

is carried forward to 2005 as gain in that same class.

Example 3. (i) The facts are the same as in Examples 1 and 2, and at the end of 2005, X has the following classes of income:

Interest income class	\$ 5
Qualified dividend income	20
Net loss in short-term capital gain class	(50)
Net long-term capital gain in 28-percent gain class	10
Net long-term capital gain in unrecaptured section 1250 gain class	135
Net long-term capital gain in all other long-term capital gain class (carried forward from 2004)	160

(ii) There are no long-term capital losses to net against the long-term capital gains. Thus, the net short-term capital loss is used to offset the net capital gains in the classes of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. The \$50 net short-term loss reduces the \$10 net gain in the 28-percent gain class to \$0. The remaining \$40 net loss reduces the \$135 net gain in the unrecaptured section 1250 gain class to \$95. As in Examples 1 and 2, during 2005, qualified dividend income is taxed at a lower rate than interest income; gain in the unrecaptured section 1250 gain class is taxed at 25 percent; and gain in the all other long-term capital gain class is taxed at a rate lower than 25 percent. The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. Therefore, in the hands of the recipient, the 2005 annuity amount has the following characteristics:

Interest income	\$ 5
Qualified dividend income	20
Unrecaptured section 1250 gain	75

(iii) The remaining \$20 gain in the unrecaptured section 1250 gain class and the \$160 gain in the all other long-term capital gain class that are not treated as distributed to the recipient in 2005 are carried forward to 2006 as gains in their respective classes.

Example 4. (i) The facts are the same as in Examples 1, 2 and 3, and at the end of 2006, X has the following classes of income:

Interest income class	\$ 95
Qualified dividend income class	10
Net loss in short-term capital gain class	(20)
Net long-term capital loss in 28-percent gain class	(350)
Net long-term capital gain in unrecaptured section 1250 gain class (carried forward from 2005)	20
Net long-term capital gain in all other long-term capital gain class (carried forward from 2005)	160

(ii) A net long-term capital loss in one class is used to offset the net capital gains in the other classes of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. The \$350 net loss in the 28-percent gain class reduces the \$20 net gain in the unrecaptured section 1250 gain class to \$0. The remaining

\$330 net loss reduces the \$160 net gain in the all other long-term capital gain class to \$0. As in Examples 1, 2 and 3, during 2006, qualified dividend income is taxed at a lower rate than interest income. The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. In the hands of the recipient, the 2006 annuity amount has the following characteristics:

Interest income	\$ 95
Qualified dividend income	5

(iii) The remaining \$5 of qualified dividend income that is not treated as distributed to the recipient in 2006 is carried forward to 2007 as qualified dividend income. The \$20 net loss in the short-term capital gain class and the \$170 net loss in the 28-percent gain class are carried forward to 2007 as net losses in their respective classes.

Example 5. (i) X, a charitable remainder annuity trust described in section 664(d)(1), is created on January 1, 2002. The annual annuity amount is \$100. Except for qualified 5-year gain of \$200 realized before May 6, 2003, but not distributed, X has no other gains or losses carried over from former years. X's income for the 2007 tax year is as follows:

Interest income class	\$ 10
Net gain in short-term capital gain class	5
Net long-term capital gain in 28-percent gain class	5
Net long-term capital gain in unrecaptured section 1250 gain class	10
Net long-term capital gain in all other long-term capital gain class	10

(ii) The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. In 2007, gains distributed to a recipient from both the qualified 5-year gain class and the all other long-term capital gains class are taxed at a 15/5 percent tax rate. Since after December 31, 2008, gains distributed from the qualified 5-year gain class will be taxed at a lower rate than gains distributed from the other classes of long-term capital gain and loss, distributions from the qualified 5-year gain class are made after distributions from the other classes of long-term capital gain and loss. In the hands of the recipient, the 2007 annuity amount has the following characteristics:

Interest income	\$10
Short-term capital gain	5
28-percent gain	5
Unrecaptured section 1250 gain	10
All other long-term capital gain	10
Qualified 5-year gain (taxed as all other long-term capital gain)	60

(iii) The remaining \$140 of qualified 5-year gain that is not treated as distributed to the recipient in 2007 is carried forward to 2008 as qualified 5-year gain.

(ix) *Effective dates.* The rules in this paragraph (d)(1) that require long-term

capital gains to be distributed in the following order: first, 28-percent gain (gains and losses from collectibles and section 1202 gains); second, unrecaptured section 1250 gain (long-term gains not treated as ordinary income that would be treated as ordinary income if section 1250(b)(1) included all depreciation); and then, all other long-term capital gains are applicable for taxable years ending on or after December 31, 1998. The rules in this paragraph (d)(1) that provide for the netting of capital gains and losses are applicable for taxable years ending on or after December 31, 1998. The rule in the second sentence of paragraph (d)(1)(vi) of this section is applicable for taxable years ending on or after December 31, 1998. The rule in the third sentence of paragraph (d)(1)(vi) of this section is applicable for distributions made in taxable years ending on or after December 31, 1998. All other provisions of this paragraph (d)(1) are applicable for taxable years ending after November 20, 2003.

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Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 10, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

RIN-0720-AA90

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Reserve Select for Certain Members of the Selected Reserve; Transitional Assistance Management Program; Early Eligibility for TRICARE for Certain Reserve Component Members

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule establishes requirements and procedures for implementation of TRICARE Reserve Select. It also revises requirements and procedures for the Transitional Assistance Management Program. In addition, it establishes

requirements and procedures for implementation of the earlier TRICARE eligibility for certain reserve component members. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates.

DATES: This rule is effective April 15, 2005. Submit comments on or before May 16, 2005.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments to the following address ONLY: TRICARE Management Activity, TRICARE Operations/Strategic Initiatives Division, Sky 5 Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3206; Attention: Jody Donehoo, Program Analyst.

FOR FURTHER INFORMATION CONTACT: Jody Donehoo, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 681-0039.

Questions regarding payment of specific claims under the TRICARE allowable charge method should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA-05) (Pub. L. 108-375) contains several provisions to enhance health care benefits for reservists and their family members. Three of the provisions are addressed in this interim final rule. First, section 701 provides for premium-based medical coverage for certain members of the Selected Reserve and their eligible family members. Section 706 makes permanent the temporary revisions to the Transitional Assistance Management Program, enacted in section 704 of the National Defense Authorization Act for Fiscal Year 2004 (NDAA-04) (Pub. L. 108-136) and section 1117 of the Emergency Supplemental Appropriations Act for the Reconstruction of Iraq and Afghanistan, 2004 (Emergency Supplemental) (Pub. L. 108-106). Section 703 makes permanent the earlier TRICARE eligibility for certain reserve component members authorized by section 703 of NDAA-04 and section 1116 of the Emergency Supplemental.

These provisions represent significant enhancements to the health care benefits available to reservists and their eligible family members. They focus particularly on reservists and guardsmen activated in support of a contingency operation after September 11, 2001. Prior to the statutory changes

enacted since November 2003, reservists and their families received TRICARE health care benefits when activated for more than 30 consecutive days. Now, TRICARE benefits begin up to 90 days prior to activation for those who receive delayed-effective-date orders, and coverage is extended to a full 180 days after a period of active service in support of a contingency operation. These changes provide for an easier transition to and from civilian life. And, for those who served in support of a contingency operation and who commit to continued service in the Selected Reserve, a new health benefits program will allow them to obtain through TRICARE health coverage comparable to that available to full-time civilian employees of the Department of Defense. This new program is called "TRICARE Reserve Select." It is subject to a number of specific statutory requirements, which are outlined in this regulation.

II. Provisions of the Rule Regarding the Tricare Reserve Select Program

A. Establishment of the TRICARE Reserve Select Program (paragraph 199.24(a)). This paragraph describes the nature, purpose, statutory basis, scope, and major features of TRICARE Reserve Select, a premium-based medical coverage program that will be available to certain members of the Selected Reserve and their dependents. TRICARE Reserve Select is authorized by 10 U.S.C. 1076d, and is applicable worldwide. The major features of the program include the following: TRICARE rules apply unless otherwise specified; certain special TRICARE programs are not part of TRICARE Reserve Select, including the Supplemental Health Care Program, the Extended Health Care Option (ECHO) program, and the Special Supplemental Food Program (also known as the Women, Infants, and Children—Overseas Program). The TRICARE Dental Program is already available under 10 U.S.C. 1076a to all members of the Selected Reserve and their family members whether or not they enroll in TRICARE Reserve Select. Under TRICARE Reserve Select, eligible Selected Reserve members may enroll for self-only or self and family coverage. When their enrollment becomes effective, TRICARE Reserve Select beneficiaries receive the TRICARE Standard benefit. TRICARE Reserve Select features the deductible and cost share provisions of the TRICARE Standard plan for active duty family members (ADFM) for both the member and eligible family members.

B. Eligibility for enrollment in TRICARE Reserve Select (paragraph 199.24(b)). This paragraph defines who is eligible to enroll in TRICARE Reserve Select, based on statutory provisions. To be eligible, a person must be a member of a reserve component of the armed forces, who serves on active duty for 90 consecutive days or more related to a contingency operation on or after September 11, 2001, and, on or before the date of release from active duty, agrees to serve continuously in the Selected Reserve for a period of one or more whole years following release from active duty, and, if not already a member of the Selected Reserve, actually begins serving in the Selected Reserve prior to the date upon which TRICARE Reserve Select coverage is effective. The member must meet the qualifications for continued service in the Selected Reserve as determined by the member's reserve component. If the member was released from active duty on or before April 26, 2005, the member has until October 28, 2005, to sign an agreement to serve continuously in the Selected Reserve for a period of one or more whole years in order to be eligible to enroll in TRICARE Reserve Select. This temporary opportunity (until October 28, 2005) applies to current members of the Selected Reserve, and also to former members who served in support of a contingency after 9/11, rejoin the Selected Reserve, and enter into an agreement for continued service. In conformance with section 701(b)(2)(B) of the NDAA-05, the Department will take reasonable steps to the maximum extent practicable to notify reservists released from active duty on or before April 26, 2005, who may be eligible for TRICARE Reserve Select and provide them information on the opportunity and procedures for entering into an agreement together with a clear explanation of the benefits that the member is eligible to receive under TRICARE Reserve Select as a result of entering into such agreement. Eligible family members of eligible reserve members enrolled in TRICARE Reserve Select are also eligible for enrollment in TRICARE Reserve Select. Eligibility determinations are the responsibility of the Reserve Components of the Armed Services.

C. TRICARE Reserve Select enrollment procedures (paragraph 199.24(c)). In order to be covered under TRICARE Reserve Select, eligible reserve component members released from active duty after April 26, 2005, must enter into an agreement prior to being released to serve continuously in the reserves for a period of one or more

whole years following such date, and the member must meet the qualifications for continuous service in the Selected Reserve as determined by the member's reserve component. The member must then enroll by signing the appropriate TRICARE enrollment form and submitting the initial monthly premium to the appropriate TRICARE contractor, not later than 30 days prior to the end of their Transitional Assistance Management Program benefit period. A member may elect self-only or self and family coverage, and may enroll for one year of TRICARE Reserve Select coverage for every 90 days of continuous active-duty service, to the extent that the member agrees to continue service in the Selected Reserves for the same number of years after coverage begins. Members released from active duty on or before April 26, 2005 may enroll in TRICARE Reserve Select upon execution of the agreement to serve continuously in the Selected Reserve. Coverage becomes effective the later of the end of TAMP coverage or the effective date of the agreement to serve in the Selected Reserve.

Except for members released from active duty on or before April 26, 2005, enrollment in TRICARE Reserve Select must be accomplished prior to the expiration of Transition Assistance Management Program (TAMP) benefits, and coverage begins at the expiration of TAMP benefits and runs continuously until eligibility expires or is otherwise terminated. When enrollment is terminated or the member is otherwise disenrolled, a member may not re-enroll unless recalled to active duty and the member re-qualifies for this benefit.

For eligible members, the decision to enroll in TRICARE Reserve Select or to decline enrollment is a one-time choice. If it is declined, or if coverage is taken for a period less than the maximum period of eligibility, coverage may not be initiated or extended later, nor may any period of eligibility be saved until later. Thus, for example, if a member served for one year in support of a contingency operation, the member earns potential eligibility for the next four years if the member agrees to continue service in the Selected Reserves for four years. However, if that member elects to continue service in the Selected Reserve for only two years, the member will qualify for only two years of TRICARE Reserve Select coverage. This two-year coverage period cannot be extended later, even if the member later extends Selected Reserve service for two more years. The only way to extend TRICARE Reserve Select coverage beyond the period determined when the one-time choice is made is by re-

qualifying through another period of active duty service in support of a contingency operation.

If, while enrolled in TRICARE Reserve Select a member is recalled to active duty for a period of more than 30 consecutive days, TRICARE Reserve Select coverage is superseded by active duty military health benefits for the member and the member's immediate family, but the coverage period continues to run. When the member is released from active duty, TRICARE Reserve Select coverage will resume for the member and the member's immediate family provided the member had been enrolled in family coverage on the date TRICARE Reserve Select coverage was superseded by active duty health benefits. TRICARE Reserve Select coverage will continue until the member's eligibility expires, is otherwise terminated, or the member is disenrolled. Following the member's release from active duty, TRICARE Reserve Select coverage will be further superseded by TAMP benefits, if applicable. In addition, TRICARE Reserve Select coverage is also superseded, if applicable, by any period of early TRICARE coverage based on delayed-effective-date orders or by a new enrollment, as a result of re-qualifying through another period of active duty service in support of a contingency operation. During any period in which TRICARE Reserve Select coverage is superseded, no premium payments for TRICARE Reserve Select are due for the period being superseded.

Under certain circumstances, reserve members may change their TRICARE Reserve Select type of coverage. After initial enrollment, the reserve member may not change from self-only to self and family enrollment, or change from self and family enrollment to self-only enrollment, except on the occasion of certain events affecting the family, such as the birth of a child, the marriage or divorce of the sponsor, the legal adoption of a child, or placement by a court of a child as a legal ward in the sponsor's home, or certain events affecting family health coverage, such as an employment change of the member or spouse. It is the responsibility of the TRS member to provide the necessary evidence required regarding the circumstances permitting the change in enrollment to the appropriate TRICARE contractor. The Director, TRICARE Management Activity shall issue guidelines as necessary to implement these provisions. All such changes are effective prospectively.

Failure to make a premium payment in a timely manner will result in

permanent disenrollment of the member and the member's immediate family and denial of claims for services received on or after the effective date of disenrollment, which is the end of the last month for which the premium was paid. Members and their immediate family will not be allowed to re-enroll, unless the member qualifies for a new period of eligibility.

A reserve member whose service in the Selected Reserve ends is automatically disenrolled, along with the member's eligible family members, based on the date the member terminated service in the Selected Reserve.

D. *TRICARE Reserve Select premiums* (paragraph 199.24(d)). Annual premiums are charged for coverage under TRICARE Reserve Select. Premiums are to be paid monthly, except as otherwise established as part of the administrative implementation of TRICARE Reserve Select. The monthly premium rates are established and updated annually on a calendar year basis and are effective on the first of January each year, for the two types of coverage—self-only and self and family. The rates are based on 28 percent of the total estimated amount reasonable for coverage under the TRICARE Standard benefit for the TRICARE Reserve Select eligible population, as determined by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) on an appropriate actuarial basis. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year, rounded to the nearest dollar.

Annual rates are based on the annual premiums for the Blue Cross and Blue Shield Standard Service Benefit Plan under the Federal Employees Health Benefits Program, a nationwide plan closely resembling TRICARE Standard coverage, with adjustments based on demographic differences in covered populations, as determined by the ASD(HA). Based on an analysis of demographic differences between Blue Cross and Blue Shield participants and beneficiaries eligible for TRICARE Reserve Select, the adjustment amount is for purposes of calendar year 2005 a 32 percent reduction from the Blue Cross and Blue Shield annual premium for self-only coverage and an 8 percent reduction from the Blue Cross and Blue Shield annual premium for self and family coverage. (The difference in the percentage reductions between self-only and self and family premiums is due to the disproportionately high number of high cost, single, elderly retiree federal employees covered by Blue Cross and Blue Shield self-only coverage.)

Premiums will be adjusted annually to maintain an appropriate relationship with the annual changes in Blue Cross and Blue Shield premiums.

In addition to these annual premium changes, premium adjustments may also be made prospectively for any calendar year to reflect any significant program changes or any actual experience in the costs of administering the TRICARE Reserve Select Program.

For calendar year 2005, the annual premium for self-only coverage is \$900 (monthly premium \$75), and the annual premium for self and family coverage is \$2,796 (monthly premium \$233). These premiums will change effective January 2006.

E. Relationship to Continued Health Care Benefits Program (CHCBP) (paragraph 199.24(e)). This paragraph addresses the relationship between TRICARE Reserve Select and the CHCBP. CHCBP is a program that (among other things) allows members released from active duty to purchase continued health care coverage through TRICARE. This coverage is available for a period of 18 months. Some members at the time of release from active duty will be eligible for either TRICARE Reserve Select or CHCBP. This paragraph of the regulation provides that if a member enrolls in TRICARE Reserve Select, but later is disenrolled, the member or the covered family members may then activate CHCBP coverage for whatever period is remaining of the original 18 month eligibility. For example, in the case that TRICARE Reserve Select enrollment is ended because of discharge from the Selected Reserve (such as through a reduction in force or base closure) of a member within 18 months of release from active duty, the member could choose to continue health care coverage under CHCBP for the remainder of the period at the applicable CHCBP premiums.

F. Preemption of State laws (paragraph 199.24(f)). This paragraph explains that the preemptions of State and local laws established for the TRICARE program also apply to TRICARE Reserve Select. Any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Reserve Select. This includes State and local laws imposing premium taxes on health insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Preemption does not apply to taxes, fees, or other payments on net income or profit realized by such

entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

G. Administration (paragraph 199.24(g)). This paragraph provides that the ASD(HA) may establish other rules and procedures necessary for the effective administration of TRICARE Reserve Select.

III. Provisions of the Rule Regarding the Transitional Assistance Management Program

A. Eligibility under the Transitional Assistance Management Program (TAMP) (paragraph 199.3(e)). Section 706 of NDAA-05 makes permanent revisions to the Transitional Assistance Management Program, which was temporarily revised by section 704 of NDAA-04 and section 1117 of the Emergency Supplemental. Based on these enactments, several categories of armed forces members are eligible for transitional health care after serving on active duty. These include:

1. A member who is involuntarily separated from active duty;
2. A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 consecutive days;
3. A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305 in support of a contingency operation; or
4. A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

(2) A spouse (as described in paragraph (b)(2)(i) of this section except for former spouses) and child (as described in paragraph (b)(2)(ii) of this section) of a member described in paragraph (e)(1) of this section is also eligible for TAMP benefits under TRICARE.

The spouse and children of the member are also eligible for TAMP benefits. TAMP benefits begin the day after the member is separated from active duty, and end 180 days later. Eligibility is determined by the armed forces.

B. Beneficiary liability under TAMP. (paragraph 199.4(f)(2)(vi)). This paragraph establishes that TAMP beneficiaries (including the member) are subject to the TRICARE Standard deductible and cost sharing rules applicable to active duty family members.

IV. Provisions of the Rule Regarding Early Eligibility for Tricare for Certain Reserve Component Members

A. Eligibility (paragraph 199.3(b)(5)). This paragraph incorporates requirements and procedures for implementation of the earlier temporary TRICARE eligibility for certain reserve component members authorized by section 703 of NDAA-04 and section 1116 of the Emergency Supplemental, which provisions were made permanent by section 703 of NDAA-05. Under this paragraph reserve component members issued delayed-effective-date orders for service in support of a contingency operation, and their family members, are eligible for TRICARE on the date the orders are issued, up to 90 days prior to the date on which the period of active duty of more than 30 consecutive days is to begin.

V. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action that would result in an annual effect on the economy of \$100 million or more, or have other substantial impacts. The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This interim final rule is not subject to any of those requirements because it would not have any of these substantial impacts. Any substantial impacts associated with implementation of TRICARE Reserve Select are already determined by statute and are outside any discretionary action of DoD or effect of this regulation.

This rule, however, does address novel policy issues relating to implementation of a new medical benefits program for members of the armed forces. Thus, this rule has been reviewed by the Office of Management and Budget under E.O. 12866.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-

3511). Information needed for TRICARE Reserve Select is obtained from active duty military service records.

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. This is because Congress has established an April 26, 2005 effective date for eligible members' entitlement to TRICARE Reserve Select. The 180-day TAMP coverage period and the delayed effect date orders pre-mobilization eligibility period entitlements became effective on the date of enactment. This rule changes the regulation to conform to the statutory entitlement. Based on these statutory requirements, the ASD(HA) has determined that following the standard practice in this case would be unnecessary, impractical, and contrary to the public interest.

Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2(b) is amended by adding the following two definitions and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * * Transitional Assistance Management Program (TAMP). The program established under 10 U.S.C. § 1145(a) and § 199.3(e) of this part.

* * * * *

TRICARE Reserve Select. The program established under 10 U.S.C. § 1076d and § 199.24 of this part.

* * * * *

3. Section 199.3 is amended by adding new paragraph (b)(5) and revising paragraph (e) to read as follows:

§ 199.3 Eligibility.

* * * * *

(b) * * * Reserve Component Members Issued Delayed-Effective-Date Orders.

(i) Member. A member of a reserve component of the armed forces who is

ordered to active duty for a period of more than 30 consecutive days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code, that provides for active-duty service to begin on a date after the date of the issuance of the order.

(ii) Dependents. CHAMPUS eligible dependents under this paragraph (b)(5) are those identified in paragraphs (b)(2)(i) (except former spouses) and (b)(2)(ii) of this section.

(iii) Effective date. The eligibility established by paragraphs (b)(5)(i) and (ii) of this section shall begin on or after November 6, 2003, and shall be effective on the later of the date that is:

(A) The date of issuance of the order referred to in paragraph (b)(5)(i) of this section; or

(B) 90 days before the date on which the period of active duty is to begin.

(iv) Termination date. The eligibility established by paragraphs (b)(5)(i) and (ii) of this section ends upon entry of the member onto active duty (at which time CHAMPUS eligibility for the dependents of the member is established under paragraph (b)(2) of this section) or upon cancellation or amendment of the orders referred to in paragraph (b)(5)(i) of this section such that they no longer meet the requirements of that paragraph (b)(5)(i).

* * * * *

(e) Eligibility under the Transitional Assistance Management Program (TAMP).

(1) A member of the armed forces is eligible for transitional health care if the member is:

(i) A member who is involuntarily separated from active duty.

(ii) A member of a Reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 consecutive days.

(iii) A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305 in support of a contingency operation; or

(iv) A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than 1 year in support of a contingency operation.

(2) A spouse (as described in paragraph (b)(2)(i) of this section except former spouses) and child (as described in paragraph (b)(2)(ii) of this section) of a member described in paragraph (e)(1) of this section is also eligible for TAMP benefits under TRICARE.

(3) TAMP benefits under TRICARE begin on the day after the member is separated from active duty, and, if such separation occurred on or after November 6, 2003, and end 180 days after such date. TRICARE benefits available to both the member and eligible family members are generally those available to family members of members of the uniformed services under this Part. Each branch of service will determine eligibility for its members and eligible family members and provide data to DEERS.

* * * * *

4. Section 199.4 is amended by adding new paragraph (f)(2)(vi) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) * * *

(2) * * *

(vi) Transitional Assistance Management Program (TAMP). Members of the Armed Forces (and their family members) who are eligible for TAMP under paragraph 199.3(e) of this Part are subject to the same beneficiary or sponsor liability as family members of members of the uniformed services described in this paragraph (f)(2).

* * * * *

5. Section 199.24 is added to read as follows:

§ 199.24 TRICARE standard coverage for certain selected reserve members.

(a) Establishment. TRICARE Reserve Select is established for the purpose of offering TRICARE health benefits to eligible members of the Selected Reserve and their immediate family.

(1) Purpose. TRICARE Reserve Select is a premium-based medical coverage program that will be available to certain members of the Selected Reserve and their immediate family as specified in paragraph (b) of this section.

(2) Statutory Authority. TRICARE Reserve Select is authorized by 10 U.S.C. 1076d.

(3) Scope of the Program. TRICARE Reserve Select is applicable in the 50 United States, the District of Columbia, Puerto Rico, and, to the extent practicable, other areas where members of the Selected Reserve serve. In locations other than the 50 states of the United States and the District of Columbia, the Assistant Secretary of Defense may authorize modifications to the program rules and procedures as may be appropriate to the area involved.

(4) Major Features of TRICARE Reserve Select. The major features of the program include the following:

(i) TRICARE rules applicable. (A) Unless specified in this section or

otherwise prescribed by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), provisions of 32 CFR Part 199 apply to TRICARE Reserve Select.

(B) Certain special programs established in 32 CFR Part 199 are not available to enrollees in TRICARE Reserve Select. These include the Supplemental Health Care Program (see § 199.16), the Extended Health Care Option Program (see § 199.5), and the Special Supplemental Food Program (see § 199.23). The TRICARE Dental Program (see § 199.13) is independent of this program and is otherwise available to all members of the Selected Reserve and their dependents whether or not they are enrolled in TRICARE Reserve Select.

(ii) *Enrollment system.* Under TRICARE Reserve Select, eligible Reserve component members may enroll for self-only or self and family coverage. Rules and procedures for enrollment and payment of applicable premiums are prescribed in this section. When their enrollment becomes effective TRICARE Reserve Select beneficiaries receive the TRICARE Standard benefit, as described in § 199.17.

(iii) *Benefits.* Eligible persons may be enrolled in TRICARE Reserve Select, which features the deductible and cost share provisions of the TRICARE Standard plan for active duty family members for both the member and the member's dependents. The TRICARE Standard plan is described in § 199.17.

(b) *Eligibility for enrollment in TRICARE Reserve Select.* (1) *Eligibility.* Individuals are eligible for enrollment in TRICARE Reserve Select who meet the eligibility criteria defined in paragraphs (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section.

(i) *Members released from active duty after April 26, 2005.* A member released from active duty after April 26, 2005 that is a member of a Reserve component of the Armed Forces is eligible for TRICARE Reserve Select if the member:

(A) Is called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B).

(B) Serves continuously on active duty for 90 days or more pursuant to such call or order to active duty (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b)(2)(A));

(C) Is released from active duty after April 26, 2005.

(D) On or before the date of release from active duty, agrees to serve

continuously in the Selected Reserve for a period of 1 or more years upon release from active duty; and

(E) Meets the qualifications for continued membership in the Selected Reserve as determined by the member's Reserve component.

(ii) *Members released from active duty on or before April 26, 2005.* A member or former member of a Reserve component of the Armed Forces who was released from active duty on or before April 26, 2005 is eligible for TRICARE Reserve Select if the member:

(A) Was called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B).

(B) Served continuously on active duty for 90 days or more pursuant to such call or order to active duty (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b)(2)(A)).

(C) Was released from active duty on or before April 26, 2005.

(D) Prior to enrollment in TRICARE Reserve Select, signs an agreement no later than October 28, 2005 to serve continuously in the Selected Reserve for a period of 1 or more years; and

(E) Meets the qualifications for continued membership in the Selected Reserve as determined by the member's Reserve component.

(iii) *Immediate family of reserve members.* While an eligible member of a Reserve component is enrolled in TRICARE Reserve Select, dependents of such member, as defined in paragraphs (b)(2)(i) (except former spouses) and (b)(2)(ii) of this section are eligible to be enrolled for the same period as the member.

(2) *Additional procedures applicable to eligibility.* The Reserve components are responsible for determining members' duty status, periods of obligation, and other military personnel matters that are pertinent to establishing eligibility for TRICARE Reserve Select.

(c) *TRICARE Reserve Select enrollment procedures.* (1) *Enrollment required.* In order to be covered under TRICARE Reserve Select, eligible Reserve component members must complete and submit the applicable TRICARE enrollment form, and an initial premium required by paragraph (d) of this section. Enrollment is accomplished by submission of an application to the appropriate TRICARE Contractor in accordance with procedures established by the ASD(HA).

(2) *Election of type of coverage.* A member of a Reserve component who is

eligible for enrollment under paragraph (b) of this section may elect self-only or self and family coverage. Family members who may be included in such family coverage are dependents referred to in paragraph (b)(1)(iii) of this section.

(3) *Period of coverage.* Except eligible members released from active duty on or before April 26, 2005, a member must before being released from active duty enter into an agreement to serve continuously in the Selected Reserve, and the member must meet the qualifications for continued service in the Selected Reserve as determined by the member's Reserve component. The member must then enroll in TRICARE Reserve Select prior to 30 days before the expiration of Transition Assistance Management Program (TAMP) benefits under § 199.3(e) of this part.

(i) Except members released from active duty on or before April 26, 2005, coverage begins at the expiration of TAMP benefits under § 199.3(e) of this part and runs continuously until eligibility expires or is otherwise terminated, or the member is disenrolled. (See paragraphs (c)(4)(i), (5), or (6) of this section.) When enrollment is terminated, a member may not re-enroll unless recalled to active duty and the member re-qualifies for a new period of benefits under paragraph (b) of this section.

(ii) For members released from active duty on or before April 26, 2005, coverage begins on the date that is the later of the expiration of TAMP benefits under § 199.3(e) or the effective date of the member's agreement referred to in paragraph (b)(1)(ii)(D) of this section.

(iii) When a member enrolled in TRICARE Reserve Select is recalled to active duty for a period of more than 30 days TRICARE Reserve Select coverage is superseded by active duty military medical benefits for the member and for any family member enrolled in TRICARE Reserve Select, but the coverage period continues to run. When the member is released from active duty, TRICARE Reserve Select coverage will resume for the member (and the member's family members provided the member had been enrolled in self and family coverage on the date TRICARE Reserve Select coverage was superseded by active duty health benefits).

TRICARE Reserve Select coverage will continue until the member's eligibility expires or is otherwise terminated, or the member is disenrolled. (See paragraphs (c)(4)(i), (5), or (6) of this section.) Following the member's release from active duty, TRICARE Reserve Select coverage will also be superseded by TAMP benefits under § 199.3(e) of this Part, if applicable. In

addition, TRICARE Reserve Select coverage is also superseded, if applicable, by any period of early TRICARE coverage based on delayed effective date orders under § 199.3(b)(5) of this Part or by a new enrollment, as a result of re-qualifying through another period of active duty service in support of a contingency operation under § 199.24(c) of this Part. During any period in which TRICARE Reserve Select coverage is superseded, no premium payments for TRICARE Reserve Select are due.

(iv) Members who are eligible for TRICARE Reserve Select under paragraph (b) of this section may enroll for one year of TRICARE Reserve Select coverage for every 90 days of continuous active-duty service, subject to the limitation in paragraph (c)(3)(v) of this section. If such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, then the otherwise eligible member may enroll for one year of TRICARE Reserve Select coverage, as provided in 10 U.S.C. 1076d(b)(2)(A).

(v) The number of years for which the member and family are eligible under paragraph (c)(3)(iv) of this section may not exceed the number of whole years for which the member agrees to continue service in the Selected Reserves before coverage begins, per the service agreement entered into under paragraph (b)(1) of this section. The number of years established by the member's agreement that was entered into prior to beginning coverage under TRICARE Reserve Select may not later be changed, even if that number of years was fewer than the maximum number of years that the member could have established in the agreement. The number of years of coverage may only be changed if the member is recalled to active duty and the member re-qualifies for a new period of benefits under paragraph (b) of this section.

(vi) When a member's eligibility is terminated or the member is disenrolled from TRICARE Reserve Select under paragraphs (c)(4)(i), (5), or (6) of this section, the member may not re-enroll unless recalled to active duty and the member re-qualifies for a new period of benefits under paragraph (b) of this section.

(4) *Changes to type of coverage.* Under certain circumstances, reserve members may change their TRICARE Reserve Select type of coverage.

(i) *Disenrollment.* Reserve members may disenroll from the program at any time by notifying the appropriate TRICARE office. Disenrollment of the member will result in automatic

disenrollment of the member's family members in TRICARE Reserve Select.

(ii) *Change from self and family type of coverage to self-only type of coverage.* After initial enrollment, sponsors may change *type of coverage* from self and family to self-only only when an event occurs that changes the composition of the family, such as divorce, legal separation, or death of a family member, or changes in family employment or health coverage status. The change will become effective in accordance with procedures established by the ASD(HA).

(iii) *Change from self-only type of coverage to self and family type of coverage.* After initial enrollment, the reserve member may change *type of coverage* from self-only to self and family only when an event occurs that changes the composition of the family, such as the birth of a child, marriage of the sponsor, legal adoption of a child, or placement by a court of a child as a legal ward in the sponsor's home, or certain events affecting family health coverage, such as an employment change. The change will become effective in accordance with procedures established by the ASD(HA).

(5) *Effect of failure to pay applicable premiums.* Failure by enrollees to make a premium payment as required in a timely manner will result in automatic disenrollment from TRICARE Reserve Select and denial of payment of claims for services provided on or after the first day of the month for which the premium payment was not paid. Beneficiaries disenrolled due to lack of premium payments will not be allowed to re-enroll, absent the member acquiring a new period of eligibility based upon qualifying active duty service after the date of disenrollment. Disenrollment of the member for failure to pay applicable premiums will also result in automatic disenrollment of the member and the member's family members from TRICARE Reserve Select.

(6) *Ineligibility.* A reserve member who ceases to be eligible for TRICARE Reserve Select as specified in paragraph (b) of this section or whose eligibility is terminated based on termination of the member's service in the Selected Reserve shall be disenrolled and shall no longer be eligible. Disenrollment of the member due to ineligibility will result in automatic disenrollment of the member's family members in TRICARE Reserve Select.

(7) *Effective date of disenrollment.* Disenrollments become effective:

(i) In the case of disenrollment due to ineligibility (other than relating to the death of a member), on the date of ineligibility.

(ii) In the case of disenrollment due to nonpayment of premiums, at the end of the last month for which premiums were paid.

(iii) In all other cases, at the end of the month in which the event causing disenrollment occurred.

(8) *Periodic revision.* Periodically, certain features, rules or procedures of TRICARE Reserve Select may be revised. If such revisions will have a significant effect on participants' costs or access to care, beneficiaries may be given the opportunity to change their enrollment status coincident with the revisions.

(d) *TRICARE Reserve Select premiums.* Premiums shall be charged for coverage under TRICARE Reserve Select. Premiums are to be paid monthly, except as otherwise provided through administrative implementation, pursuant to procedures established by the ASD(HA).

(1) *Establishment of rates.* (i) TRICARE Reserve Select monthly premium rates are established annually on a calendar year basis by the ASD(HA) for the two *types of coverage*—self-only and self and family. The annual rates are based on 28 percent of the total estimated amount (rounded to the nearest dollar) reasonable for health care coverage for the TRICARE Reserve Select eligible population under the TRICARE Standard benefit, as determined by the ASD(HA) on an appropriate actuarial basis. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year, rounded to the nearest dollar.

(ii) Initial annual rates are based on the annual premiums for the Blue Cross and Blue Shield Standard Service Benefit Plan under the Federal Employees Health Benefits Program, a nationwide plan closely resembling TRICARE Standard coverage, with an adjustment based on estimated differences in covered populations, as determined by the ASD(HA).

(2) *Premium adjustments.* In addition to the determinations described in paragraph (d)(1) of this section, premium adjustments may be made prospectively for any calendar year to reflect any significant program changes or any actual experience in the costs of administering the TRICARE Reserve Select Program.

(3) *Premium rates for calendar year 2005.* (i) For calendar year 2005, the annual premium for self-only coverage under TRICARE Reserve Select is \$900.

(ii) For calendar year 2005, the annual premium for self and family coverage under TRICARE Reserve Select is \$2,796.

(e) *Relationship to Continued Health Care Benefits Program.* If at the time a member enrolls in TRICARE Reserve Select, or resumes TRICARE Reserve Select coverage after a period in which coverage was superseded under paragraph (c)(3)(iii) of this section, the member was also eligible to enroll in the Continued Health Care Benefits Program (CHCBP) under § 199.20(d)(1)(i) of this part (except to the extent eligibility in CHCBP was affected by enrollment in TRICARE Reserve Select), enrollment in TRICARE Reserve Select will be deemed to also constitute preliminary enrollment in CHCBP. If for any reason the member becomes disenrolled from TRICARE Reserve Select before the date that is 18 months after discharge or release from the most recent period of active duty upon which CHCBP eligibility was based, the member or the member's family members eligible to be included in CHCBP coverage may, within 30 days of the effective date of the disenrollment, begin CHCBP coverage by paying the applicable premium. The period of coverage will be as provided in § 199.20(d)(6) of this part.

(f) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to contracts that implement this section.

(2) Based on the determination set forth in paragraph (e)(1) of this section, any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Reserve Select. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to TRICARE Reserve Select. (However, the Department of Defense may, by contract, establish legal obligations on the part of DoD contractors to conform with requirements similar to or identical to requirements of State or local laws or

regulations with respect to TRICARE Reserve Select.)

(3) The preemption of State and local laws set forth in paragraph (e)(2) of this section includes State and local laws imposing premium taxes on health insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of 10 U.S.C. 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(g) *Administration.* The ASD(HA) may establish other rules and procedures for the effective administration of TRICARE Reserve Select, and may authorize exceptions to requirements of this section, if permitted by law, based on extraordinary circumstances.

Dated: March 11, 2005.

Jeannette Owings-Ballard,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 05-5219 Filed 3-15-05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-04-129]

RIN 1625-AA09

Drawbridge Operation Regulations: Townsend Gut, ME

AGENCY: Coast Guard, DHS.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the SR 27 Bridge, at mile 0.7, across Townsend Gut, between Boothbay Harbor and Southport, Maine. This temporary rule requires the bridge to open at specific times between 6 a.m. and 6 p.m., each day, from March 14, 2005 through November 30, 2005.

Additionally, this temporary rule would also allow four 4-day closures during the effective period of this rule when the bridge may remain in the closed position. This action is necessary to help facilitate rehabilitation construction at the bridge.

DATES: This rule is effective on March 14, 2005, through November 30, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-04-129) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 5, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Townsend Gut, Maine, in the **Federal Register** (70 FR 773).

We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The Coast Guard believes making this final rule effective less than 30 days after publication is reasonable because the bridge rehabilitation construction is necessary vital work that needs to be performed as soon as possible.

Any delay in making this final rule effective would not be in the best interest of public or safety because performing this work during the non-winter months March 14, 2005 through November 30, 2005, is the best time period during which construction personnel may work in a more safe and productive manner to help restore the SR 27 Bridge to a more safe and reliable operational status.

Background and Purpose

The SR 27 Bridge has a vertical clearance of 10 feet at mean high water, and 19 feet at mean low water in the closed position. The existing drawbridge operating regulations under 33 CFR 117.5 require the bridge to open on signal at all times.

The bridge owner, Maine Department of Transportation, has requested a