

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Oral Orders

The State Board of Nursing (Board) amends §§ 21.14, 21.141 and 21.145 (relating to administration of drugs; definitions; and functions of the LPN) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The Board is authorized to establish rules and regulations for the practice of professional and practical nursing under section 2.1(k) of the Professional Nursing Law (63 P. S. § 212.1(k)) and section 17.6 of the Practical Nurse Law (63 P. S. § 667.6).

C. *Background and Purpose*

Current regulations of the Board prohibit a licensed practical nurse (LPN) from accepting an oral order for the administration of medication or therapeutic treatment unless the urgency of the medical circumstances requires immediate medication and therapeutic treatment. In the final-form rulemaking, the Board removes the prohibition in § 21.145 against an LPN accepting an oral order except in urgent circumstances, which the Board now regards as unnecessary and burdensome. The Board is also updating and clarifying § 21.14, which currently appears to limit the administration of medications to professional nurses (registered nurses (RNs)) only and limits the ability of an RN to accept orders from a practitioner other than a licensed doctor of the healing arts. Finally, the Board is amending § 21.141 to define the term "oral order."

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of proposed rulemaking was published at 31 Pa.B. 6544 (December 1, 2001). Publication was followed by a 30-day public comment period, during which the Board received comments from 76 public commentators: The Hospital and Healthsystem Association of Pennsylvania (HAP); Pennsylvania Association of Non-Profit Home for the Aging (PANPHA); Pennsylvania Association of County Affiliated Homes; Pennsylvania Health Care Association; Pennsylvania State Nurses Association (PSNA); Pennsylvania Medical Directors Association; Clearfield Hospital (Clearfield); Joanna K. Stuck, RN, BSN; Wilmac Corporation; Bonham Nursing Center (6); Martha Davis, RN; Lutheran Community at Telford (Telford); Pleasant Ridge Manor; Department of Military and Veterans Affairs, Pennsylvania Soldiers' and Sailors' Home (2); Oil City Presbyterian Home (Oil City); Erie Presbyterian Lodge; Cambridge Springs Presbyterian Home; Ridge Crest Nursing and Rehabilitation Center (Ridge Crest); University of Pittsburgh School of Nursing; University of Pittsburgh Medical Center, Division of Geriatric Medicine;

Peter Becker Community; County of Lehigh Cedarbrook Nursing Homes (Cedarbrook); Lock Haven Hospital; and numerous representatives of HCR ManorCare (47).

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. Responses to these comments are organized by subject.

§ 21.14. *Administration of drugs.*

IRRC questioned why the Board is including an LPN as a person who may administer a drug in this section of Subchapter A (relating to registered nurses), instead of Subchapter B (relating to practical nurses). The Board concurs and has deleted the reference to "a licensed practical nurse who is acting in accordance with § 21.145(b)."

§ 21.145. *Functions of the LPN.*

§ 21.145(b)—*oral prescriptions or orders*

IRRC and HAP recommend that the Board define "oral prescription or order" and be consistent when using this terminology. The Board's intent was to include both a situation in which the ordering practitioner delivers the order in the presence of the LPN and a situation in which the order is received over the telephone. The Board agrees that the terminology may be vague and confusing. To eliminate any confusion over the meaning of the words "prescription" and "order," the Board therefore removes reference to the word "prescription" and defines the term "oral order" in § 21.141 as "a spoken order issued by a practitioner authorized by law and by facility policy to issue orders for medical and therapeutic measures."

§ 21.145(b)—*training and qualification of the LPN to accept oral orders*

The HPLC, IRRC, the PSNA, Clearfield and the University of Pittsburgh School of Nursing have raised concerns about the level of training and instruction LPNs receive regarding their qualifications to accept oral orders and about the Board's conclusion that LPNs receive adequate instruction in pharmacology and critical thinking skills to accept oral orders. The HPLC and IRRC requested more specific information on which this conclusion is based, including curriculum requirements for LPN education programs.

Under section 5 of the Practical Nurse Law (63 P. S. § 655) and § 21.203 (relating to specific curriculum requirements for practical nursing programs), practical nursing programs must have a minimum of 1,500 hours of combined theory and clinical practice over at least a 12-month period. Section 21.203(c) and (d)(5) requires that pharmacology content be included in practical nursing education curriculum. Furthermore, Board criteria for approval of an intravenous (IV) therapy course, whether incorporated in the LPN curriculum or in an LPN IV therapy course, require content on "review of compatibility of drugs and solutions" as well as "drug actions, interactions, adverse reactions, preventions, and recognition of unexpected outcomes." (See Criteria for an Pennsylvania Board Approved Intravenous Therapy Education Program for the Student/Graduate/Licensed Practical Nurse.)

In response to a survey conducted by the Board in October 1997 of the 49 practical nursing programs in

operation at that time, 2 of the programs indicated a distinct pharmacology course as part of the curriculum, 14 programs integrated pharmacology content and 33 programs included a distinct course as well as integrated content.

All of the LPN programs that responded to a related questionnaire in 1997 indicated pharmacotherapeutics, pharmacokinetics and pharmacodynamics are covered in the curriculum. Two programs awarded three academic credits, all others included from 20 to 120 contact hours of pharmacology content. Practical nurses are instructed how to transcribe physician orders from a chart as part of their curriculum.

Because nursing practice changes frequently, the National Council of State Boards of Nursing conducts a Nationwide job analysis study of newly licensed practical/vocational nurses at least every 3 years. Both the frequency of performance and the priority ratings provided by the respondents to the related activity statements become the basis for revision of the National Council Licensure Examination for Practical Nurses (NCLEX-PN) Test Plan. As of April 1999, 5–11% of the items on the NCLEX-PN Test Plan currently relate to pharmacological therapies. Likewise, 5–11% of the items on the NCLEX-RN Test Plan relate to pharmacological and parenteral therapies.

The administrators and representatives of several facilities, as well as the University of Pittsburgh Medical Center, Division of Geriatric Medicine, specifically commented on the ability of LPNs to accept oral orders, stating that LPNs are capable of receiving verbal orders and following the appropriate protocol in the clinical record and that practical nursing programs in this Commonwealth already give instruction in pharmacology to their students, including doses calculation, drug classification and usage (PANPHA, Oil City, Telford and Cedarbrook). Telford and Cedarbrook added that the facility would provide in-service training and supervision to the LPNs as needed.

The Board concludes that LPNs are adequately prepared to take and administer oral orders. LPNs are presently permitted to administer all written orders within their scope of practice and take and administer oral orders when the urgency of the medical circumstances requires immediate medication or therapeutic measures. The Board agrees with Ridge Crest who stated it has “always found it an enigma that LPNs were able to administer any and all medications from over the counter to controlled substances, but were not able to take an [oral] order to administer the same medications that they are qualified to administer.”

§ 21.145(b)—limitation of proposed regulation to long-term care facilities

The HPLC questioned whether the acceptance of oral orders could be limited to long-term care facilities, questioning whether the same staffing concerns exist in hospitals and ambulatory surgical facilities. The HPLC requested the Board to evaluate a “limited authority” for LPNs to accept oral orders in long-term care facilities but not in hospitals and ambulatory surgical facilities. After considering the HPLC’s comments and concerns, the Board declines consideration of an authority limited to certain types of facilities. Under the Professional Nursing Law (63 P. S. §§ 211–226) and the Practical Nurse Law (63 P. S. §§ 651–667.8), the Board establishes rules and regulations for the licensure and practice of professional and practical nursing in this Commonwealth. Under the

Health Care Facilities Act (35 P. S. §§ 448.101–448.904b), the Department of Health (Department) is charged with licensing and regulating hospitals, nursing homes and ambulatory surgical facilities. Current Department regulations specify the health care practitioners who may receive oral or telephone orders in varying circumstances at each type of facility. See 28 Pa. Code §§ 107.62, 211.3 and 555.12 (relating to oral orders; oral and telephone orders; and oral orders). The Board may not alter Department regulations or assert jurisdiction over health care facilities contrary to what is mandated by statute. In light of its authority to regulate only nurses and not facilities, the Board has taken what it feels is a balanced approach in its regulations, permitting LPNs to accept oral orders if other agency regulations recognize the practice, the organization in which the LPN is employed permits the practice, the LPN can demonstrate that he has had the appropriate education and training and the LPN only accepts and acts on orders that are within the scope of practice for the LPN. If an organization or facility, for example, has a sufficient number of RNs and does not wish to permit LPNs to accept oral orders, it need not do so. The Board does not encourage the use of oral orders in all types of health care facilities, but wishes to remove unnecessary restrictions which may delay delivery of safe health care.

§ 21.145(b)(3)—questioning the order

Section 21.145(b)(3) requires the LPN to both question any order which is perceived as unsafe or contraindicated for the patient or which is not clear and to raise the issue with the ordering practitioner or other responsible person. Both IRRC and the HPLC requested an explanation as to whom the LPN is to question regarding an unclear or perceived unsafe or contraindicated order and the manner in which the LPN is to raise the issue. If the LPN questions an order perceived as unsafe or contraindicated, the LPN shall attempt to question the ordering practitioner first. If the ordering practitioner is not available, the LPN should raise the issue with an RN at the facility in a manner consistent with the protocols or policies of the facility. The Board has made this change in final-form rulemaking.

The Board declines to mandate a single specific procedure for questioning an order. The particular situation itself may determine how an apparently unclear, unsafe or contraindicated order might be clarified. Contact with the practitioner who issued the order may be by telephone or facsimile. If that practitioner is unavailable, an RN should be consulted to assist the LPN by consulting drug manuals, textbooks or other available resources. Sometimes a pharmacist or other responsible health care practitioner might be able to resolve the situation in conjunction with the RN and the LPN. A facility may well have a protocol or policy which reflects its own structure or needs. It is the experience of the professional members of the Board that questions regarding orders can almost always be answered to the satisfaction of all parties, including the ordering practitioner and the nurse.

§ 21.145(b)(5)—transcribing the oral order

Both IRRC and the HPLC point out that § 21.145(b)(5) deletes existing language that the countersignature of the physician shall be obtained in accordance with applicable Department regulations governing the licensed facility and request an explanation “as to why this requirement has been deleted.” The elimination of the countersignature language in this paragraph would in no way eliminate the requirement for a countersignature contained in the applicable Department regulations. The Board was

attempting to eliminate what it felt was duplicative and unnecessary language referring to another agency's requirements. However, the Board will retain this reference to the Department facility regulations, modified to reflect the fact that practitioners other than physicians are authorized to issue oral orders.

E. Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no fiscal impact and will not impose additional paperwork on licensees, the private sector, the general public or the Commonwealth and its political subdivisions.

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 December 1, 2001, the Board submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 6544, to IRRC and the Chairpersons of the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 17, 2003, the final-form rulemaking was approved by the HPLC. On November 19, 2003, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 20, 2003, and approved the final-form rulemaking.

H. Contact Person

Further information may be obtained by contacting Martha H. Brown, Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us/bpoa/site/default.asp.

I. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 31 Pa.B. 6544.

(4) The final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in this preamble.

J. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.14, 21.141 and 21.145 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(Editor's Note: The amendment to § 21.141 was not included in the proposed rulemaking published at 31 Pa.B. 6544.)

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of the Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

JANET HUNTER SHIELDS, MSN, CRNP, CS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 5994 (December 6, 2003).)

Fiscal Note: Fiscal Note 16A-5115 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

RESPONSIBILITIES OF THE REGISTERED NURSE

§ 21.14. Administration of drugs.

(a) A licensed registered nurse may administer a drug ordered for a patient in the dosage and manner prescribed.

(b) A licensed registered nurse, responsible for administering a drug, may supervise a graduate nurse or a nursing student in an approved nursing education program in the administration of the drug. In this section, "supervise" means the licensed registered nurse is physically present in the area or unit where the student or unlicensed graduate is practicing. This definition is not intended to limit in any way the practice of practical nursing as defined in the Practical Nurse Law (63 P. S. §§ 651—667).

Subchapter B. PRACTICAL NURSES

GENERAL PROVISIONS

§ 21.141. Definitions.

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

Act—The Practical Nurse Law (63 P. S. §§ 651—667) which establishes standards for the education of practical nurses and the practice of practical nursing.

Approved—Approved by the Board.

Board—The State Board of Nursing of this Commonwealth.

LPN—Licensed practical nurse. A nurse licensed under this subchapter to practice in this Commonwealth.

Oral order—A spoken order issued by a practitioner authorized by law and by facility policy to issue orders for medical and therapeutic measures.

Patient (includes residents and clients)—A person, other than a spouse or immediate family member, who receives professional services from a licensed practical nurse, regardless of whether or not the nurse receives remuneration for the services.

Practice of practical nursing—The performance of selected nursing acts in the care of the ill, injured or infirm under the direction of a licensed professional nurse, a licensed physician or a licensed dentist which do not require the specialized skill, judgment and knowledge required in professional nursing.

Professional relationship—The relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a licensed practical nurse and a patient and ending with the final professional contact between them. The administration of emergency medical treatment or transitory trauma care will not be deemed to establish a professional relationship.

Sexual impropriety—The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or the patient specifically requests assistance.

(iii) Examining or touching genitals without the use of gloves when performing an otherwise appropriate examination.

(iv) Discussing or commenting on a patient's potential sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.

(v) Soliciting a date from a patient.

(vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

Sexual violation—The term includes the following offenses:

(i) Sexual intercourse between a licensed practical nurse and a patient during the professional relationship.

(ii) Genital to genital contact between a nurse and a patient during the professional relationship.

(iii) Oral to genital contact between a nurse and a patient during the professional relationship.

(iv) Touching breasts, genitals or any other body part for any purpose other than appropriate examination or treatment, or using prolonged or improper examination techniques, or after the patient has refused or withdrawn consent.

(v) Encouraging a patient to masturbate in the presence of the nurse or masturbating while the patient is present.

(vi) Providing or offering to provide drugs or treatment in exchange for sexual favors.

(vii) Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in any conduct that would constitute a sexual impropriety or sexual violation.

§ 21.145. Functions of the LPN.

(a) The LPN is prepared to function as a member of the health-care team by exercising sound nursing judgment based on preparation, knowledge, skills, understandings and past experiences in nursing situations. The LPN participates in the planning, implementation and evaluation of nursing care in settings where nursing takes place.

(b) The LPN administers medication and carries out the therapeutic treatment ordered for the patient in accordance with the following:

(1) The LPN may accept a written order for medication and therapeutic treatment from a practitioner authorized by law and by facility policy to issue orders for medical and therapeutic measures.

(2) The LPN may accept an oral order if the following conditions are met:

(i) The practitioner issuing the oral order is authorized by law and by facility policy to issue oral orders for medical and therapeutic measures.

(ii) The LPN has received instruction and training in accepting an oral order in an approved nursing education program or has received instruction and training in accepting an oral order in accordance with the established policies and protocols of the facility.

(iii) The policy of the facility permits an LPN to accept an oral order.

(iv) The regulations governing the facility permit an LPN to accept an oral order.

(3) The LPN shall question any order which is perceived as unsafe or contraindicated for the patient or which is not clear and shall raise the issue with the ordering practitioner. If the ordering practitioner is not available, the LPN shall raise the issue with a registered nurse or other responsible person in a manner consistent with the protocols or policies of the facility.

(4) The LPN may not accept an oral order which is not within the scope of functions permitted by this section or which the LPN does not understand.

(5) An oral order accepted by the LPN shall be immediately transcribed by the LPN in the proper place on the medical record of the patient. The transcription shall include the prescriber's name, the date, the time of acceptance of the oral order and the full signature of the LPN accepting the oral order. The countersignature of the ordering practitioner shall be obtained in accordance with applicable regulations of the Department of Health governing the licensed facility.

* * * * *

[Pa.B. Doc. No. 03-2389. Filed for public inspection December 19, 2003, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 32]

Corrective Amendment to 61 Pa. Code § 32.2

The Department of Revenue has discovered a discrepancy between the agency text of 61 Pa. Code § 32.2 (relating to rates) as deposited with the Legislative

Reference Bureau and the official text as published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 338, January 2003) and as currently appearing in the *Pennsylvania Code*. The official text omitted § 32.2(b)(2)(ii) and (iii), (c) and (d)(1) and (i)

Therefore, under 45 Pa.C.S. § 901: The Department of Revenue has deposited with the Legislative Reference Bureau a corrective amendment to 61 Pa. Code § 32.2. The corrective amendment is effective as of January 4, 2003, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 61 Pa. Code § 32.2 appears in Annex A.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 32. EXEMPTIONS

GENERAL PROVISIONS

§ 32.2. Exemption certificates.

(a) *When exemption certificates are required.* A person who is required by the act to collect tax upon sales or rentals of tangible personal property or taxable service shall, in every case in which he has not collected tax, have available for Departmental inspection a valid, properly executed exemption certificate which was accepted in good faith or, in lieu of the certificate, the following:

(1) Evidence that the property sold or rented is not tangible personal property or a taxable service as defined by the act.

(2) Documentary evidence that his customer is the United States or an instrumentality thereof, the Commonwealth, or a political subdivision or instrumentality of the Commonwealth.

(3) Documentary evidence that he was required to deliver the property sold, rented or serviced to a destination outside this Commonwealth for use outside this Commonwealth, and that he did, in fact, so deliver the property.

(b) *Relief from tax liability.* A seller or lessor who accepts in good faith an exemption certificate which discloses a proper basis for exemption upon its face is relieved of liability for collection or payment of tax upon transactions covered by the certificate.

(1) *Disclosure of proper exemption basis.* For a certificate to disclose a proper basis for exemption, it must meet the following requirements:

(i) The certificate must be an officially promulgated exemption certificate form, or a substantial and proper reproduction thereof.

(ii) The certificate must be dated and executed in accordance with the instructions published for use therewith, and must be complete and regular in every respect.

(iii) The certificate must state a proper exemption reason.

(2) *Acceptance in good faith.* An exemption certificate to be accepted in good faith shall also meet the following requirements:

(i) The certificate must contain no statement or entry which the seller or lessor knows, or has reason to know, is false or misleading. A certificate accepted by a seller or lessor, in the ordinary course of his business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased, shall be presumed to be taken in good faith.

(ii) A seller or lessor is presumed to be familiar with the law and regulations regarding the property in which he deals. When a seller or lessor has accepted a blanket exemption certificate, each transaction between the parties is considered a separate claim for exemption thereunder, and the seller or lessor shall, therefore, exercise good faith in each transaction, in order to avoid liability for the tax.

(iii) The certificate must be in the physical possession of the seller or lessor, and available for Departmental inspection, on or before the 60th day following the date of the sale or lease to which the certificate relates. When a certificate is not made available for Departmental inspection on or before that time, the seller or lessor shall prove to the satisfaction of the Department, by means of evidence other than an exemption certificate, that the sale or lease in question is, in fact, exempt. In the absence of proof the transaction will be deemed taxable and assessed as such.

(c) *Penalties for misuse of exemption certificates.* False or fraudulent statements made upon an exemption certificate by a person, whether a seller, lessor, buyer, lessee or a representative or agent of the persons, is a misdemeanor, upon each separate conviction of which the offender may be sentenced to imprisonment not exceeding 1 year, a fine not exceeding \$1,000, or both, together with costs of prosecution. In addition, severe civil penalties are provided by law for misuse of exemption certificates by any person. Reference should be made to section 268(b) of the TRC (72 P. S. § 7268(b)).

(d) *Forms of certificates.* The following exemption certificate forms and instructions have been promulgated by the Department:

(1) *Forms for general use.* The Department form entitled Sales and Use Tax Exemption Certificate may be used for:

(i) *Unit exemption.* This exemption shall be used for all single sales or leases of tangible personal property.

(ii) *Blanket exemption.* This exemption shall be used for claims of exemption upon sales and leases of tangible personal property in a series of transactions between parties.

(2) *Forms for purchase of motor vehicles.* The following form is designed for purchase of motor vehicles, and is not valid for purposes other than that for which it is designed: *Form REV-191 Vehicles Sales and Use Tax Return*. This form shall be used for claims of exemption upon the purchase or lease of a motor vehicle, trailer, semitrailer or tractor which is required by law to be registered with the Bureau of Motor Vehicles, and shall accompany the application for title.

[Pa.B. Doc. No. 03-2390. Filed for public inspection December 19, 2003, 9:00 a.m.]

**[61 PA. CODE CHS. 817, 831 AND 867—869]
 Obsolete Lottery Regulations**

The Secretary of Revenue, under the authority contained in section 303 of the State Lottery Law (72 P. S. § 3761-303), deletes Chapters 817, 831 and 867—869.

As the selection of on-line games available to lottery players in this Commonwealth changed over the years, regulations regarding the discontinued on-line games remained in 61 Pa. Code (relating to revenue). During normal review of its regulations, the Department of Revenue (Department) determined that deleting Chapters 817, 831 and 867—869 not only rids 61 Pa. Code of unnecessary regulations, it also alleviates any possible confusion in those who read Chapters 817, 831 and 867—869 and expect to play the nonexistent games.

Because the deleted chapters relate to on-line lottery games that were retired or discontinued with actual notice conveyed through the issuance of press releases and the termination of sales, the Department, under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204) and the regulation thereunder, 1 Pa. Code § 7.4 (relating to omissions of notice of proposed rulemaking), finds that notice of proposed rulemaking is under the circumstances impracticable and, therefore, may be omitted.

Purpose of Final-Omitted Rulemaking

Play of the on-line lottery games subject to deletion were concluded in accordance with the terms of the regulations. The Lottery does not intend, now or in the near future, to offer these games in their stated configuration.

Explanation of Regulatory Requirements

The sections to be deleted are as follows:

| <i>Chapter</i> | <i>Game Name</i> | <i>End of Play</i> |
|----------------|--|--------------------|
| 817 | Pennsylvania Lotto (§§ 817.91—817.107) | 1988 |
| | Wild Card Lotto (§§ 817.111—817.127) | 1998 |
| 831 | Pennsylvania Super 7 (§§ 831.1—831.17) | 1995 |
| 867 | Hearts and Diamonds (§§ 867.1—867.17) | 1996 |
| 868 | Keystone Jackpot (§§ 868.1—868.17) | 1998 |
| 869 | Pennsylvania Lottery 25th Anniversary TV Game Show (§§ 869.1—869.15) | 1997 |

Fiscal Impact

The Department has determined that the final-omitted rulemaking will have no fiscal impact on the Commonwealth.

Paperwork

The final-omitted rulemaking will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on September 30, 2003, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Finance. A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act, on November 5, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 6, 2003, and approved the final-omitted rulemaking.

Contact Person

The contact person for an explanation of the final-omitted rulemaking is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Findings

The Department finds that the regulatory sections in Chapters 817, 831 and 867—869 are no longer necessary for administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because the games were retired or discontinued with actual notice conveyed through the issuance of press releases and the termination of sales and are under the circumstances impracticable.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapters 817, 831 and 867—869, are amended by deleting §§ 817.91—817.107, 817.111—817.127, 831.1—831.17, 867.1—867.17, 868.1—868.17 and 869.1—869.15 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

GREGORY C. FAJT,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 5791 (November 22, 2002).)

Fiscal Note: 15-423. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART V. STATE LOTTERIES

CHAPTER 817. (Reserved)

§§ 817.91—817.107. (Reserved).

§§ 817.111—817.127. (Reserved).

CHAPTER 831. (Reserved)

§§ 831.1—831.17. (Reserved).

CHAPTER 867. (Reserved)

§§ 867.1—867.17. (Reserved).

CHAPTER 868. (Reserved)

§§ 868.1—868.17. (Reserved).

CHAPTER 869. (Reserved)

§§ 869.1—869.15. (Reserved).

[Pa.B. Doc. No. 03-2391. Filed for public inspection December 19, 2003, 9:00 a.m.]