

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 the regulation of reptiles and amphibians to provide greater protection and management 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 proposed §§ 79.1—79.3 and 79.8—79.13 are published under the statutory authority of section 2102 of the code (relating to rules and regulations). Proposed §§ 79.4—79.7 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*

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

At the April 2005 meeting, the Commission approved the publication of a proposed rulemaking containing proposed amendments to the Commission's reptile and amphibian regulations. The Commission also directed staff to solicit public comments for a period of at least 90 days and to assemble a workgroup of interested parties and stakeholders. The original proposed rulemaking was published at 35 Pa.B. 5683 (October 15, 2005). As directed by the Commission, staff assembled a diverse workgroup comprised of captive breeders, hobbyists, snake hunters, snake hunt sponsors, conservationists and academics. The workgroup has met on two occasions, once in August and again in November 2005, and has offered tremendous input to the Commission.

As a result of the workgroup's discussions, the Commission has made numerous revisions and additions to the original proposed rulemaking published at 35 Pa.B. 5683. This proposed rulemaking contains many of the provisions of the original proposed rulemaking but addresses many of the issues raised by the workgroup. It also

incorporates some of the changes suggested by the public thus far. At the January 2006 meeting, the Commission approved the publication of a second proposed rulemaking and directed staff to solicit public comments for a period of 60 days.

E. *Summary of Proposals*

This proposed rulemaking, which adds Chapter 79, contains the following provisions:

(1) *Section 79.1.* Among the organizational changes in this chapter is the addition of § 79.1 (relating to definitions). The Commission proposes a more explicit definition of "hunt" and proposes the addition of definitions of "snake hooks or tongs," "turtle hooks," "subcaudal scale" and "native species." The current definitions in § 77.2 (relating to reptile and amphibian hunt permits) for "organized reptile and amphibian hunt" and "sacking contest," for the most part, were left unchanged and are included in proposed § 79.1. As a result of the workgroup meetings, this proposed section now includes a definition of "color morph" and a revised definition of the term "native species." The definition of "native species" in this proposed rulemaking now includes species or subspecies where applicable.

(2) *Section 79.2.* In proposed § 79.2 (relating to taking reptiles or amphibians), the Commission proposes combining various provisions pertaining to the taking of reptiles and amphibians found throughout Chapter 77 and proposes placing 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 proposes 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.

As a result of the workgroup meetings, the Commission has revised this proposed rulemaking so that it is not unlawful to gather, take or possess amphibian eggs. This change is consistent with the regulations in Chapter 77 that currently are in effect.

(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. This proposed rulemaking reduces the number from two times the number of persons engaged in the hunt to one.

Other proposed amendments 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 Commission's Amphibian and Reptile Technical/Advisory Committee. These species have limited ranges in this Commonwealth, are threatened by development and col-

lection 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 38 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 it is listed as a protected species (threatened or endangered) or species of concern in 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. People have been known to wantonly kill timber rattlesnakes due to their perceived threat to humankind. 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 8-10 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 rulemaking will help to protect adult and gravid (pregnant) females and enable their progeny to reach reproductive maturity. In addition, the Commission proposes 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 amendments 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 proposes that a permit like the current timber rattlesnake permit be required for northern copperheads. The specifics of this permit requirement are discussed in paragraph (6). The permit requirement will enable the Commission to collect locational 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.

As a result of the workgroup meetings, the Commission has made several revisions to this section from the original proposed rulemaking published at 35 Pa.B. 5683. The current regulations in Chapter 77 and the original proposed rulemaking provide that the 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" with the written permission of the Executive Director or a designee. The Commission proposes to limit this exception to zoos and "other accredited institutions" and proposes that it no longer be available for persons. The Commission also proposes to extend this exception to "Commission-recognized rehabilitators." The Commission further proposes that this section be revised to expressly provide that it does not prohibit possession of numbers of amphibians and reptiles in excess of possession limits by persons who have obtained a permit under § 79.4 (relating to possession permits for native species). Finally, the Commission has addressed amphibian eggs so that they, like tadpoles, have no closed season and are subject to daily and possession limits of 15 (combined species).

(4) *Section 79.4.* As a result of the workgroup meetings, the Commission proposes to add § 79.4. This proposed section is necessitated by the proposed reductions in the daily and possession limits of some species. This proposed section provides a "grandfathering" mechanism for persons possessing herptiles where daily and possession limits will be reduced. For example, the 23 "at-risk" species that are proposed for "no collection" (that is, no open season and daily and possession limits of 0) have current limits of two, and the daily and possession limits for native species not specifically listed in proposed § 79.3(g) are proposed to be reduced from two to one. Proposed § 79.4 creates a new possession permit that will "grandfather" animals possessed as of January 1, 2007, that meet possession limits in effect on December 31, 2006.

The permit will be required for the continued possession of the animal and will be required for the possession of native species regardless of origin. It will be a one-time permit and will cost \$10. Individuals shall apply by June 30, 2007. If the permit holder gives the animal to another person, the permit may be transferred to the new owner upon completion of an application, surrender of the original permit and payment of a \$10 fee. There are exceptions to the permit requirement. Possession permits will not be required for animals that are covered by other permissions (such as the written permission of the Executive Director for zoos, educational institutions, rehabilitators, and the like) and that are covered by other permits (such as snake permits or scientific collector's permits).

(5) *Section 79.5.* In proposed § 79.5 (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, when 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 snapping turtles.

The language in this section is the same as the original proposed rulemaking. There are no changes as a result of the workgroup's input.

(6) *Section 79.6.* Proposed § 79.6 (relating to venomous snake 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 \$25 for residents and \$50 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 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 issued in 2004 and 1,080 in 2005), 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.

The language in this section is the same as the original notice of proposed rulemaking published at 35 Pa. B. 5683. There are no changes as a result of the workgroup's input.

(7) *Section 79.7.* Proposed § 79.7 (relating to organized reptile and amphibian hunt permits) pertains to organized reptile and amphibian hunt permits currently addressed in § 77.2. Among the proposed amendments is an increase in the fee from the current \$25 to \$100. This increase has been proposed to offset the changes in inflation, including the permit review and processing costs, and monitoring/permit compliance of hunts. Also proposed are reporting requirements and a provisional hunting permit. The provisional permit will allow permit holders to take, catch or possess one timber rattlesnake without tagging the snake during an organized snake hunt so long as the snake is returned unharmed to the point of capture following the event. The Commission will continue with its current practice of banning sacking contests utilizing native species and of allowing the use of nonnative species lawfully imported from other jurisdictions.

(8) *Section 79.8.* The Commission, as a result of the workgroup meetings, proposes to add § 79.8 (relating to artificial propagation). When 3 Pa.C.S. Chapter 42 (relating to Aquaculture Development Law) (act) was enacted in 1998, responsibility for registering artificial propagators and dealers of live bait fish, fish bait and other live fish was transferred from the Commission to the Department of Agriculture (Department). The Department has been registering artificial propagators and dealers of several fish species and two frog species for several years. Propagation is limited to species of fish that have been

approved for propagation by the Commission, and each year the Commission provides the Department with an updated list.

Despite the fact that the definition of "fish" in the act mirrors the definition in the code and specifically includes "reptiles and amphibians," artificial propagators (except those raising Northern green frogs and bullfrogs) have not been registering with the Department. Commission staff met with Department staff, and the agencies agree that the act covers reptiles and amphibians. The Commission and the Department also agree that artificial propagators of reptiles and amphibians (except hobby breeders) must register with the Department and propagation is limited to those species approved for propagation by the Commission.

Proposed § 79.8 provides that except for hobby breeders, it is unlawful to artificially propagate reptiles and amphibians without being registered with the Department. It further provides that artificial propagation is limited to species approved for propagation by the Commission, and the Commission will maintain a list of these species. Commission staff intend to develop this list with input from the captive breeders.

(9) *Section 79.9.* Proposed § 79.9 (relating to sale of native species) addresses the sale of reptiles and amphibians currently in § 77.3 (relating to taking and selling reptiles or amphibians). This section has been clarified 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 our waterways conservation officers go through intense training on the identification of this Commonwealth's native species, 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 native species in this Commonwealth and the collection of animals in this Commonwealth for breeding stock for commercial propagation programs.

This section differs from the original proposed rulemaking published at 35 Pa. B. 5683 in that it eliminates subsection (b) that the Commission deemed to be superfluous because the language already is in the code.

(10) *Section 79.10.* Proposed § 79.10 (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.

As a result of the workgroup's input, the Commission has modified the language in the original proposed rulemaking published at 35 Pa. B. 5683 to allow transportation and importation of native species by zoos or other accredited institutions that transport and import native species for scientific, educational or research purposes and Commission-recognized rehabilitators provided that they have received the written permission of the Executive Director or a designee under § 79.3(c).

(11) *Section 79.11.* Proposed § 79.11 (relating to introduction of nonnative species) restates the current provisions of § 77.7 (relating to introduction of nonnative species). The language in this section is the same as the

original proposed rulemaking published at 35 Pa. B. 5683. There are no changes as a result of the workgroup's input.

(12) *Section 79.12.* As a result of the workgroup meetings, the Commission proposes to add § 79.12 (relating to color morphs) that pertains to color morphs that are defined in proposed § 79.1 as being "a distinct color variant form of a reptile or amphibian." For purposes of this proposed section, the Commission has presumed that color morphs of certain native species that are held in captivity were not taken from the wild. The new section provides that the Commission will designate these color morphs by publishing a notice in the *Pennsylvania Bulletin*, and certain provisions will apply to color morphs on the list provided they are not taken from the wild. Color morphs on the list will not be subject to possession limits, may be artificially propagated and may be sold. Commission staff intend to develop a list of color morphs with input from the workgroup.

(13) *Section 79.13.* Proposed § 79.13 (relating to Natural Areas) restates the current provisions of § 77.1 (relating to natural areas). The language in this section is the same as the original notice of proposed rulemaking published at 35 Pa. B. 5683. There are no changes as a result of the workgroup's input.

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

F. Paperwork

The proposed rulemaking will increase paperwork and will create new paperwork requirements in that persons who possess a live reptile or amphibian as of January 1, 2007, in compliance with the possession limits in effect on December 31, 2006, but not in compliance with the possession limits in effect on January 1, 2007, will be required to have a permit for the continued possession of the animal for the remainder of its life. These persons will have to complete an application, and if approved, the Commission will issue a permit. If a permit holder subsequently gives the animal to another person, the permit may be transferred to the new owner upon completion of an application, surrender of the original permit and issuance of a new permit by the Commission.

The proposed rulemaking also 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. This proposed rulemaking also require 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 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. Some of the 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 possession permit fee is \$10. This is a one-time fee only, and the proposed rulemaking requires affected persons to apply by no later than June 30, 2007. The Commission estimates that it will issue approximately 2,500 possession permits during 2007, the first year that the permit is available. After the first year, the Commission expects that applications will level off, and for the most part, the persons who will apply will be new owners seeking to have a permit transferred to them. The fee to transfer a permit is also \$10.

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 venomous snake permit will cost residents \$25 and nonresidents \$50. 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 issued in 2004 and 1,080 in 2005) and permit requests have increased approximately 200-300 each year since 1998. The Commission believes that it may issue fewer venomous snake 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 four permit types, the Commission will utilize the fees to offset the costs associated with permit issuance and processing and data compilation. The Commission hopes that in some instances, it will be able to utilize fees that are collected as matching funds to obtain grants to perform additional management activities.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rule-

making to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 60 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. Electronic comments submitted in any other manner will not be accepted.

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

Fiscal Note: 48A-179. (1) Fish Fund; (2) Implementing Year 2006-07 is \$73,580; (3) 1st Succeeding Year 2007-08 is \$8,750; 2nd Succeeding Year 2008-09 is \$8,750; 3rd Succeeding Year 2009-10 is \$10,000; 4th Succeeding Year 2010-11 is \$11,250; 5th Succeeding Year 2011-12 is \$11,250; (4) 2005-06 Program—\$27,000 (Timber Rattlesnake Permit); 2004-05 Program—\$29,525 (Timber Rattlesnake Permit); 2003-04 Program—\$25,000 (Timber Rattlesnake Permit); (7) General Government Operations; (8) recommends adoption. It is anticipated that a portion of the increased administrative costs to the Fish Fund would be offset by the fees collected.

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).

**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 in 58 Pa. Code pages 77-1—77-7, serial pages (297645) to (297651).)

§§ 77.1—77.8. (Reserved).

(Editor's Note: The following text is new and is printed in regular type to enhance readability.)

CHAPTER 79. REPTILES AND AMPHIBIANS

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|--------|---|
| Sec. | |
| 79.1. | Definitions. |
| 79.2. | Taking reptiles or amphibians. |
| 79.3. | Season and daily possession limits. |
| 79.4. | Possession permits for native species. |
| 79.5. | Snapping turtle permits. |
| 79.6. | Venomous snake permits. |
| 79.7. | Organized reptile and amphibian hunt permits. |
| 79.8. | Artificial propagation. |
| 79.9. | Sale of native species. |
| 79.10. | Transportation and importation of native species. |
| 79.11. | Introduction of nonnative species. |
| 79.12. | Color morphs. |
| 79.13. | 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:

Color morph—A distinct color variant form of a reptile or amphibian.

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

Native species—A reptile or amphibian species or subspecies, where applicable, 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 and subspecies, where applicable, that it has determined are native species.

Organized reptile and amphibian hunt—A hunt for reptiles or amphibians involving two or more persons 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 at least 3 1/2 inches in total length 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 alter or 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 to gather, take or possess the eggs of any reptile.

(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 (g) 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 (g) 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 § 79.7 (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 accredited institutions for scientific, educational or research purposes or licensed taxidermists for the purpose of mounting for properly permitted customers, Commission-recognized rehabilitators or licensed pest control agents with the written permission of the Executive Director or a designee. These persons and institutions 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) This section does not prohibit possession of numbers of amphibians and reptiles in excess of possession limits by persons who have obtained a permit under § 79.4 (relating to possession permits for native species).

(e) 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.

(f) 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.

(g) 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>) | July 1 to October 31 | 10 (combined species) | 20 (combined species) |
| 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 |

PROPOSED RULEMAKING

| <i>SPECIES</i> | <i>SEASON</i> | <i>DAILY LIMIT</i> | <i>POSSESSION LIMIT</i> |
|---|-------------------------------------|---|-------------------------|
| Eastern box turtle (<i>Terrapene carolina carolina</i>) | No open season | 0 | 0 |
| Broadhead skink (<i>Eumeces laticeps</i>) | No open season | 0 | 0 |
| Northern coal skink (<i>Eumeces anthracinus</i>) | No open season | 0 | 0 |
| Mudpuppy (<i>Necturus maculosus</i>) | No open season | 0 | 0 |
| Eastern hellbender (<i>Cryptobranchus alleganiensis alleganiensis</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 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 undulatus</i>) | No open season | 0 | 0 |
| Queen snake (<i>Regina septemvittata</i>) | No open season | 0 | 0 |
| Shorthead garter snake (<i>Thamnophis brachystoma</i>) | No open season | 0 | 0 |
| Eastern ribbon snake (<i>Thamnophis sauritus</i>) | No open season | 0 | 0 |
| Mountain earth snake (<i>Virginia pulchra</i>) | No open season | 0 | 0 |
| Smooth earth snake (<i>Virginia valeriae</i>) | No open season | 0 | 0 |
| Smooth green snake (<i>Liochlorophis 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 |
| Amphibian eggs and 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 38 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. Possession permits for native species.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for the protection and management of particular fish), that it is necessary for persons who possess a live reptile or amphibian as of January 1, 2007, in compliance with the possession limits in effect on December 31, 2006, but not in compliance with the possession limits in effect on January 1, 2007, to have a permit for the continued possession of the reptile or amphibian for the remainder of the animal's life. Application for a one-time permit under this section shall be made on a form prescribed by the Commission, shall be accompanied by the appropriate fee and shall be made by no later than June 30, 2007. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee is \$10.

(b) *Transfer.* If a permittee gives a reptile or amphibian covered by a permit under this section to another person, the permit may be transferred to the new owner upon completion of an application on the form provided by the Commission, surrender of the original permit and payment of the appropriate fee. The new owner shall apply for transfer of the permit prior to taking possession of the animal. The fee to transfer a permit under this section is \$10.

(c) *Denial.* The denial of a permit under this section is appealable in the manner provided by §§ 51.41—51.46 (relating to permit procedures). A person who is denied a permit under this section shall surrender the reptile or amphibian to an officer authorized to enforce the code or provide proof that the animal was humanely euthanized or given to a person or organization that can lawfully possess it. Under no circumstances may a person who is denied a permit under this section release the animal into the wild.

(d) *Required permit.* It is unlawful to retain possession of a live reptile or amphibian possessed as of January 1, 2007, that is in compliance with the possession limits in effect on December 31, 2006, but not in compliance with the possession limits in effect on January 1, 2007, without the required permit from the Commission. A permit is required for continued possession regardless of the animal's origin. A separate permit shall be obtained for each reptile or amphibian and shall be kept at the location where the animal is held. Upon request, the permit shall be presented to an officer authorized to enforce the code. Permittees shall comply with the terms and conditions of the permit. It is unlawful to alter, borrow or lend a permit under this section.

(e) *Exceptions.* This section does not apply to the possession of reptiles and amphibians that are covered by permissions and other permits issued under this chapter.

§ 79.5. 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 an annual 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. It is unlawful to alter, borrow, lend or transfer a permit under this section.

(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.

§ 79.6. Venomous snake 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 \$25 per year; the fee for nonresidents is \$50 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) *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's Natural Diversity Section, 450 Robinson Lane, Bellefonte, PA 16823.

(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 includes, but is not 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.

§ 79.7. 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 by §§ 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 his designee, may consider factors as he deems 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) *Provisional timber rattlesnake permits.*

(1) *Conditions.* A permitted sponsor of an organized hunt may issue provisional permits on the form prescribed by the Commission subject to the following conditions:

(i) A provisional permit allows the holder thereof to take, catch or possess one timber rattlesnake without tagging the snake as required by § 79.6(d) (relating to venomous snake permits).

(ii) Provisional permits shall be issued only in connection with an organized hunt and shall be valid only during the period of the organized hunt as stated in the permit.

(iii) Provisional permits shall only be issued to holders of permits under § 79.6 who are registered participants in the organized hunt.

(iv) A snake caught under a provisional permit shall be entered into the hunt and shall become the possession of the permitted sponsor of the organized hunt.

(v) The permitted sponsor of the organized hunt shall be responsible for returning all snakes caught under provisional permits unharmed in the areas from which they were taken at the conclusion of the hunt.

(vi) Provisional permits in no way allow the holders thereof to possess a snake beyond the period of the organized hunt.

(2) *Prohibited acts.* The following acts are unlawful:

(i) A permitted sponsor of an organized hunt issues a provisional permit in violation of this subsection.

(ii) The holder of a provisional permit violates the terms and conditions of the provisional permit.

(iii) The holder of the provisional permit possesses a snake beyond the period of the organized hunt.

(g) *Sacking contests.* Sacking contests of native species regardless of origin 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.

(h) *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.

§ 79.8. Artificial propagation.

Except for hobby breeders as defined in 3 Pa.C.S. Chapter 42 (relating to aquaculture development), it is unlawful to artificially propagate reptiles and amphibians without being registered with the Department of Agriculture under 3 Pa.C.S. Chapter 42. It is unlawful to artificially propagate reptiles and amphibians except those species that the Commission has approved for artificial propagation in this Commonwealth. The Bureau of Fisheries will maintain a list of species for which the Department of Agriculture may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to or deleting species from the list as necessary for the protection and management of reptiles and amphibians in this Commonwealth. The Commission will provide the list to the Department of Agriculture on or before January 31 each year and whenever the Commission updates or modifies the list. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, PA 16823.

§ 79.9. Sale of native species.

Except as otherwise provided in the code or 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 from lands or waters wholly within this Commonwealth, and its progeny, whether dead or alive, in whole or in parts, including eggs or any life stage.

§ 79.10. Transportation and importation of native species.

(a) It is unlawful to transport or import into or within this Commonwealth a native species 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.

(c) This section does not apply to zoos or other accredited institutions that transport and import native species for scientific, educational or research purposes and Commission-recognized rehabilitators provided that they have received the written permission of the Executive Director or a designee under § 79.3(c) (relating to season and daily possession limits).

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

§ 79.12. Color morphs.

For purposes of this chapter, it is presumed that color morphs of certain native species that are held in captivity

were not taken from the wild. Therefore, the Commission has determined that color morphs of certain native species are exempt from the requirements of this chapter as provided in this section. The Commission will from time to time publish in the *Pennsylvania Bulletin* a list of color morphs of native species to which the following provisions apply:

(1) Color morphs of native species designated by the Commission are not subject to the possession limits of § 79.3 (relating to seasons and daily possession limits) provided they are not taken from the wild.

(2) Color morphs of native species designated by the Commission may be artificially propagated provided they are not taken from the wild.

(3) Color morphs of native species designated by the Commission may be sold provided they are not taken from the wild.

§ 79.13. Natural Areas.

(a) This chapter applies to all native species 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 native species 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. 06-424. Filed for public inspection March 17, 2006, 9:00 a.m.]

**STATE BOARD
OF COSMETOLOGY**

[49 PA. CODE CH. 7]

Accreditation of Licensed Schools

The State Board of Cosmetology (Board) proposes to amend §§ 7.111 and 7.113a (relating to application for a school license; and accreditation by a Nationally recognized accrediting agency) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

Section 11 of the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) (63 P. S. § 517) authorizes the Board to promulgate regulations generally for the conduct of persons, copartnerships, associations or corporations affected by the act.

C. Background and Purpose

Since 1991, § 7.113a has required a cosmetology school, within 5 years of being licensed by the Board, to submit to the Board proof that it is accredited by a Nationally recognized accrediting agency. In the intervening period,

the Board has encountered instances in which a school licensee, prior to submitting proof of accreditation, changes ownership, location or name, and then asserts that the 5-year clock for accreditation should begin running again. Because the regulation is not clear on this question, some school licensees have managed to avoid submitting proof of accreditation for periods exceeding 5 years. Additionally, confusion has occurred with regard to whether, and for how long, a school is required to maintain that accreditation after submitting proof of it to the Board. This proposed rulemaking would resolve both the issue of maintenance of accreditation and the issue of change of ownership, name or location, thereby eliminating the related regulatory construction problems that exist under the current language and clarifying the accreditation requirement.

D. Description of Amendments

The proposed rulemaking adds a paragraph to § 7.111(a), makes a technical amendment to § 7.111(b), deletes an obsolete sentence from § 7.113a and adds two subsections to § 7.113a. The proposed additions amplify and clarify the requirement that a school licensed by the Board submit to the Board, within 5 years after the Board licenses it, proof that the school is accredited by a Nationally recognized accrediting agency. The proposed rulemaking also establishes the requirement that a licensed school maintain accreditation in order to renew its license biennially.

Proposed § 7.111(a)(7) establishes the requirement that an owner-applicant for a school license must include, with the license application to the Board, proof that the school is already accredited or that the school has made application for accreditation to comply with § 7.113a. The new paragraph also specifies that certification or approval by the Department of Education suffices as proof of accreditation for secondary vocational technical schools.

Section 7.111(b) is amended by inserting the term "school" in the first line to make it clear that school licenses are the subject of the provision.

Section 7.113a is amended by deleting the now obsolete provision that a school licensed by the Board as of May 25, 1991, must submit proof of accreditation by May 25, 1996.

Section 7.113a(b) is added, specifying that the requirement that a school submit proof of accreditation within 5 years of initial licensure is not negated by a change of ownership, name or location of the school within or following the 5-year period after initial licensure.

Section 7.113a(c) is added to establish the requirement that a school, after initial accreditation, must maintain accreditation in order to renew its license biennially.

E. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, any political subdivision or the private sector.

F. Sunset Date

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

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 8, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and

the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Hilarene Staller, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,
Chairperson

Fiscal Note: 16A-4511. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY

§ 7.111. Application for a school license.

(a) An owner-applicant for a school license shall submit a license application to the Board with the following:

* * * * *

(7) Proof of accreditation or application for accreditation in accordance with § 7.113a. (relating to accreditation by a Nationally recognized accrediting agency). Approval by the Department of Education in accordance with Article XVIII of the Public School Code of 1949 (24 P. S. §§ 1801—1855) is acceptable proof of accreditation for secondary vocational technical schools.

(b) A **school** license will not be issued until the Board has verified the sworn statements made by the owner-applicant in the license application and the school has been inspected by a Bureau inspector as provided in § 7.113 (relating to inspection of a school before licensure). The Board may request the owner-applicant to appear before the Board to answer questions about the application.

§ 7.113a. Accreditation by a Nationally recognized accrediting agency.

(a) **Accreditation required.** Within 5 years after being licensed by the Board, a school shall submit to the Board proof that it is accredited by a Nationally recognized accrediting agency. **[A school that is licensed by the Board as of May 25, 1991 shall submit proof of accreditation by May 25, 1996.]**

(b) Change of ownership, name or location. A change of ownership, name or location of the school within or following the 5-year period after initial licensure does not negate or postpone the requirement for accreditation within 5 years of initial licensure.

(c) Biennial renewal. After initial accreditation, a licensed cosmetology school shall maintain accreditation as a condition of biennial renewal of the school license.

[Pa.B. Doc. No. 06-425. Filed for public inspection March 17, 2006, 9:00 a.m.]

[49 PA. CODE CH. 7] Removal of Term "Manager"

The State Board of Cosmetology (Board) proposes to amend Chapter 7 (relating to State Board of Cosmetology) to read as set forth in Annex A. The proposed rulemaking removes the term "manager" and all references to a cosmetology shop manager license from the Board's regulations to conform them to the changes made to the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) by the act of June 29, 2002 (P. L. 645, No. 98) (Act 98).

A. Effective Date

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

B. Statutory Authority

Section 11 of Act 86 (63 P. S. § 517) authorizes the Board to promulgate regulations generally for the conduct of persons, copartnerships, associations or corporations affected by Act 86.

C. Background and Need for Proposed Amendments

The Board's existing regulations were promulgated under prior language of section 4.4 of Act 86 (63 P. S. § 510.4), dating back to 1976, that required either an owner or a licensed manager employed by the owner to manage a shop. Accordingly, the existing regulations include a manager license classification as well as related provisions addressing licensure and management issues. All of these regulations consistently refer to the manager and to the prior language of section 4.4 of Act 86 regarding management of shops.

Section 4.4 of Act 86 was amended by the act of October 18, 2000 (P. L. 607, No. 81) to, among other things, limit the need for a licensed shop manager in some circumstances, but that amendment did not eliminate the manager license classification. Subsequently, Act 98 amended section 4.4 of Act 86 again, entirely removing the requirement that a cosmetology shop be managed by the shop's owner, a licensed manager or a licensed cosmetology teacher. In its place, Act 98 established the requirements that every shop owner designate a person in charge of the shop in the owner's absence, that the name of the owner or designated person in charge be posted in a conspicuous place in the shop and that the owner or designated person in charge be readily available to Bureau of Professional and Occupational Affairs inspectors during business hours.

Upon implementation of Act 98, the Board eliminated the license category of manager and no longer enforced the provisions of its regulations referring to the manager or the manager license classification. This proposed rule-

making amends the Board's regulations to delete the now obsolete references and to address the new requirements related to oversight of a shop by the owner or the designated person in charge.

D. Description of Proposed Amendments

The proposed amendments to §§ 7.1, 7.11(2), 7.12, 7.31(a), 7.32g(c) and 7.128(b) delete the term "manager" or "manager's." Similarly, §§ 7.13, 7.32c and 7.129(d) (relating to scope of manager's license; requirements for manager's examination; and curriculum requirements) are deleted, as is the second sentence of § 7.45 (relating to reexamination if the license is not current for 5 or more years), because these provisions are now obsolete.

In §§ 7.51(a)(2), 7.64(a) and (b) and 7.111(a)(2)(ii)(B) (relating to application for a shop license; responsibilities of shop manager; and application for a school license), the proposed rulemaking substitutes the phrase "the designated person in charge of the shop in the owner's absence" for either the term "manager" or for a reference to the individual "managing the shop." Additionally, in § 7.62 (relating to management of cosmetology shop), the proposed rulemaking adds language to subsection (a) establishing the need for the designated person in charge of the shop in the owner's absence to be a licensee; deletes an obsolete portion of subsection (b); and adds subsections (c) and (d), that vest certain responsibilities in both the owner and the designated person in charge of the shop in the owner's absence.

E. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, any political subdivision or the private sector.

F. Sunset Date

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

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 8, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Hilarene Staller, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,
Chairperson

Fiscal Note: 16A-4513. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY GENERAL PROVISIONS

§ 7.1. Definitions.

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

* * * * *

Booth space—Any area in a cosmetology shop, cosmetician shop or manicurist shop separated or not separated which is designated to be used by a licensed teacher, **[manager,]** cosmetologist, cosmetician or manicurist.

* * * * *

§ 7.2. Fees.

Fees charged by the Board are as follows:

* * * * *

Licensure of **[cosmetology shop manager or]** cosmetology teacher..... \$10

* * * * *

INDIVIDUAL LICENSES

§ 7.11. Types of individual licenses.

The following licenses are issued by the Board to qualified individuals under the act:

* * * * *

(2) **[Manager.**

(3) **] Cosmetologist.**

[(4)](3) * * *

[(5)](4) * * *

§ 7.12. Scope of teacher's license.

An individual holding a teacher's license is qualified, without further licensure, to perform the functions of a teacher, **[manager,]** cosmetologist, cosmetician or manicurist.

§ 7.13. [Scope of manager's license] (Reserved).

[An individual holding a manager's license is qualified, without further licensure, to perform the functions of a manager, cosmetologist, cosmetician or manicurist.]

EXAMINATIONS

§ 7.31. Examination prerequisite for licensure; exception.

(a) Except as provided in subsection (b), an individual who wants to obtain a teacher's, **[manager's]** cosmetologist's, cosmetician's or manicurist's license listed in §§ 7.12—7.15 shall pass the examination required by the Board for that license.

* * * * *

§ 7.32c. [Requirements for manager's examination] (Reserved).

[An applicant for the manager's examination shall:

(1) **Be 18 years of age or older.**

(2) **Have completed a 10th grade education or its equivalent.**

(3) **Possess a current cosmetology license.**

(4) **Have done one of the following:**

(i) **Completed 300 hours of instruction in the cosmetology manager curriculum in a licensed school of cosmetology.**

(ii) **Acquired 18 months' experience as a full-time cosmetologist in a licensed cosmetology shop or shared shop.]**

§ 7.32g. Issuance of temporary licenses to qualified examination applicants.

* * * * *

(c) The holder of a temporary cosmetologist's license shall practice under the supervision of a licensed teacher**[, manager]** or cosmetologist. The holder of a temporary manicurist's license shall practice under the supervision of a licensed teacher**[, manager]** or cosmetologist.

DISPLAY, LOSS AND RENEWAL OF LICENSES AND PERMITS

§ 7.45. Reexamination if the license is not current for 5 or more years.

The holder of a teacher's, cosmetologist's, cosmetician's or manicurist's license that has been expired or in escrow for at least 5 years shall retake and pass the practical part of the examination for that license before submitting a renewal application. **[The holder of a manager's license that has been expired or in escrow for at least 5 years shall retake and pass the manager's examination before submitting a renewal application.]**

LICENSURE AND MANAGEMENT OF SHOPS

§ 7.51. Application for a shop license.

(a) An owner-applicant for a shop license shall submit a license application to the Board with the following:

* * * * *

(2) The name and license number of the individual who will be **[managing the shop] the designated person in charge of the shop in the absence of the owner.**

* * * * *

§ 7.62. Management of cosmetology shop.

(a) A cosmetology shop shall be managed by **[a licensed manager or teacher unless the owner of the shop is operating as manager under section 4.4 of the act (63 P. S. § 510.4)] the shop owner or, in the absence of the shop owner, a person in charge designated by the shop owner.**

(b) **[If the manager or teacher who manages the shop is unable to be present in the shop during a specific period, such as breaks, days off, vacation or illness, not to exceed 3 months, a licensed cosmetologist may serve as temporary manager. If the**

absence is to exceed 2 weeks, the manager shall notify the Board in writing of the absence. A notice identifying the temporary manager shall be displayed in the shop. A temporary manager assumes the responsibilities of shop manager as set forth in § 7.64(b) (relating to responsibilities of shop manager).] The designated person in charge shall be a licensed cosmetologist.

(1) In the case of a cosmetician shop, the designated person in charge may be either a licensed cosmetologist or a licensed cosmetician.

(2) In the case of a manicurist shop, the designated person in charge may be either a licensed cosmetologist or a licensed manicurist.

(c) Both the owner and the designated person in charge are responsible for posting the name of the owner or designated person in charge in a conspicuous place in the shop as required by section 4.4(b) of the act.

(d) The owner or designated person in charge of the shop shall be readily available in person to Bureau inspectors during regular business hours.

§ 7.63. [Previous owner-managers] (Reserved).

[(a) Those beauty shop owners operating as their own managers prior to September 15, 1975, may continue to manage their own shops. The owners shall obtain a certificate of prior management from the Board and shall request this certificate by February 1, 1977.

(b) A certificate of prior management shall be on display.]

§ 7.64. Responsibilities of shop [manager] owner or designated person in charge.

(a) The primary responsibilities of a shop [manager] owner and designated person in charge are the administration of the business and personnel affairs of the shop and to assure compliance within the shop [of] with all laws of the Commonwealth, this chapter and the Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

(b) A shop [manager] owner or designated person in charge will be subject to disciplinary action by the Board for a violation of the act or this chapter committed by a licensed [employe] employee of the shop, if the [manager] owner or designated person in charge had knowledge of, or control over, the violation or should have had knowledge or control.

LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY

§ 7.111. Application for a school license.

(a) An owner-applicant for a school license shall submit a license application to the Board with the following:

* * * * *

(2) The name, signature and license number of the school supervisor, together with proof that the supervisor meets the following qualifications:

* * * * *

(ii) Has done one of the following:

* * * * *

(B) Acquired [1250] 1,250 hours of satisfactory experience as a cosmetology teacher and [1800] 1,800 hours of satisfactory experience as [a manager] the designated person in charge of a cosmetology shop.

* * * * *

§ 7.128. Mandatory offering of cosmetology curriculum.

* * * * *

(b) A school may offer instruction in the curriculum for teachers, [managers,] cosmeticians and manicurists as prescribed in § 7.129.

§ 7.129. Curriculum requirements.

* * * * *

(d) [A school's manager curriculum, excluding electives, shall comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

| MANAGER CURRICULUM | Recommended Hours |
|--------------------|-------------------|
| Career Development | 50 |
| Money Management | 25 |
| Salon Management | 150 |
| Salon Advertising | 25 |
| Merchandising | 50 |
| | Total 300 |

(e)] A school's cosmetician curriculum, excluding electives, [shall] must comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

* * * * *

[(f)] (e) * * *

* * * * *

[Pa.B. Doc. No. 06-426. Filed for public inspection March 17, 2006, 9:00 a.m.]

STATE BOARD OF MEDICINE STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CHS. 16 AND 17]

Athletic Trainers

The State Boards of Medicine and Osteopathic Medicine (Boards) propose to amend the regulations providing for the certification and regulation of athletic trainers in Chapters 16, 18 and 25 to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

Section 51.1(d) of the Medical Practice Act of 1985 (63 P. S. § 422.51a(d) and section 7.1 (d) of the Osteopathic Medical Practice Act (63 P. S. § 271.7a(d)) (medical prac-

tice acts) authorize the Boards to jointly promulgate regulations that establish approved education and training programs for certification and define the circumstances and protocol under which a certified athletic trainer may perform athletic training services.

C. *Background and Purpose*

Under the Physical Therapy Practice Act (formerly 63 P.S. §§ 1301, 1310.1 and 1310.2), the State Board of Physical Therapy certified and regulated athletic trainers in this Commonwealth.

The acts of December 10, 2001 (P.L. 859, No. 92) and (P.L. 863, No. 93) (Acts 92 and 93) repealed these provisions insofar as they are inconsistent with the medical practice acts. Acts 92 and 93 added section 51.1(d) of the Medical Practice Act of 1985 and section 7.1(d) of the Osteopathic Medical Practice Act to provide for the certification and regulation of athletic trainers by the Boards. Acts 92 and 93, effective February 8, 2002, further provided that until the Boards adopt final regulations, the regulations of the State Board of Physical Therapy in 49 Pa. Code Chapter 40, Subchapter B (relating to athletic trainers) govern the activities of athletic trainers, which are not inconsistent with amendments to the medical practice acts. The Boards now propose these amendments to establish procedures for certification and protocols for the practice of athletic trainers.

D. *Description of Proposed Amendments*

With regard to the State Board of Medicine, the proposed rulemaking amends § 16.1 (relating to definitions) to define "treatment regimen" to describe the service provided by athletic trainers. This term is also of a broad enough nature that the clinical service provided by other State Board of Medicine-regulated practitioners could come under this umbrella term. It provides flexibility to the State Board of Medicine in regulating its licensees and ensures uniformity in regulation. The proposed rulemaking also amends § 16.61 (relating to unprofessional and immoral conduct) by replacing the term "physician" with "Board-regulated practitioners" so that athletic trainers and other practitioners licensed by the Board would be subject to the regulation.

The Boards propose to amend §§ 16.13 and 25.231 (relating to licensure, certification, examination and registration fees; and schedule of fees) to carry-over of the fees currently in place under the regulations of the State Board of Physical Therapy in § 40.5 (relating to fees).

The Boards also propose to add Chapter 18, Subchapter H and Chapter 25, Subchapter M (relating to athletic trainers).

Sections 18.501 and 25.701 (relating to purpose) provide a general statement. Sections 18.502 and 25.702 (relating to definitions) define key terms used throughout the subchapters.

Sections 18.503 and 25.703 (relating to certification requirement) set forth the requirement for certification of persons using the title of or performing athletic trainer services in this Commonwealth. These sections also provide for exclusions for persons authorized under other law, persons employed by visiting athletic teams or organizations competing in this Commonwealth and students in training.

Sections 18.504 and 25.704 (relating to application for certification) delineate the documentation and information required for a completed application for certification.

Sections 18.505, 18.506, 25.705 and 25.706 set forth the educational and examination requirements for certifica-

tion. The requisite education could be met by having graduated from an accredited education program for athletic trainers or holding a current credential as a certified athletic trainer from the Board of Certification, Inc. (BOC) or another accrediting body approved by the Board. Applicants must achieve a passing score on the BOC examination or an equivalent examination approved by the Board.

Sections 18.507 and 25.707 (relating to temporary certification) provide for temporary certification for applicants who have completed their education and have applied to take the examination. An applicant may practice under a temporary certificate under direct supervision for up to 1 year or until certification.

Section 18.508 and 25.708 (relating to renewal of certification) provide for biennial renewal of certificates in accordance with the renewal period of each Board. The Boards would also adopt the continuing education requirement of the BOC. The continuing education would have to be completed during the first biennial period following the effective date of the final-form rulemaking to renew a certification for the following biennium. By adopting the continuing education requirements of a Nationally recognized professional organization, the Board can assure that state-of-the-art information and education will keep certificateholders in this Commonwealth at the forefront of clinical skills.

Sections 18.509 and 25.709 (relating to practice standards for athletic trainers) contain provisions regarding referrals and protocols for treatment, retention of records and circumstances under which consultation or referral to a physician, dentist or podiatrist is required. Subsection (a) also makes these standards applicable to an athletic trainer certified by another state, commonwealth, Canadian province or territory or the District of Columbia when providing services to a team or organization in this Commonwealth.

Sections 18.510(a) and 25.710(a) (relating to refusal, suspension or revocation of certificate) authorize the Boards to impose disciplinary action against athletic trainers under section 41 of the Medical Practice Act of 1985 (63 P.S. § 422.41), § 16.61 and section 15(b) of the Osteopathic Practice Act (63 P.S. § 271.15(b)). Subsection (b) provides for the applicability of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the activities of and proceedings before the Boards regarding athletic trainers. The language is included to direct applicants and certificateholders to the procedural provisions that govern the Boards' actions.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions because it transfers regulatory authority over athletic trainers from the State Board of Physical Therapy to the Boards. For this reason also, the proposal will impose no additional paperwork requirements on the public sector.

F. *Sunset Date*

The Boards continuously monitor the effectiveness of their regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 8, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory

Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Sabina I. Howell, Board Counsel, State Board of Medicine or Beth Sender Michlovitz, Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the Pennsylvania Bulletin.

CHARLES D. HUMMER, Jr., M. D.,
Chairperson
State Board of Medicine
OLIVER BULLOCK, D. O.,
Chairperson
State Board of Osteopathic Medicine

Fiscal Note: 16A-49155314. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS
Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1. Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Treatment regimen—The provision of care and practice of a component of the healing arts by a Board-regulated practitioner.

* * * * *

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(h) Athletic Trainer:

Application for certification..... \$20
Biennial renewal..... \$37

(i) Verification or Certification:

* * * * *

[(i)] (j) * * *

* * * * *

Subchapter E. MEDICAL DISCIPLINARY PROCESS AND PROCEDURES
COMPLAINTS

§ 16.61. Unprofessional and immoral conduct.

(a) A [physician] Board-regulated practitioner who engages in unprofessional or immoral conduct is subject to disciplinary action under section 41 of the act (63 P. S. § 422.41). Unprofessional conduct includes, but is not limited to, the following:

(1) Revealing personally identifiable facts, obtained as the result of a [physician] practitioner-patient relationship, without the prior consent of the patient, except as authorized or required by statute.

(2) Violating a statute, or a regulation adopted thereunder, which imposes a standard for the practice of [medicine] the healing arts as regulated by the Board in this Commonwealth. The Board, in reaching a decision on whether there has been a violation of a statute, rule or regulation, will be guided by adjudications of the agency or court which administers or enforces the standard.

(3) Performing a medical act or treatment regimen incompetently or performing a medical act or treatment regimen which the [physician] Board-regulated practitioner knows or has reason to know that [he] the practitioner is not competent to perform.

(4) Unconditionally guaranteeing that a cure will result from the performance of medical services or treatment regimen.

(5) Advertising of a medical business which is intended to or has a tendency to deceive the public.

(6) Practicing [medicine] the healing arts fraudulently, or with reckless indifference to the interests of a patient on a particular occasion, or with negligence on repeated occasions.

(7) Practicing [medicine] the healing arts while the ability to practice is impaired by alcohol, drugs or physical or mental disability.

* * * * *

(9) Continuing to practice while the [physician's] Board-regulated practitioner's license or certificate has expired, is not registered or is suspended or revoked.

* * * * *

(13) Charging a patient or a third-party payer for a medical service or treatment regimen not performed. This paragraph does not apply to charging for an unkept office visit.

* * * * *

(18) Failing to make available to the patient or to another designated health care practitioner, upon a patient's written request, the medical record or a copy of the medical record relating to the patient which is in the possession or under the control of the [physician]

Board-regulated practitioner; or failing to complete those forms or reports, or components of forms or reports, which are required to be completed by the [**physician**] **Board-regulated practitioner** as a precondition to the reimbursement or direct payment of the medical expenses of a patient by a third party. Reasonable fees may be charged for making available copies, forms or reports. Prior payment for professional services to which the records relate—this does not apply to fees charged for reports—may not be required as a condition for making the records available. A physician may withhold information from a patient if, in the reasonable exercise of his professional judgment, the physician believes release of the information would adversely affect the patient's health.

* * * * *

(b) Immoral conduct includes, but is not limited to, the following:

(1) Misrepresentation or concealment of a material fact in obtaining a license [**to practice medicine**] or a **certificate issued by the Board** or a reinstatement thereof.

* * * * *

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

(Editor's Note: The following text is new and is printed in regular type to enhance readability.)

Subchapter H. ATHLETIC TRAINERS

| | |
|--------|---|
| Sec. | Purpose. |
| 18.501 | Definitions. |
| 18.502 | Certification requirement. |
| 18.503 | Application for certification. |
| 18.504 | Educational requirements. |
| 18.505 | Examination requirement. |
| 18.506 | Temporary certification. |
| 18.507 | Renewal of certification. |
| 18.508 | Practice standards for athletic trainers. |
| 18.509 | Refusal, suspension or revocation of certificate. |
| 18.510 | |

§ 18.501. Purpose.

This subchapter implements section 51.1 of the act (63 P. S. § 422.51a) to provide for the certification and practice standards of athletic trainers.

§ 18.502. Definitions.

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

Approved athletic training education programs—An athletic training education program that is accredited by a Board-approved Nationally recognized accrediting agency.

Athletic training services—The management and provision of care of injuries to a physically active person, with the direction of a licensed physician.

(i) The term includes the rendering of emergency care, development of injury prevention programs and providing appropriate preventative and supportive devices for the physically active person.

(ii) The term also includes the assessment, management, treatment, rehabilitation and reconditioning of the physically active person whose conditions are within the professional preparation and education of a certified athletic trainer.

(iii) The term also includes the use of modalities such as: mechanical stimulation, heat, cold, light, air, water,

electricity, sound, massage and the use of therapeutic exercise, reconditioning exercise and fitness programs.

(iv) The term does not include surgery, invasive procedures or prescription of any controlled substance.

BOC—The Board of Certification, Inc., a National credentialing organization for athletic trainers.

Certified athletic trainer—A person who is certified to perform athletic training services by the Board or by the State Board of Osteopathic Medicine.

Direction—Supervision over the actions of a certified athletic trainer by means of referral by prescription to treat conditions for a physically active person from a licensed physician, dentist or podiatrist or written protocol approved by a supervising physician, dentist or podiatrist, except that the physical presence of the supervising physician, dentist or podiatrist is not required if the supervising physician, dentist or podiatrist is readily available for consultation by direct communication, radio, telephone, facsimile, telecommunications or by other electronic means.

Physically active person—An individual who participates in organized, individual or team sports, athletic games or recreational sports activities.

Referral—An order from a licensed physician, dentist or podiatrist to a certified athletic trainer for athletic training services. An order may be written or oral, except that an oral order must be reduced to writing within 72 hours of issuance.

Standing written prescription—A portion of the written protocol or a separate document from a supervising physician, dentist or podiatrist, which includes an order to treat approved individuals in accordance with the protocol.

Written protocol—A written agreement or other document developed in conjunction with one or more supervising physicians, which identifies and is signed by the supervising physician and the certified athletic trainer, and describes the manner and frequency in which the certified athletic trainer regularly communicates with the supervising physician and includes standard operating procedures, developed in agreement with the supervising physician and certified athletic trainer, that the certified athletic trainer follows when not directly supervised onsite by the supervising physician.

§ 18.503. Certification requirement.

(a) A person may not use the title "athletic trainer" or "certified athletic trainer" or use any abbreviation including "A.T.," "A.T.C." or "C.A.T." or any similar designation to indicate that the person is an athletic trainer, or perform the duties thereof, unless that person has been certified by the Board.

(b) Subsection (a) does not apply to the following:

(1) A person trained and licensed or certified under any other law from engaging in the licensed or certified practice in which the person is trained.

(2) An athletic trainer from another state, province, territory or the District of Columbia, who is employed by an athletic team or organization that is competing in this Commonwealth only on a visiting basis, from providing athletic training services, provided the practice of the athletic trainer is limited to the members of the team or organization.

(3) An athletic training student practicing athletic training that is coincidental to required clinical education and is within the scope of the student's education and training.

(c) Athletic training certificateholders certified under the Physical Therapy Practice Act (63 P. S. §§ 1301—1313) prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) are deemed certified by the Board.

(d) Athletic training certificateholders certified by the State Board of Osteopathic Medicine are deemed certified by the Board.

§ 18.504. Application for certification.

(a) The applicant shall submit the following on forms supplied by the Board:

(1) A completed application and the fee set forth in § 16.13 (relating to licensure, certification, examination and registration fees).

(2) Verification of professional education in athletic training in accordance with § 18.505 (relating to educational requirements).

(3) Documentation of passage of the National examination in accordance with § 18.506 (relating to examination requirement).

(4) Documentation of practice as an athletic trainer, if licensed or certified in any other jurisdiction, and verification as to whether there has been any disciplinary action taken in that jurisdiction.

(b) To qualify for certification, an applicant shall be at least 20 years of age and may not be addicted to alcohol or hallucinogenic, narcotic or other drugs which tend to impair judgment or coordination.

§ 18.505. Educational requirements.

An applicant for certification shall comply with one of the following:

(1) Be a graduate of an accredited educational program for athletic trainers.

(2) Hold and maintain current credentialing as a certified athletic trainer (ATC®) from the BOC or another credentialing body approved by the Board.

§ 18.506. Examination requirement.

An applicant for a certificate to practice as a certified athletic trainer shall submit to the Board written evidence that the applicant has passed the BOC certification examination for athletic trainers, or its equivalent as determined by the Board.

§ 18.507. Temporary certification.

An applicant who is a graduate of an approved athletic training program accredited by the Commission for Accreditation of Allied Health Education Programs (CAAHEP), and who has applied to take the certification examination may be granted a temporary certificate to practice athletic training under the onsite direct supervision of a certified athletic trainer. The temporary certification expires 1 year from issuance or upon certification as an athletic trainer by the Board, whichever comes first.

§ 18.508. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board.

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner

prescribed by the Board and pay the required fee prior to the expiration of the next biennium.

(d) When a certification is renewed after December 31 of an even numbered year, a penalty fee of \$5 for each month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

(e) Continuing education requirements are as follows.

(1) Beginning with the biennial period commencing on the next biennial renewal period following _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), athletic trainers shall complete the continuing education requirements prescribed by the BOC.

(2) Applicants for renewal of a certificate shall provide a signed statement verifying that the continuing education requirement has been met.

(3) Proof of completion of the required continuing education shall be retained for 2 years after completion.

§ 18.509. Practice standards for athletic trainers.

(a) Athletic trainers certified by the Board or by the proper licensing authority of any other state, province, territory or the District of Columbia shall comply with the following:

(1) Ensure that the physically active person has secured a written referral or is subject to a written protocol for treatment by a certified athletic trainer from a licensed physician, dentist or podiatrist.

(2) Comply strictly with conditions or restrictions that may be placed on the course of athletic training services by the referring physician, dentist or podiatrist.

(3) Ensure that the physically active person has undergone a medical diagnostic examination or has had the results of a recently performed medical diagnostic examination reviewed by a licensed physician.

(4) Keep a copy of the referral and the results of the medical diagnostic examination in the physically active person's file.

(5) Consult promptly with the referring physician, dentist or podiatrist regarding a new ailment or condition or a worsened ailment or condition of the physically active person.

(6) Consult with the referring physician, dentist or podiatrist upon request of either the referring physician, dentist or podiatrist or the physically active person.

(7) Refer a physically active person with conditions outside the scope of athletic training services to a licensed physician, dentist or podiatrist.

(b) Athletic trainers certified by the Board, or by the proper licensing authority of any other state, province, territory or the District of Columbia who are working in a team setting, treating injuries which arise in the course of practices or team sports events, may treat the participant at the events under the conditions of the referral, or the standing written prescription or written protocol.

(c) An athletic trainer shall obtain the standing written prescription or protocol annually from the supervising physician, dentist or podiatrist and review it annually. The standing written prescription or written protocol shall be retained at or near the treatment location or facility. An individual referral from a supervising physician, dentist or podiatrist is required in the absence of a standing written prescription or written protocol.

§ 18.510. Refusal, suspension or revocation of certificate.

(a) The Board may refuse to issue a certificate, and after notice and hearing, may suspend or revoke the certificate of a person who is subject to disciplinary action under section 41 of the act (63 P. S. § 422.41) as set forth in § 16.61 (relating to unprofessional and immoral conduct).

(b) Actions taken by the Board regarding the refusal, suspension or revocation of a certificate are taken subject to the right of notice, hearing and adjudication and appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter F. FEES

§ 25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

* * * * *

Table with 2 columns: Description of fee and Amount. Includes rows for 'Uncertified verification of any license, certification or permit' (\$15), 'Certification of any licenses, certifications, examination grades or hours' (\$25), 'Application for athletic trainer certification' (\$20), and 'Biennial renewal—athletic trainer' (\$37).

* * * * *

(Editor's Note: The following text is new and is printed in regular type to enhance readability.)

Subchapter M. ATHLETIC TRAINERS

Table with 2 columns: Section number and Purpose. Lists sections 25.701 through 25.710 and their respective purposes.

§ 25.701. Purpose.

This subchapter implements section 7.1 of the act (63 P. S. § 271.7a) to provide for the certification of athletic trainers.

§ 25.702. Definitions.

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

Approved athletic training education programs—An athletic training education program that is accredited by a Board-approved Nationally recognized accrediting agency.

Athletic training services—The management and provision of care of injuries to a physically active person, with the direction of a licensed physician.

(i) The term includes the rendering of emergency care, development of injury prevention programs and providing appropriate preventative and supportive devices for the physically active person.

(ii) The term also includes the assessment, management, treatment, rehabilitation and reconditioning of the

physically active person whose conditions are within the professional preparation and education of a certified athletic trainer.

(iii) The term also includes the use of modalities such as: mechanical stimulation, heat, cold, light, air, water, electricity, sound, massage, and the use of therapeutic exercise, reconditioning exercise and fitness programs.

(iv) The term does not include surgery, invasive procedures or prescription of any controlled substance.

BOC—The Board of Certification, Inc., a National credentialing organization for athletic trainers.

Certified athletic trainer—A person who is certified to perform athletic training services by the Board or the State Board of Medicine.

Direction—Supervision over the actions of a certified athletic trainer by means of referral by prescription to treat conditions for a physically active person from a licensed physician, dentist or podiatrist or written protocol approved by a supervising physician, dentist or podiatrist, except that the physical presence of the supervising physician, dentist or podiatrist is not required if the supervising physician, dentist or podiatrist is readily available for consultation by direct communication, radio, telephone, facsimile, telecommunications or by other electronic means.

Physically active person—An individual who participates in organized, individual or team sports, athletic games or recreational sports activities.

Referral—An order from a licensed physician, dentist or podiatrist to a certified athletic trainer for athletic training services. An order may be written or oral, except that an oral order must be reduced to writing within 72 hours of issuance.

Standing written prescription—A portion of the written protocol or a separate document from a supervision physician, dentist or podiatrist which includes an order to treat approved individuals in accordance with the protocol.

Written protocol—A written agreement or other document developed in conjunction with one or more supervising physicians, which identifies and is signed by the supervising physician and the certified athletic trainer, describes the manner and frequency in which the certified athletic trainer regularly communicates with the supervising physician and includes standard operating procedures, developed in agreement with the supervising physician and certified athletic trainer, which the certified athletic trainer follows when not directly supervised onsite by the supervising physician.

§ 25.703. Certification requirement.

(a) A person may not use the title of "athletic trainer" or "certified athletic trainer" or use any abbreviation including "A.T.C.," "C.A.T." or "A.T." or any similar designation to indicate that the person is an athletic trainer, or perform the duties thereof, unless that person has been certified by the Board.

(b) Subsection (a) does not apply to the following:

(1) A person trained and licensed or certified under any other law from engaging in the licensed or certified practice in which the person is trained.

(2) An athletic trainer from another state, province, territory or the District of Columbia, who is employed by an athletic team or organization that is competing in this Commonwealth on a visiting basis, who provides athletic

training services to the members of their respective athletic team or organization.

(3) An athletic training student who practices athletic training that is coincidental to required clinical education and is within the scope of the student's education and training.

(c) Former athletic training certificateholders under the Physical Therapy Practice Act (63 P. S. §§ 1301—1313) prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) are deemed certified by the Board. Renewal of certification may be accomplished through renewal with the Board or with the State Board of Medicine.

(d) Athletic training certificateholders certified by the State Board of Medicine are deemed certified by the Board.

§ 25.704. Application for certification.

(a) The applicant shall submit the following on forms supplied by the Board:

(1) A completed application and the fee set forth in § 25.231 (relating to schedule of fees).

(2) Verification of professional education in athletic training in accordance with § 25.705 (relating to educational requirements).

(3) Documentation of passage of the national examination in accordance with § 25.706 (relating to examination requirement).

(4) Documentation of practice as an athletic trainer, if licensed or certified in any other jurisdiction, and verification as to whether there has been any disciplinary action taken in that jurisdiction.

(b) To qualify for certification, an applicant shall be at least 20 years of age and may not be addicted to alcohol or hallucinogenic, narcotic or other drugs which tend to impair judgment or coordination.

§ 25.705. Educational requirements.

An applicant for certification shall comply with one of the following:

(1) Be a graduate of an accredited educational program for athletic trainers.

(2) Hold current credentialing as a Certified Athletic Trainer (ATC®) from the BOC or another credentialing body approved by the Board.

§ 25.706. Examination requirement.

An applicant for a certificate to practice as a certified athletic trainer shall submit to the Board written evidence that the applicant has passed the BOC certification examination for athletic trainers or its equivalent, as determined by the Board.

§ 25.707. Temporary certification.

An applicant who is a graduate of an accredited education program for athletic trainers and who has applied to take the certification examination may be granted a temporary certificate to practice athletic training under the on site direct supervision of a certified athletic trainer. The temporary certification expires 1 year from issuance or upon certification as an athletic trainer by the Board, whichever comes first, and may not be renewed.

§ 25.708. Renewal of certificate.

(a) A certificate issued under this subchapter shall be renewed biennially. An application form will be mailed to

the most recent address of the certificateholder as it appears on the records of the Board. The certificateholder shall complete the renewal application and return it to the Board with a renewal fee before October 31 of the year in which the application was received. Certificates other than temporary certificates shall expire on October 31 of each even-numbered year. Upon receipt of an application and renewal fee, the Board will verify the accuracy of the application and issue to the applicant a certificate of renewal for the next biennial period.

(b) Continuing education requirements are as follows:

(1) Beginning with the biennial period commencing on the next biennial renewal period following _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), athletic trainers shall complete the continuing education requirements prescribed by the BOC.

(2) Applicants for renewal of a certificate shall provide a signed statement verifying that the continuing education requirement has been met.

(3) Proof of completion of the required continuing education shall be retained for 4 years after completion.

§ 25.709. Practice standards for athletic trainers.

(a) Athletic trainers certified by the Board or by the proper licensing or certification authority of any other state, province, territory or the District of Columbia shall comply with the following:

(1) Ensure that the physically active person has secured a written referral or is subject to a written protocol for treatment by a certified athletic trainer from a licensed physician, dentist or podiatrist.

(2) Comply strictly with conditions or restrictions that may be placed on the course of athletic training services by the referring physician, dentist or podiatrist.

(3) Ensure that the physically active person has undergone a medical diagnostic examination or has had the results of a recently performed medical diagnostic examination reviewed by a licensed physician, dentist or podiatrist.

(4) Keep a copy of the referral and the results of the medical diagnostic examination in the physically active person's file.

(5) Consult promptly with the referring physician, dentist or podiatrist regarding a new ailment or condition or a worsened ailment or condition of the physically active person.

(6) Consult with the referring physician, dentist or podiatrist upon request of either the referring physician, dentist or podiatrist or the physically active person.

(7) Refer a physically active person with conditions outside the scope of athletic training services to a licensed physician, dentist or podiatrist.

(b) Athletic trainers certified by the Board or by the proper licensing authority of any other state, province, territory or the District of Columbia who are working in a team setting, treating injuries which arise in the course of practices or team sports events, may treat the participant at the events under the conditions of the referral, the standing written prescription or written protocol.

(c) The supervising physician, dentist or podiatrist shall provide the standing written prescription or written protocol annually to the athletic trainer and review it annually. This standing written prescription or protocol must be in writing and retained at or near the treatment

location or facility. An individual referral from a supervising physician, dentist or podiatrist is required in the absence of a written protocol.

§ 25.710. Refusal, suspension or revocation of certificate.

(a) The Board may refuse to issue a certificate, and after notice and hearing, may suspend or revoke the certificate of a person who is subject to disciplinary action under section 15(b) of the act (63 P. S. § 271.15(b)).

(b) Actions taken by the Board regarding the refusal, suspension or revocation of a certificate are taken subject to the right of notice, hearing and adjudication and appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

[Pa.B. Doc. No. 06-427. Filed for public inspection March 17, 2006, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Certified Veterinary Technician Specialists

The State Board of Veterinary Medicine (Board) proposes to amend § 31.38 (relating to code of ethics for certified veterinary technicians) to read as set forth in Annex A. The proposed amendment would bar a certified veterinary technician (CVT) from making false, deceptive or misleading statements or claims, including a representation that the CVT is a specialist, a Veterinary Technician Specialist or a VTS unless the CVT holds current certification from a National Association of Veterinary Technicians in America (NAVTA), recognized specialty organization. The proposed amendment parallels Principle 5(a)(4) in § 31.21 (relating to Rules of Professional Conduct for Veterinarians), which regulates advertising by a veterinarian.

Effective Date

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

Statutory Authority

Section 11 of the Veterinary Medicine Practice Act (63 P. S. § 485.11) authorizes the Board “to promulgate by regulation the qualifications and requirements for the certification and regulation of veterinary technicians . . . to provide for disciplinary action and . . . [to] prescribe the grounds for such action.” This proposed rulemaking provides requirements necessary for the regulation of veterinary technicians and, through § 31.39(1) (relating to grounds for disciplinary proceedings), provides for disciplinary action against the certification of a CVT.

Background and Need for Proposed Amendments

Over the past several years, it has become increasingly common for CVTs to obtain specialized education and training in a specialty area beyond the minimum education required for certification. In addition, it has become increasingly common for CVTs to hold themselves out to the public and coworkers as specialists.

For example, a CVT may belong to a veterinary technician society, which is a group of individuals who associate together to exchange information among mem-

bers. Currently, no accrediting agency has established specialty training, testing or continuing education standards for membership in such a society. A CVT may belong to a topic-specific academy. NAVTA is the Nationally-recognized entity that provides accreditation services for schools of veterinary technology and CVT specialty academies. For a CVT specialty academy to obtain accreditation (known as “recognition”), the academy must undergo a rigorous review of the academy’s education, examination and continuing education requirements. Both veterinarians and CVTs conduct this review. Once a specialty academy has been recognized by NAVTA, all veterinarians, CVTs and the public are ensured a uniform level of preparation and competence in the individuals who are granted certification as specialists of the academy. There are currently three veterinary technician academies recognized by NAVTA to confer a specialty certification upon a veterinary technician. These three academies are the Academy of Veterinary Emergency Critical Care Technicians, the Academy of Veterinary Technician Anesthetists and the Academy of Veterinary Dental Technicians.

The Board believes that it is a departure from the acceptable standards of ethical conduct for a CVT to hold himself out as a specialist because the term, in both human and animal medicine, implies a high degree of achievement including third-party peer reviewed education and examination in a particular subject area. The Board is aware that Federal and State Constitutional law limits governmental regulation of commercial speech so that regulation is permissible if it targets only commercial speech that is misleading and if the governmental regulation employs the least restrictive means possible to avoid misleading the public. The Board believes that a CVT who holds himself out as a specialist, as that term is commonly understood by the public, a Veterinary Technician Specialist or a VTS when the CVT has not been granted specialist status by a National accrediting body that ensures the competence of the CVT in a particular area is misleading the public into believing that the CVT’s competence in a particular area has been subject to the rigorous review of a National accrediting body. In addition, the Board believes that its proposed rulemaking is the least restrictive means possible to avoid misleading the public. First, the proposed rulemaking does not restrict a CVT from noting membership in a veterinary technician academy or society. Second, the proposed rulemaking is consistent with National standards of conduct in the profession of veterinary technology.

The rulemaking also proposes to amend § 31.38(e)(2) to conform to the *Pennsylvania Code and Bulletin Style Manual*, which prefers the use of gender-neutral terms.

Description of Proposed Amendments

The Board proposes to amend the code of ethics for CVTs to use the gender-neutral term “the technician” in place of the term “his” in § 31.38(e)(2).

The Board proposes to add § 31.38(g). This subsection, through § 31.39(1), would authorize the Board to discipline a CVT who makes a false, deceptive or misleading statement or claim, including a statement or claim that includes a representation that the CVT is a specialist, a Veterinary Technician Specialist or a VTS unless the CVT holds current certification from a NAVTA-recognized organization. The provision parallels an existing provision for veterinarians.

In drafting and promulgating this proposed rulemaking, the Board sent the text of the proposed rule-

making to interested parties, including State and regional veterinary medical associations, associations of animal health technicians and schools of veterinary medicine.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have any financial impact on licensees, the Board or any other State entity. The proposed rulemaking will have no fiscal impact on the public. There are no additional paperwork requirements associated with the rulemaking.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 8, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

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

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

Fiscal Note: 16A-5716. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

VETERINARY TECHNICIANS AND NONCERTIFIED EMPLOYEES

§ 31.38. Code of ethics for certified veterinary technicians.

* * * * *

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

* * * * *

(2) To perform **[his] the veterinary technician's** work only in the manner directed by the veterinarian and to employ **[his] the veterinary technician's** best care and skill in performing all work for the veterinarian **[and not to]. The veterinary technician may not** undertake any work which **[he] the veterinary technician** is not capable of performing satisfactorily.

* * * * *

(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 any representation that the certified veterinary technician is a specialist, a Veterinary Technician Specialist or a VTS unless the certified veterinary technician holds current certification from a National Association of Veterinary Technicians in America-recognized specialty organization.

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