a permit shall be made on a form prescribed by the Commission and shall be accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee for residents is \$50 per year; the fee for nonresidents is \$100 per year. The denial of a permit under this section is appealable in the manner provided by §§ 51.41—51.46 (relating to permit procedures).

(b) It is unlawful to hunt, take, catch, kill or possess the common snapping turtle for purposes of sale, barter or trade without first procuring the required permit. The required permit shall be in possession of the permittee at all times while hunting. Permittees shall comply with the terms and conditions of the permit and furnish the reports required thereby.

(c) It is unlawful to sell, barter, trade or offer for sale a common snapping turtle, dead or alive, in whole or in parts, taken from lands or waters of this Commonwealth without first procuring the permit required under this section.

§ 79.5. Timber rattlesnake and northern copperhead permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the timber rattlesnake (*Crotalus horridus*) and northern copperhead (*Agkistrodon contortrix*) that persons who hunt, take, catch or kill these species have a permit for the activity. Application for a permit shall be made on a form prescribed by the Commission and accompanied by the

appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee for residents is \$50 per year; the fee for nonresidents is \$100 per year. The denial of a permit under this section is appealable in the manner provided under §§ 51.41—51.46 (relating to permit procedures).

(b) *Required permit.* It is unlawful to hunt, take, catch, kill or possess a timber rattlesnake or northern copperhead, in whole or in parts, without first procuring the required permit from the Commission. The required permit shall be in the possession of the permittee at all times while hunting. Permittees shall comply with the terms and conditions of the permit and furnish the reports required thereby. It is unlawful to alter, borrow, lend or transfer a permit under this section.

(c) *Reporting.* Within 10 business days following the capture or kill, or if no snake is captured or killed, within 10 days of the conclusion of the season, the permittee shall complete a report on the form prescribed by the Commission and shall mail the report to the Commission.

(d) *Tagging of timber rattlesnakes.*

(1) A person who takes, catches, kills or possesses a timber rattlesnake shall immediately complete the possession tag that is attached to his permit and detach the tag from the permit in the field. The possession tag shall be completed in accordance with the instructions printed on the tag, and the information to be provided shall include, but not be limited to, the municipality and county where the snake was captured or killed, the date of capture or kill and a description of the snake, including color phase, sex, number of subcaudal scales and length in inches. The possession tag shall be kept in a safe location so that it can be presented along with the timber rattlesnake to which it pertains upon the request of an officer authorized to enforce the code.

(2) After the possession tag is detached from the permit, it is unlawful to take, catch, kill or possess another timber rattlesnake.

(3) It is unlawful to alter, borrow, lend or transfer possession tags under this section.

(4) When presenting a timber rattlesnake to a taxidermist for mounting, the tag shall remain with the rattlesnake while in the possession of the taxidermist.

(e) *Field dressing of timber rattlesnakes.* A permittee may field dress a timber rattlesnake so long as the head and tail remain intact.

(f) *Measurement of timber rattlesnakes.* Upon the request of an officer authorized to enforce the code, a permittee shall measure a timber rattlesnake to determine its length. If the permittee is unable to measure the timber rattlesnake, the officer may seize the snake so that a measurement may be taken at another location.

§ 79.6. Organized reptile and amphibian hunt permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of fish), that it is necessary for the proper protection and management of reptiles and amphibians in this Commonwealth that organized reptile and amphibian hunts be conducted under permits issued under this section. The sponsor of an organized reptile and amphibian hunt shall apply for a permit by no earlier than January 1 and no later than March 1 of the year for which the hunt is proposed. Application for a permit shall be made on a form prescribed by the Commission and accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee for the permit is \$100. The denial of a permit under this section is appealable in a manner provided under §§ 51.41—51.46 (relating to permit procedures).

(b) *Permit issuance.*

(1) The Executive Director will issue permits to applicants who demonstrate that they are responsible and qualified to conduct an organized reptile and amphibian hunt. In determining the qualifications of an applicant, the Executive Director, or a designee, may consider factors as deemed appropriate, including, but not limited to, the experience of the applicant in conducting the events, the responsiveness of the applicant to reporting requirements, the safety record of the applicant, the ability of the applicant to conduct educational programs, the context of the event and competing applications.

(2) The Executive Director may limit the number of organized reptile and amphibian hunt permits to be issued for a particular vicinity and time proximity. In general, permits will be issued to qualified applicants no earlier than March 15 of the year in which the application is submitted. If the Commission is aware of events scheduled in the vicinity of one another within 4 weeks, and the Executive Director determines that all events cannot be permitted consistent with resource management and protection, the Executive Director may designate the applicants as competing applications. If competing applications are designated, the Executive Director may, if the parties cannot agree on the withdrawal of one or more applications, award a permit on a random basis, an alternate year basis or some other rational basis as the interests of fairness may dictate.

(c) *Required permit.* It is unlawful to engage in organized reptile and amphibian hunts unless the sponsors of the hunts have first procured the required permit for each hunt. The required permits shall be held in possession of the sponsor at all times during each hunt. Permittees shall comply with the terms and conditions of each permit and furnish reports required thereby.

(d) *Reporting.* At the location of the hunt, the permittee shall complete a report on the form prescribed by the Commission that will include, at a minimum, the location of the hunt; the names of the registered participants; the species name of the reptile or amphibian that was captured or killed; a description of the reptile or amphibian that was captured or killed; the date and time the reptile or amphibian was brought to the hunt; and the permit number of the person who captured or killed the reptile or amphibian. The permittee shall complete the form as registered participants deliver their reptiles or amphibians for entry into the competition. This form shall be presented upon the request of an officer authorized to enforce the code. Within 10 days following the conclusion of the event, the permittee shall submit the form to the Commission.

(e) *Season.* It is unlawful to conduct an organized reptile or amphibian hunt for any species of reptile or amphibian except during the open season for the reptile or amphibian as specified in § 79.3 (relating to season and daily possession limits).

(f) *Sacking contests.* Sacking contests of native species are prohibited. It is unlawful to import timber rattlesnakes or any subspecies, hybrid or variety of *Crotalus horridus*, into this Commonwealth for use in connection with a sacking contest.

(g) *Treatment of reptiles and amphibians.* Reptiles and amphibians held in connection with an organized hunt may not be confined without water or shade or otherwise physically abused or handled roughly. Free-handling of native, venomous reptiles in an organized hunt is prohibited. At the conclusion of the organized hunt, the sponsor shall return the snakes to the registered participants who entered the snakes in the event.

§ 79.7. Sale of native species.

(a) Except as otherwise provided in this chapter, it is unlawful to take, catch, kill or possess for purposes of selling or offering for sale or to sell, offer for sale, import or export for consideration, trade or barter, or purchase an amphibian or reptile that was taken, caught or killed in this Commonwealth, and its progeny, whether dead or alive, in whole or in parts, including eggs or any life stage.

(b) This section does not prohibit the sale, purchase, offer for sale, trade or barter of any reptile or amphibian propagated by or from a propagator or dealer of live aquatic animals registered under 3 Pa.C.S. Chapter 42 (relating to aquacultural development) provided that the reptiles or amphibians are a species approved for propagation in this Commonwealth and are lawfully propagated.

§ 79.8. Transportation and importation of native species.

(a) It is unlawful to transport or import into or within this Commonwealth a native species, as defined in this chapter, from another jurisdiction.

(b) It is unlawful to receive a native species that was transported or imported into or within this Commonwealth from another jurisdiction.

§ 79.9. Introduction of nonnative species.

It is unlawful to introduce any species of reptile or amphibian into the natural environment of this Commonwealth if that species is not native to this Commonwealth. Persons who import nonnative reptiles or amphibians

ians into this Commonwealth shall institute appropriate safeguards to prevent their introduction into the environment of this Commonwealth.

§ 79.10. Natural areas.

(a) This chapter applies to all species of Commonwealth amphibians and reptiles occurring naturally within the boundaries of selected natural areas of the Department of Conservation and Natural Resources.

(b) The taking, catching, killing or possession of individuals of any species of Commonwealth amphibians and reptiles occurring naturally within the boundaries of designated natural areas by persons other than those possessing a valid scientific collector's permit is prohibited.

(c) Notice of this section will be posted at parking lots or access areas on the fringe of each designated natural area.

(d) Subsections (a) and (b) apply to natural areas within State forests, posted in accordance with subsection (c).

[Pa.B. Doc. No. 05-1899. Filed for public inspection October 14, 2005, 9:00 a.m.]

MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CH. 203]

Administration of the Training Program

The Municipal Police Officers' Education and Training Commission (Commission) proposes to amend Chapter 203 (relating to administration of the training program) to read as set forth in Annex A.

The Commission proposes to amend § 203.11(a)(8) (relating to qualifications) to eliminate the sit and reach test from the physical fitness requirements and § 203.11(a)(11)(ii)(D) to charge applicants who are not employed by, or have a conditional offer of employment from, a police department an examination fee equal to the actual cost of administering the test.

The Commission proposes to amend § 203.12(2)(iv) (relating to waiver of training) to allow training waivers for out-of-State police officers only if they have been certified based on an approved basic police course comparable to the one required by 53 Pa.C.S. Chapter 21, Subchapter D (relating to municipal police officers education and training).

The Commission proposes to amend § 203.33(a) (relating to minimum school standards and requirements) to require certified schools to have a school director who meets certain standards. The Commission proposes to add § 203.37 (relating to minimum standards for school directors) to set forth the standards.

The Commission also proposes to amend § 203.35 (relating to emergency suspension of school certification) to allow the Commission's Executive Director to suspend a school's certification if a condition exists at the school that presents a clear and present danger to the public,

students or school staff; would cause the students not to receive training required by 53 Pa.C.S. Chapter 21, Subchapter D or Chapter 203; the school director does not meet the standards in proposed § 203.37; or an instructor is subject to revocation under § 203.73 (relating to revocation of instructor certification).

Finally, the Commission proposes to amend § 203.102 (relating to notice) to allow Commission staff, rather than the Commission, to provide individuals and schools with notice of an adverse action.

Statutory Authority

The rulemaking is proposed under 53 Pa.C.S. § 2164(1), (8) and (14) (relating to powers and duties of Commission).

Effect

The proposed rulemaking will affect recruits, out-of-State police officers seeking training waivers and certified schools.

Effective Date/Sunset Date

The proposed rulemaking will be effective immediately upon final-form adoption. The regulations are continually monitored and updated as needed. Therefore, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 3, 2005, the Commission 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 Chairperson of the House Judiciary Committee and the Senate Law and Justice 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 Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Contact Person/Public Comment

Interested persons wishing to comment are invited to submit written comments within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments must include the name, address and telephone number of the interested party and a concise statement with sufficient detail on the subject. Written statements should be directed to Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Persons with a disability who require an alternative format of this proposed rulemaking (for example, large print, audio tape or Braille) should contact Syndi L. Guido to make the necessary arrangements.

COLONEL JEFFREY B. MILLER,
Chairperson

Fiscal Note: 17-68. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 37. LAW

PART IV. MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

Subpart A. MUNICIPAL POLICE OFFICERS' TRAINING PROGRAM

CHAPTER 203. ADMINISTRATION OF THE TRAINING PROGRAM

Subchapter A. GENERAL

§ 203.1. Definitions.

In addition to the definitions contained in the act, the following words and terms, when used in this chapter, have the following meanings:

Act—[The act of June 18, 1974 (P. L. 359, No. 120) (53 P. S. §§ 740—749)] 53 Pa.C.S. Chapter 21, Subchapter D (relating to municipal police education and training).

* * * * *

Subchapter B. POLICE OFFICER CERTIFICATION REQUIREMENTS

§ 203.11. Qualifications.

(a) Except as provided in subsection (b), persons who are to be employed as police officers by police departments within this Commonwealth from December 21, 1996, shall:

* * * * *

(8) Be evaluated to determine physical fitness using the standards developed by the Cooper Institute for Aerobics Research in Dallas, Texas. Each applicant shall score no lower than the 30th percentile of the Cooper standards, which coincides with the 30th percentile of the general population, in each of the [five] required evaluations to be eligible for employment. A person will not be enrolled in a recruit training program at a police academy certified by the Commission unless the person has obtained a score in the 30th percentile or higher for the person's age and gender as specified in the Cooper standards for each of the required evaluations. The [five] required evaluations are as follows:

* * * * *

[(v) Sit and reach]

* * * * *

(11) Successfully complete a basic police training course given at a Commission-certified school or obtain a waiver of training as enumerated in § 203.12 (relating to waiver of training).

* * * * *

(ii) To qualify for this certification, an applicant shall:

* * * * *

(D) Pass the same certification exam administered to those seeking waiver of training as set forth in § 203.12(4).

(I) Applicants who are not employed as a police officer by a police department within this Commonwealth or do not have a conditional offer of that employment shall pay an examination fee equal to the actual cost of administering the test.

(II) Applicants who are employed as a police officer by a police department within this Common-

wealth or have a conditional offer of that employment do not pay an examination fee.

* * * * *

§ 203.12. Waiver of training.

Applications for certification for which waivers of training are requested shall be submitted by the applicant's employing police department. An applicant for a waiver of training shall:

* * * * *

(2) Satisfy one of the following conditions:

* * * * *

(iv) Previously or currently employed as a full-time police officer of another state and met the certification standards of that state, [as evidenced by documentation from the state agency responsible for establishing the standards] provided that certification had been based on the completion of an approved basic police course comparable to that of the act.

* * * * *

Subchapter C. SCHOOL REQUIREMENTS

§ 203.33. Minimum school standards and requirements.

(a) Schools shall initially meet and subsequently maintain the following standards:

* * * * *

(2) Have a school director who meets the standards in § 203.37 (relating to minimum standards for school directors).

(3) School buildings shall comply with public safety standards in sections 1—14 of the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235), known as the Fire and Panic Act.

[(3)] (4) * * *

[(4)] (5) * * *

[(5)] (6) * * *

[(6)] (7) * * *

[(7)] (8) * * *

[(8)] (9) * * *

[(9)] (10) * * *

[(10)] (11) * * *

[(11)] (12) * * *

[(12)] (13) * * *

[(13)] (14) * * *

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[(14)] (15) * * *

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[(15)] (16) * * *

[(16)] (17) * * *

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[(17)] (18) * * *

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§ 203.35. Emergency suspension of school certification.

If a Commission inspector determines that [a condition exists] one or more of the following conditions exist at a school [which presents a clear and present danger to the public, students or staff of the school, the inspector, with the approval of] the Executive Director, on behalf of the Commission, may immediately suspend the school's certification [and cause all training to cease. In those situations]:

(1) [The school may correct the situation or request an administrative hearing as outlined in Subchapter G (relating to notice and hearings).] The condition presents a clear and present danger to the public, students or staff of the school.

(2) [Schools electing to correct the situation shall notify the Commission in writing by certified mail, return receipt requested, when the correction is complete. The Commission inspector will reinspect the facility to ensure compliance.] The condition would cause the students not to receive training required by the act and this part.

(3) [Notice of results of the reinspection will verbally be provided to the school by the inspector after the inspection has concluded and in writing within 10 days of the reinspection.] The school director does not meet the requirements in § 203.37 (relating to minimum standards for school directors).

(4) An instructor is subject to revocation under § 203.73 (relating to revocation of instructor certification).

§ 203.36. Revocation of school certification.

The Commission may, after notice and hearings in compliance with Subchapter G (relating to notice and hearings), revoke the certification of a school for one of the following reasons:

* * * * *

(6) The school does not have a school director who meets the standards in § 203.37.

§ 203.37. Minimum standards for school directors.

School directors approved by the Commission shall demonstrate compliance with at least one standard set forth in paragraph (1) and at least one standard set forth in paragraph (2).

(1) School directors shall satisfy one of the following requirements:

(i) Possess an associate's or higher degree in criminal justice, public administration, education or related field.

(ii) Be a graduate of one of the following: the Federal Bureau of Investigation National Academy, the Southern Police Institute Administrative Officers Course, the Law Enforcement Instructor Training Course of the Federal Law Enforcement Training Center, the Northwestern University Staff and Command School or other law enforcement training program approved by the Commission.

(2) Satisfy one of the following minimum professional experience requirements:

(i) Ten years in law enforcement, including 5 years at an administrative level.

(ii) Fifteen years increasingly responsible full-time experience as a Federal, State or municipal police officer with general police powers.

(3) Be free of convictions for a disqualifying criminal offense.

(4) Possess experience and ability as an instructor.

Subchapter G. NOTICE AND HEARINGS

§ 203.102. Notice.

* * * * *

(b) An individual or school given notice of an adverse action by [the] Commission staff may file a written request for a hearing within 15 days after receipt of the notice. The date of receipt of the request by the Commission and not the date of deposit in the mails is determinative of a timely request for a hearing.

[Pa.B. Doc. No. 05-1900. Filed for public inspection October 14, 2005, 9:00 a.m.]