

RULES AND REGULATIONS

Title 43—MILITARY AFFAIRS

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

[43 PA. CODE CH. 9]

Persian Gulf Conflict Veterans' Benefit Program

Statutory Authority

The Adjutant General, acting by and through the Department of Military and Veterans Affairs (Department), by this order, adopts the regulations in Annex A under the authority of section 9 of the Persian Gulf Conflict Veterans' Benefit Act (act) (51 P. S. §§ 20301—20315) which authorizes the Adjutant General to promulgate rules and regulations to implement, administer and enforce the provisions of the act.

Omission of Proposed Rulemaking

Notice of proposed rulemaking is omitted in accordance with section 204(1)(i) and (iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(i) and (iv)) and 1 Pa. Code § 7.4(1)(i) and (iv) (relating to omission of notice of proposed rulemaking). This final-omitted rulemaking relates to military affairs in that determination of eligibility for the Persian Gulf Conflict Veterans' Benefit (bonus) Program (Program) is based on a review and determination of criteria related to the military status and service of the applicants. In addition, the 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 final-omitted rulemaking 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 to 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.

This final-omitted rulemaking is needed to provide clear guidance on how the authorizing statute will be administered to determine eligibility for the Program payments and in determining the amounts of the payments. Eligibility in terms of establishing legal residence in this Commonwealth 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. This final-omitted rulemaking 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, the Commonwealth 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 this Commonwealth. For the Persian Gulf Conflict (August 1990 to 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 this Commonwealth in the November 2006 general election.

Requirements

This final-omitted rulemaking implements the requirements in the act for this new Program.

Eligibility. Under the statute and the regulations, an applicant for the Program is required to show that he is a qualified veteran in that he 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 shall show that he was a legal resident of this Commonwealth at the time of qualifying service. For deceased veterans, the applicant shall 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 shall show that he was designated an eligible prisoner of war in applicable military records.

Calculation of benefit payments. This final-omitted rulemaking 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 Persian Gulf Conflict, an additional payment of \$5,000 is authorized.

Applications for deceased or incompetent veterans. The final-omitted rulemaking sets forth requirements, consistent with the statute, for applications of deceased or incompetent veterans.

Procedures, reconsideration and appeals. The final-omitted rulemaking sets forth requirements for filing applications as well as procedures for the reconsideration and appeals of a determination denying benefits.

Affected Individuals and Organizations

This final-omitted rulemaking affects approximately 32,000 Pennsylvania veterans of the Persian Gulf Conflict (August 1990 to 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 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 this final-omitted rulemaking nor the Program authorized by the statute have any negative impacts on individuals or organizations. This final-omitted rulemaking implements the authorizing statute and provides guidance for the affected individuals or organizations.

Accomplishments and Benefits

This final-omitted rulemaking is important in that it provides clear, concise and understandable guidance and processes for implementing the new Program and getting bonus payments into the hands of about 32,000 Persian

Gulf Conflict veterans. The principal accomplishment of this final-omitted rulemaking is that it will allow for fair, prompt and appropriate implementation of this new benefit Program.

Fiscal Impact

The costs associated with administering this act are a result of the act itself rather than the regulations. This final-omitted rulemaking results in no incremental costs.

The Department 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 the third year, \$415,000 in the fourth year and \$180,000 in the fifth year. 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. These costs are not the result of the regulations themselves but of the Program itself.

The Department estimates bonus payments will range from about \$3 million in the first year (current fiscal year), \$5.5 million in the second year, \$5 million in the third year, \$2 million in the fourth year and \$1.5 million in the fifth year. These payments will be made from bond funds approved by the voters of this Commonwealth in the November 2006 general election.

Neither the regulations nor the 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 bonus payments.

Paperwork Requirements

The Program creates paperwork requirements for applicants to submit written applications together with supporting documentation to qualify for the Program. It should take most applicants fewer than 1 to 2 hours to complete the application for the 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 United States 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 this final-omitted rulemaking, 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 State-wide veterans' organizations in this Commonwealth. Although this final-omitted rulemaking is being adopted without publication as proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections regarding this final-omitted rulemaking 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, (717) 861-2856 or Dennis Guise, Chief Counsel, Bldg. 7-1, Fort Indiantown Gap, Annville, PA 17003-5002, (717) 861-8503. Comments will be reviewed and considered for any subsequent revisions of this final-omitted rulemaking.

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

Sunset Date

Consistent with the authorizing statute, this final-omitted rulemaking will sunset 6 months after the statutory deadline for submitting applications for bonus payments under the act. This final-omitted rulemaking will expire on February 29, 2016.

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (act) (71 P. S. § 745.5a(c)), on February 29, 2008, the Department submitted a copy of this final-omitted rulemaking, 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, this final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5.1(j.1) and (j.2) of the act, final-omitted rulemaking was deemed approved by the Committees on April 2, 2008. IRRC met on April 3, 2008, and approved the final-omitted rulemaking.

In addition to submitting the final-omitted rulemaking, the Department has provided 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.

Findings

The Adjutant General finds that:

(1) Public notice of proposed rulemaking is omitted in accordance with section 204(1)(i) and (iv) of the act of July 31, 1968 (P. L. 769, No. 240) (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.

(2) The adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the act.

Orders

The Adjutant General, acting under the act orders that:

(a) The regulations of the Department, 43 Pa. Code, are amended by adding §§ 9.1—9.13 to read as set forth in Annex A.

(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*.

JESSICA L. WRIGHT,
Major General, PAARNG
The Adjutant General

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 1905 (April 19, 2008).)

Fiscal Note: 13-5 final-omitted. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 43. MILITARY AFFAIRS

PART I. DEPARTMENT OF MILITARY AFFAIRS

CHAPTER 9. PERSIAN GULF CONFLICT VETERANS' BENEFIT PROGRAM

| | |
|-------|--|
| Sec. | |
| 9.1. | Purpose. |
| 9.2. | Definitions. |
| 9.3. | Veteran status. |
| 9.4. | Legal residence. |
| 9.5. | Calculation of bonus payments based on months of active service. |
| 9.6. | Compensation on behalf of deceased veterans. |
| 9.7. | Compensation of prisoner of war. |
| 9.8. | Applications on behalf of deceased veterans. |
| 9.9. | Applications on behalf of incompetent veterans. |
| 9.10. | Compensation of eligible veterans who die after submitting application but before payment. |
| 9.11. | Penalty for charging fees. |
| 9.12. | Application procedures. |
| 9.13. | Reconsideration and appeals. |

§ 9.1. Purpose.

Section 9 of the act (51 P.S. § 20309) directs the Adjutant General to promulgate rules and regulations to implement, administer and enforce the act establishing the Program.

§ 9.2. Definitions.

In addition to the definitions in section 2 of the act (51 P.S. § 20302), the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Act—The Persian Gulf Conflict Veterans' Benefit Act (51 P.S. §§ 20301—20315).

Active duty—The meaning as defined in 10 U.S.C. § 101(d)(1) (relating to definitions).

Active service—

(i) 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.

(ii) The term includes time spent in hospitals as a result of service-connected wounds, diseases or injuries sustained on active service. Proof of this service shall be the official military records of the United States or other evidence as deemed sufficient by the Adjutant General.

(iii) 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 Program.

Bonus—The benefit payment made to eligible veterans or their survivors under the act.

Bureau—The Bureau for Veterans' Affairs of the Department.

Department—The Department of Military Affairs.

Deputy Adjutant General for Veterans' Affairs—The Deputy Adjutant General of the Department with general responsibilities for administration of veterans programs who oversees the Bureau for Veterans' Affairs and exercises the powers and duties described generally in 51 Pa.C.S. Chapter 17, Subchapter B (relating to Deputy Adjutant General for Veterans' Affairs).

Facility—A 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.

Parent—

(i) The natural or adoptive parent of the veteran.

(ii) The term includes persons who, for a period of at least 1 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 or 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.

Veteran—

(i) 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 established by Executive Order 12754, 12 March 1991.

(ii) The term does not include an individual who:

(A) At any time during the Persian Gulf Conflict or thereafter, was separated from the armed forces under other than honorable conditions.

(B) Has renounced his United States citizenship.

§ 9.3. Veteran status.

(a) To qualify for payment of the bonus under the Program, an applicant shall 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 § 9.2 (relating to definitions). The applicant shall show

that the person to whom or on behalf of whom the bonus payment is sought meets 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 and the Air National Guard of the United States.

(2) Served on active duty in the Persian Gulf Theater during any part of the period from August 2, 1990, to August 31, 1991.

(3) Received the Southwest Asia Service Medal established by Executive Order 127564, 12 March 1991. Individuals authorized the Southwest Asia Service Medal shall 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° North latitude and west of 68° 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, to be considered a veteran for purposes of the Program, the applicant shall certify that he:

(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).

(2) Did not, at any time, renounce United States citizenship.

§ 9.4. Legal residence.

(a) *Proof of residence.* In addition to establishing the veteran status of the person for or on behalf of whom the bonus payment is sought, the applicant shall 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 residence shall be the official records of the United States or other evidence deemed sufficient by the Adjutant General. A legal resident of this Commonwealth is an individual for whom this Commonwealth 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 this Commonwealth is not changed by virtue of military assignment to another state.

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

(c) *Home of record in this Commonwealth not shown in official military records.* In making a determination of legal residence in cases where official military records do not show this Commonwealth as the applicant's home of record for the period of service, the Department will apply a rebuttable presumption that the veteran was not a legal resident of this Commonwealth. The applicant can rebut this presumption by showing facts and circumstances establishing that this Commonwealth was the applicant's

legal residence in that it was his 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 this Commonwealth by means of official military records showing a home of record in this Commonwealth 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 this Commonwealth 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 this Commonwealth.

(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 this Commonwealth 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 this Commonwealth is not changed by virtue of military assignment to another state.

(e) *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 shall certify as part of the application that the veteran did not receive the 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 1 day of active service, as described in this chapter, 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.

(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 1 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.

(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.

(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 the service was in the Theater, provided that, to be considered eligible a reserve component, a veteran shall still demonstrate service in the Theater sufficient to qualify for award of the Southwest Asia Service Medal.

(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. To be considered eligible, a reserve component veteran shall 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 will be deemed sufficient documentation. The Department will, upon request, consider documentary evidence submitted by applicants.

§ 9.6. Compensation on behalf of deceased veterans.

(a) *Compensation.* 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 (51 P. S. § 20305(b)) shall be eligible for payment of \$5,000 when one of the following applies:

(1) The veteran died while in performance of "active service" as defined in section 2 of the act (51 P. S. § 20302) and § 9.5 during any part of the period from August 2, 1990, to August 31, 1991.

(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. The cause of death shall be documented by the United States Armed Forces or the United States Department of Veterans' Affairs to be the direct and proximate result of the service-connected wounds, diseases or injuries, and there may be no intervening cause of death.

(b) *Documentation.* Official military records of the United States Armed Forces or the United States 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) *Compensation.* Consistent with section 3(d) of the act (51 P. S. § 20303(d)), 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 under § 9.5 or § 9.6 (relating to calculation of bonus payment based on months of active service; and compensation on behalf of deceased veterans) and regardless of the duration of imprisonment.

(b) *Documentation.* Official military records of the United States 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) *Payment.* Consistent with section 5(b) of the act (51 P. S. § 20305(b)), 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 United States Department of Veterans Affairs. The surviving spouse shall certify that he 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 parents 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) *Payment.* Consistent with section 5(a) of the act (51 P. S. § 20305(a)), 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 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 the veteran commenced "active service" as defined in section 2 of the act (51 P. S. § 20302). Proof of spousal status shall be the same as would be accepted by the United States Department of Veterans' Affairs. The spouse shall certify that he 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 parents shall certify that there are no eligible court-appointed guardian, 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 guardian, 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 may 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 the application, set forth the name and address of one or more designated beneficiaries who would receive compensation in the event 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, payment will not be made and the right to compensation under the Program will cease.

§ 9.11. Penalty for charging fees.

In the event the Department receives a complaint under section 8 of the act (51 P. S. § 20308) 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 must 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 web site at www.dmva.state.pa.us.

(b) *Submission.* Applications shall 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 United States 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 this chapter 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 will be noted and considered the date of application provided a completed application is submitted within 6 months after the return of the incomplete application.

(f) *Denial.* The Bureau will 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 at www.dmva.state.pa.us. Applications will not be accepted after August 31, 2015.

§ 9.13. Reconsideration and appeals.

(a) *Reconsideration.* An applicant who is dissatisfied with the disposition of the application may ask the Deputy Adjutant General for Veterans' Affairs to reconsider the disposition. A request for reconsideration shall 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 requests for reconsideration within 60 days of receipt.

(b) *Appeal.* A 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 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

[Pa.B. Doc. No. 08-726. Filed for public inspection April 18, 2008, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PHYSICAL THERAPY [49 PA. CODE CH. 40]

Rescission of Athletic Trainer Regulations

The State Board of Physical Therapy (Board) rescinds Subchapter B (relating to athletic trainers).

Statutory authority

Prior to the adoption of the acts of December 10, 2001 (P. L. 859, No. 92) and (P. L. 863, No. 93) (Acts 92 and 93), the Board regulated athletic trainers under sections 10.1 and 10.2 of the Physical Therapy Practice Act (act) (formerly 63 P. S. §§ 1310.1 and 1310.2). Acts 92 and 93 repealed those provisions and placed the responsibility for the regulation of athletic trainers with the State Board of Medicine and State Board of Osteopathic Medicine (Boards). Acts 92 and 93 further provided that until those Boards adopted final-form regulations, the regulations in Subchapter B would continue to govern the activities of athletic trainers. The Boards adopted final-form rulemaking governing athletic trainers, at 37 Pa.B. 3230 (July 14, 2007). Therefore, the regulations of the Board in Subchapter B are no longer necessary and must be rescinded to avoid confusion.

Omission of Proposed Rulemaking

Under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), the Board is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the Board finds that the criteria of section 204 of the CDL are met.

Under authority of section 204(3) of the CDL, proposed rulemaking has been omitted as unnecessary because the amendments are merely rescinding outdated regulations that have been replaced by regulations of the Boards adopted on July 14, 2007.

Description of the Amendments

The final-form rulemaking rescinds Subchapter B in its entirety.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have a fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of this Commonwealth.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (act) (71 P. S. § 745.5a(c)), on February 27, 2008, the Board submitted copies of the final-form rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, IRRC submitted a copy of the final-form rulemaking to the Office of Attorney General under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the act (71 P. S. § 745.5(j.2)), the final-form rulemaking was approved by the HPLC on March 12, 2008, and deemed approved by the SCP/PC on

April 2, 2008. Under section 5.1(e) of the act (71 P. S. § 745.5a(e)), IRRC met on April 3, 2008, and approved the final-form rulemaking.

Additional Information

For additional information about the final-form rulemaking, submit inquiries to Beth Michlovitz, Counsel, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200.

Findings

The Board finds that:

(1) Public notice of the Board's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL has been omitted under the authority of section 204 of the CDL, because public comment is unnecessary in that the amendment merely rescinding outdated regulations have been invalidated by Acts 92 and 93 of 2001 and regulations of the Boards adopted at 37 Pa.B. 3230.

(2) The rescission of the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the act and Acts 92 and 93 of 2001.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 40, are amended by deleting §§ 40.71—40.75, 40.81—40.88, 40.101—40.103, 40.121 and 40.131 as set forth in Annex A.

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

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

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

CHARLES E. MEACCI, PT,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 1905 (April 19, 2008).)

Fiscal Note: 16A-6512. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter B. (RESERVED)

§ 40.71—40.75 (Reserved).

§ 40.81—40.88. (Reserved).

§ 40.101—40.103. (Reserved).

§ 40.121. (Reserved).

§ 40.131. (Reserved).

[Pa.B. Doc. No. 08-727. Filed for public inspection April 18, 2008, 9:00 a.m.]