

# RULES AND REGULATIONS

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 105, 123, 125, 133, 140, 141, 145, 151, 153, 165, 177 178, 181, 183, 187 AND 281]

#### TANF Program

The Department of Public Welfare (Department), by this order, adopts the amendments to read as set forth in Annex A. The statutory authority for this rulemaking is sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) (code); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); section 1902(a)(10)(A) and (C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C)); the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Notice of proposed rulemaking was published at 31 Pa.B. 5875 (October 20, 2001).

#### *Need for Amendments*

The purpose of this final-form rulemaking is to codify regulations based upon landmark Federal and State welfare reform legislation that emphasizes personal responsibility, work and self-sufficiency. Specifically, TANF and the Domestic Relations Code transformed welfare from an unlimited entitlement to a temporary support system. The new regulations reflect the legislative intent to promote self-sufficiency. Changes, including more substantial work requirements and increased financial incentives for working welfare recipients, illustrate this refocus of welfare. Moreover, the Domestic Relations Code contains revised provisions requiring cooperation with the Child Support Enforcement Program (established under Title IV-D of the Social Security Act) as a condition of eligibility for cash assistance, and a new support pass-through program. Implementation of child support cooperation provisions is another key component to assure an income source for needy families seeking to achieve self-sufficiency. This final-form rulemaking provides numerous supports and incentives to assist employable individuals in their quest for financial independence. These supports and incentives include waivers of various program requirements for victims of domestic violence, a 50% earned income disregard, exclusion of educational savings accounts and special allowances, such as child care and transportation expenses, to support training, education and work.

#### *Scope*

This final-form rulemaking codifies the basic TANF program. This final-form rulemaking affects applicants and recipients of TANF assistance, General Assistance (GA) and Medical Assistance (MA). Certain provisions regarding employment and training also affect Food Stamp recipients.

Grounded in the legislative directive in the Domestic Relations Code that work is essential to self-sufficiency, this final-form rulemaking incorporates statutory work and work-related requirements and sanctions for willful noncompliance with these requirements. At the same time, the Department recognizes that some individuals have significant obstacles that hinder their ability to work. Depending on the nature and extent of these obstacles, an individual may be exempt or excused from work and work-related requirements for good cause, and receive appropriate supportive services. These requirements and benefits associated with employment and training are embodied in the Department's Road to Economic Self-Sufficiency Through Employment and Training (RESET) program, established by the Domestic Relations Code.

This final-form rulemaking also reflects changes involving good cause waivers of child support cooperation requirements for victims of domestic violence. The Department elected to adopt the Family Violence Option (FVO) (42 U.S.C.A. § 602(a)(7); 45 CFR 260.50—260.59) in 1997, and implemented many FVO provisions in a Notice of Rule Change (NORC) published at 30 Pa.B. 2957 (June 10, 2000). In doing so, the Department demonstrated a commitment to help victims of domestic violence become self-sufficient without compromising their safety.

Further, to ensure that the Department's final-form rulemaking is consistent with its policy and TANF State Plans, this final-form rulemaking includes other changes to existing regulations. For example, the Department amended various provisions to exclude educational assistance as income or a resource. In addition, the Department has incorporated its revised good cause policy for education and training in this final-form rulemaking. These and other changes required applicable amendments to regulations governing TANF-related and GA-related MA.

Finally, this final-form rulemaking incorporates the Federal 60-month time limit for TANF assistance and specifies how that time accrues. This final-form rulemaking also clarifies exceptions to the 60-month limit. The definition of "family" also reflects a clarification regarding application of the time limit policy for certain specified relatives. For assistance that extends beyond the 60-month limit, the Department has proposed a separate rulemaking at 32 Pa.B. 431 (January 26, 2002). The Department refers to those benefits as "Extended TANF." The Department intends to publish final rulemaking for Extended TANF following adoption of this final-form rulemaking. In the interim, TANF individuals who reach the 60-month limit will continue to receive TANF assistance if they are otherwise eligible. In the following comment/response section of this Preamble, the Department's time limit policy is discussed in greater detail.

#### *Affected Individuals, Groups and Organizations*

This final-form rulemaking affects applicants and recipients of TANF, GA, Medicaid and Food Stamps.

#### *Accomplishments/Benefits*

This final-form rulemaking establishes the framework for the Department's cash assistance program. Section 403(b) of the code requires, consistent with State law, that the Department will establish rules for GA consistent with those for TANF whenever possible. With this in mind, the Department's rulemaking has a dual purpose:

1) to accomplish the legislative goals of promoting self-sufficiency through work; and 2) providing support to needy individuals to meet that goal.

By offering a comprehensive array of employment and training programs and services, the Department helps recipients prepare for, secure, retain and advance in employment. Assessments and case management, referral, specialized services and special allowances are additional benefits the Department and its employment and training contractors provide. Specialized services include those for individuals exempt from work and work-related requirements. Revised support provisions enable victims of domestic violence to receive counseling services, safety planning and waivers of cooperation requirements without jeopardizing their eligibility for cash assistance. Further, individuals engaged in education and training may be temporarily excused from work and work-related requirements to continue education or training. Individuals without appropriate care for their children or incapacitated adults in their care may also be excused from these requirements until that care is available within a reasonable distance round-trip from home.

In this final-form rulemaking, the Department also provides additional financial incentives to recipients seeking employment and economic independence. For example, income and resource regulations are simplified and more generous than existing rules. Elimination of the gross income test and the disregard of 50% of earned income provide incentives for applicants and recipients. The earned income disregard is an especially strong incentive for individuals to work because only half of a TANF recipient's earned income is counted in determining the cash assistance grant. One motor vehicle per family and educational accounts are also excluded. These financial incentives facilitate the transition to self-sufficiency and economic independence.

#### *Paperwork Requirements*

The Department developed the following new forms to support revisions to its regulations:

*Form PA 1661, Agreement of Mutual Responsibility (AMR)*, is a written, individualized agreement between the Department and the recipient. As section 405.3 of the code (62 P. S. § 405.3) provides, the AMR sets forth the responsibilities and obligations of the recipient to achieve self-sufficiency, the time frames within which the obligations are to be completed, the penalties for failure to comply and the Department's actions to support the recipient's efforts. The AMR is based on an assessment of the individual's skills and abilities. For each individual required to sign the application for benefits, the AMR is completed at application and redetermination. In addition, the AMR is updated at other times as needed.

*Form PA 1680, Participant Guide to Success*, is completed as an important component of an individual's initial assessment to determine work history, job skills and ability to work. The PA 1680 guides caseworkers and recipients through the initial job search.

*Form PA 1712, End of Sanction Letter*, is sent to remind individuals under a 30-day or 60-day RESET sanction of the earliest date the sanction could end, and explains how the individual can end the sanction.

*Form PA/CS 1747, Verification of Good Cause Based on Domestic Violence*, documents a good cause claim of domestic violence. The form must be completed when one of the following circumstances exists: 1) the individual provides acceptable verification of the claim of domestic violence; 2) a third party provides verification of the claim

of domestic violence; or 3) the individual affirms in writing an inability to safely obtain evidence to verify the claim of domestic violence within the established time frames. Approval or denial of the good cause claim is noted on the PA/CS 1747.

#### *Summary of Public Comments and Changes*

Written comments, suggestions and objections were solicited within a 30-day comment period after the publication date of the proposed rulemaking. The Department received 18 public comments. Commentators included: citizens, advocates, the Minority Chairperson of the Senate Public Health and Welfare Committee, the Minority Chairperson of the House Health and Human Services Committee and the Independent Regulatory Review Commission (IRRC).

The Department has carefully reviewed and considered each comment and thanks the individuals and organizations who commented on the proposed rulemaking. The following is a summary of the comments received during the public comment period and the Department's responses.

#### *§ 141.41(f) (redesignated as § 141.41(d) and Chapter 281). Time Limit Policy. Federal Exceptions.*

*Comment:* Commentators expressed concern that the proposed rulemaking does not include exceptions to the Federal 60-month time limit for TANF assistance. They identified four notable exceptions to the 60-month limit: 1) TANF assistance beyond 60 months for up to 20% of the caseload based on hardship; 2) State-funded "off-the-clock" assistance; 3) Federally-funded nonassistance; and 4) assistance for victims of domestic violence. While they acknowledged the Department's off-the-clock (Time-Out) and nonassistance initiatives, the election of the Federal Domestic Violence Option and plan to provide TANF assistance beyond the 60-month limit (Extended TANF), commentators asked the Department to incorporate these policies (including the Department's Maximizing Participation Project (MPP)) into this final-form rulemaking. Some commentators argued that the Department's current policies for Federal time limit exceptions conflict with proposed § 141.41(f) (relating to policy). They questioned how the Department plans to reconcile this apparent conflict. They offered two alternative suggestions: 1) that the Department remove the time limit from this final-form rulemaking and implement all time limit rules and exceptions in a comprehensive rulemaking; or 2) that the Department, at a minimum, add a general reference to time limit exceptions. Commentators also suggested that the Department revise the regulations to provide for an orderly transition from TANF to GA.

One commentator pointed out that Federal law permits states to provide up to 4 months of cash benefits in certain limited circumstances that do not count as "assistance." Because these benefits do not constitute "assistance," they are not subject to the 60-month time limit.

*Response:* The Department has revised proposed § 141.41(f) (redesignated as § 141.41(d)) by adding paragraph (5) that specifies that the time limit policy does not preclude the Department from providing TANF assistance that does not count towards the 60-month limit (Time-Out) or extends beyond the 60-month limit (Extended TANF). Accordingly, there is no conflict between the regulations establishing the 60-month time limit for TANF and the benefits that are not counted towards or extends beyond the 60-month limit. In addition, the Department offers certain nonassistance benefits. Time-

Out and nonassistance are discussed below. Proposed rulemaking for the Extended TANF program was published at 32 Pa.B. 431.

The Department implemented Time-Out as a new initiative with a public notice, announcing its intent to amend the TANF State Plan, at 31 Pa.B. 1639 (March 24, 2001). Time-Out is a fiscally segregated State-funded program permitted by Federal law. Assistance benefits funded solely through segregated State funds are subject to many TANF requirements such as work and child support, but are exempt from certain other requirements such as the 5-year time limit. See 42 U.S.C.A. § 609(a)(7)(B)(i).

To the extent that funding is available, and consistent with State and Federal law, families otherwise eligible for TANF benefits under Chapter 141 (relating to general eligibility provisions) may receive benefits under Time-Out. In general, the purpose of Time-Out benefits is to provide incentives to families meeting or exceeding minimum work participation requirements, or participating early in work and other employment-related activities or certain exempt volunteers. This program also provides assistance to victims of domestic violence. To encourage family members to care for minor children who are not residing with their parents, certain kinship caregivers may also benefit from the Time-Out program.

In accordance with the commentators' request that the Department clarify that Time-Out benefits "stop the clock" for purposes of applying the 5-year TANF time limit, the Department is incorporating the rules governing Time-Out into this final-form rulemaking. Chapter 281 (relating to time-out benefits) reflects current policy and procedures regarding the Time-Out program as it has evolved during the past year since announcement of the initiative. Chapter 281 includes a definition for "MPP" and provides that an exempt individual who volunteers to participate in and comply with MPP may be eligible to receive Time-Out benefits. However, the Department invites interested persons to submit written comments regarding the program for consideration for future amendments. These comments should be submitted to the Department of Public Welfare, Edward J. Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081, within 30 days of the date of publication of this final-form rulemaking. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Finally, the Department has assigned a sunset date of July 1, 2004, to the Time-Out program. The Department finds that Congressional policy regarding reauthorization of the TANF program and availability of future State funding for this program are uncertain. Consequently, it is prudent to proceed cautiously in making this benefit available for a limited time period until a clear picture emerges regarding its continued viability.

As noted previously, the Department has proposed rules for the Extended TANF program for families that have a hardship or include someone who has been a victim of domestic violence. As to the commentator's question concerning the receipt of GA following TANF, the Department's proposal for GA eligibility following the exhaustion of TANF is included in the proposed rulemaking for Extended TANF. See 32 Pa.B. 431. Given the discrete nature of the Extended TANF rulemaking, the Department has not combined it with this final-form rulemaking. The Department has decided to implement this

basic TANF rulemaking first. It is the essential framework upon which the Department will build.

Nor has the Department included in this rulemaking the initiatives and projects known as nonassistance. Those initiatives, announced by public notice of intent to amend the TANF State Plan, published at 30 Pa.B. 2954 (June 24, 2000), include work supports and other services to low-income families. The Department's nonassistance benefits do not include cash benefits permitted by Federal law under limited circumstances for a maximum of 4 months. Instead, individuals who have exhausted 60 months of TANF may be eligible to receive cash assistance beyond the 60-month limit under the Extended TANF program. There is no time limit for receipt of Extended TANF.

Nonassistance benefits are pilot projects implemented by the Department directly, through contractors or by grants to other State agencies. The nature and extent of those benefits may vary in the future with changes in the needs of the recipients, availability of work supports, service projects and funding. The flexibility gained through funding specific projects enables the Department to respond more quickly to changes in need and take advantage of newly developed initiatives to meet those needs, including initiatives developed by entities other than the Department. Nonassistance is not subject to the 60-month time limit. The 60-month time limit applies only to TANF "assistance." Because this rule does not apply to nonassistance, an exception for nonassistance is unnecessary.

In addition, the Department added paragraph (7) to § 141.41(d) to clarify that § 141.41(d) will not be interpreted as requiring the Department to provide or continue to provide TANF assistance that does not count towards or extends beyond the 60-month limit.

*Cash Assistance Handbook policy regarding "TANF assistance received."*

*Comment:* Commentators suggested that the Department revise § 141.41 to include the policy outlined in section 105.251 of the *Cash Assistance Handbook*. This policy illustrates what is not considered TANF assistance received for the purpose of calculating the 60-month time limit. As the commentators noted, examples include: 1) when a recipient or budget group is under a durational sanction (and, consequently, does not receive cash assistance); 2) when TANF assistance is issued, but not received; and 3) when a recipient has fully reimbursed the Department for TANF assistance received.

*Response:* The Department concurs and has revised § 141.41 accordingly.

*§ 141.42. Definition of "family."*

*Comment:* Commentators suggested that the definition of "family" in § 141.42 (relating to definitions) may lead to an excessive number of children being disqualified after 60 months of TANF. They claimed that the definition would disadvantage kinship caregivers and cause the children in their care to be ineligible for TANF. In addition, they submitted that this result would be contrary to the Department's policy of allowing certain specified relatives to receive TANF only for the children in their care. They requested that the Department revise the definition of "family" to exclude nonparental caregivers, as well as other non-TANF participating adults.

*Response:* The Department concurs with the comment and has clarified the definition of "family" by striking the second sentence of proposed § 141.42's definition of "fam-

ily.” Additionally, § 141.41(d)(2) has been amended to provide that, for purposes of calculating the 60-month time limit, a family does not include a specified relative who is not included in the TANF mandatory filing unit as specified in § 171.21 (relating to policy) and is seeking assistance only for the minor child. Section 141.42 is also revised to include a cross reference to § 141.41(d)(2).

*§ 151.43(d)(1). Temporary absence of a minor child.*

*Comment:* One commentator commended the Department for permitting a family to continue to receive assistance for a minor child who is temporarily absent from the home, but expected to return within 180 days. However, this commentator disagreed with the Department’s decision to “create a new period of ineligibility” for a specified relative who fails to report a minor child’s absence within 5 days of the time it becomes “clear” that the absence will extend beyond 180 days. The commentator claimed that the 30-day disqualification period in the regulation has no basis in Federal or State law and should be deleted. Further, the commentator stated that even if the disqualification period were authorized, disqualification should occur only when it is clear to the parent or relative that the child’s absence will extend beyond 180 days and that fact is not reported. Another commentator asked the Department to identify the statutory basis for the 30-day disqualification period. The commentator also asked when it would become “clear” that a child’s absence would extend beyond 180 days.

*Response:* The Department agrees that the specified relative’s duty to report the child’s absence should arise only after it is clear that the child’s absence will extend beyond 180 days. The Department has amended § 151.43(d)(1) (relating to requirements) accordingly. However, the Department does not agree with the commentator that it lacks statutory authority to impose a 30-day period of ineligibility on specified relatives who fail to meet the reporting requirement. Nothing in the Federal law governing the temporary absence provisions prohibits a state from establishing a minimum period of ineligibility for failure to report. See 42 U.S.C.A. § 608(a)(10). Under State law, the Department is given broad authority to establish rules, regulations and standards as to eligibility for assistance and as to its nature and extent. See sections 403(b) and 432 of the code (62 P. S. §§ 403(b) and 432). Under this State law authority, the Department has determined that a 30-day period of ineligibility for failure to report the child’s absence when it is clear to the specified relative that the absence will continue beyond 180 days, is both fair and reasonable as a tool to ensure compliance with the regulation. Finally, in response to the commentator’s question concerning when it would become clear that the child’s absence will extend beyond the 180 days, each case will depend upon its own unique factual circumstances. Caseworkers will be instructed to consider the statements of the specified relative, circumstances surrounding the child’s absence, and any supporting or conflicting evidence.

*RESET participation requirements §§ 125.1(f)(2)(vi) (re-designated as § 25.1(i)(6) and (8)), 133.23(a)(1)(vi)(B) (VI) (deleted on final-form), 141.41(e) (deleted on final-form), 141.61(a)(1)(xv) (deleted on final-form), 165.1(a), 165.2, 165.31(a)(2) and (b) (re-designated as § 165.31(a)(1)), 165.61(a)(4) and (6). Maximize employment.*

*Comment:* Commentators requested that the Department delete the phrase “maximize employment” from the regulations. They questioned the Department’s authority to require individuals to “maximize employment” as a condition of eligibility for cash assistance. Specifically,

they suggested that statutory requirements do not include the requirement to maximize employment. One commentator also questioned the wisdom of requiring individuals to maximize employment, suggesting that this mandate would be too burdensome to those who may have difficulty working full time (for example, parents with disabled or troubled children).

*Response:* The Department has deleted the phrase “maximize employment.” However, this deletion does not imply that the Department concurs with the commentators’ position that this requirement lacks a statutory basis, would be too burdensome to some parents and does not belong in the regulation. Although the Department deleted the phrase “maximize employment,” it is replaced with language that parallels section 432.3(a)(iii) of the code (62 P. S. § 432.3(a)(iii)), the statutory basis of this deleted phrase. Accordingly, the Department has revised each of the regulations that contained the phrase to follow section 432.3(a)(iii) of the code, with the exception of § 165.2 (relating to definitions) (from which “maximize employment” is deleted as a definition). Specifically, the Department revised §§ 125.1(i)(8), 165.31(a)(2) and 165.61(a)(4) (relating to policy; RESET participation requirements; and sanctions).

This revision does not reflect a new interpretation of what the statute requires an individual to do regarding employment. With or without this revision, the individual must accept, work in and keep as many hours of employment as the individual is reasonably able to maintain. This means that an individual must maximize hours of employment, above minimum requirements, if the hours are available and the individual is reasonably able to work those hours. For example, if the individual has the opportunity to increase the individual’s work hours from 20 to 30 per week, the individual must accept the additional hours, unless the individual cannot reasonably do so (such as, the 30 hours are available only during the night shift, and the individual is a single parent with no appropriate child care during that time; or, the 20-hour per week job pays the individual more than the other would). Because an individual must accept the additional hours only if the individual can reasonably do so, this requirement should not be too burdensome to those who may have difficulty working full-time. This requirement is consistent with the goal of TANF and the Domestic Relations Code that a recipient transition from dependency through increased employment to self-sufficiency as soon as practicable.

*§§ 123.22, 141.41(e) (deleted on final-form), 165.1(a) and (b) and 165.2. Assessments and consultations.*

*Comment:* Commentators suggested that § 141.41(e) of the proposed rulemaking should be revised to include a requirement that the Department assess the needs of applicants and recipients and develop plans in consultation with them for addressing additional measures needed to make the individual employable. They pointed to section 405.1 of the code (62 P. S. § 405.1) and 45 CFR 261.11 (relating to which recipients must have an assessment under TANF) as authority for this requirement. In addition, commentators stated that these assessments should be designed to direct individuals to programs which the client may not be aware of, which could enhance the individual’s opportunity for work, such as an English-as-a-second-language course. Commentators suggested that undertaking such an assessment could avoid imposition of sanctions for violations under § 165.61.

Also, commentators questioned when the Department undertakes assessments required by Federal and State law.

*Response:* The Department agrees that the previous provisions of State and Federal law require that an assessment of the individual must occur. In response to the commentators' concerns, the Department has amended § 165.1(a) (relating to general) to provide that each recipient's ability to meet RESET participation requirements will be assessed after consultation with the recipient. In addition, § 165.1(b) addresses additional measures needed to help the individual become employable. Section 165.1(b) states that the Department will provide RESET participants, to the extent necessary, with case management and approved supportive services. That subsection also provides that participants will be provided with or referred to education, training and employment-related activities designed to break the cycle of welfare dependency. To the extent it deems possible, the Department will identify and promote resources in the public and private sector that may assist participants to prepare for and obtain employment in jobs they may realistically be expected to obtain.

Next, the Department has also added a new definition of "AMR" in § 123.22 (relating to definitions), which specifies that an AMR is an individualized agreement with the Department, based on an assessment of the individual's skills and abilities, which sets forth the responsibilities and obligations to be undertaken by the individual to achieve self-sufficiency, the time frames within which each obligation is to be completed and the penalties for failure to comply. Further, the AMR describes services to be provided by the Department. Finally, the Department has revised § 165.2 (relating to definitions) to conform to the new definition of AMR specified in § 123.22.

With regard to the concern that assessments may avoid imposition of sanctions, the Department submits that the compliance review process in § 165.51 (relating to compliance review) includes a review of facts presented by the individual and those known to the Department. As set forth in § 165.51(c), no sanction will be imposed if the apparent noncompliance was not willful or the individual has good cause.

As to the commentator's question concerning when the assessment occurs, the Department submits that the assessment process is an ongoing one. There are a number of instances where the assessment occurs. First, in compliance with Federal regulations at 45 CFR 261.11, the Department conducts an initial assessment. That assessment uses the *Form PA 1680, Participant Guide to Success*, as a component of an individual's initial assessment, to determine work history, job skills and ability to work. This evaluation tool guides caseworkers and recipients through the initial job search. In addition, an individual participating in a contractor-operated employment and training program is offered a variety of assessments to determine skills, math and reading levels and employment preferences. After an assessment, the AMR will be updated as necessary.

§§ 141.41(e) (deleted on final-form), 141.61(a)(1)(xv) (deleted on final-form), 165.1, 165.31(a)(2), 165.31(b)(2), 165.61(a)(3) and (4). Requirement that individuals participate in work and work-related activities "including those specified on the AMR."

*Comment:* Commentators questioned the Department's authority to require individuals to participate in work or

work-related activities beyond those specified on the AMR. One commentator suggested that section 405.1(a.2)(4) of the code states that all work-related activity shall be incorporated into the AMR.

*Response:* Individuals are required to comply with applicable statutory and regulatory requirements concerning work and work-related activities, even if they are not specified on the individual's AMR. The AMR does not recite each eligibility requirement in the code. As §§ 123.22 and 165.2 specify, the AMR is an individualized agreement which specifies the activities in which the individual has agreed to participate, as well as the supportive services the Department will provide. The fact that the individual has agreed on an AMR to do certain activities does not obviate his responsibility to comply with applicable statutory requirements, including those which, such as, require an individual to seek, accept and maintain employment. Thus, for example, an individual's AMR might provide for him to meet the work-related activity requirement through an unpaid activity such as community service. Subsequent to the completion of the AMR, if the county assistance office (CAO) refers the individual to subsidized employment or work experience, the individual is required to seek and accept the referral to that paid employment. This is consistent with sections 405.1(a.2)(1) and 432.3(a)(ii) and (iii) of the code. While section 405.1(a.2)(4) of the code provides that the AMR shall include the type of work-related activities that will be used to meet the individual's ongoing work-related activity requirement, nothing in that or any other section of the code provides that the AMR mitigates the statutory obligation to seek and accept employment.

§§ 125.1(i)(7), 141.41(e) (deleted on final-form), 141.61(a)(1)(xv) (deleted on final-form), 165.1(a), 165.31(b)(2), 165.31(c)(2), 165.61(a)(3) and (4). Requiring more than 20 hours of participation.

*Comment:* Commentators questioned whether individuals working at least 20-hours-per week must also participate in a work-related activity. At least one commentator suggested that the Department specify that these individuals are not required to participate in a work-related activity.

*Response:* Not all individuals working 20 hours-per-week will be required to participate in a work-related activity, but working at least 20 hours per week does not excuse an individual from participating in additional activities agreed to on the individual's AMR. The AMR is individualized to support the goal of moving the individual to self-sufficiency. For any individual, this may or may not include a work-related activity in addition to 20 hours per week of work. Many of the Department's employment and training programs consist of at least 20 hours per week of work plus 10 hours of work-related activity, for example, job training. When an individual agrees on an AMR to participate in a specific work-related activity, including a contracted program, that individual is required to continue the activity as set forth on the AMR, unless and until the AMR is revised. Of course, if the individual is exempt from RESET or demonstrates good cause for not complying with a work or work-related requirement stated on the AMR, that individual is not sanctioned.

§§ 165.2, 165.21(c)(2), 165.25(2) and 165.52(a)(3). Appropriate child care and reasonable distance.

*Comment:* Commentators requested that the Department revise §§ 165.21(c)(2) and 165.25(2) (relating to exemptions for RESET participation requirements; and

RESET participation requirements following an exemption) to allow an individual to be exempt from RESET participation requirements if appropriate child care is not available within a reasonable distance from the individual's home or work site. They claimed that the proposed regulation is inconsistent with 42 U.S.C.A. § 607(e)(2)(A), which prohibits a state from sanctioning an individual if appropriate child care within a reasonable distance from the individual's home or work site is unavailable. They also noted that 45 CFR 261.56(b)(2)(ii) (relating to what happens if a parent cannot obtain needed child care) requires that the Department define the terms "appropriate" and "reasonable distance."

*Response:* The Department agrees that an individual is not subject to sanction for failure to meet a work (or work-related activity) requirement where appropriate child care is not available within a reasonable distance from the individual's home or work site. The Department has amended § 165.52(a)(3) (relating to good cause) to specify that individuals may establish good cause in this situation. The Department disagrees with the suggestion that §§ 165.21(c)(2) and 165.25(2) should be revised. The provisions of 42 U.S.C.A. § 607(e)(2)(A) do not state that an individual unable to find appropriate child care within a reasonable distance from work or home is exempt from work requirements. It simply provides that an individual may not be sanctioned under these circumstances. Under revised § 165.52(c)(3), an individual may establish good cause for not participating in a specific activity or accepting a specific job when appropriate child care is not available within a reasonable distance from the individual's home, as defined in § 165.2. However, the individual is not exempt from work and work-related requirements. In addition, the Department has added definitions of "appropriate child care" and "reasonable distance" to § 165.2. These definitions are consistent with the definitions of "appropriate" and "reasonable distance" in the Pennsylvania State Plan for Child Care and Development Fund Services (10/1/01—9/30/03), Part 4.4.

#### § 165.22. Exemptions.

*Comment:* One commentator questioned why the Department deleted the provision that excused an individual from the verification requirement when it is "clear" that the individual is exempt. For example, the commentator questioned why a "clearly mentally ill" individual must verify his condition.

*Response:* The Department deleted this provision because section 405.1(a.3)(1) of the code requires verification by a physician or psychologist for exemptions based on physical or mental disability.

#### §§ 165.22(c) and 165.25. Notification and preparation time after an exemption ends.

*Comment:* Commentators suggested that the Department revise § 165.25 by reorganizing it and stating that a person whose exemption is ending will be notified in writing of that fact and given an adequate opportunity to locate and prepare for a work or work-related activity.

*Response:* The Department has revised § 165.22(c) (relating to verification of exemption) in lieu of § 165.25 by adding the following language: "The CAO will notify the exempt individual in writing when the period of exemption is due to end. The individual will be given an opportunity to provide new or additional verification to continue the exemption . . . The individual will be given the opportunity to prepare to comply with RESET participation requirements under § 165.31 (relating to RESET participation requirements)."

#### § 165.31. Special allowances.

*Comment:* One commentator commended the Department for the practice of supporting education and training by offering special allowances when a person engages in education and training, even if it is not a mandated work activity. However, commentators suggested that § 165.31 does not clearly state whether special allowances for supportive services are available for all RESET participants, including exempt individuals who volunteer to participate in education and training programs and those who pursue education in addition to other work activities. They suggested that the Department revise § 165.31 to reflect the Department's current practice to approve special allowances for those individuals. Also, commentators questioned whether the AMR will include a description of the individual's special allowances.

*Response:* To clarify who is eligible for special allowances for supportive services, the Department has amended § 165.41 (relating to eligibility for special allowances and supportive services) instead of § 165.31. Section 165.41(a) provides that a cash assistance or Food Stamp recipient may receive certain special allowances. Section 165.41(b) provides that for cash assistance recipients, eligibility for special allowances for supportive services depends on the following: 1) eligibility for cash assistance; 2) participation in RESET, unless exempt; and 3) having an approved AMR. Subsection (b) also provides that an individual seeking only Food Stamps must comply with an approved the Employment Development Plan (EDP) to qualify for a special allowance for supportive services. Subsection (c) has been clarified to provide that supportive services do not include transportation to secondary education (or an equivalent level of vocational or technical training), except for a pregnant female or custodial parent, whose circumstances require additional supports. Finally, subsection (d) clarifies that the CAO will inform the individual, in writing and orally, of the availability of special allowances at application, reapplication and whenever the AMR or EDP is developed or revised. With these revisions, § 165.41 clarifies that individuals who participate in employment and training activities, whether voluntary or mandatory, are eligible to receive special allowances for supportive services if they have an approved AMR reflecting these activities.

As to the question concerning whether the AMR will include a description of the individual's special allowances, the answer is yes. Section 405.3(a) of code provides that the AMR will include a description of the actions that the Department will take to support the individual's efforts, which includes enumeration of special allowances that will be provided to the individual. Also, in §§ 123.22 and 165.2, the definition of "AMR" specifies that the AMR "describes the services to be provided by the Department."

#### § 165.31(c)(1) (redesignated as § 165.31(b)(3)). Length of the initial job search.

*Comment:* Commentators asked the Department to revise the regulations by limiting the initial job search to 8 weeks for those who are not working at least 20 hours per week.

*Response:* The Department agrees that the initial job search is generally limited to 8 weeks, as § 165.31(b)(3) clearly specifies. However, the Department has not revised the regulations as requested. For the initial job search, an individual may choose to participate in a contractor-directed job search, which combines job search and classroom instruction in the necessary skills and preparation required to conduct a successful job search.

Following an initial 8 weeks of classroom instruction, the individual participates in 90 or 120 days of contractor-assisted job search and literacy remediation, if needed. In this case, the individual's AMR would reflect this more intensive and expansive job search.

*§ 165.31(c)(2) (redesignated as § 165.31(b)(4)). List of work-related activities.*

*Comment:* One commentator suggested that the Department revise § 165.31(c)(2) (redesignated as § 165.31(b)(4) in final-form rulemaking) to include the limitations in section 402 of the code (62 P. S. § 402) for work-related activities such as general education. For example, the commentator recommended that the Department revise this provision to include the statutory condition that an 18-22 year old must maintain satisfactory progress for general education to count as a work-related activity. The commentator also suggested that, for clarity, proposed paragraphs (2)—(4) (redesignated as paragraphs (4)—(6) on final-form rulemaking) should be consolidated into one paragraph.

*Response:* The Department agrees with the commentator's suggestion that the list of work-related activities in § 165.31 should include the limitations in section 402 of the code, and has revised the regulations accordingly. The Department also revised § 165.61 (regarding sanctions) to be consistent with the provisions of revised § 165.31. Finally, the Department did not consolidate proposed § 165.31(c)(2)—(4). In a subsequent discussion with the Department regarding this suggestion, the commentator agreed that consolidating these paragraphs would not improve clarity, and could have the opposite effect.

*§ 165.31(c), (c)(2), (c)(3), (d)(1) (e) (redesignated as § 165.31(b), (b)(4), (b)(5), (c)(1) and (d)) (e) (redesignated as (d)) and (f)(4) (deleted on final-form). "Approved" and prescribed work and work-related activities.*

*Comment:* Commentators questioned the use of the word "approved" in the foregoing provisions. They stated that the Domestic Relations Code does not use the word "approved." They questioned what authority the Department has to approve or prescribe work or work-related activities on the AMR. They also suggested that if "approved" refers to activities on the AMR, language should be added to the regulation to clearly state the activity must be in the individual's AMR. If not, they questioned what review process the Department envisions for these work activities and how a requirement that these activities be approved is consistent with the statute.

*Response:* The Department has authority under section 405 of the code (62 P. S. § 405) and sections 405.1(a.2)(4), 405.3(a) and 432.3(a)(ii) and (iii) of the code to prescribe appropriate work and work-related activities and additional measures that may be necessary for an individual to seek, accept and maintain employment, and may establish rules and standards for accomplishing these goals. For example, in accordance with section 432.3(a)(ii) and (iii) of the code, the Department is explicitly authorized to refer an individual to a work or work-related activity, and to prescribe the time and manner in which to apply for work. The Department also approves activities that an individual selects or initiates, to the extent that the activities are consistent with RESET requirements.

Approved activities are set forth in the AMR. The Department has revised § 125.1 by adding subsection (j) to specify that. Although the Department has left the words "approved" and "approval" intact in most of the regulations cited in the comment, it has deleted the word

"approved" in §§ 165.1(a) and 165.31(b)(2), where the use of the word "approved" was redundant. Because the AMR must be approved by the Department, it was redundant to refer to activities as being "approved" on the AMR.

*§ 165.31(c)(3), (c)(4), (d), (d)(2), (f) (redesignated as § 165.31(b)(5), (b)(6), (c), (c)(2) and (e)), (f)(4) and (f)(5) (deleted on final-form). Education and training.*

*Comment:* Commentators suggested that the Department incorporate the Department's current good cause policy regarding education and training in the regulations.

*Response:* The Department agrees with the commentators and has incorporated its good cause policy regarding education and training in the regulations. In addition, the Department has revised this policy to include individuals who have received less than 24 months of cash assistance. Rather than revising the sections suggested by the commentators, however, the Department has revised §§ 165.52 (regarding good cause), 165.31(b)(5) (regarding RESET participation requirements during the first 24 months of assistance) and 165.31(c)(2) (regarding requirements that apply after the first 24 months), the relevant provisions for this change.

*Comment:* Commentators requested that the Department clarify that an individual may continue to participate in education and training if he combines it with another work-related activity. They also suggested that the Department allow education and training to count as a work-related activity beyond 12 months in certain circumstances, for example, for disabled individuals or those with limited English proficiency (LEP).

*Response:* The Department has revised § 165.31(b)(5) and (c)(2) to clarify that an individual may continue education or training beyond 12 months, but not as a work-related activity. Under section 405.1(a.2)(5) of the code, education or training may count as a work-related activity for a maximum of 12 months. After 12 months of education or training, an individual may continue to pursue education and training, but shall also fulfill applicable RESET participation requirements, unless the individual establishes good cause under § 165.52.

Likewise, an individual who is disabled or has LEP may continue his education or training after 12 months, but it does not count as a work-related activity. However, a disabled individual may be exempt from or have good cause for not complying with RESET requirements, depending on the nature and extent of the disability. Similarly, an individual with LEP may establish good cause for not complying with RESET requirements, if the individual needs more time to overcome this barrier to self-sufficiency (for example, by completing an English-as-a-Second Language course).

*Comment:* Commentators suggested that the Department revise § 165.31(f) (redesignated as § 165.31(e) in this final-form rulemaking). They questioned the need for paragraphs (1)—(3), and suggested that paragraphs (4) and (5) be renumbered or deleted as unnecessary because they relate to requirements in other subsections.

*Response:* The Department agrees in part and has deleted paragraphs (1) and (3)—(5). However, the text of paragraph (2) will remain intact. This paragraph specifies that, for self-initiated training to count as a work-related activity, an individual must be making satisfactory progress, as defined by the institution. This condition is based on section 402 of the code, which applies the requirement specifically to general education for individuals 18-22 years of age. Although paragraph (2) is not



limited to general education, the Department has elected to leave this condition intact. Consistent with sections 405, 405.1, 405.3 and 432.3 of the code, the Department is clearly authorized to require individuals to pursue activities that promote self-sufficiency. Unsatisfactory performance in an educational or training program hinders this goal.

Paragraphs (4) and (5), which clarify that an individual may continue to pursue education after the period during which education can count as a work-related activity, were relocated. Paragraph (4), applicable in the first 24 months an individual receives assistance, was relocated to § 165.31(b)(5). Paragraph (5), applicable after 24 months, was relocated to § 165.31(c)(2).

Finally, because paragraph (3) is deleted from this subsection, the Department has revised § 165.41(c), although this revision was not proposed. This revision is consistent with the Department's policy that individuals pursuing secondary education or an equivalent level of vocational or technical training are ineligible for supportive services, except for pregnant females and custodial parents.

§§ 141.41(e) (deleted in final-form), 165.31(d) (redesignated as § 165.31(c)) and 165.51. Review of eligibility versus condition of eligibility.

*Comment:* Commentators suggested that section 405.1(a.2)(6) of the code requires that after 24 months of cash assistance, individuals not participating in one or more work activities for at least 20 hours per week are subject only to a review of eligibility. They advised that the minimum 20-hour work requirement should not be stated as a condition of eligibility.

*Response:* The Department agrees that after 24 months of cash assistance, section 405.1(a.2)(6) of the code requires a review of eligibility for noncompliance with the minimum 20-hour weekly work requirement. However, the Department does not agree that a review of eligibility is all that is required as suggested by the commentators. Section 165.31 is entirely consistent with section 405.1(a.2)(6) of the code, which provides that an individual who has received assistance for 24 months must participate for an average of at least 20 hours per week in one or more of the activities enumerated in that paragraph. Accordingly, the Department has not revised § 165.31 as requested. Although the minimum 20-hour per week work requirement is stated as a condition of eligibility, only those who willfully fail, without good cause, to comply with this condition of eligibility are subject to sanction.

§ 165.31(d)(1) (redesignated as § 165.31(c)(1)). Work study.

*Comment:* One commentator suggested that the Department add work study to the list of activities in § 165.31(d)(1) (redesignated as § 165.31(c)(1) in this final-form rulemaking). The commentator explained that this revision would codify the Department's current policy regarding work study.

*Response:* Because work study is an example of subsidized employment, which is already listed in § 165.31(c)(1) (as redesignated), the Department does not think it is necessary to revise § 165.31(c) as suggested.

§§ 165.31(d)(1) (redesignated as § 165.31(c)(1)) and 165.61(a)(10)(i) (redesignated as § 165.61(a)(9)(i)). Unsubsidized employment.

*Comment:* One commentator asked, "What is unsubsidized employment?"

*Response:* Unsubsidized employment is paid work for which no public or private entity subsidizes the wages.

§ 165.31(d)(2) (redesignated as § 165.31(c)(2)). Requirements that apply after 24 months.

*Comment:* One commentator suggested this paragraph should reference the sanctions and compliance review process.

*Response:* The Department agrees with the substance of the comment. Instead of locating the reference in subsection (c), it has been placed in subsection (a). Subsection (a) applies all the time, not just after 24 months.

§ 165.51. Compliance review.

*Comment:* Commentators questioned the change in § 165.51 from conciliation to compliance review, suggesting that the former conciliation process affords greater protection against sanctions than the compliance review process. They also claimed that the change does not reflect existing policy for conciliation and the changes proposed by the Department are not mandated by statute. One commentator also suggested that § 165.51 is inconsistent with the Department's "Community Connections" program.

Further, commentators suggested that the regulations should clearly state that caseworkers will provide sufficient notice of the review and schedule it at a mutually agreeable time, in person or by phone, and document the session. One commentator questioned what would happen if the individual has a conflict with the time chosen for the compliance review. The commentator also questioned how much notice must be given to the individual in advance of the compliance review. Finally, commentators recommended that the Department add cross references to Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) and § 165.52.

*Response:* The compliance review process replaces the existing conciliation process. The Department has substantially revised § 165.51. In doing so, the Department has adopted many of the commentators' suggestions and has responded to their questions. For example, § 165.51 now includes the commentators' requested cross references to § 165.52 and § 275.1 (relating to policy) and specifies that the caseworker will inform the individual of the need for a compliance review. Although the regulation does not specify a time frame for providing advance notice, this concern is addressed. Revised § 165.51 provides that in scheduling the compliance review, the caseworker will reasonably take into account the individual's work schedule, family and school obligations. In addition, the review may be conducted by telephone or in person, according to the individual's preference. The regulation now specifies that the caseworker will review the facts, including those presented by the individual and those facts already known to the Department and document the results of the review.

Moreover, revised § 165.51 contains a special provision for individuals with disabilities. This provision states that the caseworker will consider an individual's disability during the compliance review period. This provision also states that if the individual did not comply with RESET participation requirements due to disability, no sanction is imposed.

As revised, § 165.51 underscores that the goal of RESET is to assist the individual in becoming employable and self-sufficient. Section 165.51 now illustrates that at each stage of the compliance review, the individual is an important participant. The compliance review is a multi-



step process that provides an opportunity for the individual and caseworker to engage in a dialogue, together seeking to determine whether and why the recipient did not meet RESET participation requirements, and to address any obstacles to compliance.

Section 165.51 is also consistent with the Department's "Community Connections" outreach program. The purpose of Community Connections is simply to remind individuals of program opportunities and requirements. Community Connections does not obviate the compliance review process; it supplements it. While the components of the compliance review process are not specifically mandated by statute, the compliance review process is necessary to effectuate compliance with RESET provisions.

*§ 165.52. Good cause.*

*Comment:* One commentator requested that the Department revise § 165.52 to include as good cause for not meeting RESET participation requirements certain characteristics that were exemptions under the AFDC program. The commentator specifically referred to former exemptions for individuals 60 years of age or older, caretakers for an incapacitated child or adult in the household, individuals in treatment for a drug or alcohol addiction and pregnant women.

*Response:* The Department has decided not to change § 165.52 as requested. The characteristics cited by the commentator do not form the basis for exemptions from RESET under section 405.1(a.3) of the code, but can be bases for good cause for not participating in a RESET activity. Good cause is determined by individual circumstances and their relationship to a specific RESET activity. In light of that, § 165.52 appropriately does not enumerate every circumstance, status or event that may constitute good cause. The characteristics cited by the commentator may constitute good cause under § 165.52. For example, an individual who is the caretaker for an incapacitated adult or child is not exempt from RESET but can establish good cause for not participating in a specific RESET activity under § 165.52(a)(3) if appropriate care for that adult or child is not available. Likewise, an individual who cannot participate in a specific activity because of reasons related to age or pregnancy can establish good cause under § 165.52(a)(1). Simply being in a treatment program for drug or alcohol addiction does not excuse (through exemption or good cause) participation in RESET, but if the treatment program conflicts with a RESET activity, the individual may have good cause for not participating in the conflicting RESET activity.

*§ 165.61(a). Grounds for sanction.*

*Comment:* The commentator objected to the list of sanctions in § 165.61(a), and maintained that there are only three grounds for sanction under section 432.3(a) of the code. The commentator specifically objected to the provisions in subsection (a)(6), which state that a sanction may be imposed where the individual fails to "maximize employment." Objection was also made to subsection (a)(12) (redesignated as subsection (a)(11)), which provides that sanction may be authorized where the individual "fails to apply for work at the time and in the manner the Department may prescribe." The commentator submitted that the Department lacks statutory authority for this requirement.

The commentator also objected to the fact that statutory protections such as only permitting a sanction for failure to work only when the recipient is "able to engage" in the assigned work, as required by section 432.3(a)(iii)

of the code, were not included. Additionally, the commentator objected to § 165.61(a)(9) (redesignated as subsection (a)(8)), which calls for a sanction when an individual "fails to participate in one of the following work activities during the first 24 months" without any requirement that the person be referred to a program. By doing so, it is suggested that the Department has circumvented the consultative process in section 405.1(a.2), (4) and (5) of the code.

*Response:* First, with regard to the commentator's objection that the Department lacks statutory authority to impose sanctions beyond the three sanctions listed in section 432.3(a) of the code, the Department disagrees. The Department's list is based upon not only section 432.3 of the code, but section 405.1 of the code as well. In addition, sections 405, 405.3(f)(1) and (4) of the code, together with sections 405.1 and 432.3 of the code authorize the Department to establish rules regarding grounds for sanction for noncompliance with RESET participation requirements, including requirements specified on an individual's AMR. Nevertheless, as a result of the Department's deletion of the term "maximize employment" from other sections of the regulation as noted elsewhere in this Preamble, the Department has deleted failure to "maximize employment" as a basis for sanction.

Although the Department deleted failure to maximize employment from § 165.61(a)(6), it revised subsection (a)(4) with language that parallels section 432.3(a)(iii) of the code, the statutory basis of the deleted phrase. As noted earlier, this revision does not reflect a new interpretation of what the statute requires an individual to do regarding employment. An individual is nonetheless required to maximize employment, above minimum requirements, to the extent that he is reasonably able to do so. Willful failure to do so, without good cause, is a basis for sanction under revised § 165.61(a)(4). Revised subsection (a)(4) also addresses the commentator's concern that a sanction should not be imposed unless the individual is "able to engage" in the work. As subsection (a)(4) now provides, a sanction will be imposed on an individual who willfully, and without good cause, fails to accept referral to, work in or retain employment in which the individual is able to engage. As to the objection to subsection (a)(11), the specific statutory authority for that requirement is found in section 432.3(ii) of the code.

As to the commentator's concern that there has been a short circuit of the consultative process by not clearly specifying that the individual must be referred to the work activity prior to authorizing imposition of the sanction in subsection (a)(8), the Department disagrees. The Department maintains that the consultative process is ongoing. It begins at the application and when a RESET exemption ends and continues if the initial job search does not result in employment. In addition, there is consultation at each redetermination, and as necessary, the AMR is revised. During the first 24 months, this consultation includes the caseworker providing information on and referral to specific work-related activities.

Before a sanction is imposed, the individual has an opportunity to participate in an interactive compliance review, as specified in § 165.51. During the compliance review, the individual may provide information regarding apparent noncompliance with any RESET requirements, including referral to work-related activities.

*§ 165.61(d). Monetary sanction in lieu of the durational sanction.*

*Comment:* Commentators requested that the Department revise § 165.61(d) by providing for a monetary

sanction in lieu of the durational sanction for individuals who reduce earnings after 24 months of cash assistance. They asked the Department to delete the phrase "during the first 24 months that assistance is received."

*Response:* Under section 432.3(b) of the code, the Department may either reduce the cash grant or apply a durational sanction, or both, for voluntary reduction of earnings by not fulfilling the minimum 20 hour per week work requirement. The Department has elected to apply the durational sanction after the first 24 months to comport with the heightened work-hour requirements for individuals who have received 24 months of cash assistance. The Department has retained the proposed policy reducing the assistance grant in lieu of the durational sanction in the first 24 months.

*§ 165.71(a) and (b). Notification.*

*Comment:* Commentators commended the Department for providing a reminder to individuals under sanction that the sanction is ending. Commentators suggested that the Department revise § 165.71 (relating to notification) by stating that the CAO will send notice to an individual when the minimum durational sanction is ending. One commentator suggested that the Department specify that the caseworker will notify the individual 5 days before the minimum durational period ends.

*Response:* The Department has revised § 165.71(b). The Department will send a written reminder 10 days prior to the end of the minimum sanction period. The Department concluded that 5 days was too short a period of time to provide a meaningful reminder.

*§§ 123.22 and 141.41(e) (deleted on final-form), 141.41(f) (redesignated as § 141.41(d)), 165.1(a), 165.2, 165.22, 165.31, 165.51, 165.52 and 281.3(a)(3). Compliance with the Americans with Disabilities Act (ADA).*

*Comment:* Commentators suggested that the regulations do not comport with ADA requirements in five categories: assessments, verification of work exemptions for individuals who are "clearly exempt," the 12-month limitation on education and training, the compliance review and 60-month TANF time limit. Specifically, commentators claimed that the regulations do not comport with the ADA as follows: 1) they do not provide for assessments; 2) they should provide that individuals who are "clearly exempt" should not be required to verify that they are exempt from work requirements; 3) they should modify the 12-month limitation on education as a work activity for disabled individuals who need more time to obtain the full value of an educational program; 4) regarding the compliance review process, they afford less protection against sanctions for disabled individuals than the former conciliation process; and 5) they should modify the 60-month TANF time limit for disabled individuals who may need more time to become self-sufficient.

*Response:*

*§§ 123.22, 141.41(e) (deleted on final-form), 165.1(a), 165.2 and 165.31. Assessments.*

The Department has addressed the concern that the regulations do not provide for assessments by adding a definition of AMR in § 123.22 and revising the definition in § 165.2 to reflect the fact that an AMR is based on an assessment of an individual's skills and abilities. The Department has also revised § 165.1(a) to specify that an individual's ability to meet RESET participation requirements will be assessed after consultation with the recipient. Although one commentator cited proposed § 141.41(e) (deleted on final-form rulemaking) and

§ 165.31 as the relevant sections for assessments, the Department does not agree. Section 165.31 involves only RESET participation requirements.

As previously explained, the assessment process is ongoing, occurring at numerous stages, for different purposes and in various contexts. As also previously noted, the Department does not specify details of the ongoing assessment process in the regulations. The primary reason for not regulating assessments beyond the scope of the AMR is that the nature and extent of additional assessments depend on an individual's circumstances and needs. One purpose of the assessment process is to identify obstacles, including disabilities, that may hinder self-sufficiency. Another purpose of the assessment process is to identify strengths and abilities that may facilitate self-sufficiency.

*§ 165.22. Verification for "clearly exempt."*

The Department does not agree that the regulations should be revised to excuse "clearly exempt" disabled individuals from verification requirements in § 165.21(c)(1). For individuals seeking an exemption on the basis of disability, a physician or psychologist must verify two things: 1) that the disability exists; and 2) that the disability precludes the individual from any form of employment or work-related activity. See section 405.1(a.3)(1) of the code. The requirement of physician or psychologist verification protects disabled individuals from the erroneous judgments of nonexperts. Section 165.22(a) provides further protection for disabled individuals as follows: "The CAO may assist an individual in obtaining verification when help is needed." This subsection clearly benefits disabled individuals and others who may need help in obtaining acceptable verification for an exemption. The Department submits that § 165.22 comports with ADA requirements.

*§ 165.31(c)(3) (redesignated as § 165.31(b)(5)). Twelve-month limitation on education and training as a work-related activity.*

The 12-month limitation on counting education and training as meeting the RESET participation requirement is mandated by statute. See section 405.1(a.2)(5) of the code. The Department has revised § 165.52 to reflect current good cause policy regarding education and training. The Department submits that this revision for education and training affords sufficient ADA protection for disabled individuals pursuing education and training activities, by providing additional time to continue those activities.

*§ 165.51. Compliance review.*

The Department does not agree that the compliance review process in § 165.51 affords less protection against sanctions for disabled individuals than the former conciliation process. As previously noted, the Department has made numerous revisions to § 165.51, including the addition of cross references to §§ 165.52 and 275.1. One significant revision is the addition of subsection (e), a special provision for disabled individuals. Subsection (e) specifies that if a caseworker knows that an individual has a disability, the caseworker considers this fact, as well as those presented by the individual. If the facts reveal that the individual did not comply with RESET participation requirements due to disability, no sanction is imposed. In that instance, the caseworker will develop a new AMR to address the disability, and, if applicable, other obstacles to self-sufficiency.

The compliance review offers individuals sufficient notice and opportunity to be heard, including due process

and ADA protections. The caseworker will be flexible in scheduling the compliance review, considering the individual's work, school and family obligations and accommodating a request for a telephone or in-person session, as revised § 165.51(b) provides.

§ 141.41(f) (redesignated as § 141.41(d)). *Modification to the 60-month TANF time limit.*

As previously explained, the Department has revised § 141.41(d) to reflect the Department's authority to provide TANF assistance that does not count toward or extends beyond the 60-month TANF time limit. Under this revision, the Department's decision to offer assistance that does not count toward or extends beyond the 60-month limit in part reflects a commitment to further strengthen efforts to help individuals with disabilities overcome obstacles to self-sufficiency.

First, Time-Out benefits, available under Chapter 281, do not count toward the 60-month limit. An individual who is exempt from participation in RESET because of a physical or mental disability that precludes employment is eligible to receive Time-Out under § 281.3(a)(3) (relating to eligibility requirements) if the individual voluntarily participates in MPP. MPP helps individuals address medical conditions, functional limitations or good cause situations that are barriers to self-sufficiency. Second, the Extended TANF program provides assistance beyond 60 months for an individual with a disability or other barrier to self-sufficiency. Extended TANF requires participation in MPP for these individuals.

*Good cause for not cooperating in obtaining support or establishing paternity § 187.25(a) and (b). Oral notification of right to claim good cause.*

*Comment:* Commentators requested that the Department revise § 187.25(a) (relating to notification to the applicant or recipient) to include detailed oral notification of an individual's right to claim good cause for not cooperating in obtaining support or establishing paternity.

*Response:* The Department concurs, and has revised this section (and § 187.25(b)) accordingly.

§ 187.27(b) and (c). *Proof of good cause—use of the terms “corroboration” and “corroborative evidence.”*

*Comment:* Commentators suggested that the Department replace “corroboration” and “corroborative evidence” with “verification.”

*Response:* The Department concurs, and has revised § 187.27(b) and (c) (relating to waiver of cooperation for good cause) as requested. In addition, the Department has replaced “corroborated” with “verified.”

§ 187.27(b)(1)(iv). *Verification of good cause—medical records.*

*Comment:* Commentators suggested that § 187.27(b)(1)(iv) contains burdensome verification requirements and does not comport with other verification requirements for victims of domestic violence. They suggested that the Department delete this subparagraph.

*Response:* The Department has considered this comment and does not agree that verification requirements in this subparagraph are burdensome. This subparagraph is simply permissive; a victim of domestic violence is not required to produce medical records to verify her claim. Section 187.27(b)(1)(iv) applies to an individual who wishes to use medical records to verify a good cause claim, whether she is claiming good cause as a victim of domestic violence, incest or rape. Therefore, this provision

is not inconsistent with other verification requirements for victims of domestic violence.

§ 187.27(b)(1)(v). *Scope of good cause circumstances.*

*Comment:* Commentators suggested that § 187.27(b)(1)(v) does not recite the full scope of good cause circumstances set forth in § 187.27(a)(4) (relocated to § 187.22 (relating to definitions) in this final-form rulemaking). They also asked the Department to delete the phrase “indicate that the putative father, noncustodial parent or absent spouse might inflict harm on the individual or family member as specified under subsection (a)(4)” from § 187.27(b)(1)(v), and replace it with “verify domestic violence as defined at subsection (a)(4).”

*Response:* The Department does not agree that § 187.27(b)(1)(v) should recite examples of good cause. This provision involves only verification of good cause. However, the Department has revised this provision by replacing the quoted language as suggested, and cross referencing § 187.22, the relevant provision.

§ 187.27(b)(1)(vi) and (2). *Prohibition on contacting abuser.*

*Comment:* Commentators suggested that the Department relocate the following sentence in § 187.27(b)(1)(vi): “The CAO may not contact the putative father or noncustodial parent to verify good cause in a domestic violence situation.” They suggested moving the sentence to § 187.27(b)(2), which describes the CAO's role in assisting with verification.

*Response:* The Department concurs, and has moved this sentence to § 187.27(b)(2). In addition, the Department has revised the sentence as follows: “The CAO may not contact the putative father or noncustodial parent to verify good cause based on a claim of domestic violence.”

§ 187.27(b)(1)(vii). *Person completing good cause waiver form.*

*Comment:* Commentators suggested that the Department revise § 187.27(b)(1)(vii) to clarify that the CAO will complete the *Verification of Good Cause Based on Domestic Violence Form* with the individual.

*Response:* The Department concurs, and has revised this section as recommended.

§§ 187.27(c)(3) and 187.23(d)(4). *Expiration of waivers.*

*Comment:* Commentators suggested that the Department revise § 187.23(d)(4) (relating to requirements) and § 187.27(c)(3) to specify that a good cause waiver may last as long as necessary, subject to a review every 6 months. They questioned the wisdom of establishing an expiration date for a good cause waiver.

*Response:* The Department concurs and has deleted reference to expiration of the waiver in § 187.27(c)(3), and in § 187.23(d)(4) the Department clarified that the good cause waiver may last as long as the good cause exists.

§ 187.27(c)(4). *Review of good cause.*

*Comment:* Commentators suggested that the Department revise § 187.27(c)(4) to clarify that a good cause waiver will not be reviewed more often than every 6 months. They recommended that the Department delete the last sentence in § 187.27(c)(4), which specifies that the review may be earlier if the circumstances warranting good cause change or the CAO granted the good cause waiver for a shorter period.

*Response:* The Department has revised this section as recommended. However, this revision does not preclude

the Department from reviewing the good cause waiver before the usual 6-month review period. For example, if the CAO authorizes assistance for a mother and her children in February, but she receives a good cause waiver in May, the CAO would likely review good cause at her regular redetermination in August. Thereafter, the CAO would review good cause every 6 months, at each redetermination.

*§ 187.27(c)(4)(i). Verification requirements after initial good cause waiver.*

*Comment:* Commentators suggested that § 187.27(c)(4)(i) is unduly burdensome for victims of domestic violence. They suggested that an individual with a good cause waiver based on documentation or third-party statements should not be required to submit additional verification for future waivers, if her circumstances have not changed. They requested that the Department revise the provision by deleting the requirement that these individuals submit a *Verification of Good Cause Based on Domestic Violence Form* completed by a person trained in domestic violence.

*Response:* The Department concurs, and has revised this section as recommended.

*§§ 187.23(b)(1)(i), 187.27(b)(1)(vii)(B), (C), (3) and (c)(4)(ii). Miscellaneous Chapter 187 revisions.*

*Comment:* Two commentators submitted an attachment to their written comments consisting of suggested minor edits to the sections noted previously.

*Response:* The Department has revised all but one of these sections as suggested. The Department does not agree that the phrase "without good cause" should be inserted after the phrase "minor child" in § 187.23(b)(1)(i) (regarding identifying the father of an unemancipated minor). Section 187.23(b)(1)(i) simply follows section 4379(2)(ii) of the Domestic Relations Code (relating to cooperation required), which states that failure of the mother to identify the child's father shall create a presumption of noncooperation. As section 4379(2)(ii) of the Domestic Relations Code illustrates, the General Assembly did not intend to obviate this presumption with a showing of good cause. Rather, under section 4380(b)(2) of the Domestic Relations Code (relating to enforcement of cooperation requirements), if the mother does not rebut this presumption, good cause excuses her noncooperation. However, the Department agrees that because it elected the FVO, in cases involving domestic violence, the cooperation requirement is altogether waived. In these cases, the CAO need not determine if the mother cooperated with this requirement.

*Other comments*

*§ 153.44. Eligibility for TANF/Deprivation requirements.*

*Comment:* Commentators requested that the Department revise § 153.44 (relating to procedures) by deleting rules regarding deprivation and two-parent families. They claimed that this policy is an unnecessary artifact of the former AFDC program, and disadvantages two-parent families. They suggested that the Department revise the regulations to provide that two-parent families will be evaluated for eligibility based on the same criteria as other families: income and willingness to meet RESET participation requirements, without regard to the number of hours worked.

*Response:* The Department has revised § 153.44 to eliminate several rules affecting the eligibility of two-parent families. Those rules originated in the AFDC program. These changes were implemented by a NORC

published at 30 Pa.B. 2956 (June 10, 2000). The requirement in § 153.44(d)(1)(i) that the parent be unemployed at least 30 days before eligibility begins was deleted. The definition of unemployment in § 153.44(d)(1)(ii) was revised by deleting the reference to part-time work. The change permits an otherwise eligible family to qualify without regard to the number of hours worked. The Department has also deleted § 153.44(d)(1)(iii) which defined part-time employment as work of less than 100 hours a month.

The Department has not eliminated the remaining rules regarding deprivation and two-parent families. As announced in its first TANF State Plan, the Commonwealth has retained rules from the AFDC program except for the changes outline in the State Plan.

The Department will consider the commentator's suggestion to eliminate all deprivation requirements for future rulemaking. The deprivation requirement limits TANF to families in which a child is deprived of the care and support of at least one parent due to absence, disability or unemployment. A thorough analysis of the fiscal impact would be necessary before eliminating this requirement.

*§§ 141.41(c), 141.61(c), 181.251, 183.71 and 183.105(4)(iii). Gross income test for applicants.*

*Comment:* Commentators requested that the Department eliminate the gross income test for applicants in § 183.71.

*Response:* The Department concurs, and has deleted § 183.71. Additionally, the Department revised §§ 141.41(c), 141.61(c), 181.251 and 183.105(4)(iii) to be consistent with elimination of the gross income test for both applicants and recipients.

*§ 187.22. Definition of "budget group."*

*Comment:* Commentators suggested that the Department revise the definition of "budget group" in § 187.22. They disputed that all siblings should be included in the budget group, including children for whom support or other income is paid. They noted that the Federal mandatory budget group requirement was eliminated when AFDC was repealed in 1996. One commentator questioned whether this definition discourages support from a noncustodial parent if that support must be included in the budget group income in determining eligibility.

*Response:* The Department does not agree that the definition of budget group should be revised as suggested. As the Department explained in its initial TANF State Plan, published at 27 Pa.B. 342 (January 18, 1997), many of the rules and procedures under which the Department administered the former AFDC program will remain in effect under the new TANF program. This includes the definition of "budget group" in §§ 141.42 and 187.22 and the policy for grant groups and filing units in § 171.21.

The Department's rationale for leaving the definition of "budget group" intact is premised on the explicit legislative purpose of public assistance: to enable needy individuals who lack sufficient means of support to become self-sufficient. See sections 401, 405.1, 432 and 432.12 of the code. Mindful of the need to allocate finite social welfare resources to the most needy, the Department requires individuals to first turn to other sources of income and resources before resorting to public assistance. To ensure that scarce public funds are preserved for the most needy, other financial sources are considered in determining a family's actual need for government ben-

efits. Other financial sources include income, such as support, attributed to a sibling residing with a recipient child.

Finally, the Department does not agree with the commentator's suggestion that noncustodial parents may be inclined to withhold support if the regulation is not revised as requested. Pennsylvania law plainly requires parents to support their minor dependent children. See section 4321 of the Domestic Relations Code (relating to liability for support). The Department's definition of "budget group" does not affect this obligation.

*§ 187.23(b)(6) and (c)(6). Assignment of support.*

*Comment:* Commentators suggested that the Department revise § 187.23(b)(6) and (c)(6) to state that support received or anticipated to be received directly from the payor after assignment of support is not always required to be paid to the Department. They explained that in the initial month of application for TANF, any support received or anticipated to be received is counted in determining the amount of assistance, subject to a \$50 disregard.

*Response:* The Department does not agree that § 187.23(b)(6) and (c)(6) should be revised as requested. However, the Department has revised § 183.32 to reflect the revised procedures for handling support payments received in the initial month of assistance.

With the conversion of the computer systems of the county domestic relations sections to the Statewide automated child support system of the Pennsylvania Child Support Enforcement System, assignment of support to the Department is immediate upon authorization of assistance. Prior to authorization, support paid to an applicant is not assigned to the Department, but is counted in determining the amount of assistance for the initial month. Because assignment is immediate upon authorization, any support received after this time must be reimbursed to the Department, as section 4379(2)(i)(F) of the Domestic Relations Code specifically mandates. Section 187.23(b)(6) and (c)(6) simply follows section 4379(2)(i)(F) of the Domestic Relations Code. The Department does not intend to deviate from this statute.

*Additional Revisions*

The following is a discussion of additional revisions to Annex A which the Department made as a result of its own internal review in preparation for final-form rule-making:

1. *Section 105.4(c)(2).* The Department deleted as unnecessary the reference to the code.

2. *Section 125.1 and § 133.23 (relating to requirements).* From these sections, the Department deleted the description of the AMR. However, as explained in the Preamble discussion of assessments, the Department added a definition of "AMR" in § 123.22 and revised § 165.2. In addition, the Department deleted provisions in § 133.23 that reiterated parallel provisions in § 125.1. The deleted provisions recited various obligations and responsibilities specified on an AMR. Because § 125.1 contains a list of these obligations and responsibilities, revised to closely track section 405.3 of code, the Department amended § 133.23 to specify that an individual must comply with these in accordance with § 125.1. Section 125.1 is revised to clarify the consequences of noncompliance, without good cause, with various AMR requirements. Section 133.23 is also revised to cross-reference § 125.1 for the penalties of failing, without good cause, to sign or comply with the AMR. Further, § 133.23

is revised to specify that the worker and individual will review and assess the individual's progress in achieving self-sufficiency and compliance with the AMR and modify the AMR as necessary. To make these revisions, these chapters required technical edits, including reorganization and redesignation.

3. *Sections 140.41, 140.65, 177.21, 178.161, 181.262, 181.287, 183.38 and 183.81.* The Department revised §§ 140.41, 177.21, 178.161, 181.262 and 183.81 for consistency with the TANF State Plans published at 27 Pa.B. 342 and 29 Pa.B. 5658 (October 30, 1999). As revised, these regulations provide that educational assistance in the form of loans, grants and scholarships and work study income are not counted as income or resources in determining eligibility for cash assistance and TANF- and GA-related Medicaid. In addition, the Department deleted §§ 140.65, 181.287 and 183.38 as duplicative.

4. *Section 141.41(f) (redesignated as (d)).* The Department has further revised § 141.41(d) by adding the phrase "head of household or spouse of head of household" after the word "adult" to specify that the 60-month time limit is based on TANF assistance these adults receive. This revision is consistent with 45 CFR 264.1(a)(1) (relating to what restrictions apply to the length of time Federal TANF assistance may be provided). Although this phrase does not appear in 42 U.S.C.A. § 608(a)(7)(A), PRWORA's legislative history supports this revision. See House Conference Report No. 104-725, page 288. The House Conference Report states that "[w]hen considering an individual's length of stay on welfare, states are to count only time during which the individual received assistance as the head of household or spouse of the household head."

5. *Sections 141.41(e) and 141.61(a)(1)(xv).* The Department deleted these provisions as duplicative.

6. *Sections 153.42 and 187.22.* The Department has revised the definition of "cash assistance allowance" in these sections to follow the definition in § 141.42.

7. *Section 153.44(b)(2)(i)(C).* The Department has deleted the reference to *Form PA 162-A, Advance Notice*, because this provision applies to both applicants and recipients. Applicants are sent *Form PA-162, Notice to Applicant*. *Form PA 162-A* is sent only to recipients.

8. *Sections 153.44(d)(1)(i)(E), 165.1(a), 165.2, 165.21, 165.21(c), 165.22(b)(2), 165.25, 165.31(a)(1), 165.31(f) and 165.52(a)(15).* The Department has deleted the words "enroll" and "enrollment" and replaced them with the words "participate" and "participation."

9. *Section 165.2—EDP.* Although the Department proposed to delete "EDP—Employment Development Plan," the final-form rulemaking includes it, with a revised definition. The term is now obsolete for cash assistance, but is relevant for Food Stamp recipients. The EDP outlines a Food Stamp recipient's work activities, employment goals and services provided by the Department.

10. *Section 165.2—Noncompliance.* The Department has revised the definition of "noncompliance" by deleting the words "willful" and "without good cause." Noncompliance is not necessarily willful and without good cause.

11. *Section 165.31(c)(4) (redesignated as § 165.31(b)(6)).* The Department has revised this provision to clarify that an individual under this paragraph may satisfy RESET participation requirements by pursuing a high school diploma or its equivalent, provided that the individual maintains satisfactory progress.

12. *Sections 165.1(c), 165.31(b)(7) and (8) and (c)(3).* The Department, under the authority of section 405.3(d) of the code, has added subsection (c) to § 165.1 to clarify that the Department has discretion to provide employment, education, training, work-related activities or work experience programs to applicants or recipients. However, the Department has made clear that nothing in this final-form rulemaking shall be interpreted as requiring the Department to develop or to offer or to continue to offer employment, education, training, work-related activities or work experience programs. Also, the Department added provisions to codify its interpretation of the 6-month limitation for work experience in section 402 of the code. Section 165.31(b)(7), (b)(8) and (c)(3) clarify that an individual may participate in work experience for 6 cumulative months in the individual's lifetime. Because the months are cumulative, if the individual participates in work experience for less than 6 months, he may use the balance of that 6-month period at a later time. The regulations do not preclude an individual who has exhausted his 6-month lifetime limit from engaging in a different type of RESET activity, including subsidized employment. The Department will modify the limit for individuals to comply with ADA requirements, as the regulations now specify.

13. *Sections 165.31(d) and 165.41.* The Department has revised § 165.31(d) to clarify that final approval of a Food Stamp recipient's EDP rests with the Department and revised § 165.41 to provide that Food Stamp recipients may receive special allowances for supportive services.

14. *Section 165.52(a)(3).* For consistency, the Department has revised § 165.52(a)(3) to specify that "appropriate care within a reasonable distance from the individual's home" also applies to adult care for an incapacitated adult.

15. *Section 165.52(a)(9).* The Department has deleted § 165.52(a)(9) as unnecessary and duplicative because revised § 165.52(a)(3) sufficiently addresses this situation.

16. *Section 165.52(a)(16).* The Department has deleted this provision as inconsistent with sections 405.1 and 432.3 of the code.

17. *Section 165.61(a)(8) (redesignated as § 165.61(a)(7)).* The Department has revised § 165.61(a)(7) by deleting the phrase "after having received cash assistance for 24 months or more." With this revision, § 165.61(a) clarifies that individuals who have received less than 24 months of cash assistance are also subject to sanction for reducing earnings.

18. *Section 187.27(a)(4).* The Department has moved the definition of "domestic violence" to § 187.22 (relating to definitions).

19. *Chapters 105, 123, 125, 133, 140, 141, 151, 153, 165, 178, 181, 183 and 187.* The Department has made minor technical revisions to these chapters. For example, the acronym "AFDC" is replaced with the acronym "TANF" and "client" or "clients" and "person" or "persons" are replaced with "individual" or "individuals." In addition, "will" replaces "shall" in provisions where the Department will act; "shall" replaces "will" in provisions where others have a duty to act.

#### *Fiscal Impact*

*Commonwealth.* The estimated savings to the Commonwealth for Federal Fiscal Year (FFY) 2001 and thereafter

is \$204.363 million. The estimated costs to the Commonwealth for FFY 2001 are \$86.778 million and thereafter \$83.740 million.

*Public sector.* There will be no costs or savings incurred by the public sector.

*Private sector.* There will be no costs or savings incurred by the private sector.

#### *Effective Date*

The following amendments shall take effect upon publication in the *Pennsylvania Bulletin* for §§ 123.22, 133.23(a)(1)(i)(A), 140.41, 140.65, 141.21(e), 141.41(c), 141.41(d), 141.61(c), 153.44(b)(2)(i)(C), 165.2, 165.22, 165.31(b), (c) and (e), 165.41, 165.51, 165.52(a)(3), (c) and (d), 165.71(b), 177.21, 178.161, 181.251, 181.262, 181.287, 183.32, 183.38, 183.71, 183.81, 183.105(4)(iii), 187.25(a), 187.25(a)(3), 187.25(b), 187.26(c)(1)(i) and (iii), 187.26(c)(2)(i) and (iii), 187.26(d)(1)(i) and (iii) and Chapter 281. The following amendments will be effective retroactive to March 3, 1997, for §§ 105.1, 105.3, 105.4, 125.1, 133.23, 140.53, 140.81, 141.1, 141.21, 141.41, 141.42, 141.61, 141.71, 145.43, 151.42, 151.43, 153.42, 153.43, 153.44, 165.1, 165.11, 165.21, 165.25, 165.31, 165.52, 165.61, 165.71, 177.22, 177.24, 178.11, 178.12, 178.151, 178.165, 181.41, 181.42, 181.263, 181.273, 181.311, 183.23, 183.94, 183.96, 183.97, 187.21, 187.22, 187.23, 187.24, 187.25 and 187.26. Section 183.81(29) will be effective retroactive to October 1, 1998. Section 153.44(d)(1)(i)(B), (ii) and (iii), the definition of "domestic violence" contained in § 187.22 and § 187.27 will be effective retroactive to July 3, 2000.

#### *Sunset Date*

Except for Chapter 281, there is no sunset date. Chapter 281 contains a sunset date of July 1, 2004. The regulations will be changed in accordance with changes in State and Federal law.

#### *Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 8, 2002, the Department submitted a copy of this final-form rulemaking to IRRC and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare.

Under section 5(c) of the Regulatory Review Act, the Department provided IRRC and the Committees with copies of all comments received during the public comment period. The Department has also provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request. In preparing the final-form rulemaking, the Department has considered all comments received from the public, IRRC and the Committees.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on July 29, 2002, this final-form rulemaking was deemed approved by the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 8, 2002, and approved this final-form rulemaking.

*Findings*

The Department 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking is necessary and appropriate for the administration of the act.

*Order*

The Department, acting under the act, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 105, 123, 125, 133, 140, 141, 145, 151, 153, 165, 177, 178, 181, 183 and 187, are amended by amending §§ 105.1, 105.3, 105.4, 123.22, 125.1, 133.23, 140.41, 140.81, 141.1, 141.21, 141.41, 141.42, 141.61, 141.71, 145.43, 151.42, 151.43, 153.42, 153.43, 153.44, 165.1, 165.2, 165.21, 165.31, 165.41, 165.51, 165.52, 165.61, 165.71, 177.21, 177.22, 177.24, 178.11, 178.12, 178.151, 178.161, 178.165, 181.41, 181.42, 181.262, 181.263, 181.311, 183.32, 183.81, 183.94, 183.97, 183.105, 187.21, 187.22 and 187.23; by adding §§ 165.22, 165.25, 187.25—187.27 and 281.1—281.5; and by deleting §§ 140.53, 140.65, 165.11, 181.251, 181.273, 181.287, 183.23, 183.38, 183.71, 183.96 and 187.24 to read as set forth in Annex A.

(b) The Secretary of the Department has submitted this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law. The Office of General Counsel and the Office of the Attorney General have approved this order and Annex A as to legality and form.

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

(d) The order for the following amendments shall take effect upon publication in the *Pennsylvania Bulletin* for §§ 123.22, 133.23(a)(1)(i)(A), 140.41, 140.65, 141.21(e), 141.41(c), 141.41(d), 141.61(c), 153.44(b)(2)(i)(C), 165.2, 165.22, 165.31(b), (c) and (e), 165.41, 165.51, 165.52(a)(3), (c) and (d), 165.71(b), 177.21, 178.161, 181.251, 181.262, 181.287, 183.32, 183.38, 183.71, 183.81, 183.105(4)(iii), 187.25(a), 187.25(a)(3), 187.25(b), 187.26(c)(1)(i) and (iii), 187.26(c)(2)(i) and (iii), 187.26(d)(1)(i) and (iii) and Chapter 281. The following amendments will be effective retroactive to March 3, 1997, for §§ 105.1, 105.3, 105.4, 125.1, 133.23, 140.53, 140.81, 141.1, 141.21, 141.41, 141.42, 141.61, 141.71, 145.43, 151.42, 151.43, 153.42, 153.43, 153.44, 165.1, 165.11, 165.21, 165.25, 165.31, 165.52, 165.61, 165.71, 177.22, 177.24, 178.11, 178.12, 178.151, 178.165, 181.41, 181.42, 181.263, 181.273, 181.311, 183.23, 183.94, 183.96, 183.97, 187.21, 187.22, 187.23, 187.24, 187.25 and 187.26. Section 183.81(29) will be effective retroactive to October 1, 1998. Section 153.44(d)(1)(i)(B), (ii) and (iii), the definition of “domestic violence” contained in § 187.22 and 187.27 will be effective retroactive to July 3, 2000.

FEATHER O. HOUSTON,  
*Secretary*

*(Editor’s Note: For the text of order of the Independent Regulatory Review Commission, relating to this rulemaking, see 32 Pa.B. 4211 (August 24, 2002).)*

**Fiscal Note:** Fiscal Note 14-472 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 55. PUBLIC WELFARE**  
**PART II. PUBLIC ASSISTANCE MANUAL**  
**Subpart A. ASSISTANCE POLICIES AND PROCEDURES**

**CHAPTER 105. SAFEGUARDING INFORMATION**

**§ 105.1. Policy.**

(a) *Legal provisions.* The legal provisions relating to policy for safeguarding information are as follows:

(1) The provisions of this chapter safeguard information relating to individual applicants and recipients of public assistance by restricting the use or disclosure of the information as required by sections 404, 425 and 505 of the Public Welfare Code (62 P. S. §§ 404, 425 and 505).

(2) The term “PA” as used throughout this section includes the cash assistance program (AFDC, GA, SBP), the ETP, the child welfare program, the child support enforcement program, the MA Program, the SSI Program and the Social Services Program.

(b) *General objective.* The general objective of this chapter is as follows:

(1) The objective of this chapter is to permit the maximum use of information collected from and about a client to determine eligibility for assistance, and still preserve, insofar as possible, that relationship of confidence between the Department and its clients, and the Department and the public at large, which is vital to efficient administration. To carry out this objective, the Department has established regulations defining the use and disclosure of information on applicants and recipients.

(2) The term “Department” as used in this section refers to offices and employees of the Department of Public Welfare that are concerned with the administration of the public assistance program.

(c) *General policy in the collection and use of information.* General policy in the collection and use of information is as follows:

(1) The Department will collect and use only that information that relates to its responsibilities in administering the public assistance program. The client shall give information for purposes directly related to eligibility for assistance or other services the Department gives, and use of the information by the Department is confined to those purposes. The Department often requires information from and regarding clients which is of a highly personal nature. The information is limited in its scope and its use to that which is essential to the proper discharge of the responsibilities of the Department. As a measure to provide protection of the individuals it serves, the Department will take precaution against their being exploited for commercial or political reasons.

(2) The Department will give pertinent statistical or social data in general studies, reports, surveys, information on expenditures, number and category of recipients, and other information, so long as none of it identifies any particular individual.

(3) The Department will provide information to law enforcement officials as provided in § 105.4 (relating to procedures) and information regarding an individual under the safeguards provided in this chapter, when this information relates to a service the individual is asking for himself, or one asked for on his behalf by someone he



has requested to act for him, and when the service is related to the purpose and function of the public assistance program.

(d) *Information to be safeguarded.* The Department will safeguard the following information:

- (1) The names of applicants and recipients.
- (2) The address of any applicant or recipient and the amount of assistance any recipient is receiving except as provided in § 105.4 (relating to procedures).
- (3) Information in applications, reports of investigations, financial and medical records, correspondence and other recorded or unrecorded information, related to the condition or circumstances of applicants and recipients. This applies to information in the offices of the Department, the Department of the Auditor General, the Treasury Department and other agencies concerned with the administration of public assistance. Information that does not identify a particular individual is not included in the class of material to be safeguarded.

(e) *Information on MA.* The policy for information on MA is as follows:

- (1) Each recipient or applicant for MA has the right to have the information given to the Department about his circumstances kept confidential. The information may be used only for purposes related to the administration of assistance.
- (2) In the administration of the MA Program, the agency is required to provide to the vendor of medical care and services certain information regarding an applicant or recipient. In these relationships, it is the responsibility of the agency to be reasonably assured that these persons will safeguard the information and use it only for the purpose for which it was made available.
- (3) Public access to information on the application of any person for or receipt of MA is not provided. Section 105.4(a)(1) does not apply to MA records.

(f) *Use of information outside the Department.* An individual may not have direct access to the records of the Department unless that individual has an official connection with any part of the Department, or is an employee of the Auditor General's Department, the Treasury Department or another Commonwealth or Federal agency officially charged with administrative supervision, review, evaluation or audit. Moreover, this access to records is confined to materials essential to carrying out the official functions of the Department or agency involved. Employees of agencies who are engaged in investigation of welfare fraud will in no way be prohibited access to case records. An individual may not have direct access to his own case record except as provided in § 105.5 (relating to access by an individual to his case file).

(g) *Authority to disclose information.* Authority to disclose information will vest in accordance with the following:

- (1) Information in the possession of the Department is within the exclusive control and custody of the Secretary.
- (2) Authority to disclose information as provided for in this chapter is delegated to the executive director of each county board of assistance, and to those persons in the State Office that the Secretary designates from time to time.
- (3) The executive director may delegate this responsibility only to top supervisors of social service staff.

(4) The files and records of the Department must be properly protected at all times. Each CAO shall have written rules on the removal of material from the files, return of this material and supervision of the files.

### § 105.3. Requirements.

(a) The records and files of the Department will be used only by those employees properly concerned with them in performing their duties. Case records and other information relating to a client will be forwarded to the State Office upon request. The use of information by county board members is governed by the same rules as govern employees.

(b) The use of information in the possession of the Department concerning applicants and recipients is restricted to purposes directly connected with the following:

(1) The administration of the public assistance programs of the Department. The purposes include establishing initial and continued eligibility, determining amount of assistance to be granted and providing services.

(2) An investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of the programs.

(3) The administration of another Federal or Federally-assisted program which provides assistance, in cash or in-kind, or services directly to individuals on the basis of need.

(c) Disclosure to a committee or legislative body, whether Federal, State or local of information other than that specified in § 105.4(a)(1) (relating to procedures) is prohibited.

(d) Certification of the receipt of AFDC to an employer for the sole purpose of claiming tax credit under the Tax Reduction Act of 1975 (26 U.S.C.A. §§ 3, 11, 12, 21, 42—48, 50A, 50B, 56, 141, 214, 243, 535, 613, 613A, 703, 851, 901, 902, 951, 954, 955, 962, 993, 1034, 1551, 1561, 3402, 6012, 6096, 6201, 6401 and 6428) is considered to be for a purpose directly connected with the administration of the public assistance program. The employers tax credit has been extended through December 31, 1979 by the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520. Upon written request by the employer, the CAO will complete a PA 132 certifying that the client received assistance immediately prior to the date of hire and continuously for 90 days prior to the date of hire. In non-WIN counties, three signed copies are required; for the employer, county assistance office central file, and the case record. In WIN counties, four signed copies are required; for the employer, county assistance office central file, case record and the local WIN office.

(e) When seeking additional information or proof from further sources, the Department will use only that information in its possession that is strictly relevant to the purpose. The basis for this use of information is that every client understands what is involved in determining eligibility and has, therefore, given consent to this use of information. Further reference should be made to § 121.1 (relating to policy).

(f) Information may be used to provide a service the client has asked for, or to answer inquiries made on the behalf of the client, if the Department has valid grounds for concluding that the client has asked the inquirer to act on his behalf. Information thus used must be strictly relevant to the particular service requested. In getting information for other agencies, the Department will tell the person interviewed that the information given will be sent to the inquiring agency.

(g) Information may be released to law enforcement officials, and the Pennsylvania State Police and the Board of Probation and Parole, in compliance with State and Federal law relating to release of information as provided in § 105.4.

**§ 105.4. Procedures.**

(a) *Use and disclosure of information outside the Department.* The Department will use information or disclose it to private individuals, officials or agencies outside the Department as set forth in the following:

(1) Provided that the information is not to be used for political or commercial purposes, the address and amount of assistance a person is currently receiving will be disclosed to an adult resident of this Commonwealth who asks for the information about a person. In releasing the information, the county office must be reasonably assured that the person is 21 years of age or older and a resident of this Commonwealth. The county office also will take the following steps:

(i) If the inquirer appears in person, the information in the "Request" section of *Form PA 163, Request for Address and/or Amount of Assistance* will be filled in, and the person making the request shall sign the form before the information is disclosed. The "Reply" section of the form will then be completed.

(ii) If the request is made by telephone and the inquirer is known to the person receiving the request and the inquirer knows about the restrictions on the use of information, the information will be given over the telephone. Otherwise, the inquirer will be advised to either come to the office or to make his request in writing. If information is given over the telephone, the person giving the information will prepare a *Form PA 163 (Request for Address and/or Amount of Assistance)* for file, showing the name of the person making the request.

(iii) If the information is requested by correspondence, the county office will prepare a reply in duplicate, always including in any reply that gives information the following excerpts from the Public Welfare Code (62 P. S. §§ 404 and 483):

Section 404: The department shall have the power to make and enforce regulations:

(1) To protect the names of applicants for and recipients of public assistance from improper publication, and to restrict the use of information furnished to other agencies or persons to purposes connected with the administration of public assistance. Upon request by any adult resident of the Commonwealth, the department may furnish the address and amount of assistance with respect to persons about whom inquiry is made; but, information so obtained shall not be used for commercial or political purposes; and, no information shall be furnished regarding any person's application for, or receipt of, medical assistance.

\* \* \* \* \*

Section 483 Penalties.—Any person knowingly violating any of the rules and regulations of the department made in accordance with the Article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine, not exceeding one hundred dollars (\$100), or to undergo imprisonment, not exceeding six months, or both.

(2) Information relating to the eligibility of a person for assistance obtained as a result of a request for information will be entered in the case record. The signed *Form PA 163, Request for Address and/or Amount of Assistance*, or the duplicate of the letter will be filed so as to make it as easy as possible to assemble information on these requests for the State Office when it asks for the information.

(b) *Additional uses.* Before use or disclosure of information as provided in this chapter, it is the responsibility of the Department to be reasonably assured that the use or disclosure is for a purpose connected with public assistance and the receiving agency or official will safeguard the information, will use it only for the purposes for

which it was made available and has standards of protection equal to those of the Department on the use of information by staff, and on office equipment and procedures.

(1) *Action by the Department to collect money due, or to protect welfare of certain clients.* Information may be disclosed by the Department when necessary to carry out the regulations on recovering money due as set forth in Chapters 255 and 257 (relating to restitution; and reimbursement).

(2) *Request by a public or private agency.* At the request of a public or private agency that the individual has asked for services, information may be furnished to the agency if its objective is to protect or advance the welfare of the individual, and if the individual has given that agency specific consent to the release of specific information from the records of the Department.

(3) *Judicial order (subpoena).* Information may be disclosed on proper judicial order. If, however, a proper judicial order to disclose information other than as provided in subsection (a) is for a purpose not connected with the administration of the Department, the following steps will be taken:

(i) The Executive Director will send a memo to the Chief, Division of Claim Settlement, Harrisburg, Pennsylvania explaining the situation and asking for legal counsel. In an emergency, the Executive Director will telephone.

(ii) A staff member will appear in court with counsel.

(iii) The Department will plead, in support of its request to withhold information, that under the Public Welfare Code (62 P. S. §§ 101—1503), the rules of the Department prohibit the disclosure of information in records and files, including the names of clients, except as provided in subsection (a).

(iv) After the plea is made, the Department will be governed by the final order of the court.

(v) Immediately following the court proceedings, a complete report will be made to the Chief, Division of Claim Settlement, Harrisburg, Pennsylvania.

(c) *Release of information to law enforcement officials.* For applicants and recipients of TANF and GA cash assistance, the Department will comply with the following:

(1) Provide to a Federal, State or local law enforcement officer the address of a fugitive felon, parole or probation violator or an individual who may have information that the officer needs to conduct official duties if the location and apprehension of the recipient is within the official duties.

(2) Exchange information with the Pennsylvania State Police and the Board of Probation and Parole to identify individuals who have been sentenced for a felony or misdemeanor and have not satisfied the penalty imposed by law to ensure that cash assistance is not granted to those individuals. The Pennsylvania State Police and Board of Probation and Parole will have access to the records of the Department's Assistance Recipient Identification Program (finger-imaging file).

(d) *Names of SBP recipients.* A request by an individual or organization for the names of SBP recipients, or for lists of the names, except as provided in this section, will be referred to the Bureau of Blindness and Visual Services Department of Public Welfare, Harrisburg, Pennsylvania. The files of the Bureau of Blindness and Visual

Services contain the names of blind persons who are not recipients as well as those who are. The Bureau of Blindness and Visual Services is the agency authorized by law to collect data on the nature and extent of blindness in this Commonwealth. The Bureau of Blindness and Visual Services will determine the validity of a request for names of blind persons and will release appropriate names to those individuals or agencies that have a valid interest in blind persons.

(e) *Mailing or distribution of materials.* Procedures for mailing or distribution of materials will be as follows:

(1) Materials mailed or distributed to applicants, recipients or medical vendors will be limited to those which are directly related to the administration of the program. This will include materials enclosed in envelopes containing checks. Materials having political implication are prohibited from mailing or distribution to applicants, recipients or medical vendors. Specifically prohibited from mailing or distribution will be holiday greetings, general public announcements, voting information and alien registration notices.

(2) Mailing or distributing materials that are in the immediate interest of the health and welfare of applicants and recipients is permitted. The materials include announcements of free medical examinations, availability of surplus food and consumer protection information.

(3) Only the names of persons directly connected with the administration of the program will be contained in material mailed or distributed to applicants, recipients and vendors. The persons will be identified only in their official capacity with the Department.

(f) *Making rules and regulations known.* The provisions of this chapter, including the penalty for violation, will be:

(1) Distributed to every county board member and members of the appropriate State boards.

(2) Circulated to Department employees concerned with the administration of public assistance, called to the attention of every new employee and filed to be accessible to every employee.

(3) Made available to persons to whom public assistance information is given.

(4) Made available to interested persons.

## **Subpart B. INTAKE AND REDETERMINATION**

### **CHAPTER 123. DEFINITIONS**

#### **TANF/GA INTAKE AND REDETERMINATION DEFINITIONS**

##### **§ 123.22. Definitions.**

The following words and terms, when used in this chapter and Chapters 125, 133 and 141 (relating to application process; redetermining eligibility; and general eligibility provisions), have the following meanings, unless the context clearly indicates otherwise:

*AMR—Agreement of mutual responsibility—*

(i) A written individualized document that, based on an assessment of the individual's skills and abilities, sets forth the responsibilities and obligations to be undertaken by the individual to achieve self-sufficiency, including participation in approved work and work-related activities.

(ii) The term includes:

(A) The time frames within which each obligation is to be completed.

(B) The penalties for failure to comply.

(C) The services to be provided by the Department to support the individual's efforts.

*Applicant*—An individual who submits an application for cash assistance for himself or on behalf of another. The individual remains an applicant until a decision on eligibility or ineligibility is made.

*Application*—A signed form approved by the Department which contains the name and address of the applicant, unless the applicant is homeless, and is filed with the CAO. The applicant applying for himself or others shall sign and file the application for himself or through a representative authorized by guardianship or power of attorney. If an individual is unable to apply for himself, he may apply through an authorized representative or another person who has authority to act for him. An application will continue in effect until a decision on eligibility is made. The transfer of a budget group from GA to TANF is an application. The addition of a person who is not required to be a member of an existing budget group is an application.

*Application interview*—A face-to-face interview between an applicant and an eligibility worker which is scheduled within 13-calendar days after receipt of an application. The purpose of the application interview is to gather and record information and to secure verification needed to establish eligibility.

*Authorization date of cash assistance*—The date on which a decision of eligibility is made.

*Inquiry*—An inquiry differs from an application in that the person is seeking information only, and does not wish to file an application for cash assistance. When a person asks for cash assistance or some other service on behalf of a competent adult, the Department will consider the request an inquiry unless it is known that the person asking for cash assistance on behalf of another is doing so with the knowledge and consent of the latter.

*Monthly assistance payment*—The amount of money issued monthly that is based on the family size allowance plus, if applicable, a special need allowance, reduced by the net income of the budget group.

*Reapplication*—A completed, signed form approved by the Department which is filed with the CAO by a recipient and used for a complete redetermination of continued eligibility of a budget group.

*Redetermination*—A periodic review by a CAO worker of eligibility factors subject to change. If all factors subject to change are reviewed, the review is a complete redetermination, otherwise the review is a partial redetermination.

*Screening interview*—A face-to-face or telephone interview between the applicant and a CAO worker which includes a review of the filed application form to assure that information necessary to determine eligibility is provided on the form prior to determining a person ineligible or prior to scheduling an application interview.

## **CHAPTER 125. APPLICATION PROCESS**

### **GENERAL PROVISIONS**

#### **§ 125.1. Policy.**

(a) *General.* Application is made on an application form approved by the Department.

(b) *Identification.* At the application interview, an applicant shall present proof of identity using documents such as a Social Security Card, driver's license, selective

service card, voter registration card, a Departmental identification card or a work or school I.D. If documentary proof of identification is not readily available, the worker shall attempt to verify the applicant's identity through a collateral contact. Examples of acceptable collateral contacts include social service agencies, landlords, employers, neighbors and others who can be expected to provide accurate third-party verification.

(c) *Referral to the domestic relations section of the court.* To receive benefits for himself, an applicant applying on behalf of a child whose eligibility is based on deprivation due to absence of a parent from the home shall be referred to the domestic relations section or other applicable division of the court of common pleas unless the applicant is claiming good cause as specified in Chapter 187 (relating to support from relatives not living with the client). The caretaker relative may still apply for and receive benefits for eligible minor children without completing the referral process.

(d) *Signing of application form.* Requirements for signing of an application form are as follows:

(1) The applicant, regardless of age, shall sign prior to filing the form and again during the application interview.

(2) Persons applied for who are 18 years of age or older and emancipated minors 17 years of age or younger shall sign during the application interview or within 30-calendar days from the date of authorization.

(3) Failure to sign shall result in the ineligibility of the person required to sign the form.

(e) *Signing of authorization to release information form.* Under § 201.4 (relating to procedures), the applicant or the person who is the payment name, regardless of age, and individuals applied for or receiving cash assistance who are 18 years of age or older and emancipated minors 17 years of age or younger shall sign the form. Failure to sign shall result in ineligibility of the person required to sign the form.

(f) *Signing an agreement of mutual responsibility.* Each applicant for and recipient of cash assistance and other individuals who are required to sign an application for assistance shall sign an AMR, as defined in §§ 123.22 and 165.2 (relating to definitions; and definitions) that shall be signed and approved by the CAO.

(g) *Failure to sign or complete AMR.* An individual who is required to sign an application for assistance who fails, without good cause, to sign or cooperate in the completion of an AMR is ineligible for cash assistance until the individual completes and signs an application and approved AMR.

(h) *Failure to comply with AMR.*

(1) Failure of the individual to cooperate with child support requirements, without good cause, will result in the penalties described in § 141.21(e) (relating to policy).

(2) Willful failure to comply with RESET participation requirements, without good cause, will result in the penalties described in § 165.61 (relating to sanctions).

(3) Failure to comply with other aspects of the AMR, without good cause, will result in ineligibility for cash assistance until the individual complies.

(i) *Contents of AMR.* An individual's obligations set forth in the AMR include:

(1) Remain free of alcohol and illegal drugs if substance abuse is determined to be a barrier to employment.

(2) Participate in, maintain compliance with, and satisfactorily complete a drug and alcohol treatment program approved by the Department of Health or administered by an agency of the Federal government, or both.

(3) Provide timely and accurate information.

(4) Cooperate in establishing paternity and obtaining support as specified in § 187.23 (relating to requirements).

(5) Seek and participate in an educational program leading to a high school diploma or its equivalent, job training or work-related activities.

(6) Seek, accept and maintain employment.

(7) Accept referral to, participate in and continue to participate in an available work-related activity, if applicable, including work-related activities specified on the AMR.

(8) Accept referral to, work in and retain employment in which the individual is able to engage and participate in work activities specified on the AMR.

(9) Not reduce earnings without good cause.

(10) Obtain prenatal care, if applicable.

(11) Maintain the health and well being of the individual's children, including the following, if applicable:

(i) Ensuring that children attend school and pursue a high school diploma or its equivalent.

(ii) Ensuring that children receive immunizations, appropriate health screenings and necessary medical treatment, consistent with Nationally recognized standards.

(iii) Performing other appropriate activities based on an assessment of the education level, parenting skills and history of parenting activities and involvement of each parent who is applying for assistance.

(j) *Approved work and work-related activities.* The specific work and work-related activities approved for the individual are included on the AMR.

(k) *Notice.* A notice approved by the Department is sent to the applicant whenever a decision is made on the eligibility of the applicant or person for whom he is applying.

**CHAPTER 133. REDETERMINING ELIGIBILITY  
REDETERMINING ELIGIBILITY PROVISIONS  
FOR TANF/GA**

**§ 133.23. Requirements.**

(a) *Reapplication.* A reapplication or complete redetermination of eligibility shall conform with the following:

(1) *General requirements.* General requirements are as follows:

(i) A complete redetermination is a comprehensive review of eligibility factors which are subject to change, to determine continued eligibility of the budget group members. When eligibility for assistance is based on deprivation of support due to the absence of a parent, each caretaker, as provided in § 141.21(c) (relating to policy), with whom the child is living shall comply with the support requirements in § 187.23 (relating to requirements) as a condition of continued eligibility of the caretaker for cash assistance.

(ii) A reapplication form approved by the Department shall be completed in its entirety by the payment name at each reapplication interview.

(iii) The client, regardless of age, who is the payment name for the budget group shall complete and sign the reapplication form prior to or during the reapplication interview and provide the information necessary for the completion of the redetermination as a condition of continued eligibility for cash assistance. Recipients who are 18 years of age or older and emancipated minors 17 years of age or younger shall sign the reapplication form during the reapplication interview or within 15 working days of the interview date. Failure to sign shall result in ineligibility of the person required to sign the form.

(iv) The client shall consent to the disclosure of information by third parties to the CAO for the purpose of verifying the client's residence, citizenship, employment, applications for employment, income and resources as a condition of the client's continued eligibility for assistance under verification procedures in § 201.4 (relating to procedures).

(v) A complete redetermination is required as often as appropriate to the individual budget but at least as frequently as the following:

(A) Every 6 months for TANF budgets not required to report monthly.

(B) Every 12 months for TANF budgets required to monthly report.

(C) Every 12 months for GA budgets.

(vi) The worker and the recipient or other individual will review and assess the progress in achieving self-sufficiency, including compliance with the responsibilities and obligations contained in the existing AMR. As necessary, the AMR will be modified.

(vii) A recipient or other individual who signs a new or modified AMR that is approved by the Department will comply with the obligations and responsibilities including approved work and work-related activities specified on the AMR in accordance with § 125.1(i) (relating to policy).

(viii) A recipient or other individual who fails or refuses, without good cause, to sign or cooperate in the completion of an AMR or who fails, without good cause, to comply with the AMR shall be subject to the penalties described in § 125.1(g) and (h).

(2) *Items subject to review.* A redetermination shall conform with the following:

(i) Within the established limits, the decision on how often to redetermine eligibility will vary with a budget depending upon the possibility of change in eligibility.

(ii) In the redetermination of eligibility, the worker shall make a finding as to whether the client who is the payment name wants assistance to continue, what plans the client may have or be developing for self-support or self-care and when the plans may mature. This redetermination shall include at least one interview with the person who is the payment name for the budget group. If the client wants assistance continued, the worker shall redetermine those eligibility factors which are subject to change. The redetermination shall include a review of the need and resource items and verification of items subject to change:

(A) Household and family composition.

(B) Income, earned and nonearned, including income-in-kind.

(C) Income expense deductions.

(D) Assets.

(E) Special need items.

(F) Employability status.

(G) Activity in seeking work or training.

(H) Employment and training program participation status.

(I) Prior applications for Social Security numbers if not yet reported to the CAO.

(J) Plans for the continuing care of a TANF child who is temporarily not residing with a specified relative.

(K) Income of individuals residing with the budget group, income of an LRR residing elsewhere and income of sponsors of aliens as determined under §§ 183.34, 183.35 and 183.91—183.93, if applicable.

(L) Criteria that establish GA categorical eligibility.

(3) *Verification.* Requirements for reapplication are as follows:

(i) For TANF and GA budget groups, verification of the items of need and resources in paragraph (2) is required at the time of reapplication. The maximum time lapse for the client to provide needed verification is 15 working days following the reapplication interview, except for verification of incapacity or disability. Verification of incapacity or disability shall be provided within 30-calendar days following the reapplication interview. If the client is cooperating in the verification attempt and the delay in securing the information is due to a third party, assistance will continue until documentation is secured. Cooperation and progress on securing the documentation shall be reassessed every 30-calendar days. As a condition of eligibility for assistance, the recipient shall give consent to the CAO worker to contact third parties to secure verification of the eligibility factors in paragraph (1)(iv). Except in cases of suspected fraud, the CAO worker shall attempt to notify the client prior to contacting a collateral source for the purpose of verifying information about the client under verification procedures in § 201.4.

(ii) Verification of the individual client's accumulated personal property, including exempt property, as set forth in § 177.21 (relating to personal property), is required at reapplication. The current value of nonexempted personal property, as set forth in § 177.24(1) (relating to determining value of resources), shall be verified at each reapplication.

(iii) Those factors of eligibility already verified and not likely to change, such as birthdate, may not be reviewed unless there is something to indicate that a change may take place or has taken place. Social service needs and plans shall be reevaluated. The worker shall discuss with the client plans for the next interview and the client's responsibility to report changes.

(b) *Partial redetermination.* Partial redetermination procedures are as follows:

(1) A partial redetermination is a review that focuses on specific eligibility factors and need and resource items. A partial redetermination is required as frequently as indicated by the budget group circumstances, and is always conducted if previously unreported income is first discovered by a quarterly wage match. When the partial redetermination focuses on address changes or a change in income or resources, a face-to-face interview is not required if, in the judgment of the worker, the credibility and reliability of the client are such that the client's statements may be accepted. In these instances, the redetermination may be made by telephone or correspon-

dence. If the redetermination is made by telephone or correspondence, verification shall be submitted subsequently by the client.

(2) A partial redetermination for budget groups in which there is an employable person shall focus on employment, employment efforts, income and resources. A partial redetermination relating to employment and employment efforts requires a personal interview which can be conducted by telephone. A face-to-face interview is not required.

(3) However, when the partial redetermination involves a loss or decrease in income in which a monthly assistance payment increase is requested or indicated, verification of the change in income is required. If verification is not available immediately, the monthly assistance payment may be increased without verification only if facts presented by the payment name are consistent and reasonable and a definite plan is made to obtain the needed verification. A monthly assistance payment increase without verification of the change in income is made only with the approval of a supervisor. The maximum lapse of time to obtain the verification is no more than 15 working days following the effective date of the monthly assistance payment increase.

(4) In addition to the provisions of this section, action will be taken promptly, but within 10-calendar days, in all cases to review pertinent eligibility factors if one of the following occurs:

(i) The client or someone on his behalf reports changes in circumstances to the agency or requests a special need allowance.

(ii) The agency learns of changes from a responsible source or the worker himself knows a change was anticipated.

(iii) Changes in the regulations of the Department make a redetermination necessary.

(iv) The payment name or someone on his behalf requests the addition of a mandatory budget group member, other than a newborn child, to the budget group. The payment name shall complete and sign a form approved by the Department and provide information only on the individual being added and on changes, financial or nonfinancial, in the budget group's circumstances. The added member, other than a newborn child, shall comply with § 201.4(a)(2)(ii).

(v) The addition of a newborn child to an open budget group as follows:

(A) Cash assistance benefits for a newborn child whose caretaker/relative is an open budget group will be authorized effective with the date of birth based solely on the notification of birth if notification occurs during the grace period. The grace period begins with the date of the child's birth and ends on the first day of the second month following the month of the child's birth or the mother's release from the hospital, whichever is later. Notification of birth includes an oral or written statement, by the caretaker/relative or a representative, made to the CAO, that the child has been born, or receipt by the CAO of the MA newborn eligibility form for the child.

(B) The CAO shall follow the common application system procedures when adding a newborn child to a cash budget group. The caretaker/relative shall file an updated common application form regarding the child and comply with necessary eligibility factors related to the child's eligibility by the end of the grace period. If the caretaker/relative fails to meet the deadline date to file the form

and comply with the necessary eligibility factors related to the child's eligibility, benefits will be terminated with an advance notice.

(C) If the CAO has not been notified of the newborn child's birth by the end of the grace period, benefits for the child will be authorized effective with the date that the child is determined to be eligible, but no later than 15-calendar days after a common application form has been filed and a partial redetermination completed.

(D) Underpayments caused by administrative errors concerning newborn children's eligibility will be corrected in accordance with § 227.24(d)(1)(ii)(A)(IV) (relating to procedures).

(c) *Redetermination contacts.* Redetermination contacts with the client may be in the home or in the office, depending on the preference of the client. Office and home visits shall be scheduled with the client. It may not always be possible to plan a visit so that home visits to the client without notice may be occasionally necessary; for example, when substantiating information is required and urgent to determine the continued eligibility of the client. Home visits shall always be made in accord with the principle of the Department respecting the right of the client to privacy and personal dignity as set forth in § 121.1 (relating to policy).

(d) *Controls for redeterminations.* To carry out the function of redetermining eligibility, a central control of necessary future actions is maintained to provide a method whereby reasonably predictable changes in the total caseload can be acted on within appropriate time limits.

**Subpart C. ELIGIBILITY REQUIREMENTS**

**CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS**

**Subchapter A. THE CATEGORICALLY NEEDED HEALTHY BEGINNINGS PROGRAM FOR PREGNANT WOMEN AND QUALIFIED CHILDREN**

**TYPES OF INCOME NOT COUNTED**

**§ 140.41. Educational loans, grants and work-study income.**

The following do not count as income:

- (1) Educational assistance in the form of loans, grants and scholarships.
- (2) Work-study income.

**EARNED INCOME COUNTED**

**§ 140.53. (Reserved).**

**UNEARNED INCOME COUNTED**

**§ 140.65. (Reserved).**

**INCOME DEDUCTIONS**

**§ 140.81. Deductions from earned income.**

Each employed individual in the Healthy Beginnings family whose income is used to determine the eligibility of the budget group is entitled to the following deductions from earned income, in the following order:

- (1) *Work expenses.* The first \$90 per month from the earned income of each individual who is employed if the employed individual or family member is not eligible to receive an earned income incentive deduction as described in paragraph (2) or if the \$90 per month deduction is more advantageous to the applicant or recipient group.

(2) *Earned income incentive deductions.*

(i) Each employed individual in the applicant or recipient group or family member is eligible to receive an earned income incentive deduction if one of the following exists:

(A) The employed individual is a recipient of Healthy Beginnings.

(B) The employed individual has been a recipient of cash assistance, NMP-MA or MNO-MA in a TANF-related category in 1 of the 4 calendar months before the date of the application for Healthy Beginnings.

(C) The employed individual has been a recipient of NMP-MA or MNO-MA in a GA-related category with a child who was simultaneously a recipient of MA in a TANF-related category in 1 of the 4 calendar months before the date of the application for Healthy Beginnings.

(ii) Each employed individual in the applicant or recipient group, including a family member who meets one of the requirements in subparagraph (i), is eligible to receive a continuous 50% earned income incentive deduction or the first \$90 per month work expense deduction from earned income and a \$30 plus 1/3 remainder earned income incentive deduction per requirements in subparagraph (iii), whichever is most advantageous to the applicant or recipient group.

(iii) The application of the \$30 plus 1/3 remainder earned income incentive deduction is treated as follows:

(A) The employed applicant or recipient or family member is eligible to receive the \$30 plus 1/3 remainder earned income incentive deduction for 4 consecutive months if:

(I) Twelve consecutive months have elapsed since the employed applicant or recipient has been a recipient of Healthy Beginnings or the income of the individual has not been considered when determining the eligibility of the Healthy Beginnings recipient. The count of months begins with the first month following the month of termination for Healthy Beginnings regardless of whether the employed applicant or recipient received the entire 8 consecutive months of the \$30 income incentive deduction described in clause (B).

(II) An applicant or recipient whose receipt of 4 consecutive months of the work incentive is interrupted due to loss of income or a decrease in income. The applicant or recipient is eligible for a new 4 consecutive month period.

(B) Each employed person in the applicant/recipient group who received 4 months of the \$30 plus 1/3 income incentive deduction is eligible for an income deduction of \$30 per month during the next 8 consecutive months. The application of the \$30 incentive is treated as follows:

(I) The applicant/recipient is entitled to the \$30 income incentive deduction during any month of the 8-month period for which the income of the applicant/recipient is sufficient to qualify.

(II) The 8 months of eligibility for the \$30 income incentive deduction begins with the month following the end of the 4 consecutive calendar months of the \$30 and 1/3 income incentive deduction.

(III) The 8 months of eligibility are counted consecutively, whether or not Healthy Beginnings is interrupted or income is sufficient to qualify for it.

(3) *Dependent care expenses.* The actual work-related cost of care of dependent or incapacitated persons living

in the home of the applicant/recipient or family member, if no other sound plan can be made for their care, up to a maximum of:

(i) One hundred seventy-five dollars per month per child 2 years of age or older or incapacitated person when the applicant/recipient or family member is employed full-time.

(ii) One hundred fifty dollars per month per child 2 years of age or older or incapacitated person when the applicant/recipient or family member is employed part-time.

(iii) Two hundred dollars per month per child under age 2 regardless of whether the applicant/recipient or family member is employed full-time or part-time.

## CHAPTER 141. GENERAL ELIGIBILITY PROVISIONS

### GENERAL PROVISIONS

#### § 141.1. Policy.

(a) *Types of assistance available.* A person in this Commonwealth who is in need may be eligible for one of the following kinds of cash assistance. However, a person may not receive concurrently more than one of the four following categories of cash assistance:

- (1) TANF in one of its several forms.
- (2) GA.
- (3) SBP.
- (4) SSI.

(b) *Type of assistance provided.* An individual may also be eligible for MA to cover health care costs. An individual may be eligible for MA in addition to one of the cash assistance programs in subsection (a), or an individual may be ineligible for cash assistance but eligible for MA. This subpart contains the eligibility requirements and procedures for TANF and GA cash assistance and MA. Policies and procedures governing SBP and SSI are contained in Chapters 297 and 451 (relating to Supplemental Security Income Program; and State Blind Pension). An individual who meets the eligibility requirements of a particular type of assistance receives that type of assistance, except in the following circumstances:

(1) If the person meets the eligibility requirements for GA, but is included in a TANF grant group as set forth in § 171.21(b) (relating to policy).

(2) If the person is a blind person as defined in Chapter 451 but chooses to apply for a type of assistance other than SBP.

(3) If a person meets the eligibility requirements of SBP as well as any other type of assistance, the person receives SBP, if he chooses to apply for SBP.

(4) If a person qualifies as a specified relative as defined in § 151.42 (relating to definitions) of a child who would be eligible for TANF but who is receiving SSI, the person cannot receive GA. The person must receive TANF or SBP.

### ELIGIBILITY PROVISIONS FOR TANF/GA

#### § 141.21. Policy.

\* \* \* \* \*

(e) Failure to cooperate in establishing paternity or obtaining support, as specified in § 187.23 (relating to requirements), without good cause, will result in the reduction of the cash assistance allowance by 25%.



\* \* \* \* \*

(s) An applicant or recipient who has been convicted of violating section 481(a) of the Public Welfare Code (62 P. S. § 481(a)), that is, has been convicted of securing or attempting to secure, or aiding or abetting or attempting to aid or abet any individual in securing GA, TANF, MA or Federal Food Stamps by means of a willfully false statement or misrepresentation, or by impersonation or by willfully failing to disclose a material fact regarding eligibility either before or at the time of, or subsequent to the application for assistance is ineligible for cash assistance as follows:

- (1) For 6 months from the date of first conviction.
- (2) For 12 months from the date of second conviction.
- (3) Permanently from the date of a third conviction.

(t) An applicant or recipient is ineligible for assistance if the individual is fleeing to avoid prosecution, or custody or confinement following conviction for a felony, or as felonies are classified in the State of New Jersey, a high misdemeanor.

(u) Cash assistance payments will not be made to an individual for 10 years from the date of conviction, in a Federal or State court, of fraudulent misrepresentation of residence to receive TANF, GA, MA, Food Stamps or SSI in two or more states.

**ELIGIBILITY PROVISIONS FOR TANF**

**§ 141.41. Policy.**

(a) *Conditions of eligibility.* To receive TANF, the applicant or recipient shall meet appropriate eligibility conditions and follow the procedures in this title. The specific eligibility conditions for TANF are in this part or specified in this chapter:

- (1) Chapter 145 (relating to age).
- (2) Chapter 147 (relating to residence).
- (3) Chapter 149 (relating to citizenship and alienage).
- (4) Chapter 151 (relating to specified relatives).
- (5) Chapter 153 (relating to deprivation of support or care).
- (6) Chapter 161 (relating to persons in institutions).
- (7) Chapter 163 (relating to guardians and trustees).
- (8) Chapter 165 (relating to Employment and Training Program).
- (9) Chapter 177 (relating to resources).
- (10) Chapters 125 and 127 (relating to application process; and reserved).
- (11) Chapter 255 (relating to restitution).
- (12) Chapter 257 (relating to reimbursement).

(b) *Social Security number required.* A Social Security number is required for family members for whom assistance is to be granted or is being received. If a Social Security number is needed and no application has been made, it is the responsibility of the CAO to complete and submit the SSA5 application form.

(c) *Strikers.* Requirements relating to persons on strike are as follows:

(1) An applicant who is on strike on the last day of the calendar month preceding the month of application is ineligible for assistance as follows:

(i) If the person on strike is the natural or adoptive parent, assistance is denied to the entire assistance unit during the period of the strike, regardless of whether the parent is included in the application for assistance.

(ii) If the person on strike is not the natural or adoptive parent, assistance is denied to that individual only during the period of the strike. If the person on strike is the only dependent child, the assistance unit is ineligible for AFDC.

(2) A recipient who is on strike on the last day of the calendar month for which payment has been made to the assistance unit is ineligible for assistance as follows:

(i) If the person on strike is a natural or adoptive parent, regardless of whether the parent is included in the assistance grant, the grant is recovered since the assistance unit is ineligible for AFDC assistance for that month and subsequent months when the caretaker relative is participating in the strike.

(ii) If another individual, who is not a natural or adoptive parent is participating in a strike, that individual's needs are not used for determining the grant group's need for assistance for that month and shall be recovered. The individual is not eligible for TANF assistance in subsequent months when the individual is participating in the strike. If the individual is the only dependent child of the family, the entire grant is recovered as the family is ineligible for TANF assistance for that month and subsequent months when the individual is participating in the strike.

(iii) Assistance shall be terminated for the first payment month whose deadline can be met if it is anticipated that the strike will continue through the last day of the next calendar month. If the strike ends during a month in which assistance was not received due to participation in the strike the corrective payment provision of § 175.23(b)(l)(v) (relating to requirements) shall be applied.

(d) *Time limits.* An eligible family may receive TANF assistance for a maximum of 60 months subject to the following conditions and exceptions:

(1) A family is ineligible for TANF assistance if it includes an adult head of household or spouse of head of household who has received 60 months of TANF assistance.

(2) Under this subsection, a family does not include a specified relative who is not included in the TANF mandatory filing unit as specified in § 171.21 (relating to policy) and is seeking TANF assistance only for the minor child.

(3) TANF assistance received as a minor child does not count towards the 60-month limit except TANF received as a minor child head of household or as a minor child married to the head of household.

(4) Periods during which TANF assistance is received need not be consecutive to count towards the 60-month limit.

(5) Nothing in this subsection precludes the Department from providing TANF assistance to a family which does not count towards or may extend beyond the 60-month time limit.

(6) The following are not considered TANF "assistance received" in calculating an individual's 60 months of TANF eligibility:

- (i) A period of zero cash issuance.
- (ii) Assistance which has been fully reimbursed.
- (iii) Assistance repaid due to collection of an overpayment.
- (iv) Benefits issued but not received by the individual and the benefits are not replaced.

(v) A period when an individual or budget group is under sanction and, as a result, no assistance benefits are issued.

(vi) An emergency shelter allowance (ESA) payment.

(vii) A period of interim benefits received under § 275.4(d) (relating to procedures) when a final decision has not been handed down by the Bureau of Hearings and Appeals within the appropriate time limit and the budget group's appeal is eventually denied.

(7) Nothing in this subsection will be interpreted as requiring the Department to provide or continue to provide TANF assistance which does not count toward or may extend beyond the 60-month limit.

(8) Time-out benefits provided under Chapter 281 (relating to time-out benefits) are not counted towards the 60-month time limit.

**§ 141.42. Definitions.**

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

*Adult-supervised supportive living arrangement*—A private family setting providing a supportive and supervised living arrangement or other living arrangement, including a private institution, such as a maternity home or a second-chance home, in accordance with § 161.23 (relating to requirements), that:

(i) If subject to approval, is approved in one of two ways:

(A) If a private family setting, the living arrangement has been evaluated and approved by the CAO as conducive to providing a supportive and supervised living arrangement for the minor parent.

(B) If a private institutional setting, the institution is subject to approval by a State agency for health, safety or licensing requirements.

(ii) Is maintained as a supportive family setting and supervised living arrangement as evidenced by:

(A) The assumption of responsibility for the care and control of the minor parent and dependent child by a nonrelated adult 21 years of age or older.

(B) In addition to food and shelter, the provision of supportive services, such as counseling, guidance or education including parenting skills, child development, family budgeting, health and nutrition and other skills to promote long-term economic independence and the well-being of the minor parent and dependent child.

*Budget group*—One or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs are considered together in determining eligibility for cash assistance under one category of assistance.

*Cash assistance allowance*—The monthly family size allowance, reduced by the net income of the budget group. The family size allowance is described under § 175.23(a) (relating to requirements).

*Family*—Except as provided in § 141.41(d)(2) (relating to policy), a minor child and his parent or specified relative, as defined in § 151.42 (relating to definitions), with whom the child lives.

*Minor child*—An individual who is under 18 years of age, or who is under 19 years of age and who is a full-time student in a secondary school—or in the equivalent level of vocational or technical training.

*Minor parent*—A TANF-eligible person under 18 years of age who has never been married and is the natural parent of a dependent child living with the minor parent, or is pregnant or a GA-eligible person 16 or 17 years of age who has never been married and is the natural parent of a dependent child living with the minor parent or is pregnant.

*Strike*—Includes any strike or other concerted stoppage of work by employees—including a stoppage by reason of the expiration of a collective-bargaining agreement—and a concerted slow down or other concerted interruption of operations by employees. See section 501 of the Labor Management Relations Act (29 U.S.C.A. § 142(2)).

(i) Participating in a strike includes failing to report for duty, the willful absence from one's position, the stoppage of work, slow down or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment.

(ii) Willful absence includes absences from one's position unless good cause exists.

(iii) Good cause exists when personal injury or damage to property or applicant's/recipient's life is threatened. Good cause may be corroborated by court, medical, criminal, psychological or law enforcement records. These corroborating records shall specifically relate to the injury or damage which is asserted as good cause. The applicant or recipient has the burden of proving the existence of his good cause claim and shall provide the corroborative evidence required to support the claim prior to approval for assistance benefits.

**ELIGIBILITY PROVISIONS FOR GA**

**§ 141.61. Policy.**

(a) *Conditions of eligibility.* The following relates to eligibility for GA:

(1) An individual is eligible for GA under the requirements established in subsection (d) and if the appropriate eligibility conditions in the following chapters are met:

\* \* \* \* \*

**ELIGIBILITY PROVISIONS FOR MA FOR THE CATEGORICALLY NEEDY**

**§ 141.71. Policy.**

(a) *Conditions of eligibility.* To be eligible for MA, the individual shall meet the appropriate conditions of eligibility in the following chapters:

\* \* \* \* \*

(10) Chapter 151 (relating to specified relatives).

(b) *Nonmoney payment recipients.* Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396q) provides that the benefits of the MA program available to money payment recipients shall be available to the following individuals described in paragraphs (1)—(6).

\* \* \* \* \*

(6) Applicants or recipients who would be eligible for cash assistance but for the elimination of the \$30 plus 1/3 remainder of the earned income incentive deduction for 4-consecutive months or the \$90 work expense deduction, or both, in accordance with § 181.311(2)(ii) (relating to deductions from earned income for the TANF categories of NMP-MA).

(7) The individuals described in paragraphs (1)—(6) will be designated as categorically needy—nonmoney payment recipients (NMP, Category Symbol P).

\* \* \* \* \*

**CHAPTER 145. AGE  
AGE PROVISIONS FOR TANF**

**§ 145.43. Requirements.**

(a) *General.* The following are the general TANF age requirements:

(1) The child shall conform with one of the following age requirements:

- (i) Be under 18 years of age.
- (ii) Be under 18 years of age or under 19 years of age and a full-time student in a secondary school or in the equivalent level of vocational or technical training.

(b) *Attending school or training.* The following will constitute TANF age requirements for youths attending school or training:

(1) The youth under 19 years of age will be considered to have met the requirement of attending secondary school or an equivalent course of vocational training full time, if the youth is carrying a program of supervised education or vocational training approved by the authorities of the school district or by the Department of Education. The program may be part of the regular school program, or one especially arranged for the individual youth's educational or vocational needs and approved by the school authorities. A vocational training course may be under section 2508.3 of the School Code BVR (5813.3), in a program under the Economic Opportunity Act, or in an organized training program under recognized sponsorship with a specified vocational training objective (for example, apprenticeships or training arrangements sponsored by business or industrial firms).

(2) Full-time attendance will not be deemed interrupted when the youth is temporarily absent for reasons accepted under the laws of the State on compulsory school attendance, or for reasons accepted under the regulations of the secondary school or vocational training program in which the youth is enrolled.

(3) TANF payment will be made for the following:

(i) The months in which the youth is not in secondary school or training because of official vacations, provided that the youth will again attend full-time secondary school, or an equivalent vocational or technical school, when the official vacation is over.

(ii) The month the youth completes or discontinues secondary school or equivalent vocational or technical school before reaching 19 years of age.

(4) The date the secondary school or equivalent vocational or technical school records show the youth ended full-time status as a student or trainee will be the date of completion or discontinuance of secondary school or an equivalent vocational or technical school.

**CHAPTER 151. SPECIFIED RELATIVES**

**SPECIFIED RELATIVES PROVISIONS FOR TANF**

**§ 151.42. Definitions.**

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

*Adult*—An individual who is 19 years of age or older or who is 18 years of age and not a full-time student in a secondary school or in the equivalent level of vocational or technical training.

*Specified relative*—An adult or a minor parent who is exempt, under § 141.21(q) (relating to policy), from the requirements to live with an adult and who conforms with the following:

(i) Is exercising responsibility for the care and control of the child. This means actually participating in making plans for the support, education and maintenance of the child and supervising carrying out the plans, and making the application for assistance on behalf of the child. The finding that a relative is exercising care and control of the child shall be made whether the relative is the parent or other relative of the child.

(ii) Is maintaining a home where the child lives with him, or is in the process of setting up a home where the child will go to live with him within 30 days after he receives the first TANF payment.

(iii) Is related to the child as follows:

(A) A blood relative who is within the fifth degree of kinship to the dependent child, including a first cousin once removed. Second cousins and more remote cousins are not within the fifth degree of kinship. A first cousin once removed is the child of one's first cousin or the first cousin of one's parent. The fifth degree of kinship includes great-great grandparents and great-great-great grandparents. The fifth degree of kinship also includes other relationships prefixed by great, great-great, grand or great-grand. Blood relatives include those of half-blood.

(B) A parent by legal adoption and any of the adopting parent's blood or adoptive relatives as described in clause (A).

(C) Stepfather, stepmother, stepbrother and stepsister.

(D) A spouse of a person named in this subparagraph, even though the marriage is terminated by death, separation or divorce.

**§ 151.43. Requirements.**

(a) *Eligibility for TANF.* When a child is living with a relative who is exercising responsibility for the care and control of the child, eligibility for TANF will not be affected by the following situations:

(1) The child is under the jurisdiction of the court (for example, is receiving probation services or protective supervision).

(2) Someone other than the relative (for example, a person, or public or voluntary agency, holds legal custody of the child).

(b) *Persons 15 years of age or younger.* A person 15 years of age or younger, living in the home of his specified relative, will not normally be considered to be capable of exercising responsibility for the care and control of the child unless that person can clearly show that capability. The capability may be shown by a statement provided by the specified relative in whose home the applicant or recipient is living, that the applicant or recipient is in fact exercising the care and control. In the absence of a statement, a factual determination of who is exercising care and control will be made. If a specified relative is exercising responsibility for the care and control of the child, then regardless of the age of the specified relative, he may apply for assistance (TANF) for himself or his child, or both, as well as be the payment name for a grant for himself and his child.

(c) *Different specified relatives within a shelter group.* If, within a shelter group, different specified relatives are exercising responsibility for care and control of different groups of children eligible for TANF, each relative will be

considered to be maintaining a home for the children on whose behalf he applies for or receives assistance if the following conditions are met:

(1) The specified relatives of different groups of children are not spouses of each other.

(2) No one of the specified relatives is the parent of all the children in the shelter group for whom TANF is to be authorized.

(d) *Temporary absence of the child or relative.* The temporary absence of either the child or the relative from his home will not affect the eligibility of the child for TANF under the following circumstances:

(1) The absence of the child is not more than or expected to be more than 180 consecutive days. A specified relative shall report the absence of a minor child by the end of the 5-day period that begins with the date that it becomes clear to the specified relative that the minor child will be absent beyond the consecutive 180-day period. A specified relative who fails to report within 5 days of the time it becomes clear to the specified relative that a minor child will be absent beyond the consecutive 180-day period will be ineligible for assistance for 30 days.

(2) The absence does not basically affect the responsibility of the relative for the care and control of the child. However, if the child is living in a school to which the relative has had to turn over control of the child, the relative will not be eligible for TANF.

(3) The relative will exercise this responsibility when the reason for the temporary separation no longer exists. For example, a child is temporarily living away from home because the best plan for the child's education through the first 12 grades, undergraduate college or for vocational training requires it. During the period of separation, the county staff shall decide whether or not the child is still in need or whether the child's needs are being met: if the child is in need, the grant will be computed as though the child were living in the home of the specified relative.

(e) *Temporary exception to living with specified relatives.* The requirements for a temporary exception to living with specified relatives are as follows:

(1) During a temporary period of crisis or change in a child's life, that is, when an emergency deprives the child of care by a specified relative, and plans for the future care and protection of the child cannot be made immediately, the child may be living with a person other than a specified relative. In these cases, the child shall be eligible only if the person the child is living with is acting in the behalf of the child, the child was receiving TANF when the crisis occurred and active planning is going on for the continuing care of the child.

(2) TANF is granted during this temporary period so that plans for the continuing care of the child can be made and carried out, for example, so that the child can be referred to another agency and be accepted by them for care. When the plans for the child have been made and carried out, the temporary TANF payments will end. The plans shall be reviewed at a redetermination.

(f) *Pregnant women.* A pregnant woman with no children or with children who are not receiving TANF may qualify for TANF for herself only as a specified relative if all of the following apply:

(1) The pregnancy and the expected delivery date are established by a physician, clinic or other medical source.

(2) The fetus, if born, would be eligible for TANF based on the criteria in § 153.43 (relating to TANF deprivation of support or care requirements).

## CHAPTER 153. DEPRIVATION OF SUPPORT OR CARE

### DEPRIVATION OF SUPPORT OR CARE PROVISIONS FOR TANF

#### § 153.42. Definitions.

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

*Cash assistance allowance*—The monthly family size allowance, reduced by the net income of the budget group. The family size allowance is described under § 175.23(a) (relating to requirements).

*Deprived child*—One who lacks the support, care or guidance of one parent or both. This means that the child does not have the maintenance, physical care or guidance that one parent or both would ordinarily be expected to provide, or that these have been interrupted.

*Uniformed service*—The Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration and Public Health Service of the United States.

#### § 153.43. TANF deprivation of support or care requirements.

(a) *General.* If a child is living with both of his natural parents, the incapacity of either parent is the eligibility factor for TANF. If a child has been legally adopted, it is the lack of the support or care of the adoptive parent, and not of the natural parent, that is the eligibility factor for TANF. If a child is living with a parent and a stepparent, lack of support or care by the natural parent is the eligibility factor for TANF. Deprivation of support is not considered to exist in situations where the mother and the putative father of a child born out-of-wedlock are living together with the child and paternity has been established. For public assistance purposes, this is an intact family. The CAO documents a putative father's claim of paternity for a child born out-of-wedlock who was born within this Commonwealth on an *Acknowledgement of Paternity Form* under § 153.44(e)(1) (relating to procedures). When the putative father claims paternity of a child who was born out-of-State, the CAO refers the putative father to the domestic relations section to file a domestic relations section *Voluntary Statement of Paternity Form* in accord with § 153.44(e)(2). When the putative father living with the child denies paternity, TANF may be established based on the absence of the child's legal parent if all other eligibility requirements are met. A child is considered deprived of parental support or care if at least one parent is one of the following:

(b) *Requirements relating to absence from the home.* Continued absence from the home refers to desertion by a parent, legal, or other separation between the parents, and certain other circumstances of absence enumerated in § 153.44. It also describes the situation when a parent of a child born out-of-wedlock is not with the child.

(c) *Requirements relating to physical or mental incapacity.* Physical or mental incapacity exists when either one of the parents living with the child has a physical or mental defect, illness or impairment which substantially reduces or eliminates the ability of the parent to support or care for the child. The incapacity shall be proved.

(d) *Unemployment of the parent.* The lack of parental support or care for the child because of unemployment refers to the employment status of the parent who is the principal wage earner. The unemployment of the principal wage earner parent, as specified in § 153.44(d), will establish the TANF category for the needy child regardless of the extent to which the other parent is employed.

**§ 153.44. Procedures.**

(a) *Absence from the home.* The following procedures relate to absence from the home:

(1) "Continued absence" will be considered to exist whenever the parent is a convicted offender permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday.

(2) When the eligibility of a child for TANF is based on deprivation due to "continued absence," the Application for Support Services form will be completed at the time assistance is authorized for the child and forwarded to the Bureau of Claim Settlement Child Support Liaison Agent assigned to the CAO for processing as specified in paragraph (1).

(3) There must be proof that a parent is absent from the home and there must be evidence that the absence of the parent deprives the child of, or interrupts the child's receiving support, care or guidance.

(4) If it is verified that a parent is absent for one of the reasons listed in paragraph (6), the absence will be considered to interfere with the child's receiving support, care or guidance from the parent. No further evidence on this point will be necessary.

(5) Proof of the circumstances in the subparagraphs of this paragraph consists of the statement of the applicant or recipient supported by other valid evidence. Examples of acceptable evidence are divorce decrees; court orders; official court statements; and official letters from the penal institution or other institution, hospital, and the like. Acceptable evidence of marital separation consists of documentation that husband and wife live at different addresses due to marital discord. Circumstances which establish absence are:

- (i) Divorce.
- (ii) Pending divorce.
- (iii) Desertion.
- (iv) Marital separation.
- (v) Hospitalization.

(vi) Imprisonment, including a person who is a convicted offender permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday. A person so sentenced is not considered part of the assistance unit and is not eligible to receive assistance.

- (vii) Other institutionalization.

(6) Whenever the CAO finds that a parent is absent from the home, and not for one of the specific reasons listed in paragraph (5), for purposes of eligibility for TANF there must be evidence that temporarily or permanently the parent is not taking responsibility for the support, care or guidance of the child.

(7) Deprivation due to absence does not exist if the absence of the parent from the home is due solely to the parent's performance of active duty in a uniformed service. Deprivation due to absence may be established only

if there is evidence that absence for one of the specific reasons listed in paragraph (6) exists.

(8) If pieces of evidence in a case show conflicting information, the county staff will decide which is most reliable; and the decision and the reason for it will be recorded.

(9) Whenever a person applies for assistance on behalf of a child living with him and either or both parents are absent from the home, the CAO shall assure itself that the absent parent or parents have the opportunity to participate in planning for the child unless circumstances make it inadvisable or impossible. If the person applying indicates that the absent parent or parents are not interested in taking part in planning for the child or that it would be inadvisable or impossible for the parent to do so, the CAO will require the person applying to produce some evidence of this fact.

(10) For requirements relating to establishing paternity and securing support from a putative father or from parents who are absent from the home, see Chapter 187 (relating to support from relatives not living with the client).

(b) *Locating absent parents.* Procedures are as follows:

(1) Regardless of their living arrangements, parents are legally responsible for the care and support of their dependent children. Absent parents therefore represent possible economic and social resources that must be explored.

(2) When a parent is absent from the home, the first step in exploring the resource that the parent represents to the TANF child or children will be to locate the parent. The purposes of location are to reunite the family when feasible, and to obtain support so far as possible.

(i) *Referral to county domestic relations section (DRS) for support services.* Referral to the DRS will occur under the following circumstances:

(A) If the eligibility of a child for TANF is based on deprivation due to absence of a parent from the home, each applicant or recipient caretaker relative with whom the child is living will be referred, before authorization, to the DRS as specified in § 187.23(d) (relating to requirements).

(B) As a condition of continued eligibility, the caretaker/relative will be required to comply with cooperation requirements by appearing at the DRS support interview and providing all verbal or written information known or possessed by him relevant to the identification and location of the absent parent as set forth in § 141.21 (relating to policy). If the caretaker/relative disagrees with a determination made by the DRS support official, with regard to cooperation requirements, he does have a right to appeal and have a fair hearing.

(C) If the applicant or recipient fails to comply with cooperation requirements without good cause, a notice will be provided notifying the individual of a reduction in the cash assistance allowance by 25% effective 10 days from the date of the notice. At the expiration of the 10-day period, the CAO will impose the cash assistance allowance reduction unless a timely appeal is filed by a recipient.

\* \* \* \* \*

(c) *Procedures relating to determining incapacity or impairment.* The following procedures relate to the determination of incapacity or impairment:

(1) *Incapacity.* The incapacity must be proved. If the necessary data is not already available in the case record or from the parent, the CAO will provide help, if requested, to get the necessary verification. If the services of a competent authority are not available without cost, the CAO will authorize a medical examination. If capacity of either parent cannot be determined from the available information, the CAO will make a preliminary decision regarding the incapacity. If the decision is that a parent appears to be incapacitated, and if the grant group meets the other TANF eligibility requirements, the CAO will authorize TANF presumptively as provided in Chapter 227 (relating to central office disbursement). When there is a question of incapacity, the individual shall cooperate with the CAO in providing verification of incapacity as a condition of eligibility for the family. To prove incapacity, an impairment expected to last at least 30 days shall be verified by competent medical information, such as the following:

\* \* \* \* \*

(d) *Procedures relating to the unemployed principal wage earner parent.* The following procedures relate to an unemployed parent determined to be the principal wage earner:

(1) *General.* The following is a general statement relating to the principal wage earner parent:

(i) The principal wage earner is an employable parent in a home in which both parents of a dependent child reside, who earned the greater amount of income in the 24-month period immediately preceding the month in which application for assistance is made. If both parents earned an identical amount of income in the 24-month period, the principal wage earner is that parent who earned the greater amount of income in the last 6 months of the 24-month period. If both parents earned an identical amount of income in the 6-month period, either parent may be designated the principal wage earner. The principal wage earner parent shall meet the conditions in this subparagraph on the effective date of the initial authorization for TANF. The conditions are as follows:

(A) The principal wage earner parent has had a work record. Reference should be made to paragraph (2).

(B) The principal wage earner parent has not without good cause refused a bona fide offer of employment or training within the period of unemployment.

(C) The principal wage earner parent does not refuse to apply for or accept unemployment compensation which the parent is qualified to receive under an unemployment compensation law of a state or of the United States.

(D) A nonexempt parent shall participate in the RESET as provided in Chapter 165 (relating to road to economic self-sufficiency through employment and training (RESET) program).

(E) The principal wage earner parent is not a participant in a strike.

(ii) Unemployment is defined as: having no work, having work in which the net income, after allowable deductions under §§ 183.94 and 183.98 (relating to eligibility for TANF earned income deductions; and unearned income and lump sum income deductions) is less than the family size allowance for the budget group, as defined in § 168.2 (relating to definitions) or having "on-the-job" training in a project that is approved or recommended by the JS or RESET.

(iii) If a principal wage earner parent has refused an offer of employment or training for employment, the

following factors are considered in deciding whether the offer was bona fide or whether there was good cause to refuse it: the capacity of the parent to do the type of work required; the travel distance, and transportation available; the fact of a definite offer of employment at wages meeting applicable minimum wage requirements and which are customary for work in the community; working conditions, such as risks to health, safety or lack of workers' compensation protection. If the offer of employment was made directly to the parent through JS or through a manpower agency, the determination as to whether the offer was bona fide or whether there was good cause to refuse it is made by JS or the manpower agency. This determination is binding on the CAO.

(iv) The family will be ineligible for TANF with respect to any week for which the principal wage earner parent qualifies for unemployment compensation under an unemployment compensation law of a state or of the United States but refuses to apply for or accept the UC.

(2) *Work record requirement.* Eligibility for TANF depends on the unemployed principal wage earner parent having had a work record. A work record shall be proved. To prove a work record, there shall be evidence that the principal wage earner parent meets one of the following conditions:

(i) The parent received UC benefits from a state or from the United States within the 12-month period prior to the date of application or was qualified for UC which means that the parent would have been eligible if the parent had filed application for benefits or if the parent's employment had been covered under Unemployment Compensation Law (43 P.S. §§ 751—914) within the 1-year period.

(ii) The parent worked for 6 or more calendar quarters in a 13-calendar quarter period ending within the 12-month period before the date of the application. Activities as specified in clauses (D) and (E) may be used to qualify for no more than 4 of the required 6-calendar quarters. In a calendar quarter, which is defined as a period of 3-consecutive calendar months ending on March 31, June 30, September 30 or December 31, the parent shall have:

(A) Earned \$50 or more.

(B) Participated in a community work and training program; which means programs of a constructive nature, encouraging the conservation of work skills and the development of new skills for individuals who are 18 years of age or older and are receiving TANF and under conditions which are designed to assure protection of the health and welfare of these individuals and the dependent children involved, or other work and training program under governmental auspices.

(C) Participated in the Work Incentive Program before October 1, 1989, or in ETP or RESET on or after October 1, 1989, while receiving AFDC or TANF.

(D) Attended, full-time, an elementary school, a secondary school or a vocational or technical training course designed to prepare the individual for gainful employment.

(E) Participated in an educational or training program established under the Job Training Partnership Act of 1982 (29 U.S.C.A. §§ 1501—1781).

(F) A quarter of coverage based on earnings in the calendar year, as determined under section 213(a)(2) of the Social Security Act (42 U.S.C.A. § 413(a)(2)).

(3) *Transfers between CU and C grant groups.* Transfers between CU and C grant groups will be governed by the following:

(i) CU grant groups will be transferred to C if deprivation occurs for reasons other than the unemployment of the principal wage earner parent. Similarly, C grant groups will be transferred to CU if deprivation no longer exists except for the unemployment of the principal wage earner parent as specified in § 153.43(d) (relating to TANF deprivation of support or care requirements).

(ii) A *Form PA 122, Authorization*, is required for each transfer. The executive director or his delegate will sign the Form PA 122 authorizing GA.

(e) *Procedures relating to the Acknowledgement of Paternity form*. When assistance is requested or received on behalf of a child born out-of-wedlock, the CAO will explore with the caretaker relative the putative father's willingness to sign an *Acknowledgment of Paternity Form*.

(1) For children born in this Commonwealth, the following procedures apply:

(i) The *Acknowledgment of Paternity Form* is used to establish paternity of a child born out-of-wedlock when assistance is requested or received on behalf of a child born out-of-wedlock and the putative father voluntarily consents to establishing a claim of paternity by signing the form. The following procedures apply:

(A) When the putative father establishes a claim of paternity by signing the form, the worker also obtains the mother's signature on the form. To be valid, the signatures of the mother and putative father shall be witnessed by a third party. The third party may not be the mother or the putative father. The CAO forwards the form to:

THE PARENT LOCATOR SERVICE SECTION  
CHILD SUPPORT PROGRAMS OFFICE  
POST OFFICE BOX 8018  
HARRISBURG, PENNSYLVANIA 17105

(B) Upon completing and forwarding the form to the Parent Locator Service Section, the CAO will consider the putative father as an LRR to the child. The CAO will apply appropriate LRR regulations.

\* \* \* \* \*

**CHAPTER 165. ROAD TO ECONOMIC  
SELF-SUFFICIENCY THROUGH EMPLOYMENT  
AND TRAINING (RESET) PROGRAM**

**GENERAL RESET PROVISIONS**

**§ 165.1. General.**

(a) A recipient who is not exempt shall participate in RESET. An exempt individual may volunteer to participate in RESET. The CAO will inform an applicant and recipient of the rights and responsibilities, and services and benefits available to RESET participants. A recipient's ability to meet RESET participation requirements will be assessed after consultation with the recipient. Applicants and recipients shall comply with this chapter.

(b) The Department will provide RESET participants, to the extent necessary, case management and approved supportive services as may be necessary to support participants in becoming self-sufficient. In addition, participants will be provided with or referred to education, training and employment-related activities designed to break the cycle of welfare dependency. To the extent it deems possible, the Department will identify and promote resources in the public and private sectors that may assist participants to prepare for and obtain employment in jobs they may realistically be expected to obtain.

(c) The Department may provide employment, education, training, work-related activities or work experience programs to applicants or recipients. Nothing in this chapter shall be interpreted as requiring the Department to develop or to offer or to continue to offer the employment, education, training, work-related activities or work experience programs.

**§ 165.2. Definitions.**

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

*AMR—Agreement of Mutual Responsibility—*

(i) A written individualized document that, based on an assessment of the individual's skills and abilities, sets forth the responsibilities and obligations to be undertaken by the individual to achieve self-sufficiency, including participation in approved work and work-related activities.

(ii) The AMR includes the time frames within which each obligation is to be completed, the penalties for failure to comply, and the services to be provided by the Department to support the individual's efforts.

*Appropriate child care—*

(i) Services operating in accordance with applicable State regulations for child day care centers, group day care homes and registered family day care.

(ii) The term also includes informal care provided in the child's home or the home of the caregiver.

*Bona fide offer of employment—*To be considered a bona fide offer of employment, there must be reasonable assurances that:

(i) Appropriate standards for the health, safety, minimum wage and other conditions applicable to the performance of work and training in the employment are established and will be maintained.

(ii) The employment will not result in any displacement of employed workers and with respect to that employment, the conditions of work, training, education and employment are reasonable in light of factors such as the type of work, geographical region and proficiency of the participant.

(iii) The employment is not available due to a labor dispute, strike or lock-out.

*EDP—Employment Development Plan—*

(i) An individualized agreement with the Department that is completed by the Food Stamp recipient and is based on the individual's skills and abilities.

(i) An EDP sets forth an employment goal with responsibilities and obligations to be undertaken by the individual to achieve that goal and the time frames within which each obligation is to be completed.

(ii) The EDP describes services to be provided by the Department.

*Exempt—*Individuals who are not required to comply with RESET participation requirements, as specified in § 165.21 (relating to exemptions from RESET participation requirements).

*Full-time child care—*Child care of at least 5 hours per day.

*Grant diversion—*The use of all or a portion of a recipient's cash assistance grant and Food Stamps as a wage supplement to an employer.



*Noncompliance*—The failure or refusal to comply with this chapter.

*Participant*—An individual who is actively engaged in a mutually agreed upon and approved education, employment or training related activity.

*Part-time child care*—Child care of less than 5 hours per day.

*Preexpenditure approval*—Approval by a person specified by the Department prior to the recipient's incurring an expense for an item or service.

*Reasonable distance*—Up to 2 hours travel time round trip from home to the work site, including travel time to the child or adult care provider, by reasonably available public or private transportation.

*RESET—Road to Economic Self-Sufficiency Through Employment and Training*—A program operated by the Department, within the constraints of available funds, to enable recipients of cash assistance to secure permanent full-time unsubsidized jobs, entry level jobs or part-time jobs which can establish a work history, preferably in the private sector, with wages and benefits that lead to economic independence and self-sufficiency as soon as practicable.

*Special allowances for supportive services*—Payments for items and services as determined by the Department to be necessary to enable a participant to prepare for, seek, accept or maintain education, employment or training.

#### § 165.11. (Reserved).

### EXEMPTIONS FROM RESET PARTICIPATION REQUIREMENTS

#### § 165.21. Exemptions from RESET participation requirements.

(a) An individual's exemption status is reviewed when a change is reported that would affect the individual's exemption status, when a condition is expected to change and at each reapplication interview. The individual is notified in writing of changes in exemption status.

(b) An individual who is exempt may volunteer to participate in RESET.

(c) An individual shall participate in RESET unless the individual establishes good cause under § 165.52 (relating to good cause) or the individual is exempt. An individual may be exempt if the individual is one of the following:

(1) Mentally or physically disabled, as verified by a physician or licensed psychologist, and the disability temporarily or permanently precludes any form of employment or work-related activity.

(i) An exemption period for recuperation after childbirth as determined by a physician or licensed psychologist.

(ii) Because mentally ill or mentally retarded persons cannot always acknowledge or explain their impairment and are frequently incapable of obtaining verification, persons who, in the judgment of the worker are mentally impaired, shall be referred to the Disability Advocacy Program for further evaluation. These persons will be exempt pending the results of an evaluation.

(iii) The Department may require an applicant or recipient with a verified temporary mental or physical

disability, including drug or alcohol dependency, to pursue appropriate treatment as a condition of receiving assistance.

(iv) The Department may require an applicant or recipient to submit to an independent examination as a condition of receiving assistance.

(2) The parent or other caretaker who is personally providing care for a child under 6 years of age for whom an alternate child care arrangement is unavailable.

(3) A child who is under 18 years of age and pursuing a high school diploma or a certificate of high school equivalency.

(4) The custodial parent in a one-parent household who is caring for a child who is under 12 months of age. This exemption is limited to a maximum of 12 months in the parent's lifetime.

#### § 165.22. Verification of exemption.

(a) *Need for verification.* The applicant or recipient shall cooperate in providing necessary information and verification regarding the basis for exemption.

(1) The CAO may assist an individual in obtaining verification when help is needed.

(2) The Department may require an applicant or recipient claiming an exemption based on a physical or mental disability which temporarily or permanently precludes any form of employment or work-related activity to submit to an independent examination as a condition of receiving assistance, if the individual is exempt from RESET.

(3) An applicant or recipient with a verified physical or mental disability which temporarily precludes any form of work or work-related activity shall pursue appropriate treatment to restore or improve the individual's ability to work, as a condition of receiving assistance, if the individual is exempt from RESET.

(4) An individual is not required to verify information that was previously verified and is not subject to change.

(b) *Types of verification.* Verification of an exemption consists of reasonably available documentation specified by the Department and includes birth certificates or baptismal records, written statements from physicians, licensed psychologists or school officials that support the Individual's claim for an exemption.

(1) The verification of a physical or mental disability shall be established on a form specified by the Department and shall be based on acceptable clinical and laboratory diagnostic techniques rather than on the applicant's or recipient's statement of symptoms.

(2) If the individual fails to verify the claim for an exemption, the individual shall participate in RESET unless the individual has cooperated in seeking verification and verification is unavailable.

(c) *Expiration of exemption.* The CAO will notify the exempt individual in writing when the period of exemption is due to end.

(1) The individual will be given an opportunity to provide new or additional verification to continue the exemption.

(2) The individual will be given the opportunity to prepare to comply with RESET participation requirements under § 165.31 (relating to RESET participation requirements).

**§ 165.25. RESET participation requirements following an exemption.**

An individual who was formerly exempt shall participate in RESET, as specified in § 165.31 (relating to RESET participation requirements), in accordance with the following:

(1) An individual who was exempt due to a physical or mental disability is required to participate in RESET:

(i) Immediately if the condition ceases during the first 22 months that the individual receives cash assistance.

(ii) Within 8 weeks if the condition ceases after the individual has received cash assistance for 22 months or more.

(2) An individual who was exempt from RESET because the individual is providing child care for a child under 6 years of age shall participate in RESET as soon as alternate child care arrangements are available or when the child becomes 6 years of age, whichever occurs first.

(3) An exempt individual under 18 years of age shall participate in RESET when the individual:

(i) Reaches 18 years of age, although the individual may be able to continue to pursue a high school or equivalency program after age 18 as a work-related activity during the first 24 months of receipt of cash assistance.

(ii) Attains a high school diploma or a certificate of high school equivalency.

(iii) Ceases to pursue a high school diploma or a certificate of high school equivalency.

(4) A custodial parent in a one-parent household who was exempt to provide care to a child under 12 months of age shall participate in RESET if one of the following conditions:

(i) The child reaches 12 months of age.

(ii) The custodial parent has claimed this exemption for a total of 12 months during the parent's lifetime.

(iii) The custodial parent chooses to end the exemption.

**RESET PARTICIPATION REQUIREMENTS**

**§ 165.31. RESET participation requirements.**

(a) The following RESET participation requirements always apply:

(1) An individual who is not exempt under § 165.21 (relating to exemptions from RESET participation requirements) shall seek and accept any bona fide offer of employment and maintain employment.

(2) A nonexempt individual shall accept referral to, work in and retain employment in which the individual is able to engage and participate in work activities specified on the AMR.

(3) A nonexempt individual may not, without good cause, voluntarily terminate employment, reduce earnings or fail to apply for work.

(4) Information indicating noncompliance with this section will result in a compliance review in accordance with § 165.51 (relating to compliance review).

(5) A nonexempt recipient's willful failure, without good cause, to comply with this subsection will result in the imposition of sanctions as specified in § 165.61 (relating to sanctions).

(b) *Requirements that apply during the first 24 months.* The following RESET participation requirements apply during the first 24 months:

(1) A nonexempt individual who is not employed for an average of at least 20 hours per week shall participate in a work-related activity.

(2) A nonexempt individual who is not employed for an average of at least 20 hours per week shall accept referral to, participate in and continue to participate in an available work-related activity, including work-related activities specified on the AMR.

(3) For the initial work-related activity, the individual shall participate in an initial job search for up to 8 weeks, except as provided in paragraph (6) and subsection (f).

(i) For an applicant, the initial job search is required upon authorization of cash assistance.

(ii) The applicant or recipient shall document these efforts and present the documentation to the appropriate CAO upon request.

(4) After the initial job search, the individual may fulfill the work-related activity requirement, subject to the limitations in paragraphs (5)—(8), by participating in one or more of the following activities, as approved by the Department:

(i) Subsidized employment.

(ii) Work experience.

(iii) On-the-job training.

(iv) Community service.

(v) Workfare.

(vi) Job search, whether independent or assisted, and job readiness and job preparation activities.

(vii) Vocational education training or job skills training.

(viii) Any employment and training program funded or approved by the Department that provides one-stop access to intensive case management, training, education, job readiness training, job search and individual job development that leads to job placement.

(ix) Any employment and training program funded or approved by the Department that provides activities for a cash assistance applicant or recipient to achieve rapid attachment to the workforce.

(x) In the case of a recipient 18 years of age or older and less than 22 years of age, general education that is necessary for the recipient to obtain employment, a high school diploma or a certificate of high school equivalency, subject to the recipient maintaining satisfactory progress as defined by the school or educational program.

(5) During the first 24 months that an individual receives cash assistance, whether consecutive or interrupted, participation in an approved vocational education, general education, English-as-a-second language and job skills training counts toward fulfilling the work-related activity requirement of this subsection for a maximum of 12 months. After 12 months of education or training, the individual may continue to pursue education or training, but shall also fulfill RESET participation requirements, unless the individual establishes good cause under § 165.52 (relating to good cause).

(6) A recipient 18 years of age or older but under 22 years of age who does not have a high school diploma or its equivalent may fulfill RESET participation requirements by pursuing a high school diploma or its equivalent.

lent, provided that the individual maintains satisfactory progress, as defined by the institution.

(7) Work experience is limited to 6 cumulative months in an individual's lifetime.

(8) Notwithstanding paragraph (7), work experience may be extended beyond the 6-month lifetime limit if necessary to comply with Title II of the Americans With Disabilities Act (42 U.S.C.A. §§ 12131—12165).

(c) *Requirements that apply after the first 24 months.* The following RESET participation requirements apply after the first 24 months:

(1) After receiving cash assistance for 24 months, whether the months are consecutive or interrupted, a nonexempt individual shall, as a condition of eligibility or continuing eligibility for cash assistance, participate for an average of at least 20 hours per week in any one or a combination of the following activities, as approved by the Department:

- (i) Unsubsidized employment.
- (ii) Subsidized employment.
- (iii) Work experience.
- (iv) Community service.
- (v) On-the-job training.
- (vi) Workfare.

(2) After 24 months of receipt of cash assistance, an individual may continue to pursue education or training, but shall also fulfill RESET participation requirements, including the minimum 20-hour-per-week work activity requirement in paragraph (1), unless the individual establishes good cause, as specified in § 165.52.

(3) Work experience is subject to the provisions of subsection (b)(7) and (8).

(d) *AMR and EDP.* Final approval of the work and work-related activities listed in the AMR or EDP rests with the Department. The AMR and EDP are not considered contracts. Factors to be considered in developing the AMR and EDP include:

- (1) Available program services.
- (2) The client's previous education and training.
- (3) The client's supportive services needs.
- (4) The client's skills level and aptitudes.
- (5) Local employment opportunities.
- (6) The client's goals and interests, to the extent possible.

(e) *Self-initiated education or training.* Subject to subsections (b) and (c), self-initiated education or training may be approved as part of an individual's AMR, if the person is making satisfactory progress as defined by the institution.

(f) *Exempt voluntary participation.* An exempt individual may volunteer to participate in RESET. An exempt volunteer is not required to conduct an initial job search before participating in RESET.

#### **SPECIAL ALLOWANCES FOR SUPPORTIVE SERVICES**

##### **§ 165.41. Eligibility for special allowances for supportive services.**

(a) A cash assistance or Food Stamp recipient may receive certain special allowances to pay for in advance or to reimburse costs of supportive services, as specified in

this chapter, to enable the individual to prepare for, seek, accept or maintain education, training or employment. Payment for supportive services will be made in advance whenever the payment is needed by the individual to begin or maintain a RESET activity.

(b) For an individual seeking cash assistance to qualify to receive a special allowance for supportive services, the individual shall be determined eligible for cash assistance, participate in RESET unless exempt and have an approved AMR. For an individual seeking only Food Stamps, to qualify for a special allowance for supportive services, the individual shall comply with an approved EDP. The approved AMR or EDP, whichever is applicable, shall specify the activities for which the supportive services will be provided.

(c) A special allowance for supportive services is made only to the extent that the item or service is not available from another public source at no cost to the individual, does not interfere with parental choice as specified in §§ 165.46(a)(5) and 168.11(b) (relating to types of special allowances for supportive services; and general requirements), and cannot be met by educational assistance. The activity may not be secondary education or an equivalent level of vocational or technical training, unless the individual is a pregnant female or custodial parent.

(d) The CAO will inform the individual, in writing and orally, of the availability of special allowances for supportive services at application, reapplication and whenever the AMR or EDP is developed or revised.

(e) The CAO shall assist the participant to obtain supportive services to participate in employment, education, training and job search activities, including precomponent activities such as orientation.

(f) Except as otherwise restricted in this chapter, special allowances for supportive services may be granted as often as required to enable the individual to participate in an approved education or training activity and once for each job.

#### **COMPLIANCE REVIEW AND GOOD CAUSE**

##### **§ 165.51. Compliance review.**

(a) *Need for compliance review.* A compliance review will be conducted when information indicates that a recipient may be out of compliance with RESET participation requirements, as specified in § 165.31 (relating to RESET participation requirements).

(b) *Scheduling the compliance review.* The caseworker will inform the recipient of the need for a compliance review and the consequences of failing, without good cause, to participate in the compliance review. In scheduling the compliance review, the caseworker will reasonably take into account the individual's work schedule, family and school obligations. The compliance review may be conducted in person or by telephone, according to the individual's preference.

(c) *Purpose of compliance review.* With the understanding that the goal of RESET is to assist the individual in becoming employable and self-sufficient, the compliance review will seek to identify the reasons for the individual's apparent noncompliance with RESET participation requirements. The caseworker will review the facts including those presented by the individual and those facts already known by the Department. If the individual's failure to comply with RESET participation requirements is not willful or the individual has good cause under § 165.52 (relating to good cause), the individual is not subject to sanction. In that instance, the caseworker will

explore ways to address the obstacles that prevented the individual from complying with RESET participation requirements.

(d) *Results of compliance review.* The caseworker will document the results of the compliance review. If the caseworker determines that a recipient has willfully failed, without good cause, to comply with RESET participation requirements, the recipient is subject to sanction under § 165.61 (relating to sanctions). For a noncompliant recipient not subject to sanction, the caseworker will review program requirements, help identify obstacles to compliance, and with the recipient's involvement, develop a new AMR to help achieve and maintain compliance. A recipient may appeal the Department's decision that the recipient is subject to sanction as specified under § 275.1 (relating to policy).

(e) *Special provision for individuals with disabilities.* If the caseworker knows that an individual has a disability, the caseworker considers this fact, and those presented by the individual. If the facts reveal that the individual did not comply with RESET participation requirements due to disability, no sanction is imposed. In that case, the caseworker and the individual will develop a new AMR to address the disability and, if applicable, other obstacles to self-sufficiency.

**§ 165.52. Good cause.**

(a) Good cause includes the following circumstances beyond the individual's control:

- (1) The job was beyond the capacity of the individual.
- (2) The individual reasonably attempted and is unable to secure or to maintain transportation.
- (3) The individual reasonably attempted and cannot secure or maintain appropriate child care, as defined in § 165.2 (relating to definitions), or appropriate adult care for an incapacitated adult living in the same home, within a reasonable distance from the individual's home, as defined in § 165.2.
- (4) The working conditions are substandard; that is, the place of employment is not free of recognized hazards that are causing or are likely to cause death or serious physical harm, or the wages paid are below the minimum wage if applicable for that type of employment or are below the prevailing wage normally paid in the community for that specific kind of employment.
- (5) The individual establishes a basis for a claim of discrimination by an employer or fellow employees based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs or other unlawful discrimination.
- (6) The individual leaves a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm labor, construction work or temporary work through an agency. Even though employment at the new site has not actually started, leaving the previous employment shall be considered good cause if it is part of the pattern of that type of employment.
- (7) Personal illness or illness of another household or family member.
- (8) A personal emergency.
- (9) The individual failed to receive notice at least 2 days prior to the date of a scheduled RESET activity.
- (10) The individual ends a sporadic work relationship that does not hold a reasonable possibility for permanent,

full-time work to participate in an approved RESET activity or to accept full-time employment.

(11) A job offer is rejected because it will result in a net loss of cash income to the budget group of the RESET participant. Net loss of cash income results if the budget group's gross income less actual work-related expenses plus a cash assistance payment for which the budget group remains eligible is less than the cash assistance previously received. The actual work-related expenses include mandatory payroll deductions as well as the actual cost of the child care, cost of care of an incapacitated individual living in the same home and transportation.

(12) The individual was placed in an education or training activity that was beyond the capacity of the individual to complete, and the individual is willing to participate in another activity better suited to the individual's needs and aptitudes.

(13) A required employment and training activity conflicts with scheduled hours of employment or a job interview.

(14) The location of a RESET site or job is more than 2 hours round-trip by reasonably available public or private transportation from the individual's residence.

(15) The individual is claiming to be exempt from RESET participation requirements under § 165.21 (relating to exemptions from RESET participation requirements) and is cooperating in an attempt to provide verification of exemption.

(b) In determining good cause, the worker will give the individual the benefit of the doubt and consider all the facts and circumstances, especially if the transgression is relatively minor (such as reporting to a component a few minutes late) or isolated in nature (such as forgetting to keep an appointment, despite good overall attendance). Even after the CAO has made a preliminary determination of the lack of good cause, an individual may offer evidence of good cause to avoid sanction.

(c) The Department may grant good cause for up to 6 months to an individual, when strict application of any RESET participation requirement would not promote an individual's approved plan for self-sufficiency, as recorded on the AMR, and would make it more difficult for the individual to fulfill the plan. Examples of good cause for not strictly complying with a RESET participation requirement include:

- (1) Hours that an individual is participating in an approved education or training activity which began during the first 24 months of receipt of cash assistance, if the total hours of instruction, lab time and work or work-related activity, whichever applies, equals at least 20 hours per week.
- (2) Hours that an individual is participating in an internship, student teaching, or practicum assignment required as part of an approved education or training curriculum, if the individual is maintaining satisfactory progress as determined by the school or training agency, and the total hours of this activity and work or work-related activity, whichever applies, equals at least 20 hours per week.

(d) The Department may also grant good cause to a pregnant or parenting individual under 22 years of age who is enrolled in high school or attending a minimum 20-hour per week GED program, until the individual graduates from high school, receives a GED or reaches 22 years of age, whichever occurs first.

**SANCTIONS****§ 165.61. Sanctions.**

(a) A sanction will be imposed on an individual who is required to participate in RESET if the individual willfully, and without good cause, does one or more of the following:

(1) Fails to accept a bona fide offer of employment in which the individual is able to engage.

(2) Voluntarily terminates employment.

(3) Fails or refuses to accept referral to, participate in, or continue to participate in an available work-related activity, including work-related activities specified on the AMR.

(4) Fails to accept referral to, work in, or retain employment in which the individual is able to engage and participate in work activities specified on the AMR.

(5) Fails to seek employment.

(6) Fails to maintain employment.

(7) Reduces earnings.

(8) During the first 24 months of cash assistance, fails to participate in one of the following work-related activities, if not employed at least 20 hours per week:

(i) Subsidized employment.

(ii) Work experience.

(iii) On-the-job training.

(iv) Community service.

(v) Workfare.

(vi) Job search, whether independent or assisted, and job readiness and job preparation activities.

(vii) Vocational education training or job skills training.

(viii) Any employment and training program funded or approved by the Department that provides one-stop access to intensive case management, training, education, job readiness training, job search and individual job development that leads to job placement.

(ix) Any employment and training program funded or approved by the Department that provides activities for a cash assistance applicant or recipient to achieve rapid attachment to the workforce.

(x) In the case of a recipient 18 years of age or older and less than 22 years of age, general education that is necessary for the recipient to obtain employment, a high school diploma or a certificate of high school equivalency, subject to the recipient maintaining satisfactory progress as defined by the school or educational program.

(9) After receiving 24 months of cash assistance, fails to participate for an average of at least 20 hours per week in one of the following work activities:

(i) Unsubsidized employment.

(ii) Subsidized employment.

(iii) Work experience.

(iv) Community service.

(v) On-the-job training.

(vi) Workfare.

(10) Fails to agree to fulfill RESET participation requirements.

(11) Fails to apply for work at the time and in the manner the Department may prescribe.

(b) The sanction period shall be:

(1) For the first occurrence, ineligibility for cash assistance for 30 days, or until the recipient is willing to comply, whichever is longer.

(2) For the second occurrence, ineligibility for cash assistance for 60 days, or until the recipient is willing to comply, whichever is longer.

(3) For the third occurrence, permanent ineligibility for cash assistance.

(c) Applicability of the sanction is as follows:

(1) During the first 24 months, the sanction is imposed only on the individual who failed to comply.

(2) After 24 months, the sanction is imposed on the entire budget group.

(d) In lieu of the sanctions in subsections (b)(1)–(3) and (c)(1), if an employed individual voluntarily, without good cause, reduces his earnings during the first 24 months that assistance is received by not working an average of at least 20 hours per week, the grant will be reduced by the dollar value of the income that would have been earned if the recipient had not voluntarily reduced the hours of employment to less than an average of 20 hours per week. Unless the individual verifies an exemption from RESET participation requirements or establishes good cause for noncompliance, the reduction will continue until the minimum 20-hour weekly work requirement is met.

(e) If the individual under sanction in the first 24 months is the only dependent child in the TANF budget group, the caretaker will continue to receive TANF during the sanction period, if otherwise eligible.

(f) If the individual under sanction in the first 24 months is a parent or other caretaker, protective payments for the remaining members of the budget group will be made to the caretaker under sanction.

**NOTIFICATION****§ 165.71. Notification.**

(a) If the compliance review results in a finding that the recipient was willfully, and without good cause, failed to comply with RESET participation requirements, the CAO will notify the recipient in accordance with Chapter 133 (relating to redetermining eligibility). This notice will indicate the sanction to be imposed and the reason for the sanction.

(b) An individual whose failure to comply results in a sanction, as specified in § 165.61 (relating to sanctions), will be reminded in writing before the end of the minimum durational sanction period of the individual's option to end the sanction by correcting the failure to comply. The CAO will send the reminder to the individual 10 days prior to the end of the sanction period.

(c) The CAO shall inform applicants and recipients of the availability of transitional child care and extended medical care at application and reapplication.

**Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE****CHAPTER 177. RESOURCES****TREATMENT OF RESOURCES****§ 177.21. Personal property.**

(a) *Applicants and recipients.* For an applicant and recipient, the following personal property is not counted in determining eligibility:

(1) Basic items essential to day to day living, such as the following:

- (i) A household furnishing.
- (ii) A major appliance.
- (iii) An item used to provide, equip and maintain a household for the applicant or recipient.
- (iv) A personal effect of limited value, including clothing, a child's toy, a wedding or engagement ring.
- (v) Pets and family heirlooms.
- (vi) A farm animal for domestic use.
- (vii) A piece of farm equipment or a farm animal needed for employment.
- (viii) A piece of equipment needed for employment, rehabilitation or to implement a self-care plan.

(2) The full value of one vehicle per TANF or GA budget group. The equity value of all other vehicles will be counted and applied toward the resource limit.

(3) A retroactive assistance payment received as a result of a prehearing conference, a fair hearing decision or a court order. This exemption will be only for the calendar month of receipt and the following calendar month. If an amount remains after the period of exemption, it is considered nonexempt and is subject to the resource limits under § 177.31 (relating to resource limit).

(4) A retroactive assistance payment authorized to correct underpayments to current recipients. The exemption will be only for the calendar month of receipt and the following calendar month. If an amount remains after the period of exemption, it is considered nonexempt and is subject to the resource limit under § 177.31.

(5) The value of food stamps received by a participant in the food stamp program.

(6) A Home Energy Assistance (HEA) benefit furnished in-kind by a private, nonprofit organization or furnished as cash or in-kind assistance by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis and regulated by the Pennsylvania Public Utility Commission or by a municipal utility providing home energy. HEA benefits may include payments for heating or cooling, storm doors, weatherization services, blankets or other items. HEA benefits do not include food or clothing.

(7) In-kind Support or Maintenance Assistance (SMA) benefits provided by a private, nonprofit organization. SMA benefits may include in-kind provisions of food, clothing, temporary emergency shelter, furniture, appliances or other items.

(8) Benefits received from the Low Income Home Energy Assistance Program (LIHEAP).

(9) A revocable burial reserve, as defined in § 177.2 (relating to definitions), of up to \$1500 for each member of the budget group.

(10) If a burial reserve is in irrevocable form under § 177.24(l)(i) (relating to determining value of resources), it has no effect on eligibility for assistance.

(11) An educational savings account established by an individual at a bank or other financial institution to pay for education expenses, including tuition, books and incidental expenses related to attendance at a vocational school, community college, college or university. The

account shall be clearly identified as having been established for or restricted to payment of educational expenses.

(i) The savings account, its ownership, the account balance and the fact that the account is restricted for payment of educational expenses shall be verified by written documentation. Documentation may include, but is not limited to, a copy of the passbook or a copy of the current account statement from the bank or other financial institution.

(ii) Moneys deposited in an account plus interest earned on the account shall be exempt in determining eligibility as long as the funds remain on deposit.

(iii) Moneys withdrawn to pay for educational expenses are exempt. Documentation shall be provided that verifies the expenses were incurred and related to attending school.

(iv) Moneys withdrawn from an educational savings account that are used for a purpose unrelated to education shall be added to the budget group's resource amount and used to determine eligibility beginning with the date of withdrawal.

(12) Savings accounts established and bonds purchased under the Tuition Account Program and College Savings Bond Act (24 P. S. §§ 6901.101—6901.701).

(13) Educational assistance in the form of loans, grants and scholarships, and work-study income.

(14) The face and cash surrender value of a life insurance policy.

(15) A family savings account established under Chapter 21 of the Job Enhancement Act (73 P. S. §§ 400.2101—400.2103).

(i) The account shall be clearly identified as a family savings account.

(ii) The savings account, its ownership and the account balance shall be verified by written documentation. Documentation may include a copy of the passbook or a current statement from the bank or other financial institution.

(iii) Moneys deposited into the account plus interest earned on the account shall be exempt in determining eligibility as long as the funds remain on deposit.

(iv) Moneys withdrawn to pay for expenses outlined in an approved savings plan for this account are exempt. Documentation shall be provided that verifies the expenses were incurred.

(v) Moneys withdrawn from a family savings account that are used for a purpose unrelated to the approved savings plan shall be added to the budget group's resource amount and used to determine eligibility beginning with the date of withdrawal. Exception: moneys withdrawn to pay for educational expenses shall be exempt.

(b) *SBP and SSI recipients.* Personal property of SBP and SSI recipients is considered exempt in determining eligibility of the budget group, even if the recipient is an LRR to a budget group member.

(c) *LRRs.* An LRR is eligible for the personal property exemptions in subsection (a). The following requirements apply:

(1) An LRR who resides with the budget group and is not receiving cash assistance will have nonexempt personal property counted in determining eligibility of the budget group.

(2) An LRR who is not residing with the budget group will not have his nonexempt personal property resources counted when determining the eligibility of the budget group.

(d) *Individual sponsor of an alien.* An individual sponsor of an alien is eligible for the personal property resource exemptions in subsection (a).

(e) *Stepparents.* Personal property of a stepparent who is not included in the budget group is exempt in determining eligibility for stepchildren.

**§ 177.22. Real property.**

(a) *Resident property owned by an applicant or recipient.* The equity value of resident property is not counted toward the resource limit. The owner shall acknowledge liability of the resident property for reimbursement of assistance received on behalf of himself and persons for whom he is an LRR as defined in § 257.24(b) (relating to procedures) by signing an agreement consenting to the placement of a lien against the property.

(1) The Department will not force the sale of, or execute on a lien against, resident property as long as the property is used as a home by the applicant or recipient owner or his spouse or minor or incompetent adult children.

(2) Although a lien is placed against resident property, the lien does not include assistance paid during the period the owner or someone else in the budget group worked in a CWEP assignment. The amount disregarded from the lien will equal the number of hours worked in a CWEP assignment multiplied by the hourly minimum wage at the time of the work assignment.

(b) *Nonresident property owned by an applicant or recipient.* Nonresident property, including a burial space, is considered in the following manner:

(1) One burial space for each household member is exempt. This exemption also applies to LRRs and sponsors of aliens.

(2) If nonexempt property is legally available, the equity value of the applicant's/recipient's interest in the property plus the equity value of other nonexempt resources is totaled and considered against the resource limits in § 177.31 (relating to resource limit).

(3) If the equity value of nonexempt property, either alone or in combination with other nonexempt resources, exceeds the resource limit, each separately deeded parcel of nonexempt property receives an exemption for 9 consecutive budget months beginning with the date assistance is authorized for applicants, and the date the resource becomes legally available for recipients, if the following requirements are met:

(i) The applicant or recipient makes a good faith effort to dispose of the property and shall sign an agreement acknowledging liability for reimbursement of assistance received on behalf of himself and persons in the budget group for whom he is an LRR.

(ii) In cases when the budget group has been unable to sell nonresident property for reasons beyond its control, the 9-month time limit for disposing of the property will be extended for additional 9-month periods as long as the Department determines that the budget group is continuing to make a good-faith effort to sell the property.

(iii) The applicant or recipient repays the amount of assistance received during the exemption period, not to exceed the net proceeds of the sale. The assistance received is treated as an overpayment.

(4) If the nonexempt property has not been sold within each of the 9-month exemption periods, and the budget group cannot substantiate that a good-faith effort to sell the property is still being made, the recipient and members of the budget group for whom he is an LRR are ineligible, and the assistance received is treated as an overpayment. If the assistance stops and restarts during the 9 consecutive month exemption period, the assistance received is treated as an overpayment.

(c) *Real property owned by an SSI or SBP recipient.* The equity value of real property of an SSI or SBP recipient is not counted in determining eligibility of a budget group, regardless of whether or not he is an LRR to the budget group. The SBP recipient shall acknowledge liability for reimbursement of assistance provided to members of the budget group for whom the SBP recipient is an LRR, and a lien in favor of the Department will be placed against only the resident property. The SBP recipient who is an LRR is subject to the requirements under subsections (a) and (b). The SBP recipient is not required to sell his resident property as a condition of eligibility of the budget group, nor will the Department force the sale of, or execute on, the lien against the property.

(d) *Resident property owned by an LRR.* The following requirements apply:

(1) The equity value of resident property of an LRR who resides with the budget group, and who does not receive cash assistance, is not counted when determining eligibility of the budget group. Subject to the requirements of subsection (a), the LRR shall acknowledge liability of the property for reimbursement of assistance received by members for whom he is legally responsible if the LRR sells the resident property.

(2) Subject to the requirements under subsection (a), the LRR who owns resident property but is not residing with the budget group shall acknowledge liability for assistance received by members for whom the LRR is responsible. Failure by the LRR to agree to acknowledge liability does not affect the eligibility of the budget group.

(e) *Nonresident property owned by an LRR.* The following requirements apply to nonresident property owned by an LRR:

(1) For an LRR who resides in the home of the budget group and who is not receiving cash assistance, SSI or SBP and who has an ownership interest in nonresident property, his equity value of the property plus the equity value of other nonexempt resources of those members for whom the LRR is responsible are totaled and counted against the resource limit found in § 177.31. The conversion requirements of subsection (b) apply to the LRR. If the property is not legally available, the value of the property is not counted. The LRR shall acknowledge liability for reimbursement of the assistance received by budget group members for whom the LRR is legally responsible under subsection (b).

(2) For an LRR who is absent from the home, the procedures at § 257.24(a)(4) apply.

(f) *Real property owned by a stepparent.* Real property or a portion of real property owned by a stepparent is exempt when determining the eligibility of the stepchild. It is not subject to acknowledgement of liability for reimbursement of assistance received by the stepchild.

(g) *Real property owned by the sponsor of an alien.* Real property owned by a sponsor of an alien is treated under § 177.11(h)(1)(ii) and (iii) (relating to identification and verification of resources).



**§ 177.24. Determining value of resources.**

Unless specifically exempt under § 177.21 or § 177.22 (relating to personal property; and real property), the equity value of real and personal property is subject to the resource limits in § 177.31 (relating to resource limit).

(1) *Determining value of personal property.* An applicant, recipient, guardian, trustee or sponsor of an alien shall provide documentation verifying value of personal property. This documentation includes a written estimate from a car dealer of the fair market value of a motor vehicle, a title of ownership and a written statement from financial institutions. Special requirements regarding certain personal property resources are as follows:

(i) An irrevocable burial reserve shall be in a form which restricts the use of the money to the client's burial, and shall provide that no part of the burial reserve may be withdrawn prior to the death of the client. If the interest earned on the reserve can be withdrawn, the interest is treated as income. If the CAO questions whether the document supports irrevocability, the Executive Director will send a copy of the document through proper channels for a review by the Office of Legal Counsel.

(ii) An irrevocable burial reserve owned by an applicant or established by a recipient is exempt. The value of a revocable burial reserve shall be counted as a resource available to the AFDC or GA budget group under § 177.21(a).

(iii) The establishment of an irrevocable or revocable burial reserve from excess resources does not reduce the individual's liability to repay the Department for the assistance granted during the time that the individual's total resource equity value exceeded the resource limit.

(2) *Determining value of nonresident property.* Documentation of the fair market value of nonresident property includes the estimate of value provide by value based property tax bills, by a licensed real estate broker or a financial institution—or, in the case of burial spaces, a statement from a representative of a cemetery or memorial garden—verifying ownership, conditions of resale and value. An encumbrance is deducted from the fair market value to determine the equity value.

**CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NMP-MA AND MNO-MA**

**Subchapter A. GENERAL PROVISIONS FOR MA RESOURCES COMMON TO ALL CATEGORIES OF MA CATEGORIES OF MA**

**§ 178.11. Categories of NMP-MA.**

NMP-MA applicants or recipients shall meet the resource requirements of the category of NMP-MA for which they are eligible. The following explains the different NMP-MA categories:

(1) The PA category designates an NMP person who is 65 years of age or older. This category is an SSI-related category.

(2) The PJ category designates an NMP person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.

(3) The PM category designates an NMP person who meets the eligibility conditions as a blind person. This category is an SSI-related category.

(4) The PC category is a TANF-related category and designates an NMP individual who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

(ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).

(iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).

(5) The PU category is an AFDC-related category and designates an NMP person who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (4) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman with no other children and the father of her unborn child, who constitute a two parent household with an unemployed principal wage earner, as defined in § 153.44(d).

(6) The PD category is a GA-related category and designates an NMP person who is 21 years of age or older and under 65 years of age, who meets the eligibility requirements for GA and who chooses to receive only MA.

**§ 178.12. Categories of MNO-MA.**

MNO-MA applicants or recipients shall meet the resource requirements of the category of MNO-MA for which they are eligible. The following explains the different MNO-MA categories:

(1) The TA category designates an MNO person who is 65 years of age or older. This category is an SSI-related category.

(2) The TJ category designates an MNO person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.

(3) The TM category designates an MNO person who meets the eligibility conditions as a blind person. This category is an SSI-related category.

(4) The TB category designates an MNO person who receives a SBP.

(5) The TC category is a TANF-related category and designates an MNO individual who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

(ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is

receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).

(iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).

(6) The TU category is an AFDC-related category and designates an MNO person who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (5)(ii) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman who is 21 years of age or older, with no other children, in a two parent household with an unemployed principal wage earner as defined in § 153.44(d).

(7) The TD category is a GA-related category and designates an MNO person who does not meet the requirements for another category of MNO.

#### **Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA**

##### **ADDITIONAL RESOURCE REQUIREMENTS FOR TANF-RELATED AND GA-RELATED CATEGORIES OF MA**

#### **§ 178.151. Additional resource requirements.**

(a) As a condition of MA eligibility for dependents living with him, a spouse and the natural or adoptive parent of an unemancipated minor child shall identify nonexcluded resources, which shall be considered, used and liquidated as though the spouse or parent were receiving MA. The spouse or parent cannot be relieved of this obligation by being a nonapplicant/nonrecipient. Only the resources actually contributed to a child who is 18 years of age or older and under 21 years of age by his parents are counted in determining the MA eligibility of a child in a MNO-MA category.

(b) The cash value of life insurance is considered a resource to the applicant/recipient group only if the applicant/recipient or an LRR living in the home is the owner of the policy or has the authority to cash in the policy.

(c) If an applicant or recipient or LRR owns nonexcluded real property, he shall have a 9-month period in which to make a bona fide effort to sell the property and additional 9-month periods as long as the applicant or recipient or LRR can demonstrate good cause for not selling the property.

(d) That portion of a gift that exceeds \$50 per individual in a calendar quarter as determined under § 181.263(8) (relating to other types of income not counted for the TANF and GA categories) is a countable resource.

(e) If a pregnancy is medically verified, the unborn child is counted as a member of the applicant/recipient group when establishing the resource limit. If multiple births are expected and verified, each unborn child is counted.

#### **RESOURCE EXCLUSIONS FOR THE TANF-RELATED AND GA-RELATED CATEGORIES OF MA**

#### **§ 178.161. Personal property exclusions.**

The following personal property is excluded:

(1) *Basic items essential to day-to-day living.* Basic items essential to day to day living such as:

(i) Household furnishings.

(ii) Major appliances.

(iii) Items used to provide, equip and maintain a household for the applicant/recipient.

(iv) Personal effects of limited value including clothing, children's toys, wedding and engagement rings.

(v) Farm animals for domestic use.

(vi) Pets and family heirlooms.

(vii) Farm equipment or farm animals needed for employment.

(viii) Equipment needed for employment, rehabilitation or to implement a self-care plan.

(2) *Motor vehicle.* Only one motor vehicle for an applicant/recipient group is excluded. Other motor vehicles are counted at their equity value.

(3) *Retroactive assistance payments.* Retroactive assistance payments received as a result of a prehearing conference, a fair hearing decision or a court order. This exemption is only allowed for the calendar month in which it is received and the following calendar month. If an amount remains after the exemption period, it is considered a resource.

(4) *Value of Food Stamps.* The value of food stamps received by a participant in the Food Stamp Program.

(5) *Personal property of an SSI or SBP recipient.* Personal property of an SSI or SBP recipient is excluded even if the SSI or SBP recipient is an LRR to an applicant/recipient group member.

(6) *Home Energy Assistance benefits.* Home Energy Assistance (HEA) benefits furnished in-kind by a private, nonprofit organization or furnished as cash or in-kind assistance by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis and regulated by the Pennsylvania Public Utility Commission or by a municipal utility providing home energy. HEA benefits may include payments for heating or cooling, storm doors, weatherization services and blankets. HEA benefits do not include food or clothing.

(7) *Support and Maintenance Assistance Benefits.* In-kind Support or Maintenance Assistance (SMA) benefits provided by a private, nonprofit organization. SMA benefits may include in-kind provision of food, clothing, temporary emergency shelter, furniture, toys and appliances.

(8) *Low Income Home Energy Assistance Program.* Benefits received from the Low Income Home Energy Assistance Program.

(9) *Burial space.* One burial space, as defined in § 178.2 (relating to definitions), for each member of the applicant/recipient group. Burial plots include graves, burial drawers, mausoleums or other property held for final interment.

(10) *Revocable burial reserve.* A revocable burial reserve up to \$1,500 for each applicant/recipient.

(11) *Irrevocable burial reserve.* An irrevocable burial reserve is considered under § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA).

(12) *Uniform Gifts to Minors Act.* A gift made to a person 20 years of age or younger under 20 Pa.C.S. §§ 5301—5310 (relating to Pennsylvania Uniform Gifts to Minors Act) is excluded as a resource until the person attains 21 years of age.

(13) *Life insurance policies.* The face and cash surrender value of all life insurance owned by the applicant or recipient.

(14) *Japanese-American and Aleutian restitution payments.* Restitution payments made by the United States government to eligible Japanese-Americans and Aleuts who were interned or relocated during World War II are excluded. If the eligible Japanese-Americans are deceased at the time of payments, payments will be made to certain of their survivors as specified under the Civil Liberties Act of 1988 (50 App. 1989b-1—1989b-9). This payment is also excluded. This paragraph does not apply to eligible Aleuts who are covered under the Aleutian and Pribilof Islands Restitution Act (50 App. §§ 1989c and 1989c-1—1989c-8). The exclusion as a resource only continues as long as the retained funds are kept identifiable. If real or personal property is purchased, the new resource is not excluded unless otherwise exempt. Interest received on retained restitution payments is also not excluded but is subject to the usual regulations governing interest as specified in Chapter 181 (relating to income provisions for categorically needy NMP-MA and MNO-MA).

(15) *Agent orange settlement payments.* Payments made from the Agent Orange Settlement Fund or another fund established pursuant to the settlement in the agent orange product liability litigation.

(16) *Educational assistance.* Educational assistance in the form of loans, grants and scholarships, and work-study income.

(17) *Family savings account.* A family savings account established under Chapter 21 of the Job Enhancement Act (73 P. S. §§ 400.2101—400.2103).

(i) The account shall be clearly identified as a family savings account.

(ii) The savings account, its ownership and the account balance shall be verified by written documentation. Documentation may include a copy of the passbook or a current statement from the bank or other financial institution.

(iii) Moneys deposited into the account, plus interest earned on the account shall be exempt in determining eligibility as long as the funds remain on deposit.

(iv) Moneys withdrawn to pay for expenses outlined in an approved savings plan for this account are exempt. Documentation shall be provided that verifies the expenses were incurred.

(v) Moneys withdrawn from a family savings account that are used for a purpose unrelated to the approved savings plan shall be added to the applicant or recipient group's resource amount and used to determine eligibility beginning with the date of withdrawal. Exception: moneys withdrawn to pay for educational expenses shall be exempt.

**ADDITIONAL RESOURCE EXCLUSIONS FOR GA CATEGORIES OF MA**

**§ 178.165. Educational savings accounts.**

(a) For GA categories of MA, an educational savings account established by an individual at a bank or other financial institution to pay for education expenses, including tuition, books and incidental expenses related to attendance at a vocational school, community college, college or university is not counted in determining eligibility.

(1) The account shall be clearly identified as having been established for or restricted to payment of educational expenses.

(2) The savings account, its ownership, the account balance and the fact that the account is restricted for payment of educational expenses shall be verified by written documentation. Documentation may include, but is not limited to, a copy of the passbook or a copy of a current account statement from the bank or other financial institution.

(3) Moneys deposited in an account plus interest earned on the account shall be exempt in determining eligibility for GA as long as the funds remain on deposit.

(4) Moneys withdrawn to pay for educational expenses are exempt. Documentation shall be provided that verifies the expenses were incurred and related to attending school.

(5) Moneys withdrawn from an educational savings account that are used for a purpose unrelated to education shall be added to the budget group's resource amount and used to determine eligibility beginning with the date of withdrawal.

(b) For GA categories of MA, savings accounts established and bonds purchased under the Tuition Account Program and College Savings Bond Act (24 P. S. §§ 6901.101—6901.701) are not counted in determining eligibility.

**CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY NEEDY NMP-MA AND MNO-MA**

**Subchapter A. GENERAL PROVISIONS FOR MA INCOME COMMON TO ALL CATEGORIES OF MA**

**CATEGORIES OF MA**

**§ 181.41. Categories of NMP-MA.**

An NMP-MA applicant or recipient shall meet the income requirements of the category of NMP-MA for which the applicant or recipient is eligible. The following explains the different NMP-MA categories:

(1) The PA category designates an NMP person who is at least 65 years of age. This category is an SSI-related category.

(2) The PJ category designates an NMP person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.

(3) The PM category designates an NMP person who meets the eligibility conditions as a blind person. This category is an SSI-related category.

(4) The PC category is a TANF-related category and designates an NMP individual who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

(ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified

relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).

(iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).

(5) The PU category is a TANF-related category and designates an NMP individual who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (4) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman with no other children and the father of her unborn child, who constitute a two parent household with an unemployed principal wage earner, as defined in § 153.44(d).

(6) The PD category is a GA-related category and designates an NMP person who is 21 years of age or older and under 65 years of age, who meets the GA eligibility requirements and who chooses to receive only NMP-MA.

#### § 181.42. Categories of MNO-MA.

An MNO-MA applicant or recipient shall meet the income requirements of the category of MNO-MA for which the applicant or recipient is eligible. The following explains the different MNO-MA categories:

(1) The TA category designates an MNO person who is 65 years of age or older. This category is an SSI-related category.

(2) The TJ category designates an MNO person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.

(3) The TM category designates an MNO person who meets the eligibility conditions as a blind person. This category is an SSI-related category.

(4) The TB category designates an MNO person who receives a SBP.

(5) The TC category is a TANF-related category and designates an MNO individual who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

(ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent age level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).

(iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).

(6) The TU category is a TANF-related category and designates an MNO individual who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (5)(ii) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman who is 21 years of age or older, with no other children, in a two parent household with an unemployed principal wage earner as defined in § 153.44(d).

(7) The TD category is a GA-related category and designates an MNO person who does not meet the requirements for another category of MA.

### Subchapter C. THE TANF AND GA CATEGORIES

#### § 181.251. (Reserved).

#### TYPES OF INCOME NOT COUNTED FOR THE TANF AND GA CATEGORIES

#### § 181.262. Educational loans, grants and work-study income.

The following do not count as income:

(1) Educational assistance in the form of loans, grants and scholarships.

(2) Work-study income.

#### § 181.263. Other types of income not counted for the TANF and GA categories.

The following types of income are not counted for the TANF and GA categories:

(1) *Funds subject to reimbursement.* Funds for which a Department reimbursement agreement has been executed.

(2) *MA Copayment rebates.* A refund to the applicant/recipient authorized as a rebate for payment made in excess of the amount required as copayment for MA services.

(3) *Retroactive cash assistance payments.* Retroactive cash assistance payments authorized to correct underpayments to previous recipients of cash assistance are not considered income in the month paid nor in the following month. In subsequent months, money remaining from the payments is treated as a resource under Chapter 178 (relating to resources provisions for categorically NMP-MA and MNO-MA).

(4) *Corrective cash assistance payment.* A corrective cash assistance payment when authorized retroactively as a result of a prehearing conference, a fair hearing decision or a court order.

(5) *Refund of assigned support payment.* An assigned court order or voluntary support payment refunded to the applicant/recipient due to a month of suspension of the monthly cash assistance payment.

(6) *Donations from public or private agencies.* Money, goods or services an applicant/recipient receives from a public or private agency or organization.

(7) *Donations from individuals.* In-kind goods or services provided by a person to an applicant/recipient or third-party payments made to a vendor on behalf of an applicant/recipient.

(8) *Gifts, loans and borrowed money.* A loan or borrowed money such as, but not limited to, a car loan or a personal loan from non-LRR sources. Occasional nonrecurring small amounts of money given as a gift, regardless of whether the giver is or is not an LRR, if the amount of the gifts does not exceed \$50 per person in a calendar quarter. A gift received by a member who is included in the application for MA or is a recipient of MA may be divided among the members applying for, or receiving, MA, if the member who received the gift claims that the gift is intended for the entire group. If the gifts exceed \$50 per person per calendar quarter, only the amount of the gifts over \$50 per person is treated as a resource in the month received for all of the members.

(9) *Home produce.* The value of an applicant's/recipient's home produce which is used by him and his household for their own personal consumption and not for sale.

(10) *Day care.* Money received from providing day care for children in an approved family day care home.

(11) *Earned Income Tax Credit (EITC).* The advance monthly payment or year-end payment which an applicant/recipient receives.

**TYPES OF EARNED INCOME COUNTED FOR THE TANF AND GA CATEGORIES**

§ 181.273. (Reserved).

**TYPES OF UNEARNED INCOME COUNTED FOR THE TANF AND GA CATEGORIES**

§ 181.287. (Reserved).

**DEDUCTIONS FROM INCOME FOR THE TANF AND GA CATEGORIES**

§ 181.311. **Deductions from earned income for the TANF categories of NMP-MA.**

Each employed individual who qualifies for MA in the PC category, PU category or in the PD category with PC category children is entitled to the following deductions from earned income in the following order:

(1) *Work expenses.* The first \$90 per month from the earned income of each applicant or recipient who is employed if the employed individual is not eligible to receive an earned income incentive deduction as described in paragraph (2) or if the \$90 deduction is more advantageous to the applicant or recipient group.

(2) *Earned income incentive deductions.*

(i) Each employed individual in the NMP-MA applicant or recipient group is eligible to receive an earned income incentive deduction if one of the following applies:

(A) The employed individual in the NMP-MA applicant or recipient group is a recipient in a TANF-related category or a GA-related category with a child who is simultaneously a recipient of MA in a TANF-related category.

(B) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in a TANF-related category in 1 of the 4 calendar months before the calendar month of his application for NMP-MA.

(C) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in a GA-related category with a child who was simultaneously a recipient of MA in a TANF-related category in 1 of the 4 calendar months before the calendar month of his application for NMP-MA.

(D) The total income of persons in the NMP-MA applicant group which is the sum of earned income less work and dependent care expenses and unearned income less appropriate deductions is less than, or equal to, the appropriate standard of need in Appendix I.

(ii) Each employed individual in the applicant or recipient group who meets one of the requirements in subparagraph (i) is eligible to receive a continuous 50% earned income incentive deduction or the first \$90 per month work expense deduction from earned income and a \$30 plus 1/3 remainder earned income incentive deduction per requirements in subparagraph (iii), whichever is most advantageous to the applicant or recipient group.

(iii) The application of the \$30 plus 1/3 remainder earned income incentive deduction is treated as follows:

(A) The employed applicant or recipient is eligible to receive the \$30 plus 1/3 remainder earned income incentive deduction for 4 consecutive months if:

(I) Twelve or more consecutive months have elapsed since the employed applicant or recipient last received NMP-MA in a TANF-related category or in a GA-related category with a child who was simultaneously a recipient in a TANF-related category. The count begins with the first month following the month of termination for NMP-MA regardless of whether the employed individual received the entire 8 consecutive months of the \$30 income incentive deduction described in clause (B).

(II) The employed applicant/recipient is eligible for a new 4 consecutive month count if the employed applicant/recipient had an interruption in the 4 consecutive month count of receipt of the \$30 and 1/3 incentive deduction. Each of the following is treated as an interruption:

(-a-) If there is no earned income to be counted when determining eligibility for NMP-MA after the deduction of work and dependent care expenses for the employed person, that month does not count as 1 of the 4 consecutive months.

(-b-) An applicant/recipient whose receipt of 4 consecutive months of the work incentive is interrupted by loss of income.

(III) An applicant or recipient who has his NMP-MA terminated due to receipt of a regularly recurring extra paycheck within a 5-week month is not considered to have had an interruption in the accumulation of consecutive months and does not have that month count as one of the 4 consecutive months. The applicant or recipient shall meet one of the qualifications described in subparagraph (i) to qualify for a balance remaining in the 4-month count unless 12 consecutive months have elapsed in which the applicant or recipient has not been a recipient of NMP-MA in a TANF-related category or in a GA-related category with a child who was simultaneously a recipient in a TANF-related category. If 12 consecutive months have elapsed, the employed applicant or recipient is eligible for a new 4 consecutive month count.

(IV) If an applicant/recipient received retroactive NMP-MA and qualified for receipt of the earned income incentive deduction as described in subparagraph (i) and elected to receive the earned income incentive deduction, each month that he received the earned income incentive deduction during the retroactive period counts as 1 of the 4 consecutive months when determining the balance remaining in the 4-month count.

(B) Each employed individual in the applicant or recipient group who received 4 months of the \$30 plus 1/3 income incentive deduction is eligible for an income

deduction of \$30 per month during the next 8 consecutive months. The application of the \$30 incentive is treated as follows:

(I) Each employed individual in the applicant or recipient group is eligible to receive the deduction for 8 consecutive calendar months.

(II) The applicant or recipient is entitled to the \$30 income incentive deduction during a calendar month of the 8-month period for which the income of the applicant or recipient is sufficient to qualify.

(III) The 8 months of eligibility for the \$30 income incentive deduction begins with the calendar month following the end of the 4 consecutive calendar months of the \$30 and 1/3 income incentive deduction.

(IV) The 8 months of eligibility are counted consecutively, whether or not MA is interrupted or income is sufficient to qualify for it.

(3) *Dependent care expenses.* The actual work-related cost of care of dependent children or incapacitated persons living in the home of the applicant/recipient if no other sound plan can be made for their care, up to a maximum of:

(i) One hundred seventy-five dollars per month per child 2 years of age or older or incapacitated person when the applicant/recipient is employed full-time.

(ii) One hundred fifty dollars per month per child 2 years of age or older or incapacitated person when the applicant/recipient is employed part-time.

(iii) Two hundred dollars per month per child 1 year of age or younger regardless of whether the client is employed full-time or part-time.

## CHAPTER 183. INCOME

### EARNED INCOME

§ 183.23. (Reserved).

### UNEARNED INCOME

§ 183.32. **Support.**

Support paid by an LRR for a child or spouse, whether it is court-ordered or voluntary, a direct payment to the individual or assigned to the Department, is counted in determining eligibility and treated as follows:

(1) Support, court-ordered or voluntary, received by the individual in the initial budget month is counted in determining that month's assistance payment.

(2) After the initial authorization, support is collected by the Department and is not counted as income in computing the amount of the monthly assistance payments. The amount of support collected by the Department is used in determining the continued eligibility of the budget group.

(3) The payee of the support payment is required to remit to the Department support payments received after the initial budget month assistance payment. Upon written notification from the Bureau of Child Support Enforcement that the caretaker/relative is not cooperating with the support requirements by failing to remit court ordered or voluntary support payments, the caretaker/relative is removed from the budget group for the first payment month that can be affected.

(4) Support received on behalf of the budget group members by the caretaker/relative during the period of the sanction for failure to cooperate with the support requirements under § 141.21 (relating to policy) is

counted as income when computing the amount of the monthly assistance payment.

(5) Support received by the caretaker/relative for his needs during the period of the sanction for failure to cooperate with the support requirements under § 141.21 is deemed available to the budget group under § 183.91 (relating to LRR, parent of an AFDC minor parent and stepparent deductions). The income deemed from the LRR is added to other countable income of the budget group and is adjusted to the budget group's monthly assistance payment.

(6) If the client states that voluntary support is no longer being paid and attempts to verify the statement are nonproductive, or if there is a conflict in statements of the two parties involved and no documentation is available to prove either statement, the client's statement is accepted and eligibility exists for the caretaker/relative.

§ 183.38. (Reserved).

§ 183.71. (Reserved).

## INCOME EXEMPTIONS

§ 183.81. **Income exemptions.**

The following income is not considered in determining the amount of the monthly assistance payment:

(1) *TANF child.* For TANF, the gross earnings of a child, if one of the following conditions is met:

(i) The child is qualified by age and dependency status as an TANF child and is a student under one of the following:

(A) A full-time student under Chapter 145 (relating to age).

(B) A part-time student who is also employed part-time. The employment status of the student; that is, whether he is employed full or part-time, is determined during that period when school is in session. Full-time employment during school vacation does not affect the status of the student as a part-time employee as long as it is reasonably expected that the child will return to school.

(C) A participant in the Job Corps Program under the Job Training Partnership Act of 1982 (29 U.S.C.A. §§ 1501—1781).

(ii) The child is a nonstudent 17 years of age or younger whose earnings are from a program under the Job Training Partnership Act of 1982. This earnings exemption is for a maximum of 6 calendar months per calendar year.

(2) *GA child.* For GA, the earnings of a child, if one of the following applies:

(i) The child is 13 years of age or younger.

(ii) The child is 14 through 17 years of age and the earnings are from a program under the Job Training Partnership Act of 1982. This earnings exemption is for a maximum of 6 calendar months per calendar year.

(3) *Educational loans, grants and work-study income.* The following do not count as income:

(i) Educational assistance in the form of loans, grants and scholarships.

(ii) Work-study income.

(4) *Funds subject to reimbursement.* Funds for which a Departmental reimbursement agreement has been executed.

\* \* \* \* \*

(29) *Support pass-through.* The first \$50 per budget month of court-ordered and voluntary support payments received by the budget group, excluding arrearages.

\* \* \* \* \*

**INCOME DEDUCTIONS**

**§ 183.94. Eligibility for TANF earned income deductions.**

Subject to the limitations in § 183.97 (relating to ineligibility for disregards from earned income for TANF and GA), the earned income of each employed individual in the TANF budget group is treated as follows:

(1) An applicant who has been a recipient of TANF in 1 of the 4 calendar months before this application is eligible to receive a continuous 50% disregard from gross earned income.

(2) The applicant who has not been a recipient of TANF in 1 of the 4 calendar months before this application is eligible to receive a continuous 50% disregard if the applicant's income after application of the following deductions is less than the standard of need for the budget group as specified in Appendix B, Table 1 (relating to standard of need).

(i) The first \$90 per month from gross earned income.

(ii) Personal expenses subject to the limitations of paragraph (3).

(iii) Unearned income and lump sum income deductions as specified in § 183.98 (relating to unearned income and lump sum income deductions).

(3) *Personal expenses.* The actual cost of care of incapacitated adults living in the same home and receiving TANF, if no other sound plan can be made for their care, up to a maximum of:

(i) One hundred seventy-five dollars per incapacitated adult when the client is employed full-time.

(ii) One hundred fifty dollars per month per incapacitated adult when the client is employed part-time.

**§ 183.96. (Reserved).**

**§ 183.97. Ineligibility for disregards from earned income for TANF and GA.**

The deductions in §§ 183.94 and 183.95 (relating to eligibility for TANF earned income deductions; and GA earned income deductions) do not apply to the budget month income considered for the corresponding payment month for an applicant or recipient to whom one of the following conditions applies:

(1) Within the 30-day period preceding the budget month, the applicant or recipient terminated employment or reduced his earned income without good cause as defined in Chapter 165 (relating to Employment and Training Program).

(2) Within the 30-day period preceding the budget month, the applicant or recipient refused without good cause, to accept employment in which he was able to engage which was offered through the JS, through the CAO or by an employer whose offer is determined by JS or the CAO to be a bona fide offer and thereby incurs an employment sanction. Ineligibility for the deductions will apply to the budget months corresponding to the payment months of the sanction period even if the disqualifying action has been corrected.

(3) He failed, without good cause, to make a timely report of the budget month income as specified in Chapters 125 and 142 (relating to application process; and monthly reporting). Good cause includes, but is not limited to, the following situations: serious illness, accident, death, physical or mental handicap, illiteracy, language problems or postal delay, making it impossible to expect that the usual reporting requirements be met.

**MONTHLY ASSISTANCE PAYMENT DETERMINATION**

**§ 183.105. Increases in income.**

An increase in actual, deemed or estimated income of the budget group in a calendar month affects eligibility and the amount of the monthly assistance payment as follows:

(1) If the increase in recurring income results in ineligibility, and the ineligibility is expected to last more than 1 month, assistance is terminated for the first check which can be reached in the first month of ineligibility or the following month with proper notice being provided as described in § 133.4 (relating to procedures). An overpayment occurs for assistance received beginning with the first month of ineligibility.

(2) If the increase in recurring or nonrecurring income results in ineligibility, but ineligibility will exist for only 1 month, and it is caused by excessive income or other similar circumstances in the budget month, assistance is suspended for the corresponding payment month using the proper notice as described in § 133.4.

(3) If the increase in recurring or nonrecurring income does not result in ineligibility, the increase in actual or deemed income in the budget month affects the assistance payment in the corresponding payment month.

(4) If the increase is lump sum income, the following applies:

(i) If the increase in lump sum income of the budget group or LRR other than the parent of an AFDC minor parent living with the budget group results in ineligibility, assistance is terminated no later than the payment month corresponding with the budget month in which the income was received. The budget group is ineligible for the number of full months for which the lump sum and other countable net income will meet the needs of the budget group and LRR whose lump sum income is counted. The standard of need—Appendix B, Table 1—used to determine the period of ineligibility is the one applicable to the county in which the budget group resides and is based on the number of persons in the budget group plus the LRR whose lump sum income is counted.

(A) If the income calculated as remaining after the period of ineligibility is less than the monthly assistance payment, it is considered income only in the first month following the period of ineligibility.

(B) If the income calculated as remaining after the period of ineligibility is equal to or exceeds the monthly assistance payment, the budget 2 group is ineligible for 1 additional month. The remainder is a resource, if available, in the month of reapplication.

(C) The period of ineligibility applies to an individual whose lump sum income is counted and those individuals who were receiving or applied for assistance during the month the lump sum income was received. Other individuals who did not receive or apply for assistance during

the month the lump sum income was received and who subsequently apply may be eligible for a monthly assistance benefit.

(D) Advance notification of ineligibility includes the computation upon which the period of ineligibility is based. If the exact amount of the lump sum income received is unknown due to the refusal to provide this information, the budget group is determined to be ineligible due to failure to cooperate.

(ii) Recalculation of the period of ineligibility following the initial application of this subparagraph is required under certain circumstances. The recalculation may only shorten the period of ineligibility, not lengthen it. The grant may be restored at the end of the recalculated period of ineligibility upon reapplication, if the budget group is otherwise eligible for a grant. No retroactive benefits may be granted for any period of time prior to the date of the reapplication. Recalculations are made only under the following conditions:

(A) When a member of the budget group leaves the family taking the remaining funds from the lump sum income and refuses to make the lump sum available to the rest of the family. The period of ineligibility for the remaining members is recalculated beginning with the month of the loss of these funds by the remaining members as follows:

(I) If funds which should be remaining are removed, the remaining members are eligible. If only part of those funds which should be remaining from the initial lump sum calculation are removed, the period of ineligibility is recalculated by dividing the funds which should be remaining, less the amount of funds removed, by the standard of need for the number of persons covered under the original lump sum calculation remaining in the household. The amount remaining is considered income under subparagraphs (i) and (iii).

(II) The original period of ineligibility is applied to the persons who left the household. The amount remaining is considered income under subparagraphs (i) and (iii). The period of ineligibility is applied whether or not the members later return to the household.

(B) When a natural disaster or other life or health threatening event over which the budget group has no control necessitates expenditure of the balance of the lump sum income. This clause applies only when, prior to the event, the budget group was using the lump sum income to meet 2 essential needs and there are no other income or resources sufficient to meet the needs resulting from the event.

(C) When medical expenses are incurred and paid for a member of the budget group, which are for medically necessary surgery or medical care to treat a congenital condition, serious illness or traumatic injury, if medical needs were not taken into account in determining the initial period of ineligibility; the needs cannot be met by other income or resources; and, the lump sum income was being used to meet the essential needs of the budget group.

(D) If the budget group is unable to verify the cost of essential needs, such as shelter, clothing and food, allow for basic living needs under the standard of need levels for the size of the budget group in recalculating the period of ineligibility.

(iii) The amount of lump sum income received by the nonassistance stepparent, parent of a TANF minor parent or sponsor of an alien remaining after disregards, as

defined in §§ 183.91, 183.93 and 183.98(1)—(3) (relating to LRR, parent of a TANF minor parent and stepparent deductions; sponsor deductions; and unearned income and lump sum income deductions) is considered only in the month of receipt under paragraphs (2) and (3). A portion retained by the stepparent or parent of a TANF minor parent subsequent to the month of receipt is a resource to that individual and is not to be considered in determining eligibility for a budget group unless actually made available to them. A portion retained by the sponsor subsequent to the month of receipt is a resource to the alien in subsequent months.

(iv) An individual who receives GA and who is determined to be ineligible for a specified period due to receipt of lump sum income may apply for and receive AFDC during this period if otherwise eligible. Remaining lump sum income is considered a resource under Chapter 177 (relating to resources).

## CHAPTER 187. SUPPORT FROM RELATIVES NOT LIVING WITH THE CLIENT

### SUPPORT PROVISIONS FOR CASH ASSISTANCE

#### § 187.21. General policy.

*Legal bases for support requirements.* The Support Law (62 P. S. §§ 1971—1977) provides authority to the courts to order or direct support to needy individuals from LRR upon petition from the needy individual or the Department. The Public Welfare Code (62 P. S. §§ 101—1503) requires the Department to grant assistance only to those individuals who apply for and meet all conditions of eligibility. By law, then, LRRs will be a potential resource to individuals applying for or receiving assistance. The Support Law (62 P. S. §§ 1971—1977), 23 Pa.C.S. §§ 4301—5104 and 7101—8415, and the Public Welfare Code (62 P. S. §§ 101—1503) mesh to make it mandatory to explore and develop the resource that an LRR may provide to an individual. Under the child support program, support collection and paternity determination services will also be made available upon request to individuals who are not applying for or receiving assistance. The domestic relations section in each county has been designated to process requests for support services.

#### § 187.22. Definitions.

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

*Arrears*—Past due and unpaid support.

*BCSE—Bureau of Child Support Enforcement*—The organizational unit in this Commonwealth responsible for supervising the State Plan for Child Support Enforcement under Title IV-D of the Social Security Act (42 U.S.C.A. §§ 651—669b).

*Budget group*—One or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs and eligibility are considered together in determining eligibility for cash assistance under one category of assistance.

*CAO—County assistance office*—The local office of the Department responsible for the determination of eligibility for cash, Food Stamps and MA Programs.

*Cash assistance allowance*—The monthly family size allowance, reduced by the net income of the budget group. The family size allowance is described under § 175.23(a) (relating to requirements).



*DRS—Domestic relations section*—The division of a court of common pleas responsible for establishing and enforcing support orders.

*Domestic violence*—One or more of the following:

- (i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.
- (ii) Sexual abuse.
- (iii) Sexual activity involving a dependent child.
- (iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
- (v) Threats of, or attempts at, physical or sexual abuse.
- (vi) Mental abuse.
- (vii) Neglect or deprivation of medical care.

*Establishing paternity*—The process that determines the legal father of a child.

*LRR—Legally responsible relative*—The spouse, including common-law, of the applicant or recipient of cash assistance, or the biological or adoptive parent of an unemancipated minor child for whom cash assistance is sought or received.

*Obtaining support*—Establishing, modifying or enforcing a support order.

*Support*—A judgment, decree or order whether temporary, final or subject to modification, imposed or imposed by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child or spouse, or both, which provides for monetary support, health care, arrears or reimbursement, and which may include other relief.

*Unemancipated minor child*—An individual who is under 18 years of age, or an individual 18 years of age or older but under 21 years of age, who has not graduated from high school, is not married and is in the care and control of a parent or caretaker.

**§ 187.23. Requirements.**

(a) *Applicability.* This chapter applies to applicants for and recipients of cash assistance if there is: The reported absence of a parent from the home of an unemancipated minor child; a putative father for an unemancipated minor child; or a spouse absent from the home. The absence of a parent from the home is determined according to the requirements under § 153.44(a) (relating to procedures).

(b) *Cooperation requirements for child support.* As a condition of eligibility for cash assistance, every applicant or recipient seeking or receiving cash assistance on behalf of an unemancipated minor child shall cooperate in establishing paternity of an unemancipated minor child with respect to whom assistance is sought and cooperate in obtaining support from an LRR for the unemancipated minor child, unless the applicant or recipient establishes good cause for failing to do so. Cooperation includes taking the following actions:

(1) Identifying the parents of an unemancipated minor child for whom assistance is sought or received, including appearing for scheduled genetic testing with the child and submitting to the testing.

(i) Failure of the mother to identify by name the father of an unemancipated minor child shall create a presumption of noncooperation which may be rebutted only by clear and convincing evidence.

(ii) If the applicant or recipient provides the names of two putative fathers subsequently excluded from paternity by genetic testing, the second exclusion shall create a presumption of noncooperation, which may be rebutted only by clear and convincing evidence.

(2) Keeping scheduled appointments with the Department or the DRS.

(3) Providing truthful and accurate information and documents requested by the Department or the DRS.

(i) When the whereabouts of a parent or putative father are unknown, the applicant or recipient will be required to take whatever steps are appropriate to the individual circumstances to locate the missing parent or putative father. This may include contacting relatives and friends for information about the whereabouts of the parent or putative father or giving consent to the CAO to contact other agencies, relatives and other individuals, or possible employers and similar resources.

(ii) The CAO will provide whatever help is appropriate to the individual circumstances of the applicant or recipient to assist in locating the missing parent or putative father and supplement the efforts of the applicant or recipient by checking appropriate governmental records.

(iii) Together, the CAO and the applicant or recipient will plan and agree on the specific steps to be taken to locate the missing parent or putative father. Assistance will be authorized or continued on the agreement of the applicant or recipient to take the specific steps within the time set for doing so.

(4) Signing and returning any forms requested by the Department or the DRS.

(5) Appearing as a witness and providing testimony at judicial and other hearings as requested by the DRS.

(6) Paying to the Department any support payment received directly from an absent parent after an assignment of support has been made.

(c) *Cooperation criteria for spousal support.* As a condition of eligibility for cash assistance, every applicant or recipient seeking or receiving cash assistance on behalf of himself and for whom there is an absent spouse shall cooperate in obtaining support unless the applicant or recipient establishes good cause for failing to do so. Cooperation includes the following:

(1) Naming the absent spouse.

(2) Keeping scheduled appointments with the Department or the DRS.

(3) Providing truthful and accurate information and documents requested by the Department or the DRS.

(i) When the whereabouts of a spouse is unknown, the applicant or recipient shall take whatever steps are appropriate to the individual circumstances to locate the missing spouse. This may include contacting relatives and friends for information about the whereabouts of the spouse or giving consent to the CAO to contact other agencies, relatives and other individuals or possible employers and similar resources.

(ii) The CAO will provide whatever help is appropriate to the individual circumstances of the applicant or recipient to assist in locating the missing spouse and supplement the efforts of the applicant or recipient by checking appropriate governmental records.

(iii) Together, the CAO staff and the applicant or recipient will plan and agree on the specific steps to be taken to locate the missing spouse. Assistance will be

authorized or continued on the agreement of the applicant or recipient to take the specific steps within the time set for doing so.

(4) Signing and returning any forms requested by the Department or the DRS.

(5) Appearing as a witness and providing testimony at judicial and other hearings as requested by the DRS.

(6) Paying to the Department any support payment received directly from an absent spouse after an assignment of support has been made.

(d) *Cooperation prior to authorization.* Except as provided in paragraphs (3) and (4), every applicant or recipient of cash assistance shall cooperate in establishing paternity and obtaining support. The applicant or recipient shall:

(1) Appear before the DRS or other applicable division of the court of common pleas and provide to the CAO certification from the DRS of cooperation by the applicant or recipient of cash assistance in establishing paternity and in obtaining support.

(2) Cooperate with the procedures established for the county when a waiver of the personal appearance requirement is in place. The Secretary is authorized to waive the personal appearance requirement under paragraph (1) if another procedure would be as effective and efficient and a family court or DRS requests a waiver.

(3) In the case of a newborn, cooperate with the requirements under § 133.23(b)(4)(v) (relating to requirements).

(4) File a good cause claim. The cooperation requirements are waived from the time a good cause claim is filed until the CAO, court of common pleas or DRS makes a determination on the claim. If the CAO, court of common pleas or DRS determines that good cause exists, the cooperation requirements are waived as long as the good cause exists.

(e) *Assignment of support rights.* Acceptance of cash assistance shall operate as an assignment to the Department, by operation of law, of the assistance recipient's rights to receive support, on the recipient's own behalf and on behalf of any family member with respect to whom the recipient is receiving cash assistance. The assignment shall be effective only up to the amount of assistance received. The assignment shall take effect at the time that the individual is determined to be eligible for assistance. Upon termination of assistance payments, the assignment of support rights shall terminate, provided that any amount of unpaid support obligations shall continue as an obligation to and collectible by the Department to the extent of any unreimbursed assistance consistent with Federal law.

**§ 187.24. (Reserved).**

**§ 187.25. Notification to the applicant or recipient.**

(a) *Cash assistance sought or received for an unemancipated minor child.* Before requiring cooperation under § 187.23(b) (relating to requirements), the CAO will provide oral and written notice of the cooperation requirements to the applicant or recipient. The oral and written notice will advise the applicant or recipient of the following:

(1) The potential benefits that the unemancipated minor child may derive from the cooperation of the applicant or recipient in establishing paternity and obtaining support.

(2) Cooperation is a condition of eligibility.

(3) Failure to cooperate without good cause will result in the reduction of the cash assistance allowance by 25%.

(4) The right to claim good cause, good cause circumstances, proving the good cause claim, and the good cause determination under § 187.27 (relating to waiver of cooperation for good cause).

(5) The CAO will waive the cooperation requirements when the CAO, the court of common pleas or the DRS determines that good cause exists.

(6) A finding of noncooperation of an applicant or recipient does not affect the LRR's duty to pay support.

(b) *Cash assistance sought or received for a spouse.* Before requiring cooperation under § 187.23(c), the CAO will provide oral and written notice to the applicant or recipient of the cooperation requirements and the right to claim good cause. The oral and written notice will advise the applicant or recipient of the information specified in subsection (a).

**§ 187.26. Noncooperation.**

(a) *Determination of noncooperation by the CAO, court of common pleas or DRS.* The CAO, court or DRS may make the determination of whether an applicant or recipient refused to cooperate without good cause. The court of common pleas of each county will have the option of hearing appeals from any determination of its DRS that an applicant or recipient has not cooperated in accordance with § 187.23 (relating to requirements). If the court declines to exercise the option to hold hearings on the appeals, the procedures in subsection (b) apply. If the CAO determines noncooperation without good cause, the procedures in subsection (c) apply. Subsection (c)(1) applies to applicants. Subsection (c)(2) applies to recipients. The procedures in subsection (c)(1) or (2) also apply when the court declines to hold the noncooperation hearing. If the court, after notice and an opportunity to be heard, determines that the applicant or recipient refused to cooperate without good cause, the Department will implement the court's order, as specified in subsection (d).

(b) If the court or the DRS determines that the applicant or recipient has failed to cooperate, without good cause, with § 187.23, the court or the DRS will provide notice of any noncooperation determination to the CAO along with notice of its decision to opt not to hold a hearing on noncooperation. Appropriate court personnel shall be made available to provide testimonial evidence by telephone testimony at the time and location set by the Department for the Departmental appeal hearing. Upon receipt of the notice from the court or the DRS, the CAO shall proceed in accordance with subsection (c)(1) or (2) depending upon whether the individual is an applicant for or recipient of assistance.

(c) If the CAO determines that the applicant or recipient has failed to cooperate, without good cause, with § 187.23, or upon receipt of a notice of a noncooperation determination by the court or DRS under subsection (b), the CAO will:

(1) In the case of an applicant:

(i) Provide notice to the applicant of the noncooperation determination, the basis for the noncooperation determination and the reduction of the cash assistance allowance by 25% effective upon authorization of assistance.

(ii) Provide notice to the applicant of the right to appeal to the Department's Bureau of Hearings and

Appeals under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(iii) Authorize the cash assistance allowance reduced by 25% effective upon authorization of assistance.

(iv) Authorize the full cash assistance allowance if so ordered as a result of a decision rendered by the Bureau of Hearings and Appeals, as a result of a good cause claim initiated by the applicant, or as a result of the applicant cooperating with the support requirements.

(2) In the case of a recipient:

(i) Provide notice to the recipient of the noncooperation determination, the basis for the noncooperation determination, and the reduction of the cash assistance allowance by 25% 10 days after the date of the notice.

(ii) Provide notice to the recipient of the right to appeal to the Bureau of Hearings and Appeals under Chapter 275.

(iii) Authorize the reduction of the cash assistance allowance by 25% effective 10 days after the date of the notice, unless the recipient has invoked his right to a hearing and has filed an appeal within the 10-day period. If the recipient has invoked his right to a fair hearing within the 10-day period, cash assistance will not be reduced pending a decision in the hearing.

(iv) Initiate recovery of the assistance granted pending the fair hearing if the Department action is sustained.

(d) *Determination of noncooperation by the court.* A hearing or appeal with respect to the recommendation order of noncooperation directed by the court or DRS will be conducted by the court in accordance with the 231 Pa. Code (relating to rules of civil procedure).

(1) Upon receipt of a court order issued by a court of common pleas, the CAO will implement the order within 10 days of receipt. The CAO will:

(i) Provide notice to the applicant or recipient of the court order and the cash assistance allowance reduction by 25%.

(ii) Provide notice to the applicant or recipient of the right to appeal to the Bureau of Hearings and Appeals under Chapter 275 and that the right of appeal to the Bureau of Hearings and Appeals does not include appeal of a court order in which noncooperation has been determined by the court. The right to appeal in this instance to the Bureau of Hearings and Appeals under Chapter 275 is restricted to the calculation of the assistance allowance.

(iii) For an applicant, authorize the cash assistance allowance reduced by 25% effective upon authorization of assistance. For a recipient, the CAO will reduce the cash assistance allowance by 25% effective 10 days after the date of the notice, unless the recipient has invoked his right to a hearing and has filed an appeal within the 10-day period. If the recipient has invoked his right to a fair hearing within the 10-day period, the cash assistance allowance will not be reduced pending a decision in the hearing.

(2) If the court order directs the Department to rescind the sanction for noncooperation, the Department will implement the order immediately upon receipt.

**§ 187.27. Waiver of cooperation for good cause.**

(a) *Good cause circumstances.* Cooperation requirements may be waived for good cause. Good cause circumstances include the following:

(1) The child was conceived as a result of incest or rape.

(2) Legal proceedings for the adoption of the child are pending before a court.

(3) The applicant or recipient of cash assistance is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption and the discussions have not progressed for more than 3 months.

(4) Action to establish paternity or obtain child or spousal support would make it more difficult for the individual or family member to escape domestic violence, as defined in § 187.22 (relating to definitions), or unfairly penalize the individual who has been victimized by the violence, or who is at risk of further violence.

(b) *Proving the good cause claim.* The applicant or recipient of cash assistance shall provide relevant verification.

(1) A good cause claim may be verified with the following types of evidence:

(i) A birth certificate or medical or law enforcement records which indicate that the child was conceived as the result of incest or rape.

(ii) Court documents or other records which indicate that legal proceedings for adoption are pending.

(iii) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to relinquish the child for adoption.

(iv) Medical records which indicate emotional health history and present emotional health status of the applicant or recipient or the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the applicant or recipient or the child for whom support would be sought. Supportive evidence submitted from a mental health professional will be defined as statements written by individuals who have obtained licensure or certification, if applicable, or have received a degree in defined areas of mental health including psychiatry, social work, psychology, nursing, occupational therapy or recreational therapy.

(v) Court, medical, criminal, child protective services, social services, psychological or law enforcement records which verify domestic violence, as defined in § 187.22.

(vi) Statements from individuals other than the applicant or recipient with knowledge of the good cause circumstances, including a domestic violence service provider, a medical, psychological or social service provider, a law enforcement professional, a legal representative, an acquaintance, friend, relative or neighbor of the claimant or other individual.

(vii) *Verification of good cause based on domestic violence.* The CAO and applicant or recipient will complete this form for all good cause claims based on domestic violence in accordance with one of the following circumstances:

(A) To accompany acceptable verification as specified in subparagraph (iv), (v) or (vi) that an applicant or recipient has provided.

(B) To grant good cause upon written consent of the applicant or recipient based on verification of the good cause claim provided by a third party on the form.

(C) To grant good cause for up to 6 months when an applicant or recipient affirms she is at risk of domestic violence and unable to safely obtain other evidence to verify the claim of domestic violence within the established time frames for providing verification.

(2) When the applicant or recipient of cash assistance initiates a claim of good cause, the CAO, court or the DRS may provide assistance with obtaining verification. If requested by the applicant or recipient, the CAO, court or DRS will provide assistance in securing the needed evidence by advising how to obtain specific documents that may be available and by undertaking to obtain specific documents the applicant or recipient is not able to obtain. The CAO may not contact the putative father or noncustodial parent to verify good cause based on a claim of domestic violence.

(3) An applicant or recipient shall provide verification of the good cause claim, as specified under paragraphs (1)(iv)—(vii)(A) and (B), within 30 days from the date the claim is made, except when the applicant or recipient cannot otherwise provide verification of the good cause claim as specified in paragraph (1)(vii)(C).

(i) In the case of an applicant, assistance will be authorized no later than 30 days following application when the applicant is claiming good cause and verification is not readily available or pending from a third party.

(ii) In the case of a recipient, the CAO will continue assistance if verification is not provided within 30 days and the delay is due to a third party.

(c) *Good cause determination.* The CAO, court or the DRS will make a determination within 45 days from the day the claim was initiated by the applicant or recipient of cash assistance. The CAO, court or the DRS may approve additional days for the determination to be completed.

(1) If the CAO makes a determination on a good cause claim, the CAO will notify the applicant or recipient of cash assistance in writing of the final determination regarding the claim of good cause and the basis therefor and of the right to appeal under Chapter 275. If the good cause claim is denied, neither the Department nor the Bureau of Child Support Enforcement will attempt to establish paternity or obtain support for at least 30 days after the individual has been informed orally and in writing of the denial of the good cause claim.

(2) If the court of common pleas or DRS makes a determination on a good cause claim, the DRS will notify the applicant or recipient of cash assistance and the CAO of the final determination and the basis therefor and of the right to appeal under Chapter 275.

(3) When the CAO, court of common pleas or the DRS approve a waiver of the cooperation requirement based on a claim of good cause, the DRS will not attempt to establish paternity or obtain support.

(4) When good cause is determined to exist, the CAO will review the circumstances upon which the good cause determination is based, at least every 6 months.

(i) If the good cause waiver was granted based on verification, no additional verification is required if circumstances have not changed since approval of the initial waiver.

(ii) If the good cause waiver was granted based on the recipient's affirmation under subsection (b)(1)(vii)(C), and she is unable to provide verification as specified in subsection (b)(1)(iv)—(vi) and (vii)(A) and (B), the CAO

will make a determination of good cause based on a current assessment of the recipient's circumstances. This assessment will be completed by an individual with domestic violence training and substantiated by completion of the verification of good cause based on the domestic violence form under subsection (b)(1)(vii).

## CHAPTER 281. TIME-OUT BENEFITS

Sec.	
281.1	Policy.
281.2	Definitions.
281.3	Eligibility requirements.
281.4	Limitations.
281.5	Ineligibility for time-out.

### § 281.1. Policy.

To the extent State funding is available, and consistent with State and Federal law, families otherwise eligible for TANF benefits under Chapter 141 (relating to general eligibility provisions) are eligible to receive time-out benefits. The receipt of these benefits does not count towards the 60-month TANF time limit in § 141.41(d) (relating to policy).

### § 281.2. Definitions.

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

*Kinship caregiver*—A nonparental specified relative, as defined in § 151.42 (relating to definitions).

*MPP—Maximizing Participation Project*—A program to assist individuals to remedy medical conditions, functional limitations and good cause situations that preclude the individual from complying with RESET requirements.

*RESET—Road to Economic Self-Sufficiency Through Employment and Training Program*—As defined in § 165.2 (relating to definitions).

*Time-out*—Cash assistance provided to a family under this chapter.

*Victim of domestic violence*—An individual who has been subjected to domestic violence, as defined in § 187.22 (relating to definitions).

### § 281.3. Eligibility requirements.

(a) A family is eligible to receive time-out benefits if the head of household or spouse of head of household is one of the following:

(1) *A working individual.* An individual who is participating in work and work-related activities for at least the number of hours specified in subparagraphs (i)—(iv), or who is meeting the Federal definition of "engaged in work" as specified in section 407 of the Social Security Act (42 U.S.C.A. § 607(c)), whichever provides for the greater number of hours of work.

(i) Working in paid employment 30 hours per week.

(ii) Working in self-employment 30 hours per week.

(iii) Working in paid employment at least 20 hours per week and engaging in additional hours of approved work-related activity so that the total hours of work plus approved work-related activity equals or exceeds 30.

(iv) For a two-parent family, working in paid employment a combined total of 55 hours per week.

(2) *An early engager.* An individual who completed the job search required under § 165.31(b) (relating to RESET participation requirements) and who meets one of the following conditions:

(i) Began an approved employment and training activity for at least 30 hours per week during the first 12 months of receiving cash assistance, and continues to participate in the activity for at least 30 hours per week.

(ii) Enrolled in a postsecondary educational activity defined as full time by the institution during the first 12 months of receiving cash assistance, and is maintaining satisfactory progress, as defined by the institution.

(3) *An exempt volunteer.* An individual who is exempt from RESET participation requirements due to a verified physical or mental disability under § 165.21(c)(1) (relating to exemptions from RESET participation requirements), and voluntarily participates in MPP, as defined in § 281.2 (relating to definitions). For continued eligibility for time-out, an exempt volunteer shall comply with MPP.

(4) *A kinship caregiver.* A kinship caregiver, as defined in § 281.2, who meets the following conditions:

(i) Has received at least 24 months of cash assistance for the caretaker and a related minor dependent child or has care and control of a related minor dependent child as a result of a court-ordered placement by county children and youth social services, as defined in § 3130.5 (relating to definitions).

(ii) Is not receiving TANF for the kinship caregiver's own children.

(iii) Is meeting RESET participation requirements, as specified in § 165.31, unless the individual is exempt or has good cause for not meeting those requirements.

(b) A family is eligible to receive time-out if a family member is a victim of domestic violence, as defined in § 281.2.

**§ 281.4. Limitations.**

(a) *Twelve-month time limit.* The family's time-out under § 281.3(a)(1)—(3) (relating to eligibility requirements) is limited to 12 months in the lifetime of the head of household or spouse of head of household.

(b) *Combined periods.* A family may receive time-out under more than one paragraph in § 281.3(a)(1)—(3). The months need not be sequential. The combined periods of § 281.3(a)(1)—(3) may not exceed 12 months in the lifetime of the head of household or spouse of head of household.

(c) *Victims of domestic violence.* Time-out received under § 281.3(b) is limited to 12 months in the lifetime of the head of household or spouse of head of household. The family may receive an additional 12 months of time-out under § 281.3(a)(1)—(3) if the head of household or spouse of head of household meets the requirements of § 281.3(a)(1), (2) or (3).

(d) *Special exemption from time limits for kinship caregivers.* A kinship caregiver may continue to receive time-out as long as the eligibility requirements of § 281.3(a)(4) are met.

(e) *Sunset date.* This chapter will sunset on July 1, 2004.

**§ 281.5. Ineligibility for time-out.**

(a) *Appeal rights.* An individual may appeal the denial or termination of time-out benefits under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(b) *Ending time-out.* If the individual fails, without good cause, to comply with requirements for time-out, or no longer qualifies for time-out under § 281.4 (relating to

limitations), time-out benefits for the family will end. In that event, and to the extent the family otherwise qualifies for TANF, TANF assistance will resume.

[Pa.B. Doc. No. 02-1589. Filed for public inspection September 13, 2002, 9:00 a.m.]

**Title 58—RECREATION**

**FISH AND BOAT COMMISSION**

**[58 PA. CODE CHS. 53, 61 AND 65]**

**Commission Property; Fishing**

The Fish and Boat Commission (Commission) by this order amends Chapters 53, 61 and 65 (relating to Commission property; seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing these final-form amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

**A. Effective Date**

The final-form amendments will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

**B. Contact Person**

For further information on the final-form amendments, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

**C. Statutory Authority**

The final-form amendment to § 53.27 (relating to use permits for unpowered boats) is published under the statutory authority of section 742(e) of the code (relating to use of property). The amendment to § 61.7 (relating to Susquehanna River and tributaries) is published under the statutory authority of section 2102 of the (relating to rules and regulations). The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the (relating to waters limited to specific purposes).

**D. Purpose and Background**

The final-form amendments are designed to update, modify and improve the Commission's regulations pertaining to its property and fishing. The specific purpose of the final-form amendments is described in more detail under the summary of changes.

**E. Summary of Changes**

*Section 53.27.* It has come to Commission staff's attention that the current wording of § 53.27(b), requiring use permit decals to be displayed above the waterline on both sides of the bow of the boat, creates a conflict with § 93.5(c) (relating to display of registration number and validation decal). Section 93.5(c) provides that no number other than the registration number may be displayed on either side of the bow of the vessel. The Commission's Boating Advisory Board (BAB) recommended that the Commission adopt the amendment as proposed with a few grammar corrections. The Commission adopted the amendment as proposed with the grammatical corrections suggested by the BAB.

*Section 61.7.* The Commission recently discovered an error in this section. To correct the error, the Commission adopted the amendment as proposed.

*Section 65.24.* Dunkard Creek is a low gradient warmwater stream that flows through the rural setting of southern Greene County. The fish populations of Dunkard Creek have been sampled extensively dating to 1976. The dominant gamefish sampled through the years has been smallmouth bass. Dunkard Creek has been documented as one of the highest density smallmouth bass populations in a warmwater stream in Southwest Pennsylvania. Analysis of the smallmouth bass data through 1990 indicated that angler harvest was a major factor in reducing the quality of the bass population. Additionally, results of a 1990 Statewide Smallmouth Bass Angler Opinion Survey suggested that anglers were very interested in quality smallmouth bass fishing through use of more restrictive length limits. These reasons combined to provide the impetus to implement and study a catch and release regulation for black bass on a portion of Dunkard Creek effective in 1995 to improve the overall quality of the smallmouth bass fishery.

Two sampling sites were used in this evaluation, one in the catch and release section and one in the Statewide regulation section. The Dunkard Creek smallmouth bass population abundance, biomass, growth and year class strength demonstrated a similar declining trend from 1984 to 2000 at both sites. The number of smallmouth bass over 12 inches at both sites declined by about 60% for the years 1995 to 2000, compared to the 1984 to 2000 mean. This occurred even though both sites had more restrictive regulations applied over the evaluation period of 1984 to 2000. One site went from a minimum length limit of 10 to 12 inches and from a year-round season to a closed season in the spring, while the other site went to catch and release. The more restrictive harvest regulations should have led to an increase in abundance of smallmouth bass over 12 inches at both sites. Smallmouth bass growth data showed that older bass (5 and 6 years of age) had a slower growth rate over time, even though abundance had been reduced. Rock bass populations also declined at both sites over the study period.

The declining smallmouth bass and rock bass population evidence combined pointed to habitat or water quality deterioration as possible factors. Water quality was not considered a major contributor, but erosion and sedimentation in the watershed as reported in a study by the Greene County Conservation District was identified as a probable cause of the fish population declines. This documentation should serve as emphasis to heighten this awareness and take steps toward reducing and eliminating this pollution problem. Livestock farming operations and dirt and gravel roads were considered the major sediment producing sources in the upper watershed. Other sediment sources include mining and logging areas, runoff from waste sites, haul roads and construction sites.

The Dunkard Creek long-term data set allowed staff to document that the catch and release regulations for bass did not meet their objective of improving the quality of the bass population. However, this data set also allowed staff to discover the chronic effects of erosion and sedimentation on smallmouth bass and rock bass populations in the Dunkard Creek watershed. Conservation groups will now be directed to alleviate this pollution and ultimately return the quality component of the smallmouth bass population to its former state.

The Commission amended § 65.24 to remove the miscellaneous special regulations on Dunkard Creek, as proposed.

#### F. Paperwork

The final-form amendments will not increase paperwork and will create no new paperwork requirements.

#### G. Fiscal Impact

The final-form amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form amendments will impose no new costs on the private sector or the general public.

#### H. Public Involvement

A notice of proposed rulemaking was published at 32 Pa.B. 1729 (April 6, 2002). The Commission did not receive any public comments regarding the proposed amendments.

#### Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been 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 (1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

#### Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 53, 61 and 65, are amended by amending §§ 61.7 and 65.24 to read as set forth at 32 Pa.B. 1729 and by amending § 53.27 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 32 Pa.B. 1729 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 32 Pa.B. 1729 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-125 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

##### Subpart A. GENERAL PROVISIONS

#### CHAPTER 53. COMMISSION PROPERTY

##### § 53.27. Use permits for unpowered boats.

(a) The Commission and issuing agents designated by the Commission will issue use permits for unpowered boats when their owners choose not to register them to use Commission lakes and access areas.

(b) Use permits will be issued in the form of decals, showing the expiration date. Decals shall be clearly displayed on both sides of the hull amidships below the

gunwale. For low-volume boats, such as kayaks, decals shall be placed on both sides of the deck amidships.

[Pa.B. Doc. No. 02-1590. Filed for public inspection September 13, 2002, 9:00 a.m.]

**FISH AND BOAT COMMISSION**  
**[58 PA. CODE CHS. 63, 71 AND 73]**  
**Snakehead Fish**

The Fish and Boat Commission (Commission) hereby amends Chapters 63, 71 and 73 (relating to general fishing regulations; propagation and introduction of fish into Commonwealth waters; and transportation of live fish into this Commonwealth). The Commission is publishing these final-omitted amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

*A. Effective Date*

The final-omitted rulemaking will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

*B. Contact Person*

For further information on the final-omitted amendments, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-omitted rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

*C. Statutory Authority*

The final-omitted rulemaking to §§ 63.46, 71.6 and 73.1 (relating to sale, purchase or barter of live snakehead species; prohibited acts; and transportation) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

*D. Purpose and Background*

The final-omitted rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the amendments is described in more detail under the summary of changes.

*E. Summary of Changes*

Snakehead fish are native to Asia; they are not native to this Commonwealth. Snakehead fish have not been identified in the wild in this Commonwealth. The discovery of a population of about 100 northern snakehead (*Channa argus*), one of several species of snakehead fish, in a pond in Crofton County, MD received National news media attention recently. Three species of snakeheads have been found in open waters in 7 states and 13 states currently prohibit possession of these species. It is believed that the introduction of this fish occurs when individuals purchase live fish and subsequently release them into the wild. There have been reports of snakeheads in hobby fish trade (pet stores) in this Commonwealth.

These fish can cause problems for aquatic ecosystems. They have large mouths, big teeth, grow to a weight of 15 pounds, can survive out of water for several days and are considered voracious predators. They have the potential to disrupt the balance between predator and prey in an aquatic ecosystem.

Secretary of the Interior Gale Norton and the United States Fish and Wildlife Service announced a proposal to ban the invasive and voracious snakehead fish from importation and interstate transportation during a press conference held in Washington, DC on July 23, 2002. This action would classify the species as injurious wildlife and subject to the Lacey Act (16 U.S.C.A. § 701).

Although it is currently illegal under Commonwealth laws and regulations for anyone to release live snakehead fish into Commonwealth waters, it previously was not illegal to possess, sell, offer for sale or purchase them. Accordingly, the Commission adopted new regulations to address this issue. The Commission, having found that it is impracticable and contrary to the public interest to follow ordinary proposed rulemaking procedures in this case, adopted the amendments to read as set forth in Annex A.

In terms of enforcement, the Commission plans to pursue a deliberate enforcement approach to ensure fairness while maximizing protection for Commonwealth waters. A person introducing live snakehead fish into Commonwealth waters ordinarily will be cited. However, a person found in possession of live snakehead fish in a situation not involving introduction of the fish into Commonwealth waters will be given a reasonable opportunity to dispose lawfully of the fish in a humane manner before commencement of any prosecution or issuance of any citation.

*F. Paperwork*

The final-omitted rulemaking will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

The final-omitted rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-omitted rulemaking will impose no new costs on the general public. However, there may be costs to the private sector in that the Commission has heard anecdotal reports that snakehead fish are being sold by a limited number of pet stores throughout this Commonwealth. The Commission's best estimate is that the final-omitted rulemaking will have a fiscal impact of approximately \$2,000 to \$3,000 on these pet stores State-wide.

*H. Public Involvement*

The Commission has omitted the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 because the Commission for good cause has found that the compliance with procedures specified therein is impracticable and contrary to the public interest. In light of the demonstrated problems caused by live snakehead fish and the response by the Federal and State governments, it would be impracticable and contrary to the public's best interests to delay prohibitions on sale, offering for sale, purchase or possession of live snakeheads in this Commonwealth. There could be some risk that, as other states prohibit possession and sale in the period before the effective date of new Federal prohibitions, this Commonwealth could become a destination state for these fish with concomitant risks to Commonwealth aquatic resources. Even though it is already illegal to stock these fish in Commonwealth waters, the practice of selling, offering for sale, purchasing and possessing these fish poses a foreseeable risk that fish handled in this way will find their way into Commonwealth waterways.

*Findings*

The Commission finds that:

(1) Compliance with the procedures specified in sections 201 and 202 of the CDL and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2, are in the circumstances impracticable and contrary to the public interest.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 63, 71 and 73, are amended by adding § 63.46 and by amending §§ 71.6 and 73.1 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director 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 immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** 48A-131. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 58. RECREATION****PART II. FISH AND BOAT COMMISSION****Subpart B. FISHING****CHAPTER 63. GENERAL FISHING REGULATIONS****§ 63.46. Sale, purchase or barter of live snakehead species.**

It is unlawful for a person to sell, purchase, offer for sale or barter live snakehead species in this Commonwealth.

**CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS****§ 71.6. Prohibited acts.**

(a) Except as otherwise provided in § 71.7 (relating to triploid grass carp), it is unlawful to introduce or import grass carp (white amur) into this Commonwealth. Except as otherwise provided in § 71.7, it is unlawful to possess grass carp (white amur) in this Commonwealth.

(b) It is unlawful to introduce tilapia, including blue tilapia and tilapia hybrids, into the waters of this Commonwealth.

(c) As an exception to subsection (a), §§ 71.1 and 73.1 (relating to general; and transportation), the Executive Director may authorize the Research Division of the

Bureau of Fisheries to possess grass carp (white amur) and introduce them into waters within the confines of the Commonwealth hatchery system as part of a carefully controlled research effort, subject to conditions as the Executive Director may prescribe.

(d) It is unlawful to possess live snakehead species in this Commonwealth. It is unlawful to introduce or import live snakehead species into the waters of this Commonwealth.

**CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THIS COMMONWEALTH****§ 73.1. Transportation.**

(a) Species of fish may not be transported into this Commonwealth from another state, province or country and liberated in a watershed of this Commonwealth without previous written permission from the Commission, nor may a species of fish be transferred from waters in this Commonwealth into another drainage of this Commonwealth where this particular species is not always present without prior written consent from the Commission. Inspection for species composition or presence of disease, or both, will be required at the discretion of the Commission on all lots of fish transported into this Commonwealth.

(b) Permission is not required for the importation of tropical fish unless the Commission considers them to be potentially dangerous to native fish species or to man. Permission is not required for the stocking of farm ponds or licensed fee fishing ponds which receive fish stocks from Commonwealth commercial fish hatcheries except for the following kinds of fish: goldfish, golden orfe or fish species not native to this Commonwealth.

(c) Except as provided in § 71.7 (relating to triploid grass carp), transportation of the grass carp (white amur) in this Commonwealth is prohibited.

(d) Transportation of live snakehead species in or through this Commonwealth is prohibited.

[Pa.B. Doc. No. 02-1591. Filed for public inspection September 13, 2002, 9:00 a.m.]

**GAME COMMISSION****[58 PA. CODE CH. 135]**

[Correction]

**Use of and Permissible Activities on State Game Lands**

An error occurred in the preamble to the final rule-making which appeared at 32 Pa.B. 4235, 4236 (August 31, 2002). Although the effective date (February 1, 2003) was correctly stated in the preamble in paragraph 7 (Effective Dates), the order stated that the amendments would take effect upon publication. The correct effective date for those amendments is February 1, 2003.

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