

regulations is authorized under 33 CFR 117.35.

Dated: December 15, 2005.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 9

**RIN 2900-AM36**

#### Traumatic Injury Protection Rider to Servicemembers' Group Life Insurance

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this interim final rule to implement section 1032 of the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005," (Public Law 109-13). Section 1032 of Public Law 109-13 establishes an automatic traumatic injury protection rider provision to Servicemembers' Group Life Insurance (SGLI), effective December 1, 2005, providing automatic insurance for any SGLI insured who sustains a serious traumatic injury as prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense that results in certain losses prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense. This rule specifies the losses for which the traumatic injury benefit (TSGLI) will be paid and the amount of the TSGLI benefit payable for each loss.

Section 1032(c)(1) of Public Law 109-13 also provides for the payment of TSGLI benefits to service members who experienced a traumatic injury between October 7, 2001, and the effective date of section 1032 of Public Law 109-13, *i.e.*, December 1, 2005, if the loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom.

**DATES:** *Effective Date:* This interim final rule is effective December 20, 2005. Comments must be received on or before January 23, 2006.

*Applicability Date:* VA will apply this rule to injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom on or after October 7, 2001, through and including November 30, 2005, and to all injuries incurred on or after December 1, 2005.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273-9026; or e-mail comments through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AM36." All comments received will be available for public inspection in the Office of Regulations Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Hosmer, Senior Insurance Specialist/Attorney, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842-2000 ext. 4280.

**SUPPLEMENTARY INFORMATION:** TSGLI was designed to provide severely injured service members who suffer a loss as a direct result of a serious traumatic injury, such as a loss of an arm or leg, with monetary assistance to help the member and the member's family through an often long and arduous treatment and rehabilitation period. In many instances, the family of a member who suffers a traumatic loss in the service of his or her country must physically relocate in order to be with the member during this period in order to provide the member with emotional support. Relocating an entire family is not only disruptive but can and does result in economic hardship to the member and the member's family brought on by new and/or additional living expenses, and in some cases the loss of a job. TSGLI helps to lessen that economic burden by providing immediate financial relief.

Traumatic injury protection under SGLI (TSGLI) is modeled after commercial Accidental Death and Dismemberment (AD&D) insurance coverage, specifically, the "dismemberment" portion of the coverage, although as we explain below, it deviates in some respects from the commercial AD&D model to account for the unique needs of military personnel. We have relied on commercial AD&D policies as a basis for the TSGLI program for the following reasons. According to 38 U.S.C. 1980A(a), TSGLI is a "rider" to the existing SGLI group policy, which the Secretary of Veterans Affairs purchased from a commercial life insurance company, Prudential Insurance Company of America, on behalf of service members. 38 U.S.C.

1966. SGLI premiums after the first policy year are readjusted by the insurance company issuing the policy "on a basis determined by the Secretary [of Veterans Affairs] in advance of such year to be consistent with the general practice of life insurance companies under policies of group life insurance issued to large employers." AD&D policies are often a rider to group life insurance policies offered by commercial life insurance companies. In addition, VA is obligated to manage the TSGLI program "on the basis of sound actuarial principles," 38 U.S.C. 1980A(e)(4) and (5), and these AD&D models have proven to be actuarially sound. Therefore, these rules implementing the TSGLI program are based on commercial AD&D policies, which have a successful track record, because TSGLI is a rider to a group life insurance policy purchased from a commercial life insurance company and because AD&D policies are frequently provided as a rider to a commercial life insurance policy.

We are setting forth the rules for the TSGLI program in a new regulation at 38 CFR 9.20. These rules were drafted in collaboration with the Department of Defense (DoD) as required by statute. We have added definitions relevant to the TSGLI program at 38 CFR 9.1(k)-(q). The term "activities of daily living" is defined in 38 U.S.C. 1965(11), as added by section 1032(a)(1) of Public Law 109-13, and we have restated the definition in 38 CFR 9.1(k) because it is a technical term that may not be readily understood by the general public. We have added to the statutory definition of "transferring" in 38 CFR 9.1(k)(6) the phrase "in or out of bed or chair with or without equipment," in order to better explain the meaning of the term. We have defined pyogenic infection in 38 CFR 9.1(l) to mean "a pus-producing infection." The definitions of contaminated substance and chemical, biological and radiological weapons in 38 CFR 9.1(m) through (p) are based on various sources, including the National Center for Biotechnical Information, the National Library of Medicine, the National Institutes of Health, the DoD Dictionary of Military Terms, and commercial insurance industry sources. We have reworded the definitions for purposes of consistency and clarity.

We have defined "attending medical professional" in 38 CFR 9.1(q) to mean a licensed physician, optometrist, nurse practitioner, registered nurse, or physician assistant.

We have defined the term "traumatic event" in 38 CFR 9.20(b)(1) to mean "the application of external force, violence, chemical, biological, or

radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living body.” TSGLI coverage, however, is limited to events occurring on certain dates. TSGLI is effective on December 1, 2005, as provided by section 1032(d)(1) of Public Law 109–13, 119 Stat. 260. However, any service member who experienced a traumatic injury between October 7, 2001, and the effective date of section 1032, *i.e.*, December 1, 2005, is eligible for TSGLI coverage if the loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom under section 1032(c)(1) of Public Law 109–13. Therefore, as explained in § 9.20(b)(1) and (2), the term “traumatic event” refers to a traumatic injury occurring on or after December 1, 2005, or on or after October 7, 2001, and through and including November 30, 2005, if the scheduled loss is a direct result of a traumatic injury incurred in Operation Enduring Freedom or Operation Iraqi Freedom. For purposes of this rule only, we have defined the terms “incurred in Operation Enduring Freedom” and “incurred in Operation Iraqi Freedom” in 38 CFR 9.20(b)(2) to mean that a service member was deployed outside the United States on orders in support of Operation Enduring Freedom or Operation Iraqi Freedom or served in a geographic location that qualified the service member for the Combat Zone Tax Exclusion under 26 U.S.C. 211.

We explain in 38 CFR 9.20(b)(3) that the term “traumatic event” does not include a surgical procedure in and of itself because the commercial AD&D models we reviewed do not provide coverage for injury caused by a surgical procedure in and of itself. For example, if a service member has surgery for a disease such as diabetes, which is not covered by § 9.20, requiring amputation of a leg, the surgery would not be considered a traumatic event and TSGLI would not be payable for the loss. However, if a service member undergoes surgery for injuries caused by an explosive device, resulting in amputation of a leg, TSGLI would be payable for the loss because it is the result of a traumatic event, *i.e.*, the detonation of the explosive device, not the surgery.

We have defined the term “traumatic injury” in 38 CFR 9.20(c)(1) to mean “physical damage to a living body that is caused by a traumatic event, as defined in § 9.20(b).” In § 9.20(c)(2), we explain that the term does not include damage to a living body caused by a mental disorder or mental or physical illness or disease, except if the physical illness or disease is caused by chemical,

biological, or radiological weapons or accidental ingestion of a contaminated substance. In several precedent opinions, the VA General Counsel has addressed the meaning of the term “injury” for purposes of 38 U.S.C. 101(24) and we believe that the discussion of the plain meaning of the term in these opinions is helpful in defining “traumatic injury” for purposes of 38 U.S.C. 1980A. The General Counsel has explained that the term “injury” refers to the results of an external trauma rather than a degenerative process. VAOPGCPREC 4–2002, para. 7. The term “trauma” is frequently defined with reference to external force or violence. VAOPGC 6–86 (1–31–86). The term “disease,” on the other hand, refers to some type of internal infection or degenerative process. VAOPGCPREC 86–90. Based upon these General Counsel opinions, we have defined “traumatic injury” as damage to a living body that is caused by the application of external force, violence, or chemical, biological, or radiological weapons or accidental ingestion of a contaminated substance. In accordance with these opinions, we have also defined the term “traumatic injury” in 38 CFR 9.20(c)(2) to exclude damage to a living body caused by a mental disorder or illness or disease, whether physical or mental in nature, except if the physical illness or disease is caused by chemical, biological, or radiological weapons or accidental ingestion of a contaminated substance. *See Winn v. Brown*, 8 Vet. App. 510, 516 (1996) (personality disorder is not disease under 38 U.S.C. 1110 and 1131).

We have defined “traumatic injury” in § 9.20(c)(2)(ii) to include physical illness or disease caused by a pyogenic infection, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance because including immediate traumatic harm due to those unique hazards of military service is consistent with the purpose of TSGLI. Because the process by which such hazards produce immediate harm may be characterized as a disease process, we specify in § 9.20(c)(2)(ii) that diseases resulting from those hazards are within the definition of “traumatic injury.”

Section 9.20(c)(3) states that, for purposes of this section, all traumatic injuries will be considered to have occurred at the same time as the traumatic event. We believe that inherent in the term “traumatic injury” is the notion that the injury occurs immediately. This is also the case with regard to the application of chemical, biological, and radiological weapons and accidental ingestion of a

contaminated substance because the physical damage resulting in a covered loss would generally occur immediately and require prompt medical treatment.

Section 9.20(d) discusses the eligibility requirements for payment of traumatic injury protection benefits. Section 1980A(c) of title 38, United States Code, provides that TSGLI payments may be made only if: (1) A member is insured under SGLI when the traumatic injury is sustained; (2) the loss results directly from that traumatic injury and from no other cause; and (3) the member suffers the loss before the end of a period that begins on the date on which the member sustains the traumatic injury. Section 1980A(h) of title 38, United States Code, states that coverage for TSGLI ceases at midnight on the date of the member’s separation from the uniformed service. Section 9.20(d)(1) and (2) of title 38, Code of Federal Regulations, as added by this interim rule, restates 38 U.S.C. 1980A(c)(1) and (2) and (h). Also, a member is not insured under SGLI, and therefore not covered for purposes of TSGLI, if the member’s coverage has terminated under 38 U.S.C. 1968(a)(1)(B) or if the member has forfeited his or her rights to SGLI under 38 U.S.C. 1973.

Section 1980A(g) of title 38, United States Code, prohibits payment for a loss resulting from a traumatic injury if the member dies before the end of the period prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense. Pursuant to this statutory authority, 38 CFR 9.20(d)(3) requires an insured member to survive for seven days after a traumatic injury to be eligible for TSGLI benefits for a loss resulting from that traumatic injury. The seven days (*i.e.*, 168 hours) are measured beginning from the time and date of the traumatic injury. For example if a member suffers a traumatic injury at 12 noon Zulu (Greenwich Meridian) time on December 1, 2005, the member must survive until 12 noon Zulu (Greenwich Meridian) time on December 8, 2005, to be eligible for TSGLI payments.

We selected a seven-day period based on a review of data gathered by DoD concerning traumatic injuries incurred in Operations Enduring Freedom and Iraqi Freedom, which shows that it usually takes a minimum of seven to ten days following a traumatic injury to stabilize the injured member and transport the member back to the United States for further treatment and to begin the rehabilitation process. During this initial period, the service department pays most if not all major expenses that are incurred by an injured member and/

or the member's family relating to travel by the family to be at the member's side, as provided in 37 U.S.C. 411h. As a result, TSGLI benefits are not needed during the initial period following a traumatic injury. Once the member's condition is stabilized and doctors and the member decide on a course of treatment, TSGLI benefits are needed and will be available to help pay for expenses incurred after the initial period. Furthermore, if the insured member dies within seven days after a traumatic injury, although no TSGLI benefit is payable, the basic SGLI death benefits will be paid to the beneficiary designated by the member or other eligible beneficiary.

According to 38 U.S.C. 1980A(c)(3), a TSGLI payment may be made only if a member suffers a scheduled loss before the end of the period prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense, except if the loss is quadriplegia, paraplegia, or hemiplegia, in which case the member must suffer the loss not later than 365 days after sustaining the traumatic injury.

Section 9.20(d)(4) of this rule provides that a member must suffer a scheduled loss within 365 days of the traumatic injury to be eligible for payment. In determining the appropriate period, we took into account that DoD has advised that both physicians and service members do everything possible to save a limb, and as a result, amputation frequently occurs only after a significant period of time passes after a traumatic injury. With respect to other types of losses, it is difficult to determine with any accuracy the time period within which loss due directly to the traumatic injury can be expected to occur. Although in some cases, the loss may be expected to occur sooner than 365 days after the traumatic injury, 365 days is similar to the time frame which Congress has prescribed for severe injuries, such as quadriplegia and is the broadest period of time included in any commercial AD&D policy we reviewed. Therefore, § 9.20(d)(4) of this rule provides that a member must suffer a scheduled loss within 365 days of the traumatic event to be eligible for payment.

Section 1980A(c)(2) of title 38 provides that the TSGLI benefit is payable only if the scheduled loss "results directly from [the] traumatic injury and from no other cause." In addition, section 1032(c)(1) of Public Law 109-13 states that TSGLI benefits are payable for a traumatic injury occurring between October 7, 2001, and December 1, 2005, "if the qualifying loss was a direct result of injuries incurred

in Operation Enduring Freedom or Operation Iraqi Freedom." In 38 CFR 9.20(e)(1), we interpret the phrases "results directly \* \* \* and from no other cause" and "direct result" to mean that benefits are payable for a scheduled loss only if a traumatic injury directly causes a member's scheduled loss.

Section 1980A(b)(3) of title 38, United States Code, authorizes the Secretary of Veterans Affairs, in collaboration with the Secretary of Defense, to promulgate regulations providing the conditions under which coverage against a scheduled loss will not be provided by TSGLI. Therefore, § 9.20(e)(2) states that the maximum TSGLI benefit payable for losses under the schedule in paragraph (e)(7) due to more than one traumatic event occurring within a seven-day period is \$100,000. We do not believe that Congress intended for a service member to receive more than the statutory maximum TSGLI benefit of \$100,000 as a result of scheduled losses due to each of several traumatic events occurring within a short period of time. Also, VA must manage the TSGLI program "on the basis of sound actuarial principles." Congress has expressed its understanding that the premium for TSGLI coverage will be minimal. 151 Cong. Rec. S4095 (2005) (statement of Sen. Craig). In accordance with that charge, we have concluded that, in the case of multiple traumatic events occurring within a seven-day period, it is appropriate to limit recovery to the statutory maximum allowed for a single traumatic event, regardless of whether the losses come from multiple traumatic events within a seven-day period. We have concluded that a period of seven days is appropriate to properly balance the need for actuarial soundness and the interests of providing adequate coverage for traumatic events separated by a greater amount of time. A member could incur a second scheduled loss virtually simultaneously with the initial scheduled loss. If the benefit for the initial scheduled loss were for \$100,000, we do not believe Congress intended an additional payment, beyond the maximum provided by law.

If a member loses a limb as a result of a traumatic event, and within seven days the member sustains another traumatic injury from a separate traumatic event that results in the loss of sight in both eyes, the member will receive the benefit under the schedule for those two losses up to \$100,000, the maximum amount payable for a single traumatic event under the statute. If a member incurs two scheduled losses separated by more than seven days, the member will receive payment for both losses according to the schedule. For

example, a member loses a foot, is paid \$50,000 according to the schedule, returns to duty six months later, and sustains the loss of both hands, the member will be paid an additional \$100,000 according to the schedule. We will calculate the seven-day period beginning with the day on which the first traumatic event occurs. For example, if there were three separate traumatic events occurring on day one, day six, and day nine, a TSGLI benefit will be paid to the member for the scheduled losses resulting from traumatic events on days one and six, up to \$100,000. Since the event on day nine is outside of the initial seven-day period, the member would be paid TSGLI according to the schedule for any loss sustained as a result of the event on day nine.

VA is also promulgating 38 CFR 9.20(e)(3), which explains that TSGLI benefits are not payable if a service member's loss is due to a traumatic injury caused by the member's attempted suicide, while sane or insane, an intentionally self-inflicted injury or an attempt to inflict such injury, medical or surgical treatment of an illness, or willful use of an illegal or controlled substance that was not administered or consumed on the advice of a medical doctor. Also, TSGLI benefits are not payable for a loss due to a traumatic injury that a member sustained while committing or attempting to commit a felony. These limitations follow insurance-industry standards relating to traumatic injury coverage and are based upon sound actuarial and financial principles that VA must utilize in administering TSGLI.

As noted, section 1980A(c)(2) of title 38 provides that the TSGLI benefit is payable only if the scheduled loss "results directly \* \* \* and from no other cause." Therefore, 38 CFR 9.20(e)(4) of this rule provides that payment will not be made for a scheduled loss if caused by a physical or mental illness or disease, except pyogenic infection, whether or not caused by a traumatic injury, or a mental disorder, whether or not caused by a traumatic injury. This follows the commercial AD&D model which excludes losses caused by physical or mental illness or disease or mental disorders and which contains an exception for disease resulting from a pyogenic infection, which is likely to occur as a result of injuries, *i.e.*, wounds, that are incurred under military conditions.

We have incorporated into 38 CFR 9.20(e)(6) the statutory definitions in 38 U.S.C. 1980A(b)(2) of quadriplegia, paraplegia, and hemiplegia because

these are technical terms with which the public may not be familiar.

Section 1980A(b)(1) and (d)(1) of title 38, United States Code, authorizes the Secretary of Veterans Affairs, in collaboration with the Secretary of Defense, to prescribe a schedule of losses resulting from traumatic injuries for which TSGLI benefits are payable and the amount that will be paid for each loss that results from the injuries. Section 9.20(e)(7) of title 38, Code of Federal Regulations, contains a schedule of 43 specific losses for which, if resulting directly from traumatic injuries, TSGLI is payable and the corresponding amount of the payment for each loss. In addition, item 44 in the schedule of losses covers losses due to traumatic injuries other than those provided for elsewhere in the schedule that directly result in a member's inability to perform activities of daily living.

Section 1980A(b)(1)(H) requires that the schedule of losses include coma or the inability to carry out the activities of daily living resulting from traumatic injury to the brain. A note at the end of the schedule in § 9.20(e)(7) explains that the period during which a member is unable to carry out activities of daily living for purposes of determining the amount of TSGLI benefits to be paid runs from the day of onset of the member's inability to perform activities of daily living until the day when the member can again carry out activities of daily living.

As required by 38 U.S.C. 1980A(d), the amount of the payment in the schedule at 38 CFR 9.20(e)(7) is based on the severity of the member's loss. Payments in the schedule range from the statutory minimum of \$25,000 up to the statutory maximum of \$100,000. Generally, commercial AD&D policies pay 100% of the contracted benefit for the loss of two or more members, *e.g.*, hand, foot, or limb, or for the loss of sight in both eyes, while paying 50% for loss of one member or loss of sight in one eye. Based on the commercial AD&D model, the schedule of losses for TSGLI provides a payment of \$100,000 for loss of two or more members, as well as quadriplegia, hemiplegia, and paraplegia, and \$50,000 for loss of one member or total and permanent loss of sight in one eye.

Although the TSGLI schedule generally follows the commercial AD&D model, it differs from the basic AD&D model we followed with respect to:

- Permanent and total loss of hearing in one ear.
- Combination of losses that include loss of hearing in one ear.

- Combination of losses that include coma.

- Combination of losses that include the inability to carry out the activities of daily living.

- Burns greater than second degree, covering 30 percent of the body or 30 percent of the face.

VA has decided to provide a payment of \$25,000 for permanent and total loss of hearing in one ear and \$75,000 for combinations such as loss of one limb or loss of sight in one eye and total and permanent loss of hearing in one ear. We note that most of the AD&D policies we reviewed pay no benefit for total and permanent loss of hearing in one ear only. However, a few policies do provide a benefit for the total and permanent loss of hearing in one ear. In those policies, the benefit payable for total and permanent loss of hearing in one ear is less than half the benefit for total and permanent loss of hearing in both ears. We have included the total and permanent loss of hearing in one ear in the schedule so as to tailor TSGLI to the unique needs of those injured in military service.

The benefit amounts to be paid for scheduled losses that include coma or inability to carry out the activities of daily living are based generally upon the likelihood of recovery as determined by the duration of the coma or inability to carry out activities of daily living. In addition, the determination of benefits in this manner is consistent with commercial insurance industry standards.

In another deviation from commercial industry standards, we provide in the schedule that burns greater than second degree, covering 30 percent of the body or 30 percent of the face, warrant a payment of \$100,000. The reason for a maximum payment for this type of injury is due to its severity and length of treatment. Because burns are one of the most complex and harmful physical injuries, they often require initial trauma care, followed by careful evaluation and appropriate wound management. In the case of a 3rd degree or worse burn, skin grafting or other replacement options are required. When a burn injury is deep enough to involve muscle, bone, tendon, and/or ligament, it is often classified as a 4th degree burn. These burns are often life-threatening in nature, and sometimes require amputation.

In accordance with 38 U.S.C. 1980A(f), § 9.20(f) states that the uniformed services will determine eligibility for TSGLI. All uniformed services will certify eligibility based upon section 1032 of Public Law 109-13 and this rule.

Section 9.20(g) explains how a member initiates a claim for TSGLI benefits. A member, or someone acting on his or her behalf if he or she is unable to do so, will obtain a Certification of Traumatic Injury Protection Form, GL.2005.261, on the VA Insurance website, <http://www.insurance.va.gov>, or by contacting the Office of Servicemembers' Group Life Insurance (OSGLI) at 1-800-419-1473. A member can also obtain Form GL.2005.261 by contacting his or her branch of service, and the point of contact for each branch of service is available on the VA Insurance website or from OSGLI.

The member must complete and sign Part A of Form GL.2005.261, which requests identifying information. If the member is unable to sign, Form GL.2005.261 may be signed by the member's guardian or attorney-in-fact. If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualified is paid, the beneficiary or beneficiaries of the member's SGLI policy may complete Form GL.2005.261.

Section 9.20(g)(2) explains that, if a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Certification of Traumatic Injury form for a different scheduled loss, the member must submit a completed Form GL.2005.261 for the new scheduled loss and for each subsequent scheduled loss that occurs. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§ 9.20(e)(7)(xxvii)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§ 9.20(e)(7)(xliv)), a completed Form GL.2005.261 must be submitted for each increment of time for which TSGLI is payable. For example, if a service member suffers a scheduled loss due to a coma, a completed Form GL.2005.261 should be filed after the 15th consecutive day that the member is in the coma, for which \$25,000 is payable. If the member remains in a coma for another 15 days, another completed Form GL.2005.261 should be submitted and another \$25,000 will be paid.

The certification form that has been completed by the service member, member's guardian or member's attorney-in-fact should then be sent to

an attending medical professional for completion of Part B of Form GL.2005.261 regarding the nature of the member's injury and whether it meets the schedular requirements of this rule. The appropriate administrative office of the branch of service will complete Part C of Form GL.2005.261, certifying that the member was covered under SGLI when the traumatic injury was sustained and that the member meets the other eligibility requirements set forth in section 1032 of Public Law 109-13 and this rule. The branch of service will then forward the completed certification form to the OSGLI for disbursement of the benefit payment.

Section 9.20(h)(1) states that appeals of TSGLI eligibility determinations, such as whether the loss occurred within 365 days of the traumatic injury, whether the injury was self-inflicted, or whether a loss of hearing was total and permanent, will be made to the Secretary of the uniformed service that made the determination regarding the member's eligibility. Points of contact for filing appeals to the branches of service will be provided on the VA Insurance website, <http://www.insurance.va.gov>, and by the Office of Servicemembers' Group Life Insurance (OSGLI) at 1-800-419-1473.

Section 9.20(h)(2) states that an appeal regarding whether a service member was covered under SGLI when the traumatic injury was sustained must be submitted to OSGLI. Appeals regarding actions on the policy itself, such as whether a service member received a TSGLI payment, are also directed to OSGLI. Section 9.20(h)(3) provides that a member is not precluded by anything in this section from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13.

Section 9.20(i) explains to whom the traumatic injury protection benefit will be paid. The benefit will be paid to the injured member, except in the following circumstances. If the member is legally incapacitated, the benefit will be paid to the member's guardian or attorney-in-fact. If the member dies before a TSGLI payment is made, the benefit will be paid to the beneficiary designated by the member or other eligible beneficiary in accordance with 38 U.S.C. 1970(a), which explains the order of precedence for payment of SGLI proceeds following an insured's death.

#### **Administrative Procedure Act**

In accordance with 5 U.S.C. 553(b)(3)(B), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for prior comment with respect to this rule which explains how the TSGLI program will be

implemented. The Secretary finds that it is impracticable to delay this regulation for the purpose of soliciting prior public comment because TSGLI is effective December 1, 2005, and because service members and their families need the payment provided by TSGLI as soon as possible following a traumatic injury in order to reduce the financial burden that results from the severe losses covered by the schedule. For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary of Veterans Affairs will consider and address comments that are received within 30 days of the date this interim final rule is published in the **Federal Register**.

#### **Congressional Review Act**

Although this rule is a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 804(2), it will not be subject to the 60-day delay in effective date applicable to major rules under 5 U.S.C. 801(a)(3) because VA finds that good cause exists under 5 U.S.C. 808(2) to make the rule effective immediately. As stated above, Congress has directed that TSGLI take effect on December 1, 2005. Further, service members and their families have an immediate and urgent need for the payment provided by TSGLI as soon as possible following a traumatic injury in order to reduce the financial burden that results from the severe losses covered by the schedule. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this rule and other information, including VA's economic analysis of this rule as set forth below.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no effect on State, local, or tribal governments.

#### **Paperwork Reduction Act**

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The interim final rule at § 9.20 contains collections of information under the Paperwork Reduction Act (44

U.S.C. 3501-3521) (the Act). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by January 23, 2006; however, we are also requesting comments on the collection of information provisions contained in § 9.20 on a non-emergency basis. Comments must be submitted by February 21, 2006.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, or faxed to 202-395-6974, with copies mailed or hand-delivered to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AM36."

*Title:* Traumatic Injury Protection (TSGLI) Under The Servicemembers' Group Life Insurance Program Certification Form and Instructions.

*Summary of collection of information:* The interim final rule at § 9.20(g) contains information for applying for the TSGLI benefit using the TSGLI Certification Form and for completion of the form by medical professionals.

*Description of the need for information and proposed use of information:* Section 9.20(g)(2) requires that a service member insured under Servicemembers' Group Life Insurance (SGLI) who wants to be paid a TSGLI benefit provide certain information to his or her uniformed service. This information is needed by the uniformed services to determine eligibility for the TSGLI benefit. Section 9.20(g)(2) also requires a medical professional to certify that the member has sustained a traumatic injury that resulted in a scheduled loss. The information needed is as follows:

#### *Part A: Completed by the Service Member*

In Part A, the service member or his or her guardian or attorney-in-fact needs to provide basic identifying information including: name, address, telephone

number, service branch, social security number and date of birth. In addition, if the member has a guardian or attorney-in-fact who will receive payment for the benefit on their behalf, the name, address, and other contact information of the guardian or attorney-in-fact needs to be provided. The service member also needs to select how they would like to receive payment (either by Electronic Funds Transfer or through a checkbook) and provide the appropriate bank information if they elect Electronic Funds Transfer. Lastly, the service member needs to sign an authorization for release of medical information to their branch of service and the Office of Servicemembers' Group Life Insurance (OSGLI). This release is needed to comply with the Standards for Privacy of Individually Identifiable Health Information, codified at 45 CFR part 160 and part 164, subparts A and E, so that the service departments and OSGLI can obtain necessary medical information to determine if the service member is eligible for the benefit.

*Part B: Completed by an Attending Medical Professional*

In Part B, an attending medical professional (either military or civilian) must provide information on the service member's medical condition. The attending medical professional must indicate in a signed statement whether the member sustained a traumatic injury or injuries and a scheduled loss as a direct result of the injury or injuries that would make the member eligible for the TSGLI benefit.

*Part C: Completed by the Branch of Service*

In Part C, the service member's branch of service must provide information on additional eligibility criteria and sign as the certifying official. The requirements of the Paperwork Reduction Act do not apply to collections of information from current Government employees acting within the scope of their duties. 5 CFR 1320.3(c)(4). Accordingly, the information in Part C of the certification does not require OMB approval.

*Description of likely respondents:* Service members, service members' guardians and attorneys-in-fact, service members' beneficiaries (if the service member is deceased), and civilian physicians.

*Estimated number of respondents per year:* 950.

*Estimated frequency of responses per year:* 1.

*Estimated total annual reporting and recordkeeping burden:* 475 hours.

*Estimated annual burden per collection:* 30 minutes.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

**Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

VA estimates that this rule will have an effect \$100 million or greater in any one year under section 3(f)(1) of Executive Order 12866. Therefore, this rule is a significant regulatory action under Executive Order 12866.

VA has attempted to follow OMB circular A-4 to the extent feasible in

this analysis. The Circular first calls for a discussion of the need for the regulation. The SGLI Traumatic Injury benefit is designed to provide immediate payment to severely injured service members. The preamble above discusses the need for the regulation in more detail.

The impact of this regulation is primarily to the federal budget, although service members themselves will eventually be impacted by changes in the premiums charged for this coverage. A qualifying service member will receive between \$25,000 and \$100,000 after suffering a traumatic injury, depending on the type of loss suffered as a result of the injury. The premium charged for this coverage is expected to be \$1 per month from each service member insured under SGLI. VA continues to study what premium changes may be needed to cover this benefit; therefore, a premium of \$1 per month, although a reasonable assumption, may be subject to change in the future. This premium is intended to cover only the civilian incidence of such injuries. The law provides that any excess program costs above the premiums collected from service members will be paid by DoD.

The required funding from DoD is composed of three parts: retroactive costs, program start-up funds, and prospective monthly costs. Based upon the information available from DoD, VA has developed estimates of each of these costs.

By far the largest impact on the budget is due to the retroactive provision of Public Law 109-13, which provides that any service member who suffered a qualifying loss between October 7, 2001, and December 1, 2005, will receive a benefit under the TSGLI program if the loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. Based on information from DoD, VA has derived a preliminary estimate of the retroactive cost in excess of \$400 million, based upon over 5000 seriously wounded service members and a \$75,000 average payment amount. Please note that this assumed number of wounded and payouts is based on preliminary projections; actual payouts may be significantly higher or lower than this estimated amount. VA will continue to study the actual demand on the program and will make adjustments accordingly.

For program startup funds, the law also specifies that the Secretary of Defense will forward to VA an amount equivalent to half the anticipated cost of excess claims for the fiscal year on the December 1st effective date. Since ten

months will then be left in fiscal year 2006, a five-month advance payment is required. VA had developed an estimate of \$68 million for the fiscal year 2006 cost to DoD. Using this estimate, the five-month advance payment due December 1 amounted to \$28 million.

In addition, the law provides for the provision of prospective monthly costs. Specifically, the law provides that the cost of providing such coverage, less the premiums paid by members, will be paid by the Secretary of Defense to VA on a monthly basis. Again, using VA's estimated \$68 million cost for fiscal year 2006, monthly payments of \$5.7 million would be required from DoD starting December 2005.

The total of these estimated costs through fiscal year 2006 amounts to \$485 million. VA will continue to develop actuarial models to ensure that future SGLI premiums fully cover the expected civilian incidence of such injuries. Due to the unpredictability of traumatic injuries resulting from military service (including war), VA has not attempted to estimate the costs to DoD beyond fiscal year 2006. As DoD develops claim data and becomes more cognizant of the cost of TSGLI, VA will make appropriate adjustments in the amount of funds requested for fiscal year 2006. VA requests comment on all of these projections.

### Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not affect any entity since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number and title for this regulation is 64.103, Life Insurance for Veterans.

### List of Subjects in Part 9

Life insurance, Military personnel, Veterans.

Approved: December 15, 2005.

**R. James Nicholson,**  
Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 9 is amended as follows:

## PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for part 9 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Section 9.1 is amended by:

■ (a) In paragraph (f), removing “upon death occurring”.

■ (b) Adding paragraphs (k) through (q).  
The addition reads as follows:

### § 9.1 Definitions.

\* \* \* \* \*

(k) The term *inability to carry out activities of daily living* means the inability to independently perform at least two of the six following functions:

- (1) Bathing.
- (2) Continence.
- (3) Dressing.
- (4) Eating.
- (5) Toileting.

(6) Transferring in or out of a bed or chair with or without equipment.

(l) The term *pyogenic infection* means a pus-producing infection.

(m) The term *contaminated substance* means food or water made unfit for consumption by humans because of the presence of chemicals, radioactive elements, bacteria, or organisms.

(n) The term *chemical weapon* means chemical substances intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(o) The term *biological weapon* means biological agents or microorganisms intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(p) The term *radiological weapon* means radioactive materials or radiation-producing devices intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(q) The term *attending medical professional* means a licensed physician, optometrist, nurse practitioner, registered nurse, or physician assistant.

(Authority: 38 U.S.C. 501(a), 1980A)

■ 3. Section 9.20 is added to read as follows:

### § 9.20 Traumatic injury protection.

(a) *What is traumatic injury protection?* Traumatic injury protection provides for the payment of a specified benefit amount to a member insured by Servicemembers' Group Life Insurance who sustains a traumatic injury directly resulting in a scheduled loss.

(b) *What is a traumatic event?* (1) A traumatic event is the application of

external force, violence, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living being occurring—

(i) On or after December 1, 2005, or  
(ii) On or after October 7, 2001, and through and including November 30, 2005, if the scheduled loss is a direct result of a traumatic injury incurred in Operation Enduring Freedom or Operation Iraqi Freedom.

(2)(i) The term *incurred in Operation Enduring Freedom* means a service member was deployed outside of the United States on orders in support of Operation Enduring Freedom or served in a geographic location that qualified the service member for the Combat Zone Tax Exclusion under 26 U.S.C. 211.

(ii) The term *incurred in Operation Iraqi Freedom* means a service member was deployed outside of the United States on orders in support of Operation Iraqi Freedom or served in a geographic location that qualified the service member for the Combat Zone Tax Exclusion under 26 U.S.C. 211.

(3) A traumatic event does not include a surgical procedure in and of itself.

(c) *What is a traumatic injury?* (1) A traumatic injury is physical damage to a living body that is caused by a traumatic event as defined in paragraph (b) of this section.

(2) For purposes of this section, the term “traumatic injury” does not include damage to a living body caused by—

(i) A mental disorder; or  
(ii) A mental or physical illness or disease, except if the physical illness or disease is caused by a pyogenic infection, biological, chemical, or radiological weapons, or accidental ingestion of a contaminated substance.

(3) For purposes of this section, all traumatic injuries will be considered to have occurred at the same time as the traumatic event.

(d) *What are the eligibility requirements for payment of traumatic injury protection benefits?* You must meet all of the following requirements in order to be eligible for traumatic injury protection benefits.

(1) You must be a member of the uniformed services who is insured by Servicemembers' Group Life Insurance under section 1967(a)(1)(A)(i), (B) or (C)(i) of title 38, United States Code, on the date you sustained a traumatic injury. (For this purpose, you will be considered a member of the uniformed services until midnight on the date of your separation from service.)

(2) You must suffer a scheduled loss that is a direct result of a traumatic injury and no other cause.

(3) You must survive for a period not less than seven full days from the date of the traumatic injury. The seven day period begins on the date and Zulu (Greenwich Meridean) time of the traumatic injury and ends 168 full hours later.

(4) You must suffer a scheduled loss under paragraph (e)(7) of this section within 365 days of the traumatic injury.

(e) *What is a scheduled loss and what amount will be paid because of that loss?* (1) The term “scheduled loss” means a condition listed in the schedule in paragraph (e)(7) of this section if directly caused by a traumatic injury. A scheduled loss is payable at the amount specified in the schedule.

(2) The maximum amount payable under the schedule for all losses resulting from traumatic events occurring within a seven-day period is \$100,000. We will calculate the seven-day period beginning with the day on which the first traumatic event occurs.

(3) A benefit will not be paid if a scheduled loss is due to a traumatic injury—

(i) Caused by—

(A) The member’s attempted suicide, while sane or insane;

(B) An intentionally self-inflicted injury or an attempt to inflict such injury;

(C) Medical or surgical treatment of an illness or disease;

(D) Willful use of an illegal or controlled substance, unless administered or consumed on the advice of a medical doctor; or

(ii) Sustained while a member was committing or attempting to commit a felony.

(4) A benefit will not be paid for a scheduled loss resulting from—

(i) A physical or mental illness or disease, whether or not caused by a traumatic injury, other than a pyogenic infection or physical illness or disease caused by biological, chemical, or radiological weapons or accidental ingestion of a contaminated substance; or

(ii) A mental disorder whether or not caused by a traumatic injury.

(5) Amount Payable under the Schedule of Losses. (i) The maximum amount payable for all scheduled losses resulting from a single traumatic event is limited to \$100,000. For example, if a traumatic event on April 1, 2006, results in the immediate total and permanent loss of sight in both eyes, and the loss of one foot on May 1, 2006, as a direct result of the same traumatic event, the member will be paid \$100,000.

(ii) If a member suffers more than one scheduled loss as a result of a single traumatic event, payment will be made for the scheduled loss with the highest benefit amount.

(iii) If a member suffers more than one scheduled loss from separate traumatic events occurring more than seven full days apart, the scheduled losses will be considered separately and a benefit will be paid for each loss up to the maximum amount according to the schedule. For example, if a member suffers the loss of one foot at or above the ankle on May 1, 2006, from one event, the member will be paid \$50,000. If the same member suffers loss of sight in both eyes from an event that occurred on November 1, 2006, the member will be paid an additional \$100,000.

(6) Definitions. For purposes of this paragraph (e)(6)—

(i) *Quadriplegia* means the complete and irreversible paralysis of all four limbs;

(ii) *Paraplegia* means the complete and irreversible paralysis of both lower limbs; and

(iii) *Hemiplegia* means the complete and irreversible paralysis of the upper and lower limbs on one side of the body.

(7) Schedule of Losses.

If the loss is—	Then the amount that will be paid is—
(i) Total and permanent loss of sight in both eyes .....	\$100,000.
(ii) Total and permanent loss of hearing in both ears .....	\$100,000.
(iii) Loss of both hands at or above wrist .....	\$100,000.
(iv) Loss of both feet at or above ankle .....	\$100,000.
(v) Quadriplegia .....	\$100,000.
(vi) Hemiplegia .....	\$100,000.
(vii) Paraplegia .....	\$100,000.
(viii) 3rd degree or worse burns, covering 30% of the body or 30% of the face.	\$100,000.
(ix) Loss of one hand at or above wrist and one foot at or above ankle	\$100,000.
(x) Loss of one hand at or above wrist and total and permanent loss of sight in one eye.	\$100,000.
(xi) Loss of one foot at or above ankle and total and permanent loss of sight in one eye.	\$100,000.
(xii) Total and permanent loss of speech and total and permanent loss of hearing in one ear.	\$75,000.
(xiii) Loss of one hand at or above wrist and total and permanent loss of speech.	\$100,000.
(xiv) Loss of one hand at or above wrist and total and permanent loss of hearing in one ear.	\$75,000.
(xv) Loss of one hand at or above wrist and loss of thumb and index finger of other hand.	\$100,000.
(xvi) Loss of one foot at or above ankle and total and permanent loss of speech.	\$100,000.
(xvii) Loss of one foot at or above ankle and total and permanent loss of hearing in one ear.	\$75,000.
(xviii) Loss of one foot at or above ankle and loss of thumb and index finger of same hand.	\$100,000.
(xix) Total and permanent loss of sight in one eye and total and permanent loss of speech.	\$100,000.
(xx) Total and permanent loss of sight in one eye and total and permanent loss of hearing in one ear.	\$75,000.
(xxi) Total and permanent loss of sight in one eye and loss of thumb and index finger of same hand.	\$100,000.
(xxii) Total and permanent loss of thumb of both hands, regardless of the loss of any other digits.	\$100,000.



If the loss is—	Then the amount that will be paid is—
(xxiii) Total and permanent loss of speech and loss of thumb and index finger of same hand.	\$100,000.
(xxiv) Total and permanent loss of hearing in one ear and loss of thumb and index finger of same hand.	\$75,000.
(xxv) Loss of one hand at or above wrist and coma .....	\$50,000 for of loss of hand plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxvi) Loss of one foot at or above ankle and coma .....	\$50,000 for loss of foot plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxvii) Total and permanent loss of speech and coma .....	\$50,000 for total and permanent loss of speech plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxviii) Total and permanent loss of sight in one eye and coma .....	\$50,000 for total and permanent loss of sight in one eye plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxix) Total and permanent loss of hearing in one ear and coma .....	\$25,000 for total and permanent loss of hearing in one ear plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxx) Loss of thumb and index finger of same hand and coma .....	\$50,000 for loss of thumb and index finger of the same hand plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxxi) Total and permanent loss of sight in one eye and inability to carry out activities of daily living due to traumatic brain injury.	\$50,000 for loss of sight in one eye plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxxii) Loss of one hand at or above wrist and inability to carry out activities of daily living due to traumatic brain injury.	\$50,000 for loss of hand plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxxiii) Loss of one foot at or above ankle and inability to carry out activities of daily living due to traumatic brain injury.	\$50,000 for loss of foot plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxxiv) Loss of thumb and index finger of same hand and inability to carry out activities of daily living due to traumatic brain injury.	\$50,000 for loss of thumb and index finger plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxxv) Total and permanent loss of hearing in one ear and inability to carry out activities of daily living due to traumatic brain injury.	\$25,000 for total and permanent loss of hearing in one ear plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxxvi) Total and permanent loss of speech and inability to carry out activities of daily living due to traumatic brain injury.	\$50,000 for total and permanent loss of speech plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of \$100,000.
(xxxvii) Coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury.	At 15th consecutive day in a coma, and/or the inability to carry out activities of daily living—\$25,000.
<i>Note 1:</i> Benefits will not be paid under this schedule for concurrent conditions of coma and traumatic brain injury.	At 30th consecutive day in a coma, and/or the inability to carry out activities of daily living—Additional \$25,000.
<i>Note 2:</i> Duration of coma includes the day of onset of the coma and the day when the member recovers from coma.	At 60th consecutive day in a coma, and/or the inability to carry out activities of daily living—Additional \$25,000.
<i>Note 3:</i> Duration of the inability to carry out activities of daily living due to traumatic brain injury includes the day of the onset of the inability to carry out activities of daily living and the day the member once again can carry out activities of daily living.	At 90th consecutive day in a coma, and/or the inability to carry out activities of daily living—Additional \$25,000.
(xxxviii) Total and permanent loss of speech .....	At 90th consecutive day of the inability to carry out activities of daily living—Additional \$25,000. (Benefits can be paid for both conditions only if experienced consecutively, not concurrently.)
(xxxix) Loss of one hand at or above wrist .....	\$50,000.
(xl) Loss of one foot at or above ankle .....	\$50,000.
(xli) Total and permanent loss of sight in one eye .....	\$50,000.
(xlii) Loss of thumb and index finger of same hand .....	\$50,000.
(xlili) Total and permanent loss of hearing in one ear .....	\$25,000.
(xliv) The inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain.	At 30th consecutive day of the inability to carry out activities of daily living—\$25,000.
<i>Note:</i> Duration of the inability to carry out activities of daily living includes the day of onset of the inability to carry out activities of daily living and the day when the member can once again carry out activities of daily living.	At 60th consecutive day of the inability to carry out activities of daily living—Additional \$25,000.
	At 90th consecutive day of the inability to carry out activities of daily living—Additional \$25,000.
	At 120th consecutive day of the inability to carry out activities of daily living—Additional \$25,000.

(f) *Who will determine eligibility for traumatic injury protection benefits?*  
Each uniformed service will certify the eligibility of its own members for

traumatic injury protection benefits based upon section 1032 of Public Law 109–13 and this section.

(g) *How does a member make a claim for traumatic injury protection benefits?*  
(1)(i) A member who believes he or she qualifies for traumatic injury protection

benefits must complete Part A of the Certification of Traumatic Injury Protection Form and sign the form.

(ii) If a member is unable to do so, anyone acting on the member's behalf may request a Certification of Traumatic Injury Protection Form from the uniformed service. However, the Certification of Traumatic Injury Protection Form must be signed by the member, the member's guardian, or the member's attorney-in-fact.

(iii) If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualifies is paid the beneficiary or beneficiaries of the member's Servicemembers' Group Life Insurance policy should complete a Certification of Traumatic Injury Protection Form.

(2) If a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Certification of Traumatic Injury Protection Form for a different scheduled loss, the member must submit a completed Certification of Traumatic Injury Protection Form for the new scheduled loss and for each scheduled loss that occurs thereafter. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§ 9.20(e)(7)(xxxvii)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§ 9.20(e)(7)(xliv)), a completed Certification of Traumatic Injury Protection Form must be submitted for each increment of time for which TSGLI is payable. Also, for example, if a service member suffers a scheduled loss due to a coma, a completed Certification of Traumatic Injury Protection Form should be filed after the 15th consecutive day that the member is in the coma, for which \$25,000 is payable. If the member remains in a coma for another 15 days, another completed Certification of Traumatic Injury Protection Form should be submitted and another \$25,000 will be paid.

(h) *How does a member or beneficiary appeal an adverse eligibility determination?* (1) Notice of a decision regarding a member's eligibility for traumatic injury protection benefits will include an explanation of the procedure for obtaining review of the decision. An appeal of an eligibility determination, such as whether the loss occurred within 365 days of the traumatic injury,

whether the injury was self-inflicted or whether a loss of hearing was total and permanent, must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative, within one year of the date of a denial of eligibility, to the office of the uniformed service identified in the decision regarding the member's eligibility for the benefit.

(2) An appeal regarding whether a member was insured under Servicemembers' Group Life Insurance when the traumatic injury was sustained must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative within one year of the date of a denial of eligibility to the Office of Servicemembers' Group Life Insurance.

(3) Nothing in this section precludes a member from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13.

(i) *Who will be paid the traumatic injury protection benefit?* The injured member who suffered a scheduled loss will be paid the traumatic injury protection benefit in accordance with title 38 U.S.C. 1980A except under the following circumstances:

(1) If a member is legally incapacitated, the member's guardian or attorney-in-fact will be paid the benefit on behalf of the member.

(2) If a member dies before payment is made, the beneficiary or beneficiaries who will be paid the benefit will be determined in accordance with 38 U.S.C. 1970(a).

(Authority: 38 U.S.C. 501(a) and 1980A)

[FR Doc. 05-24390 Filed 12-20-05; 10:53 am]

BILLING CODE 8320-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 83

RIN 0920-AA13

#### Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Amendments; Interim Final Rule With Request for Comments

**AGENCY:** Department of Health and Human Services.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Department of Health and Human Services ("HHS") is amending

its procedures to consider designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 ("EEOICPA"), 42 U.S.C. 7384-7385. HHS must change these procedures to implement amendments to EEOICPA enacted on October 28, 2004, as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375 (codified as amended in scattered sections of 42 U.S.C.).

**DATES:** *Effective Date:* This interim final rule is effective December 22, 2005.

*Comments:* The Department invites written comments on the interim final rule from interested parties. Comments on the rule must be received by February 21, 2006.

**ADDRESSES:** Address written comments on the interim final rule to the National Institute for Occupational Safety and Health ("NIOSH") Docket Officer electronically by e-mail to [NIOCINDOCKET@cdc.gov](mailto:NIOCINDOCKET@cdc.gov). See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-C-46, Cincinnati, OH 45226, Telephone 513-533-6800 (this is not a toll free number). Information requests can also be submitted by e-mail to [OCAS@cdc.gov](mailto:OCAS@cdc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Comments Invited

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to the changes in the Special Exposure Cohort ("the Cohort") rule (42 CFR part 83) effectuated by this rulemaking. Comments concerning any other provisions of the Cohort rule, unchanged and unaffected by this rulemaking, will not be considered.

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: [NIOCINDOCKET@cdc.gov](mailto:NIOCINDOCKET@cdc.gov). Comments submitted by e-mail may be provided as e-mail text or as a Word or