

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency  
Department of Military and Veterans Affairs

(2) I.D. Number (Governor's Office Use)  
**13-05**

IRRC Number: <sup>4</sup> 2680

(3) Short Title  
Persian Gulf Conflict Veterans' Benefit Program

(4) PA Code Cite  
43 Pa. Code Ch. 9  
43 Pa. Code §§ 9.1 – 9.13

(5) Agency Contacts & Telephone Numbers  
  
Primary Contact: Dennis Guise, 717-861-8503  
  
Secondary Contact: David Heiland, 717-861-2856

(6) Type of Rulemaking (check one)  
 Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?  
 No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation implements Act 2006-29, which created the Persian Gulf Conflict Veterans' Benefit Program. This program will pay compensation (bonus payments) to Pennsylvania veterans of the first Persian Gulf Conflict (August 1990 – August 1991). For most Persian Gulf Conflict veterans, the bonus payments will be \$75 per month for months assigned in the Persian Gulf Theater of Operations up to a maximum of \$525. The survivors of a Persian Gulf Conflict veteran who died in active service or as a result of service-connected wounds, diseases or injuries, qualify for a \$5,000 bonus payment as do Pennsylvania veterans who were prisoners of war during the conflict. The regulation describes the process by which eligible veterans or their survivors may apply for bonus payments, as well as the criteria that will be employed in determining the appropriate payments.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 9 of the Persian Gulf Conflict Veterans' Benefit Act of 2006 (P.L. 91, No. 29) is the statutory authority for this regulation. It states that "the Adjutant General shall promulgate rules and regulations to implement, administer and enforce this act."

### Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. Section 9 of the Persian Gulf Conflict Veterans' Benefit Act of 2006 (P.L. 91, No. 29).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The General Assembly established the Persian Gulf Conflict Veterans' Benefit Program by statute and the voters of Pennsylvania overwhelmingly approved funding for the bond issue for this program. The regulations are necessary to fully implement this program and provide guidance on its administration and enforcement.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation will lead to a Persian Gulf Conflict Veterans' Benefit Program that will not function as clearly and effectively. This is a general welfare risk. The Commonwealth needs these regulations to effectively operate this new program.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Based upon Department of Defense statistics and other available information, it is estimated that there are between 30,000 and 35,000 Pennsylvania veterans of the Persian Gulf Conflict who will benefit from this program. In addition, nineteen Pennsylvania soldiers were killed during the conflict, and it is possible that a number of veterans have died from service-connected wounds, diseases, or injuries after the conflict. There were one or two Pennsylvania prisoners of war in this conflict. These veterans and the survivors of the deceased veterans will benefit from this program. Note that these program benefits are largely the result of the statute and the action by Pennsylvania voters to approve the program. The regulations themselves will provide benefits by clearly stating the administrative process and review criteria for implementing the program.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one will be adversely affected by this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Applicants for the Persian Gulf Conflict Veterans' Benefit Program will need to comply with this regulation. It is anticipated that there will be fewer than 35,000 applicants for the program between 2008 and its expiration in 2015.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Adjutant General and Department of Military and Veterans Affairs sought input from the State Veterans' Commission and its constituent groups in the drafting of these regulations. The State Veterans' Commission is an advisory commission which consists of the commanders, commandants or heads of all the major veterans' organizations in Pennsylvania, as well as the adjutants of several veterans' organizations and members at large. Their comments or concerns were incorporated into the regulation drafting process.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulated community (that is applicants or potential applicants for Persian Gulf Veterans' Benefit Act bonus payments) will bear the costs of submitting an application, which will be nominal (less than \$5 per application for mailing, copying, and the like). Under Section 8 of Act 29, it is unlawful for anyone to charge a fee to assist veterans in applying for these benefits.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

These regulations impose no costs on local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The costs associated with administering the Persian Gulf Conflict Veterans' Benefit Act of 2006 are a result of the Act itself rather than the regulations. The Department of Military and Veterans Affairs plans to employ a contractor to receive applications, determine eligibility and process payments. Since it is anticipated that the bulk of applications will be submitted in the early years of this program, these administrative costs are concentrated in the early years of the program. Note that these costs are not the result of the regulations but of the Persian Gulf Conflict Veterans' Benefit program itself. The regulations result in no incremental costs.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. Note: The regulations themselves impose no costs.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$850,000	\$720,000	\$475,000	\$415,000	\$180,000	\$125,000
<b>Total Costs</b>	\$850,000	\$720,000	\$475,000	\$415,000	\$180,000	\$125,000
<b>REVENUE LOSSES:</b>						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the cost estimates listed above were derived.

The costs to state government derive from DMVA estimates of the costs to administer the Persian Gulf Conflict Veterans' Benefit Program. These costs do not result from the regulations themselves but from the costs of the program. These costs are derived from the estimated personnel, equipment, etc. costs as well as the cost of a contractor to administer the program. A contract for program administration is scheduled to take effect by late December 2007 or early January 2008. The costs of implementation and administration will be paid from DMVA General Government Operations (GGO) appropriations or Persian Gulf Conflict Veterans' Bond Fund monies.

In addition to the implementation/compliance costs listed above, the Commonwealth will bear the costs of paying the bonus payment to eligible Persian Gulf Conflict veterans and their survivors. These costs will be paid from bond funds approved by the voters at the November 2006 general election. The bonus payments will be made from Persian Gulf Conflict Veterans' Compensation Bond Fund monies. They are estimated as follows:

Bonus Payments	Current FY	FY +1 Year	FY +2 Year	FY + 3 Year	FY +4 Year	FY +5 Year
	\$3,000,000	\$5,500,000	\$5,000,000	\$2,000,000	\$1,500,000	\$500,000

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.  
This is new program. No other programs are affected by the regulation. There is no program history.

Program	FY -3	FY -2	FY -1	Current FY
New Program	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of this regulation clearly outweigh any costs. First of all, the regulation provides for implementation, administration and enforcement of a new program (the Persian Gulf Conflict Veterans' Benefit Program) mandated by law and funded through a bond issue approved by the voters of the Commonwealth. Second, it is beneficial for the Commonwealth to implement this new program in an effective and clear manner. Third, the regulations themselves (as opposed to the program they implement) essentially involve no costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Regulations are called for by Section 9 of the Persian Gulf Conflict Veterans' Benefit Act. Although it is conceivable that the program could be implemented without promulgation of regulations, the regulations provide practical and effective guidance for the implementation, administration and enforcement of the program. Nonregulatory alternatives were not considered given the clear mandate of the act.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Consistent with Section 9 of the Persian Gulf Conflict Veterans' Benefit Act of 2006, a regulatory scheme along the lines contained in the regulations is appropriate. As part of the drafting process, the Department considered alternative wording for some provisions and made appropriate changes, but the overall structure of this regulatory scheme is appropriate to implement this new program.

### Regulatory Analysis Form

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

There are no provisions that are more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These regulations implement a veterans' bonus program. The regulations do not put Pennsylvania at a competitive disadvantage with other states.

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

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No. The Department will brief the State Veterans' Commission on the status of the regulation. Because the regulations relate to military affairs, a notice of proposed rulemaking is omitted.

### Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The only paperwork changes required by the regulations are the requirement for submission of an application form with supporting documentation. A contractor will be required to develop the application form, subject to approval by DMVA. The form has not yet been developed.

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

Although the regulations themselves do not contain any special provisions, the program will be administered in a way to reach out to veterans and their families and ensure that they have assistance from veterans' service officers, county directors of veterans' affairs and others.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

DMVA would like the regulations to take effect immediately upon publication of the order adopting regulations. The anticipated effective date is in February 2008. The regulation implements a new program. Compliance with the application requirements will be effective immediately, but no permits, licenses or additional approvals will be required to comply with the regulation.

(31) Provide the schedule for continual review of the regulation

DMVA will review these regulations with the State Veterans' Commission on an annual basis starting in October 2008. DMVA will continually review the effectiveness of the regulations to address any issues that arise during the implementation of this new program.



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

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

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable.  
Copy not approved.  
Objections attached.

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

Department of Military and Veterans Affairs  
(Agency)

DOCUMENT/FISCAL NOTE NO. 13-05

DATE OF ADOPTION: \_\_\_\_\_

BY: Jessica L Wright

Major General, PAARNG

Title: The Adjutant General

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

*Andrew C. Clark*

BY: Andrew C. Clark  
FEB 19 2008

DATE OF APPROVAL

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

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

**NOTICE OF FINAL-OMITTED RULEMAKING  
WITHOUT PUBLICATION AS PROPOSED**

**DEPARTMENT OF MILITARY AND VETERANS AFFAIRS  
BUREAU FOR VETERANS' AFFAIRS**

43 Pa. Code Chapter 9

**Persian Gulf Conflict Veterans' Benefit Program**

## PREAMBLE – FINAL-OMITTED RULEMAKING

### ***Statutory Authority***

The Adjutant General, acting by and through the Department of Military and Veterans Affairs (Department), by this order, adopts the regulation set forth in Annex A pursuant to the authority of Section 9 of the Act of April 24, 2006 (P.L. 91, No. 29), which authorizes the Adjutant General to promulgate rules and regulations to implement, administer and enforce the provisions of the Persian Gulf Conflict Veterans' Benefit Act.

### ***Omission of Proposed Rulemaking***

Notice of proposed rulemaking is omitted in accordance with § 204(1)(i) and (iv) of the Commonwealth Documents Law (45 P.S. § 1204 (1) (i) and (iv)) and 1 Pa.Code § 7.4(1)(i) and (iv). The regulations relate to "military affairs" in that determination of eligibility for the Persian Gulf Conflict Veterans' Benefit (bonus) program is based on a review and determination of criteria related to the military status and service of the applicants. In addition, the Persian Gulf Conflict Veterans' Benefit program, which pays a bonus to eligible Pennsylvania veterans of the first Persian Gulf Conflict (August 1990 to August 1991) is by its very nature a Commonwealth benefits program.

### ***Purpose***

The purpose of this regulation is to implement a new program providing a veterans' benefit, in the form of a "bonus" payment, to an estimated 32,000 eligible Pennsylvania veterans of the first Persian Gulf War (August 2, 1990 - August 31, 1991) and to survivors of veterans who died in performance of active service during the period or as a result of service-connected wounds, diseases or injuries.

The regulation is needed to provide clear guidance on how the authorizing statute will be administered to determine eligibility for the Persian Gulf Conflict Veterans' Benefit payments and in determining the amounts of the payments. Eligibility in terms of establishing legal residence in Pennsylvania during the period of the Persian Gulf Conflict and in establishing qualifying active service in the Persian Gulf theater of operations will be determined using the veterans' military service records. The regulation explains how this will be done. It also explains the varying calculations for military personnel who were on active duty during the Persian Gulf Conflict and those who were members of the National Guard and reserve components who served during the conflict.

### ***Background***

Since World War I, Pennsylvania has recognized its war veterans by paying a veterans' benefit, commonly called a "bonus," to veterans who served honorably during specified war or armed conflict periods. These bonus payments have been funded by bond issues that were approved by the voters of Pennsylvania. For the Persian Gulf Conflict (August 1990 – August 1991), the General Assembly passed legislation establishing the

program in April 2006, and the funding for the bonus payments was approved by the voters of the Commonwealth at the November 2006 general election.

### ***Requirements***

The regulation implements the requirements set forth in the authorizing statute (Act of April 24, 2006 (P.L. 91, No. 29)) for this new veterans' benefit (bonus) program.

Eligibility. Under the statute and the regulations, an applicant for Persian Gulf Conflict Veterans' Benefit program is required to show that he or she is a qualified veteran in that he or she served on active duty in the Persian Gulf Theater of Operations during any part of the period from August 2, 1990 until August 31, 1991 and received the Southwest Asia Service Medal. In addition to establishing veteran status, an applicant must show he or she was a legal resident of the Commonwealth at the time of qualifying service. For deceased veterans, the applicant must show that the veteran died while in performance of qualifying service or from service-connected wounds, diseases or injuries incurred in the conflict. For applicants claiming a bonus payment as a prisoner of war during the Persian Gulf Conflict, the applicant must show that he or she was designated an eligible prisoner of war in applicable military records.

Calculation of Benefit Payments. The regulation requires that benefit payments be calculated in accordance with a formula set forth in the statute. The basic calculation is that the veteran should receive a payment of \$75 per month of qualifying active service during the Persian Gulf Conflict up to a maximum of \$525. For veterans who were POWs during the conflict or who died in performance of duty during the Persian Gulf Conflict or from service-connected wounds, diseases or injuries incurred during the Conflict, an additional payment of \$5,000 is authorized.

Applications for deceased or incompetent veterans. The regulation sets for requirements, consistent with the statute, for applications of deceased or incompetent veterans.

Procedures, Reconsideration and Appeals. The regulation sets forth requirements for filing applications as well as procedures for reconsideration and appeals of a determination denying benefits.

### ***Affected Individuals and Organizations***

The regulation affects approximately 32,000 Pennsylvania veterans of the Persian Gulf Conflict (August 1990 – August 1991) as well as survivors of veterans who died in performance of duty during the conflict or died of service-connected wounds, diseases or injuries incurred during the conflict. The Persian Gulf Veterans' Benefit program will also have some impacts on veterans' service officers, including County Directors of Veterans' Affairs, and veterans' organizations, which may assist veterans in applying for and securing the bonus payments. Neither the regulations nor the veterans' benefit program authorized by the statute have any negative impacts on individuals or organizations. The regulation implements the authorizing statute and provides guidance for the affected individuals or organizations.

### ***Accomplishments and Benefits***

The regulation is important in that it provides clear, concise and understandable guidance and processes for implementing the new Persian Gulf Conflict Veterans' Benefit program and getting bonus payments into the hands of about 32,000 Persian Gulf Conflict veterans. The principal accomplishment of the regulations is that it will allow for fair, prompt and appropriate implementation of this new benefit program.

### ***Fiscal Impact***

The costs associated with administering the Persian Gulf Conflict Veterans' Benefit Act of 2006 are a result of the Act itself rather than the regulations. The regulations result in no incremental costs.

The Department of Military and Veterans Affairs plans to employ a contractor to receive applications, determine eligibility and process payments. Since it is anticipated that the bulk of applications will be submitted in the early years of this program, the administrative costs are concentrated in the early years of the program. The costs of administering the program are estimated at \$850,000 for the first fiscal year and \$720,000 for the second fiscal year. In later fiscal years, the administrative costs are estimated to decline to \$475,000 in year three, \$415,000 in year four and \$180,000 in year five. The deadline for applications is in 2015, but it is expected that nearly all the applications will be received in the first years of the program. Note that these costs are not the result of the regulations themselves but of the Persian Gulf Conflict Veterans' Benefit program itself.

The Department estimates Persian Gulf Conflict Veterans' Benefit (bonus) payments will range from about \$3 million in year one (current fiscal year), \$5.5 million in year two, \$5 million in year 3, \$2 million in year four and \$1.5 million in year five. These payments will be made from bond funds approved by the voters of the Commonwealth at the November 2006 general election.

Neither the regulations nor the Persian Gulf Conflict Veterans' Benefit program impose any costs on local governments. In terms of costs on affected individuals, the only costs would be nominal costs of copying required military records and mailing applications and documentation. The statute prohibits charging a fee to assist veterans or families in applying for the Persian Gulf Conflict Veterans' benefit (bonus) payments.

### ***Paperwork Requirements***

The Persian Gulf Conflict Veterans' Benefit program creates paperwork requirements for applicants to submit written applications together with supporting documentation in order to qualify for the program. Although it should take most applicants fewer than one to two hours to complete the application for the Persian Gulf Conflict Veterans bonus payment, gathering and copying the supporting documentation (Department of Defense Forms 214, proof of active service and Southwest Asia Service

Medal, proof of legal residence) may take some veterans longer. In some cases, a veteran may need to apply to the U.S. Government for copies of documentation needed to support the application. The Department believes the paperwork required to support the applications is the minimum required to meet the statutory requirements.

### ***Public Comment***

In developing these regulations, the Department solicited, considered and incorporated comments and suggestions from the Pennsylvania State Veterans' Commission, an advisory commission within the Department, which has representation from all the major statewide veterans' organizations in Pennsylvania. Although this regulation is being adopted without publication as proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections regarding the regulation to the Department at the following address: David Heiland, Veterans' Services, Department of Military and Veterans Affairs, Bldg S-0-47, Fort Indiantown Gap, Annville, PA 17003-5002 (telephone 717-861-2856) or Dennis Guise, Chief Counsel, Bldg 7-1, Fort Indiantown Gap, Annville, PA 17003-5002 (telephone 717-861-8503). Comments will be reviewed and considered for any subsequent revisions of the regulation.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users).

### ***Sunset Date***

Consistent with the authorizing statute, these regulations will sunset six months after the statutory deadline for submitting applications for bonus payments under the Persian Gulf Conflict Veterans' Benefit Act. These regulations will expire on February 29, 2016.

### ***Regulatory Review Act***

Under § 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on February 29, 2008, the Department submitted a copy of this regulation, with proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Veterans' Affairs and Emergency Preparedness and the Senate Committee on Veterans' Affairs and Emergency Preparedness. On the same date, the regulation was submitted to the Office of the Attorney General for review and approval pursuant to the Commonwealth Attorneys Act.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was approved by the Committees on . The IRRC met on and approved the regulation.

In addition to submitting the final-omit rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

**Order**

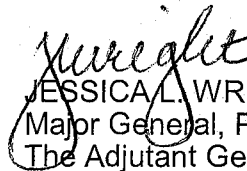
The Adjutant General, Department of Military and Veterans Affairs, finds:

- (a) Notice of proposed rulemaking is omitted in accordance with § 204(1)(i) and (iv) of the Commonwealth Documents Law (45 P.S. § 1204 (1) (i) and (iv)) and 1 Pa.Code § 7.4(1)(i) and (iv). because the regulations relate to military affairs and implement a Commonwealth benefits program.
- (b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Act of April 24, 2006 (P.L. 91, No. 29), known as the Persian Gulf Conflict Veterans' Benefits Act.

The Adjutant General, Department of Military and Veterans Affairs, acting pursuant to the authority of Section 9 of the Act of April 24, 2006 (P.L. 91, No. 29), orders:

- (a) The regulations of the Department are adopted to read as set forth in Annex A of this Order.
- (b) The Adjutant General shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.
- (c) The Adjutant General shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.
- (d) This Order shall take effect upon publication of this Order in the *Pennsylvania Bulletin*.

FOR THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

  
JESSICA L. WRIGHT  
Major General, PAARNG  
The Adjutant General

Annex A

**Title 43**  
**Military Affairs**

**Chapter 9**

**PERSIAN GULF CONFLICT VETERANS' BENEFIT PROGRAM**

**§ 9.1 Purpose.**

Section 9 of the Act of April 24, 2006 (P.L. 91, No. 29), effective December 18, 2006, directs the Adjutant General to promulgate rules and regulations to implement, administer and enforce the provisions of the Act establishing the Persian Gulf Conflict Veterans' Benefit Program.

**§ 9.2 Definitions.**

In addition to the definitions set forth in Section 2 of the Act of April 24, 2006 (P.L. 91, No. 29), the following words and phrases shall have the meaning given to them in this section unless the context clearly indicates otherwise:

“Act.” The Act of April 24, 2006 (P.L. 91, No. 29), known and cited as the Persian Gulf Conflict Veterans' Benefit Act.

“Active Duty.” The term “active duty” has the meaning of such term in section 101(d)(1) of Title 10, United States Code.

“Active service.” For a member of an active component of the armed forces of the United States, the time served on active duty for which the member has received or is eligible to receive the Southwest Asia Service Medal for service related to the Persian Gulf Conflict Theater; for a member of the Pennsylvania National Guard or a reserve component of the armed forces of the United States, time served on active duty for the support of operations in the Persian Gulf Conflict Theater whether or not that service was in the theater. The term includes time spent in hospitals as a result of service-connected wounds, diseases or injuries sustained on active service. Proof of such service shall be the official military records of the United States or such other evidence as is deemed sufficient by the Adjutant General. The term does not include time served on active duty for annual training or schooling, except for training and schooling in preparation for active duty in the Persian Gulf Conflict Theater.

"Applicant." The individual who, or facility which, submits an application for payment under the Persian Gulf Conflict Veterans' Benefit Program.

"Bonus." The benefit payment made to eligible veterans or their survivors under the Persian Gulf Conflict Veterans' Benefit Act. (Act of April 24, 2006 (P.L. 91, No. 29)).

"Bureau." The Bureau for Veterans' Affairs of the Department of Military and Veterans Affairs.

"Deputy Adjutant General for Veterans' Affairs." The Deputy Adjutant General of the Department of Military and Veterans Affairs with general responsibilities for administration of veterans programs who oversees the Bureau for Veterans' Affairs and exercises the powers and duties described generally in Chapter 17, Subchapter B of the Military and Veterans Code, 51 Pa.C.S. Ch. 17, Subch. B.

"Facility." Any mental health establishment, hospital, clinic, institution, center, day-care center, base service unit, community mental health center or other organizational unit, or treatment, care, rehabilitation or detention of mentally disabled persons.

"Legal resident of this Commonwealth." A member of the United States Armed Forces, a reserve component of the United States Armed Forces or the Pennsylvania National Guard whose home of record at the time of the Persian Gulf Conflict was this Commonwealth or any specific place in this Commonwealth without regard to the place of enlistment, commission or induction.

"Member." A member of the Armed Forces of the United States or a reserve component of the Armed Forces of the United States, including the Army National Guard of the United States or the Air National Guard of the United States.

"Parents." The natural or adoptive parent or parents of the veteran. The term includes persons who, for a period of not less than one year, acted in the capacity of a foster parent to the veteran immediately prior to the veteran having attained 18 years of age.

"Persian Gulf Conflict Theater." The area defined as the Persian Gulf Conflict Theater of Operations as established by the United States Department of Defense for the awarding of the Southwest Asia Service Medal for the period of time from August 2, 1990, through August 31, 1991.

"Program." The Persian Gulf Conflict Veterans' Benefit Program established by the Act of April 24, 2006 (P.L. 91, No. 29.)

"Veteran." A member or former member of the armed forces of the United States, including a member of the Army National Guard of the United States, the Air National Guard of the United States or a reserve component of the armed forces, who was ordered into or volunteered to serve on active duty in the Persian Gulf Theater of operations



during the period from August 2, 1990, to August 31, 1991, and has received the Southwest Asia Service Medal (SWASM) established by executive order 12754, 12 March 1991.

This term shall not include:

- (1) any individual who, at any time during the Persian Gulf Conflict or thereafter, was separated from the armed forces under other than honorable conditions; and
- (2) any individual who has renounced his United States citizenship.

### **§ 9.3 Veteran Status**

(a) In order to qualify for payment of the bonus under the program, an applicant must establish to the satisfaction of the Department that the person for whom the bonus payment is sought is a veteran as defined in the Act and Section 9.2 (relating to definitions). The applicant must show that the person to whom or on behalf of whom the bonus payment is sought meets all the following requirements:

- (1) Was a member of the armed forces of the United States or a reserve component of the armed forces, including the Army National Guard of the United States, the Air National Guard of the United States; and,
- (2) Served on active duty in the Persian Gulf Theater during any part of the period from August 2, 1990 to August 31, 1991; and,
- (3) Received the Southwest Asia Service Medal established by executive order 127564, 12 March 1991. Individuals authorized the Southwest Asia Service Medal must have served in support of Operation Desert Shield or Desert Storm, in one or more of the following areas, between 2 August 1990 and 31 August 1991: Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, that portion of the Arabian Sea that lies north of 10 degrees North latitude and west of 68 degrees East longitude, as well as the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. Individuals serving in Israel, Egypt, Turkey, Syria and Jordan (including the airspace and territorial waters) directly supporting combat operations between 17 January 1991 and 11 April 1991 are also eligible for this award.

(b) In addition, in order to be considered a veteran for purposes of the Program, the applicant must certify that he or she:

- (1) Was not, at any time during the Persian Gulf Conflict or thereafter, separated from the armed forces under other than honorable conditions (including a bad conduct or dishonorable discharge or an administrative discharge under other than honorable conditions); and,
- (2) Did not, at any time, renounce his or her United States citizenship.

#### § 9.4 Legal residence.

(a) In addition to establishing the veteran status of the person for or behalf of whom the bonus payment is sought, the applicant must establish to the satisfaction of the Department that the individual was a legal resident of this Commonwealth at the time of service qualifying for payment of the bonus during the period August 2, 1990 to August 31, 1991. The proof of such residence shall be the official records of the United States or such other evidence as is deemed sufficient by the Adjutant General. A legal resident of this Commonwealth is an individual for whom Pennsylvania was the state of domicile and who did not claim legal residence in any other state for any purpose. A service member's legal residence in Pennsylvania is not changed by virtue of military assignment to another state.

(b) Home of Record in Pennsylvania Shown in Official Military Records. A veteran whose home of record is listed in Pennsylvania in official military records showing qualifying service during the period August 2, 1990 to August 31, 1991 will be considered a legal resident of Pennsylvania without regard to the veteran's place of enlistment, commission or induction.

(c) Home of Record in Pennsylvania Not Shown in Official Military Records. In making a determination of legal residence in cases where official military records do not show Pennsylvania as the applicant's home of record for the period of service, the Department shall apply a rebuttable presumption that the veteran was not a legal resident of Pennsylvania. The applicant can rebut this presumption by showing facts and circumstances establishing that Pennsylvania was the applicant's legal residence in that it was his or her permanent place of abode to which the applicant had an intent to return.

(d) Documentation. If an applicant is unable to show legal residence in Pennsylvania by means of official military records showing a home of record in Pennsylvania during the period of service, the Department may consider the following documentation when determining whether sufficient evidence exists to show by a preponderance of the available evidence that the veteran was a legal resident of Pennsylvania who did not claim legal residence in any other state at that time:

- (1) Voter registration records for the period August 2, 1990 to August 31, 1991.
- (2) Proof of payment of state income tax as a resident for 1990 or 1991.
- (3) Pennsylvania driver's license or Pennsylvania Identification Card and similar documentation for 1990 or 1991.
- (4) Other proof of Pennsylvania residence address in 1990 or 1991, including high school diploma or attendance record for Pennsylvania high school, real

estate records, utility receipts, and other records showing residence in Pennsylvania.

(5) An affidavit of residence submitted by the applicant under penalty of law in which the applicant swears or affirms that the veteran on whose behalf the bonus payment was sought remained a legal resident of Pennsylvania and did not claim legal residence in any other state for any purpose during the period August 2, 1990 to August 31, 1991. A service member's legal residence in Pennsylvania is not changed by virtue of military assignment to another state.

(c) Exclusion. An individual who received from any other state in the United States, a bonus, gratuity or compensation similar in nature or purpose to the bonus payable under the Act is ineligible for a bonus payment under the Act. Applicants must certify as part of the application that the veteran did not receive such compensation or benefit payment from any other state. This exclusion does not apply to bonus, gratuity, compensation or benefit payments from the United States Government.

#### **§ 9.5 Calculation of Bonus Payments based on Months of Active Service**

(a) Eligible veterans of Persian Gulf Conflict active service in the active armed forces. Bonus payments, not to exceed \$525, will be calculated on the basis of \$75 for the first month for which the member completed one day of active service; as described herein, and \$75 for each full month or major fraction of a month thereafter for which the eligible veteran completed active service. For eligible veterans of Persian Gulf Conflict service in the active armed forces, "active service" is considered:

(1) Active duty in the Persian Gulf Theater of Operations for which the member received or was eligible to receive the Southwest Area Service Medal for service related to the Persian Gulf Conflict Theater; and,

(2) Time spent in hospitals during the period August 2, 1990 to August 31, 1991 as a result of service-connected wounds, diseases or injuries sustained while on active duty in the Persian Gulf Theater.

(b) Eligible veterans of Persian Gulf Conflict active service in reserve components. Bonus payments, not to exceed \$525, will be calculated on the basis of \$75 for the first month for which the member completed one day of active service and \$75 for each full month or major fraction of a month thereafter for which the eligible veteran completed active service. For eligible veterans of Persian Gulf Conflict service in the reserve components of the armed forces, active service is considered:

(1) Active duty in the Persian Gulf Theater for which the member received or was eligible to receive the Southwest Area Service Medal for service related to the Persian Gulf Conflict Theater; and,

(2) Time spent in hospitals during the period August 2, 1990 to August 31, 1991 as a result of service-connected wounds, diseases or injuries sustained while on active duty in the Persian Gulf Theater; and,

(3) Time served on active duty during the period August 2, 1990 to August 31, 1991 for support of operations in the Persian Gulf Theater whether or not such service was in the Theater, provided that, in order to be considered eligible a reserve component, veteran must still demonstrate service in the Theater sufficient to qualify for award of the Southwest Asia Service Medal; and,

(4) Time served on active duty in training and schooling (other than annual training or schooling), during the period August 2, 1990 to August 31, 1991, when the applicant can demonstrate to the satisfaction of the Department that the training and schooling was in direct preparation for deployment on active duty to the Persian Gulf Theater. In order to be considered eligible, a reserve component veteran must still demonstrate service in the Theater of Operations sufficient to qualify for award of the Southwest Asia Service Medal.

(c) Documentation. Completion of qualifying active service shall ordinarily be documented by official military service records showing dates and places of services. Evidence contained in official military service records shall be deemed sufficient documentation. The Department will, upon request, consider documentary evidence submitted by applicants.

#### **§ 9.6. Compensation on behalf of deceased veterans.**

(a) In addition to bonus payments calculated based on months of active service under § 9.5 (relating to calculation of bonus payment based on months of active service), the eligible survivors of a deceased veteran as described in Section 5(b) of the Act shall be eligible for payment of \$5,000 when:

(1) The veteran died while in performance of "active service" as defined in Section 2 of the Act and § 9.5 (relating to calculation of bonus payment based on months of active service) during any part of the period from August 2, 1990 to August 31, 1991; or

(2) The veteran died as result of service-connected wounds, diseases or injuries incurred during the period of "active service" as defined in Section 2 of the Act and § 9.5 (relating to calculation of bonus payment based on months of active service). The cause of death must be documented by the U.S. Armed Forces or the U.S. Department of Veterans' Affairs to be the direct and proximate result of such service-connected wounds, diseases or injuries, and there must be no intervening cause of death.

(b) Documentation. Official military records of the U.S. Armed Forces or the U.S. Department of Veterans Affairs describing the circumstances of the death of an eligible veteran while performing active service or as result of service-connected wounds, diseases or injuries incurred in active service will be considered sufficient documentation.

#### **§ 9.7 Compensation of prisoner of war.**

(a) Consistent with Section 3(d) of the Act, a veteran who was declared and recognized as a prisoner of war as a result of active service during any part of the period from August 2, 1990 until August 31, 1991, shall be eligible for a bonus payment of \$5,000 in addition to any compensation paid §§ 9.5 (relating to calculation of bonus payment based on months of active service), or 9.6 (relating to compensation on behalf of deceased veterans) and regardless of the duration of imprisonment.

(b) Documentation. Official military records of the U.S. Armed Forces designating the eligible veteran as a prisoner of war during the Persian Gulf Conflict will be considered sufficient documentation.

#### **§ 9.8 Applicants on behalf of deceased veterans.**

(a) Consistent with Section 5(b) of the Act, the following individuals shall be eligible for payment of compensation on behalf of eligible deceased veterans. Eligible deceased veterans may include eligible veterans who died in performance of active service or as a result of service-connected wounds, diseases or injuries as described in § 9.6 (relating to compensation on behalf of deceased veterans), and veterans who would, but for their death prior to submission of an application for benefits, been eligible for bonus payments based on active service under § 9.5 (relating to calculation of bonus payment based on months of active service). Applicants will be considered in the following order:

(1) The surviving spouse of the eligible veteran unless the surviving spouse was living separate and apart from the veteran at the time the veteran commenced active service. Proof of spousal status shall be the same as would be accepted by the U.S. Department of Veterans Affairs. The surviving spouse will certify that he or she was not living separate and apart from the eligible veteran when the veteran commenced active service. If a surviving spouse applies or is qualified to apply, the entire payment shall be made to the surviving spouse.

(2) The surviving children of the eligible veteran in equal shares, share and share alike, provided there is no eligible surviving spouse. The surviving children shall certify that there is no eligible surviving spouse as part of the application for the benefit.

(3) The surviving parents of the eligible veteran in equal shares, share and share alike, provided there is no eligible surviving spouse and no eligible surviving

children. The surviving parent(s) shall certify that there are no eligible surviving spouse or children as part of the application for the benefit.

(b) Disputes. If the eligibility of a surviving spouse, surviving children or surviving parents is disputed, the Department will defer payment of the bonus until the parties resolve the dispute or a court of competent jurisdiction issues an order making a determination on the issue.

#### **§ 9.9 Applicants on behalf of incompetent veterans.**

(a) Consistent with Section 5(a) of the Act, the following individuals shall be eligible for payment of compensation on behalf of eligible incompetent veterans. A veteran shall be considered as an incompetent veteran if he or she has been so declared by a court of competent jurisdiction. Payments shall be used for the benefit of the incapacitated veteran. Applicants will be considered in the following order:

(1) Court-appointed guardian of the eligible veteran.

(2) The surviving spouse of the eligible veteran unless the spouse was living separate and apart from the veteran at the time of the veteran commenced "active service" as defined in Section 2 of the Act. Proof of spousal status shall be the same as would be accepted by the U.S. Department of Veterans' Affairs. The spouse will certify that her or she was not living separate and apart from the eligible veteran when the veteran commenced active service. The spouse shall certify that there is no court-appointed guardian of the eligible veteran.

(3) The surviving children of the eligible veteran. The children shall certify that there is no court-appointed guardian or eligible spouse as part of the application for the benefit.

(4) The surviving parents of the eligible veteran provided there are no court-appointed guardian, eligible spouse and no eligible children. The parent(s) shall certify that there are no eligible court-appointed guardians, spouse or children as part of the application for the benefit.

(5) The facility, as defined in Section 5(c) of the Act, providing care and services to the eligible veteran, provided that there are no court-appointed guardians, eligible spouse, children or parents and the facility so certifies. The bonus payment shall be used for clothing and incidental needs of the veteran and shall not be used to pay for the maintenance of the veteran in the facility.

(b) Disputes. If the eligibility of an applicant under subsection (a) is disputed, the Department will defer payment of the bonus until the parties resolve the dispute or a court of competent jurisdiction issues an order making a determination on the issue.

**§ 9.10. Compensation of eligible veterans who die after submitting application but before payment.**

(a) An applicant for compensation under the program shall, in his or her application, set forth the name and address of one or more designated beneficiaries who would receive compensation in the event of the applicant dies before payment.

(b) If an applicant dies after applying for the bonus but before payment and has designated a beneficiary as part of the application for the benefit, the Department will pay the designated beneficiary the benefit upon proof of identity.

(c) If an applicant fails to designate a beneficiary or no person designated as a beneficiary survives the applicant, no payment shall be made and the right to compensation under the Program shall cease.

**§ 9.11. Penalty for charging fees.**

In the event the Department receives a complaint under Section 8 of the Act that a person has charged a fee for assisting a veteran in applying for the benefits provided by the Act, the Department will refer the complaint to the appropriate district attorney or law enforcement agency.

**§ 9.12. Application Procedures**

(a) Forms. Application for benefits under the Program shall be made on forms provided by the Department. Forms may be obtained from the Department, county directors of veterans' affairs, veterans' services organizations and on-line at the Department's website ([www.dmva.state.pa.us](http://www.dmva.state.pa.us)).

(b) Submission. Applications must be submitted to the address designated by the Department on the application form.

(c) Additional Documentation. Applications must be accompanied by copies of supporting documentation from official military records of the U.S. Armed Forces or its reserve components including DD Form 214s or similar documentation showing periods of active service, military orders, certificate of award of Southwest Asia Service Medal, documentation of home of record, and other documentation specified in these regulations and the application form.

(d) Review of applications. The Department or a contractor or designee will conduct a review of applications for completeness. If the application is deemed complete, the Department or a contractor or designee will review the application to determine eligibility for the benefits provided by the program and to calculate the amount of compensation.

(e) Incomplete applications. Incomplete applications will be returned to the applicant, but the date of receipt of the incomplete application shall be noted and considered the date of application provided a completed application is submitted within six (6) months after the return of the incomplete application.

(f) Denial. The Bureau shall review and approve all denials of benefits proposed by a contractor or designee before notice of the denial is sent to an applicant.

(g) Time. The Department will, by notice published in the *Pennsylvania Bulletin*, provide official notice of when applications will be available and when they may be submitted. Notice will also be provided by news release and by publication on the DMVA web site ([www.dmv.state.pa.us](http://www.dmv.state.pa.us)). No application will be accepted after August 31, 2015.

### **§ 9.13 Reconsideration and Appeals.**

(a) Reconsideration. Any applicant who is dissatisfied with the disposition of his or her application may ask the Deputy Adjutant General for Veterans' Affairs to reconsider the disposition. A request for reconsideration must be filed within 30 days of receipt of the initial disposition of the application. The request for reconsideration, which may be in the form of a letter or memorandum, should state why the applicant is dissatisfied with the disposition and state the reasons, including facts and circumstances, why the applicant believes the disposition should be altered. The Deputy Adjutant General will respond in writing to any requests for reconsideration within 60 days of receipt.

(b) Any person aggrieved by decision of the Deputy Adjutant General for Veterans' Affairs after reconsideration under subsection (a) may, within 30 days of receipt of the decision, appeal in writing to the Adjutant General. The Adjutant General will adjudicate the appeal in accordance with the General Rules of Administrative Practice and Procedure (1 Pa. Code Part II).



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

I.D. NUMBER: 13-05  
 SUBJECT: PERSIAN GULF CONFLICT VETERANS' BENEFIT PROGRAM  
 AGENCY: DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

**TYPE OF REGULATION**

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

RECEIVED  
 2008 FEB 29 AM 11:29  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
_____	_____	HOUSE COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS
2/29/08	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>Melio</u>
_____	_____	SENATE COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS
2/29/08	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>Baker</u>
2/29/08	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
2/29/08	<i>[Signature]</i>	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)