

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 936.15 is amended in the table by adding a new entry in

chronological order by “date of final publication” to read as follows:

**§ 936.15 Approval of Oklahoma regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
November 26, 2008 .....	April 9, 2010 .....	Notice of violations: Section 460:20–59–4.

[FR Doc. 2010–8175 Filed 4–8–10; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[Docket ID: DoD–2007–HA–0078; RIN 0720–AB17]

#### **TRICARE; Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 1097c of Title 10, United States Code, as added by section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll or to terminate enrollment in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Benefits offered through cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible as long as the plan treats all similarly situated employees eligible for benefits the same and does not illegally take TRICARE eligibility into account. TRICARE supplemental insurance plans, because they are limited to TRICARE beneficiaries exclusively, are generally impermissible. Properly documented non-employer contributed TRICARE supplemental plans, however, are allowed.

**DATES:** Effective June 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Larkin, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681–0039.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 707 of the John Warner National Defense Authorization Act for

Fiscal Year 2007 (Pub. L. 109–364) added section 1097c to Title 10, United States Code. Section 1097c prohibits employers from offering financial or other incentives to certain TRICARE-eligible employees (essentially retirees and their family members) to not enroll in an employer-offered GHP in the same manner as employers are currently prohibited from offering incentives to Medicare-eligible employees under section 1862(b)(3)(C) of the Social Security Act (42 U.S.C. 1395y(b)(3)(C)). Many employers, including state and local governments, have begun to offer their employees who are TRICARE-eligible a TRICARE supplement as an incentive not to enroll in the employer’s primary GHP. These actions shift thousands of dollars of annual health costs per employee to the Defense Department, draining resources from higher national security priorities. TRICARE is, as is Medicare, a secondary payer to employer-provided health insurance. In all instances where a TRICARE beneficiary is employed by a public or private entity and elects to participate in a GHP, reimbursements for TRICARE claims will be paid as a secondary payer to the TRICARE beneficiary’s employer-sponsored GHP. TRICARE is not responsible for paying first as it relates to reimbursements for a TRICARE beneficiary’s health care and the coordination of benefits with employer-sponsored GHPs.

An identified employer-sponsored health plan will be the primary payer and TRICARE will be the secondary payer. TRICARE will generally pay no more than the amount it would have paid if there were no employer GHP. As applicable to both the Medicare and TRICARE secondary payer programs, the term “group health plan” means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. It should be noted that by including any plan of an employer to provide health

care to employees, this definition is very broad.

The purpose of the prohibition on incentives not to enroll in employer-sponsored GHPs is to prevent employers from shifting their responsibility for their employees onto the Federal taxpayers. Certain common employer benefit programs do not constitute improper incentives under the law. For example, the general rule is that an employer-funded benefit offered through an employer’s cafeteria plan that comports with section 125 of the Internal Revenue Code would not be considered improper incentive, as long as it is not a TRICARE exclusive benefit. A cafeteria plan, as defined by the Internal Revenue Code, 26 U.S.C. 125(d), is a written plan under which all participants are employees and the participants may choose among two or more benefits consisting of cash and qualified benefits. Employers who adhere to the requirements of section 125 and offer all similarly situated employees without regard to TRICARE eligibility a choice between health insurance and cash payment equivalents are not considered in violation of 42 U.S.C. 1395y(b)(3)(C). Therefore, if a TRICARE beneficiary elects the cash-payment option as a benefit offered via the employer’s cafeteria plan, one which meets section 125 requirements, then the employer would not be in violation of these provisions. In general, 10 U.S.C. 1097c prohibits employer-endorsed TRICARE supplemental plans as an option for health coverage under an employer-sponsored GHP to TRICARE-eligible beneficiaries. This type of benefit cannot be offered as part of a cafeteria plan because the employer, by endorsing this type of plan, effectively offers an improper incentive targeted only at TRICARE beneficiaries for not enrolling in the employer’s main health plan option or options.

Section 1097c does not impact TRICARE supplemental plans that are not offered by an employer but are sold by an insurer and/or beneficiary association working in conjunction with an insurer. Such non-employer-sponsored TRICARE supplemental plans will continue to be expressly

excluded as double coverage under 32 CFR 199.2(b) and 199.8(b)(4)(ii), so that TRICARE is the primary payer and the TRICARE supplemental plan is the secondary payer.

## II. Public Comments

The proposed rule was published in the **Federal Register** on March 24, 2008, for a 60-day comment period. We received 21 comments. We thank those who provided comments. Specific matters raised by those who submitted comments are summarized below.

*Comment:* One commenter approved of the rule but suggested the text be clarified to refer more precisely to a “cafeteria plan” as a vehicle for offering benefits to employees, rather than as a benefit itself. Further, this commenter suggested our references to “benefits offered to all employees” overlook that benefits are oftentimes not offered to all employees due to their being in different divisions or geographic locations.

*Response:* We agree with the commenter. We have clarified our references to “cafeteria plan.”

Additionally, references to “all employees” have been changed to “all similarly situated employees.”

*Comment:* Several commenters urged that we revise the rule to permit employers to offer TRICARE supplemental plans that are not paid for in whole or in part by the employer and are not endorsed by the employer. Plans such as this, sometimes referred to as “voluntary plans,” might allow employees to purchase TRICARE supplements with pre-tax dollars.

*Response:* We agree that this is a reasonable proposal, allowing the employer to have some involvement in offering a TRICARE-exclusive plan. Thus, we have revised the rule to make clear that the prohibition on employer incentives does not include TRICARE supplemental plans when it is properly documented that the employer does not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer’s only involvement is providing the administrative support for the benefits under the cafeteria plan.

*Comment:* Several commenters reported they had been inappropriately excluded from benefits due to their employers’ misunderstanding of the law. For example, several commented that their employers stopped allowing TRICARE eligibles from taking advantage of a permissible cash option under a proper cafeteria plan. Another commenter who similarly lost a medical-insurance stipend applauded

the rule as she believes its implementation will correct her employer’s misunderstanding since it clearly states cash options are permissible when offered to all similarly situated employees under a proper cafeteria plan.

*Response:* We hope this final rule will eliminate these misunderstandings. This regulation does not prohibit TRICARE-eligible employees from electing a cash option offered to all similarly situated employees under a proper cafeteria plan.

*Comment:* One commenter, an active duty service member, reported that his daughter’s employer ceased funding her 403(b) benefit and required her to acquire the employer health insurance plan in order to comply with this law.

*Response:* Again, nothing of the sort is required by the law or this regulation. Further, both the statute and this regulation expressly define a TRICARE-eligible employee as a person who is eligible for TRICARE coverage under 10 U.S.C. 1086. This essentially applies to retirees and their family members and does not include dependents of active duty personnel.

*Comment:* One commenter offered a different numbering scheme for the insertion of this rule into section 1097(c) of Title 10, U.S. Code.

*Response:* Section 1097c is a new, complete section and will not be added as subsection 1097(c) under section 1097.

*Comment:* One commenter stated military retirees should have the same access to civilian employer cafeteria plan offerings as their fellow employees.

*Response:* We agree that military retirees should have the same access to employer benefit plans as their civilian counterparts. The rule makes clear that employer-sponsored benefits offered to all similarly situated employees do not violate 10 U.S.C. 1097c or this regulation.

*Comment:* Several commenters believe section 707 exceeds what is necessary to ensure improper incentives are not provided by employers; they feel a qualifying cafeteria plan which offers a TRICARE supplement is not an improper incentive.

*Response:* The statute is designed to stop employers from targeting TRICARE beneficiaries with incentives designed to shift employers’ financial responsibility for health coverage to federal taxpayers. The Conference Report accompanying the enactment of section 1097c made clear that supplemental insurance plans offered by employers through cafeteria plans are permissible under 1097c only if they are “non-TRICARE-exclusive employer-

provider health care incentives.” TRICARE-exclusive plans, even if offered under cafeteria plans, are not allowed (except for plans offered that comport with the new provision regarding non-contributory plans).

*Comment:* One commenter questioned if the employer could provide a Health Reimbursement Arrangement (HRA) in lieu of a traditional employer-sponsored health plan. An additional commenter questioned how this rule intersects with the McNamara-O’Hara Service Contract Act (SCA).

*Response:* An HRA is an employer sponsored plan. HRAs generally are classified as group health plans, and only employers can make contributions to HRAs. If the incentive, such as an HRA, is available to and can be used by all similarly situated employees (not limited to TRICARE beneficiaries), it does not violate this provision. Further, cash payments or other bona fide fringe benefits may properly be offered under the SCA and otherwise in lieu of health care coverage as long as the employer does not consider TRICARE eligibility when formulating the cash payment or fringe benefits options.

*Comment:* Several commenters criticized the proposed rule on the grounds that it results in a lessening of total benefits for military retirees who could otherwise receive TRICARE Standard coverage from DoD and a TRICARE supplemental plan from the employer, both without paying premiums and together resulting in comprehensive health care with no out-of-pocket costs.

*Response:* We acknowledge that prior to the enactment of section 1097c, an employer could offer TRICARE-eligible employees TRICARE supplemental plans that would save money for both the employer and the employee. But this was accomplished by shifting costs to the employee’s former employer, the United States Government and the federal taxpayers. Health care financing in the United States is, of course, a complicated enterprise but in general is organized as a benefit of employment for which most employers accept primary responsibility. Usually employees also contribute to this coverage in the form of paying part of the premiums. In cases in which there is a former employer from whom benefits are also available, it is not typically assumed that these replace the responsibility of the current employer. With respect to military retirees, they have a very good health care benefit under TRICARE provided by their former employer. Under the law there are some out-of-pocket costs in the form of deductibles and copayments; there is

no entitlement to free, comprehensive care. Taking all of these factors together, the question becomes: What are the rules for allocating financial responsibilities among the three players—the current employer, the former employer (the U.S. Government), and the employee/retiree? This statute provides that the employer and the U.S. Government let the employee/retiree choose between his or her respective health care options, placing primary responsibility with either the employer or the Government. Neither the employer nor the Government should seek to shift the responsibility to the other. In other words, both the employer and Government should offer the same benefits they otherwise would offer and let the employee decide. That is what both the statute and regulation require. Although it is true this does not necessarily maximize the financial gain of the military retiree involved, it is a fair allocation of financial responsibility, consistent with prevailing health care financing law, policy, and practice in the United States.

### III. Provisions of Final Rule

The final rule would add to § 199.8 of the TRICARE Regulation a new paragraph (d)(6) concerning the statutory prohibition against financial and other incentives not to enroll in a group health plan. The final rule is similar to the proposed rule except for the refinement and revisions noted above. DoD considered alternatives to the final rule within the bounds of the statute and Congressional intent. The statute is specific in requiring DoD to apply the Medicare rules concerning employer incentives to rely on Medicare, but does give DoD authority to adopt exceptions. The legislative history establishes Congressional intent clearly to prohibit employer-sponsored TRICARE supplemental plans. DoD considered the alternative of applying the Medicare rules without exception, but decided to adopt an exception, discussed above, when the employer's only involvement is providing the administrative support for the benefits under a cafeteria plan for a non-contributory TRICARE supplemental plan. Subparagraph (i) provides the general rule that an employer or other entity is prohibited from offering TRICARE beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in a group health plan that is or would be primary to TRICARE. This prohibition applies in the same manner as the Medicare Secondary Payer law applies to incentives for a Medicare-eligible

employee not to enroll in a group health plan that is or would be primary to Medicare.

Subparagraph (ii) states that this prohibition precludes offering to TRICARE beneficiaries an alternative to the employer primary plan unless the beneficiary has primary coverage other than TRICARE; or the benefit is offered under a proper cafeteria plan and is offered to all similarly situated employees, including non-TRICARE-eligible employees; or the benefit is offered under a cafeteria plan and, although offered only to TRICARE-eligible employees, the employer does not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit. The employer's only involvement is providing the administrative support for the benefits under the cafeteria plan, and the participation of the employee in the plan is completely voluntary.

Subparagraph (iii) requires documentation certifying the requirements for a non-contributory TRICARE supplemental plan is met in cases in which an employer provides that option, and that the certification will be provided upon request to the Department of Defense. In cases in which a question arises about a TRICARE supplemental plan offered by an employer, this documentation will provide a simple means to resolve that it was offered within the authorized exception to the general rule against TRICARE-exclusive benefits.

Subparagraph (iv) provides that enforcement of this prohibition is afforded through civil monetary penalties not to exceed \$5,000 for each violation, investigative authorities of the Department of Defense Inspector General, recourse under the Debt Collection Improvement Act, and any other authority provided by law.

Subparagraph (v) provides definitions. The term "employer" includes any State or unit of local government and any employer that employs at least 20 employees. The term "group health plan" is defined in reference to the Internal Revenue Code. The term "TRICARE-eligible employee" means a covered beneficiary under 10 U.S.C. 1086, essentially military retirees and their eligible family members. The term "similarly situated" means sharing common attributes, such as part-time employees, or other bona fide employment-based classifications consistent with the employer's usual business practice, but not including TRICARE eligibility as a permissible classification.

Subparagraph (vi) provides that the Departments of Defense and Health and Human Services are authorized to enter into agreements to further carry out the new regulation.

### IV. Regulatory Procedures

#### *Executive Order 12866, "Regulatory Planning and Review"*

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. In the proposed rule, we stated that this rule was an economically significant rule. This was based on a Congressional Budget Office (CBO) estimate during Congressional consideration of the underlying legislation that it would have an annual economic impact of \$119 million in 2008 and \$700 million over the 2008–2011 period. This was based on CBO's estimate that 50,000 retirees and their dependents would stop using TRICARE in favor of an employer-sponsored plan. Based on an assessment of data in the Defense Eligibility Enrollment Reporting System (DEERS) of retirees and their dependents under age 65 identified as having other health insurance, as well as recent beneficiary survey data, we now believe the CBO estimate was too high, and that a better estimate is that the statutory change implemented by this final rule will yield annual budget savings of \$64 million for Fiscal Year 2010. Nonetheless, DoD will continue to treat this as an economically significant rule to maintain consistency with the proposed rule and because medical system cost growth in the future may raise the economic impact over the \$100 million per year threshold.

The revised estimate is based on a DoD beneficiary survey conducted in October 2007 (three months before the effective date of section 707). Defense Enrollment Eligibility Reporting System (DEERS) data indicate that the average number of non-active duty family members (NADFM) eligible for TRICARE, excluding Medicare eligibles, was 2,881,929 in FY09. Among these NADFM, the October 2007 DoD survey indicated that 51 percent were offered OHI. Therefore, we estimate that 1,469,784 NADFM eligibles are currently offered OHI. Of those NADFM offered OHI, the survey indicated that 53 percent took the OHI and 47 percent used TRICARE, prior the effect of Sec. 707. Therefore, we estimate that 690,798 current NADFM eligibles were offered OHI but instead

would have used TRICARE, prior to the effect of Sec. 707.

The survey also asked this group (who were offered OHI but used TRICARE) whether their employer (or spouse's employer) paid them a bonus for declining the employer's health plan, and the survey indicated that 4 percent of this group were, in fact, paid to decline OHI. Therefore, we estimate that 27,632 TRICARE eligibles were paid by an employer to decline the employer's coverage, prior to the effective date of section 707. Of the 690,798 NADFM's who declined OHI prior to sec. 707, 663,166 did so without a financial incentive from their employer (because they perceived TRICARE as less expensive, a better benefit, and/or for other reasons). These NADFM's who declined their employer plan but were not paid to do so represent 46 percent of the 1,442,152 NADFM's who were offered OHI without a financial incentive to decline it (prior to Sec. 707). The other 54 percent of NADFM's who were offered OHI, without a financial incentive to decline it, took the OHI. Combining these two points, we estimate that with the section 707 prohibition of employer incentives, 54 percent of the 27,632 NADFM's, or 14,921 NADFM's, would shift to OHI rather than using TRICARE. The other 46 percent, or 12,711 NADFM's, would continue as TRICARE users even without the employer financial incentive, just as 46 percent of the NADFM's who do not have an employer financial incentive opt for TRICARE rather than OHI.

An updated analysis of DoD's cost and population data for FY09 indicates that the average MHS cost per NADFM user under age 65 was \$3,975 (in FY09 dollars). After adjusting for inflation to FY10, we estimate that the current year (FY10) cost per NADFM user is \$4,293. Multiplying this cost per user by the 14,921 NADFM's who would shift to OHI rather than using TRICARE, due to section 707, yields an annual estimated cost impact of \$64.1 million in savings for Fiscal Year 2010.

Based on a trend of seven percent inflation offset by a projected two percent annual decrease in non-active duty family members under age 65, we estimate the following impact.

#### ESTIMATED ANNUAL IMPACT

Fiscal year	Savings (in millions)
2010 .....	\$64.1
2011 .....	67.3
2012 .....	70.6
2013 .....	74.2
2014 .....	77.9

#### ESTIMATED ANNUAL IMPACT— Continued

Fiscal year	Savings (in millions)
2015 .....	81.8

*Congressional Review Act, 5 U.S.C. 801, et seq.*

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect of the economy of \$100 million or more or have certain other impacts. For the reasons stated above, DoD is treating this as a major rule under the Congressional Review Act.

*"Regulatory Flexibility Act" (5 U.S.C. 601)*

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 which would have a significant impact on a substantial number of small entities. This rule will not have a significant impact on a substantial number of small entities for purposes of the RFA.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)*

This rule will impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). (Ref: **Federal Register** Vol. 73, No. 251, December 31, 2008).

*Executive Order 13132, "Federalism"*

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

*Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"*

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

#### PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS) [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 199.8 is amended by adding a new paragraph (d)(6) to read as follows:

#### § 199.8 Double coverage.

\* \* \* \* \*

(d) \* \* \*

(6) *Prohibition against financial and other incentives not to enroll in a group health plan*—(i) *General rule.* Under 10 U.S.C. 1097c, an employer or other entity is prohibited from offering TRICARE beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in, a group health plan that is or would be primary to TRICARE. This prohibition applies in the same manner as section 1862(b)(3)(C) of the Social Security Act applies to incentives for a Medicare-eligible employee not to enroll in a group health plan that is or would be primary to Medicare.

(ii) *Application of general rule.* The prohibition in paragraph (d)(6)(i) of this section precludes offering to TRICARE beneficiaries an alternative to the employer primary plan unless:

(A) The beneficiary has primary coverage other than TRICARE; or

(B) The benefit is offered under a cafeteria plan under section 125 of the Internal Revenue Code and is offered to all similarly situated employees, including non-TRICARE eligible employees; or

(C) The benefit is offered under a cafeteria plan under section 125 of the Internal Revenue Code and, although offered only to TRICARE-eligible employees, the employer does not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer's only involvement is providing the administrative support for the benefits under the cafeteria plan, and the employee's participation in the plan is completely voluntary.

(iii) *Documentation.* In the case of a benefit excluded by paragraph (d)(6)(ii)(C) of this section from the

prohibition in paragraph (d)(6)(i) of this section, the exclusion is dependent on the employer maintaining in the employer's files a certification signed by the employer that the conditions described in paragraph (d)(6)(ii)(C) of this section are met, and, upon request of the Department of Defense, providing a copy of that certification to the Department of Defense.

(iv) *Remedies and penalties.* (A) Remedies for violation of this paragraph (d)(6) include but are not limited to remedies under the Federal Claims Collection Act, 31 U.S.C. 3701 *et seq.*

(B) Penalties for violation of this paragraph (d)(6) include a civil monetary penalty of up to \$5,000 for each violation. The provisions of section 1128A of the Social Security Act, 42 U.S.C. 1320a-7a, (other than subsections (a) and (b)) apply to the civil monetary penalty in the same manner as the provisions apply to a penalty or proceeding under section 1128A.

(v) *Definitions.* For the purposes of this paragraph (d)(6):

(A) The term "employer" includes any State or unit of local government and any employer that employs at least 20 employees.

(B) The term "group health plan" means a group health plan as that term is defined in section 5000(b)(1) of the Internal Revenue Code of 1986 without regard to section 5000(d) of the Internal Revenue Code of 1986.

(C) The term "similarly situated" means sharing common attributes, such as part-time employees, or other bona fide employment-based classifications consistent with the employer's usual business practice. (Internal Revenue Service regulations at 26 CFR 54.9802-1(d) may be used as a reference for this purpose). However, in no event shall eligibility for or entitlement to TRICARE (or ineligibility or non-entitlement to TRICARE) be considered a bona fide employment-based classification.

(D) The term "TRICARE-eligible employee" means a covered beneficiary under section 1086 of title 10, United States Code, Chapter 55, entitled to health care benefits under the TRICARE program.

(vi) *Procedures.* The Departments of Defense and Health and Human Services are authorized to enter into agreements to further carry out this section.

\* \* \* \* \*

Dated: April 6, 2010.

**Mitchell S. Bryman,**  
*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 2010-8162 Filed 4-8-10; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1017]

RIN 1625-AA11

#### Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington; Correction

##### Correction

In rule document 2010-4769 beginning on page 10687 in the issue of Tuesday, March 9, 2010, make the following correction:

##### **§165.1325 [Corrected]**

1. On page 10688, in §165.1325, in the first column, in paragraph (a)(12) "43°38'35" N., 24°14'25"W." should read, "43°38'35" N., 124°14'25"W."

[FR Doc. C1-2010-4769 Filed 4-8-10; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2010-0203]

#### Drawbridge Operation Regulation; Mermentau River, Grand Chenier, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 82 swing span bridge across the Mermentau River, mile 7.1, at Grand Chenier, Cameron Parish, Louisiana. This deviation is necessary for electrical and mechanical repairs pertaining to the bridge's main span drive assembly and system components. This deviation allows the bridge to remain closed to navigation for approximately 10 weeks.

**DATES:** This deviation is effective from 7 a.m. on April 21, 2010, through 7 a.m. on June 30, 2010.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2010-0203 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0203 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Kay Wade, Bridge Administration Branch, Coast Guard; telephone 504-671-2128, e-mail [Kay.B.Wade@uscg.mil](mailto:Kay.B.Wade@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** The Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the swing span bridge across the Mermentau River at mile 7.1 in Grand Chenier, Cameron Parish, Louisiana. The closure is necessary in order to perform electrical and mechanical repairs pertaining to the bridge's main span drive assembly and system components. This maintenance is essential for the continued operation of the bridge.

The operating schedule for the bridge is in 33 CFR 117.480 and states the bridge opens on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given, for the passage of vessels. This deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. Wednesday, April 21, 2010, through 7 a.m. Thursday, July 1, 2010.

The vertical clearance of the swing span bridge in the closed-to-navigation position is 13.15 feet above Mean High Water, elevation 3.1 feet Mean Sea Level. Vessels are able to transit under the bridge during operations. There is an alternate navigation route via Grand Lake for vessels unable to pass under the bridge. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Due to prior experience and coordination with waterway users, it has been determined that the closure will not have a significant effect on navigation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This