number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'', paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 16, 2006, is amended as follows:

Paragraph 2006 Area Navigation Routes.

* * * * *

Q–35 IMB to DRK [New]

IMB	VORTAC	(lat. 44°38′54″ N., long. 119°42′42″ W.)
NEERO	WP	(lat. 41°49′03″ N., long. 118°01′29″ W.)
WINEN	WP	(lat. 37°56′00″ N., long. 113°30′00″ W.)
CORKR	Fix	(lat. 36°05′02″ N., long. 112°24′01″ W.)
DRK	VORTAC	(lat. 34°42′09″ N., long. 112°28′49″ W.)

* * * * *

Issued in Washington, DC, on April 30, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7–8603 Filed 5–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

[DoD–2006–OS–0136]

RIN 0790–AI15

Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense proposes to amend the current rule addressing military recruiting and Reserve Officer Training Corps program access at institutions of higher education. This proposed rule would implement 10 U.S.C. 983, as amended by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375 (October 28, 2004)). As amended, 10 U.S.C. 983 clarifies access to campuses, access to students and access to directory information on students for the purposes of military recruiting, and now states that access to campuses and students on campuses shall be provided in a manner that is at least equal in quality and scope to that provided to any other employer. The prohibition against providing Federal funds when there is a violation of 10 U.S.C. 983 has an exception for any Federal funds provided to an institution of higher education, or to an individual, that are available solely for student financial assistance, related administrative costs, or costs associated with attendance. Such funds may be used for the purpose for which the funding is provided. A similar provision in section 8120 of the Department of Defense Appropriations Act of 2000 (Pub. L. 106–79; 113 Stat. 1260) has been repealed. This rule also rescinds the previous policy that established an exception that would limit recruiting on the premises of the covered school only in response to an expression of student interest when the covered school certified that too few students had expressed interest to warrant accommodating military recruiters.

DATES: Comments must be received by July 6, 2007.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Brenda Leong, Office of the Under Secretary of Defense (Personnel and Readiness), 4000 Defense Pentagon, Washington, DC 20301–4000 (telephone: (703) 695–5529).

SUPPLEMENTARY INFORMATION: ''Covered funds'' is defined in 10 U.S.C. 983 to be any funds made available for the Departments of Defense, Transportation, Homeland Security, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or for any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. None of these covered funds may be provided by contract or grant to a covered school (including any subelement of a covered school) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of Defense from establishing or operating a Senior Reserve Officer Training Corps (ROTC) at that covered school (or any subelement of that covered school); or that either prohibits, or in effect prevents, a student at that covered school (or any subelement of that covered school) from enrolling in a ROTC unit at another institution of higher education. The Federal law further provides similar sanctions

against these covered funds being provided to a covered school (or any subelement of a covered school) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting, where such policy or practice denies the military recruiter access that is at least equal in quality and scope to the access to campuses and students provided to any other employer; or access to student directory information pertaining to the students' names, addresses, telephone listings, dates and places of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student. The term ''equal in quality and scope'' means the same access to campus and students provided by the school to the nonmilitary recruiter receiving the most favorable access.[1]

As an exception to the above rule, any Federal funding provided to a covered school or to an individual that is available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

The Department of Defense drafted this proposed rule in consultation with other Federal agencies, including the Departments of Education, Labor, Transportation, Health and Human Services, Homeland Security, Energy, and the Central Intelligence Agency. Agencies affected by this rule will continue to coordinate with other organizations as they implement their provisions.

This proposed rule defines the criteria for determining whether an institution of higher education has a policy or practice prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit; or has a policy of denying military recruiting personnel access that is at least equal in quality and scope to the access to campuses and students provided to any other employer, or access to directory information on students. Pursuant to 10 U.S.C. 983 and this proposed rule, institutions of higher education having such policies or practices are ineligible for certain Federal funding.

The criterion of ''efficiently operating a Senior ROTC unit'' refers generally to an expectation that the ROTC Department would be treated on a par with other academic departments; as such, it would not be singled out for unreasonable actions that would impede access to students (and vice versa) or restrict its operations.

This proposed rule also defines the procedures that would be followed in evaluating reports that a covered school has not met requirements defined in this rule. When a component of the Department of Defense (DoD component) believes that policies or practices of an institution of higher education might require such an evaluation, that component is required to confirm the institution's policy in consultation with the institution. If that exchange suggests that the policy or practice could trigger a denial of funding, as required by the Act, the supporting facts would be forwarded through Department of Defense channels to the decision authority, the Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)).

In evaluating whether an institution that provides information in response to a request from a military recruiter for military recruiting purposes would violate the Family Educational Rights and Privacy Act of 1972, as amended, (FERPA; 20 U.S.C. 1232g), the Department of Education has informed the Department of Defense that it will not consider the act of providing responsive student information as required under the Act and this rule as an act that violates FERPA. Institutions must take care, however, to release only that information specifically required under 10 U.S.C. 983 and this proposed rule.

Regarding the opportunity for a student to ''opt-out'' of or object to the release of ''directory information'' under FERPA, the Department of Defense provides the following clarification. If an institution receives a request for student-recruiting information, and that request seeks information that the institution has included in its definition of ''directory information'' that is releasable under FERPA, and a student has previously requested, in writing, that the ''directory information'' not be disclosed to any third party, the Department of Defense agrees that information for that student will not be provided to the requesting military recruiter or Department of Defense. If an institution declines to provide student-recruiting information because a student has ''opted-out'' from the institution's policy of disclosing ''directory information'' under FERPA, the Department of Defense will not consider that institution to have denied access under 10 U.S.C. 983. The Department of Defense will honor only those student ''opt-outs'' from the disclosure of directory information that are even-handedly applied to all prospective employers seeking information for recruiting purposes. In those circumstances where an institution's ''directory information'' definition does not include all of the student-recruiting information required under 10 U.S.C. 983, the Department of Defense will also honor the student's ''opt-out'' decision that was made regarding the release of the institution's ''directory information.''

If an institution does not release all of the requested student-recruiting information as part of its ''directory information'' policy under FERPA (or has a policy of disclosing no ''directory information''), the institution must nevertheless honor the request from a military recruiter for student-recruiting information concerning students who have not ''opted-out'', even if that information would not be available to the public under FERPA. Because this information is requested exclusively for military recruiting, a special opportunity for a student to decline the release of student-recruiting information is not necessary or appropriate.

Summary of Rule

In carrying out their customary activities, DoD components must identify any covered school that, by policy or practice, denies military recruiting personnel access to its campus or access to its students on campus in a manner that is at least equal in quality and scope to access provided to any other employer, in effect denies students permission to participate, or prevents students from participating in recruiting activities, or denies military recruiters access to student-recruiting information. The term ''equal in quality and scope'' means the same access to campus and students provided to the nonmilitary recruiter receiving the most favorable

[1] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.'* (Emphasis add [by Court].) * * *

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text of the statute support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

access.[2] When requests to schedule recruiting visits or to obtain student-recruiting information are unsuccessful, the DoD component concerned must seek written confirmation of the school's present policy from the head of the covered school through a letter of inquiry, allowing 30 days for response. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the DoD component's submission to the PDUSD(P&R). When that 30-day period has elapsed, the DoD component will forward the case for disposition.

Similarly, in carrying out their customary activities, DoD components also must identify any covered school that, by policy or practice, denies establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or denies students permission to participate, or effectively prevents students from participating in a unit of the Senior ROTC at another institution of higher education. The DoD component concerned must seek written confirmation of the school's policy from the head of the covered school through a letter of inquiry, allowing 30 days for response. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the DoD component's submission to the PDUSD(P&R). When that 30-day period has elapsed, the DoD component will forward the case for disposition.

The recommendation of the DoD component then must be reviewed by the Secretary of the Military Department concerned, or designee, who shall evaluate responses to the letter of inquiry and other such information obtained in accordance with this part, and submit to the PDUSD(P&R) the names and addresses of covered schools that are believed to be in violation of 10 U.S.C. 983. Full documentation must be furnished to the PDUSD(P&R) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies. Under agreement with the Department of Homeland Security, reports of covered schools believed to be in violation of 10 U.S.C. 983 with regard to the Coast Guard when not operating as a Service in the Navy shall be furnished to the PDUSD(P&R) for disposition.

Following any determination by the PDUSD(P&R) that the policies or practices of an institution of higher education require ineligibility for certain Federal funding, as required by the Act, the PDUSD(P&R) shall:

- Disseminate to Federal entities affected by the decision, including the DoD components and the General Services Administration (GSA), and to the Secretary of Education and the head of each other department and agency the funds of which are subject to the determination, the names of the affected institutions. The PDUSD(P&R) also shall notify the Committees on Armed Services of the Senate and the House of Representatives;
- Publish in the **Federal Register** each such determination, and publish in the **Federal Register** at least once every 6 months a list of all institutions currently determined to be ineligible for contracts and grants by reason of such determinations; and
- Inform the affected institution that its funding eligibility may be restored if the school provides sufficient new information to establish that the basis for the determination no longer exists.

This proposed rule contains procedures under which funding may be restored. Not later than 45 days after receipt of a school's request to restore funding eligibility, the PDUSD(P&R) must determine whether the funding status of the covered school should be changed and notify the applicable school of that determination. Pursuant to that determination, entities of the Federal government affected by the decision, including the DoD components and the GSA, shall be notified of any change in funding status.

Other Matters

In the event of any determination of ineligibility by the PDUSD(P&R), Federal departments and agencies concerned shall determine what funds provided by grant or contract to the covered school are affected and take appropriate action. As a result of this division of responsibility and the large number of Federal departments and agencies affected, this rule does not detail what specific funds are affected by any determination of ineligibility.

This proposed rule does not affect or cover any Federal funding that is provided to an institution of higher education or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance. This includes, but is not limited to, funds under the Federal Supplemental Educational Opportunity Grant Program (Title IV, Part A, Subpart 3 of the Higher Education Act of 1965, as amended), the Federal Work-Study Program (Title IV, Part C), and the Federal Perkins Loan Program (Title IV, Part E), the Federal Pell Grant Program (Title IV, Part A, Subpart 1), the Federal Family Education Loan Program (Title IV, Part B), and the William D. Ford Federal Direct Loan Program (Title IV, Part D). The Secretary of Education will provide additional information about the applicability of the rule to other Department of Education programs in communications to the affected communities.

Executive Order 12866, ''Regulatory Planning and Review''

This proposed rule is a significant regulatory action that OMB has approved for publication.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities since recent history indicates that their provisions are not applicable to the vast majority of institutions of higher education.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule 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.

[2] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.*' (Emphasis added [by Court].) * * *

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text of the statute support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures for on-campus military recruiting and student access to Reserve Officer Training Corps (ROTC) programs in implementation of 10 U.S.C. 983.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This proposed rule will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

Executive Order 13132

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 216

Armed forces; Colleges and universities.

Accordingly, 32 CFR part 216 is proposed to be revised to reflect the most recent statutory changes and to read as follows:

PART 216—MILITARY RECRUITING AND RESERVE OFFICER TRAINING CORPS PROGRAM ACCESS TO INSTITUTIONS OF HIGHER EDUCATION

Sec.
216.1 Purpose.
216.2 Applicability.
216.3 Definitions.
216.4 Policy.
216.5 Responsibilities.
216.6 Information requirements.
Appendix A of Part 216—Military Recruiting Sample Letter of Inquiry
Appendix B of Part 216—ROTC Sample Letter of Inquiry

Authority: 10 U.S.C. 983.

§ 216.1 Purpose.

This part:

(a) Implements 10 U.S.C. 983.

(b) Updates policy and responsibilities relating to the management of covered schools that have a policy of denying or effectively preventing military recruiting personnel access to their campuses or access to students on their campuses in a manner that is at least equal in quality and scope to the access to campuses and to students provided to any other employer, or access to student-recruiting information. The term ''equal in quality and scope'' means the same access to campus and students provided to the nonmilitary recruiter receiving the most favorable access.[1]

(c) Updates policy and responsibilities relating to the management of covered schools that have an anti-ROTC policy.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD components''). This part also applies, by agreement with the Department of Homeland Security (DHS), to the Coast Guard at all times, including when it is a service in the Department of Homeland Security. The policies herein also affect the Departments of Transportation, Homeland Security, Energy (National Nuclear Security Administration), the Central Intelligence Agency, and any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard, including their Reserve or National Guard components. The term ''Related Agencies'' as used herein refers to the Armed Forces Retirement Home, the Corporation for National and Community Service, the Corporation for Public Broadcasting, the Federal Mediation and Conciliation Service, the Federal Mine Safety and Health Review Commission, the National Commission on Libraries and Information Science, the National Council on Disability, the National Education Goals Panel, the National Labor Relations Board, the National Mediation Board, the Occupational Safety and Health Review Commission, the Social Security Administration, the Railroad Retirement Board and the United States Institute of Peace.

§ 216.3 Definitions.

(a) *Anti-ROTC policy.* A policy or practice whereby a covered school prohibits or in effect prevents the Secretary of Defense from maintaining, establishing, or efficiently operating a unit of the Senior ROTC at the covered school, or prohibits or in effect prevents a student at the covered school from enrolling in a Senior ROTC unit at another institution of higher education.

(b) *Covered funds.* ''Covered funds'' is defined in 10 U.S.C. 983 as any funds made available for the Departments of Defense, Transportation, Homeland Security, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, and Education, as well as in Related Agencies Appropriations Act (excluding any Federal funds provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance).

(c) *Covered school.* An institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications:

(1) A determination (§ 216.5(a)) affecting only a subelement of a parent institution (see § 216.3(f)) effects a limitation on the use of funds (§ 216.4(a)) applicable to the parent institution as a whole, including the institution's offending subelement and all of its subelements, if any.

(2) When an individual institution of higher education that is part of a single university system (e.g., University of (State) at (City)—a part of that state's university system) has a policy or practice that prohibits, or in effect prevents, access to campuses or access to students on campuses in a manner

[1] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297, 1305 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.*' (Emphasis added [by Court].) The statute does not call for an inquiry into why or how the 'other employer' secured its access * * * We do not think that the military recruiter has received equal 'access' [when a law firm is permitted on campus to interview students and the military is not]—regardless of whether the disparate treatment is attributable to the military's failure to comply with the school's nondiscrimination policy.

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

that is at least equal in quality and scope to the access to its campus and students as it provides to any other employer, or access to student-recruiting information by military recruiters, or has an anti-ROTC policy, as defined in this rule, it is only that individual institution within that university system that is affected by the loss of Federal funds. This limited effect applies even though another campus of the same university system may or may not be affected by a separate determination under § 216.5(a). The funding of a subelement of the offending individual institution of a single university system, if any, will also be withheld as a result of the policies or practices of that offending individual institution.

(d) *Enrolled.* Students are ''enrolled'' when registered for at least one credit hour of academic credit at the covered school during the most recent, current, or next term. Students who are enrolled during the most recent term, but who are no longer attending the institution, are included.

(e) *Equal in quality and scope.* The same access to campus and students on campus provided to the nonmilitary recruiter receiving the most favorable access.[2]

(f) *Institution of higher education.* A domestic college, university, or other institution (or subelement thereof) providing postsecondary school courses of study, including foreign campuses of such domestic institutions. The term includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term does not include entities that operate exclusively outside the United States, its territories, and possessions. A subelement of an institution of higher education is a discrete (although not necessarily autonomous) organizational entity that may establish policies or practices affecting military recruiting and related actions (e.g., an undergraduate school, a law school, a medical school, other graduate schools, or a national laboratory connected or affiliated with that parent institution). For example, the School of Law of XYZ University is a subelement of its parent institution (XYZ University).

(g) *Military recruiters.* Personnel of DoD whose current assignment or detail is to a recruiting activity of the DoD.

(h) *Pacifism.* Opposition to war or violence, demonstrated by refusal to participate in military service.

(i) *Student.* An individual who is 17 years of age or older and is enrolled at a covered school.

(j) *Student-recruiting information.* For those students currently enrolled, the student's name, address, telephone listing, age (or year of birth), place of birth, level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), most recent educational institution attended, and current major(s).

§ 216.4 Policy.

It is DoD policy that:

(a) Under 10 U.S.C. 983, no covered funds may be provided by contract or grant (to include payment on such contracts or grants previously obligated) to a covered school if the Secretary of Defense determines that the covered school:

(1) Has a policy or practice (regardless of when implemented) that either prohibits or in effect prevents the Secretary of Defense or Secretary of Homeland Security from obtaining, for military recruiting purposes, access to campuses or access to students on campuses that is at least equal in quality and scope, as defined in § 216.3(d), to the access to campuses and to students provided to any other employer, or access to directory information on students;

(2) Has failed to disseminate military visit information or alerts at least on par with nonmilitary recruiters since schools offering such services to nonmilitary recruiters must also send e-mails, post notices, etc., on behalf of military recruiters to comply with the Solomon Amendment;[3]

(3) Has failed to schedule visits at times requested by military recruiters that coincide with nonmilitary recruiters' visits to campus if this results in a greater level of access for other recruiters than for the military (e.g., offering non-military recruiters a choice of a variety of dates for on-campus interviews while only offering the military recruiters the final day of interviews), as schools must ensure that their recruiting policies operate such that military recruiters are given access to students at least equal to that provided to any other employer;[4]

(4) Has failed to provide military recruiters with a mainstream recruiting location amidst nonmilitary employers to allow unfettered access to interviewees since military recruiters must be given the same access as recruiters who comply with a school's nondiscrimination policy;[5]

(5) Has failed to enforce time, place, and manner policies established by the covered school such that the military recruiters experience an inferior or unsafe recruiting climate, as schools must allow military recruiters on campus and must assist them in whatever way the school assists other employers;[6]

(6) Has through policy or practice in effect denied students permission to participate, or has prevented students from participating, in recruiting activities; or

(7) Has an anti-ROTC policy or practice, as defined in this rule, regardless of when implemented.

(b) The limitations established in paragraph (a) of this section shall not apply to a covered school if the Secretary of Defense determines that the covered school:

(1) Has ceased the policies or practices defined in paragraph (a) of this section;

(2) Has a long-standing policy of pacifism (see § 216.3(j)) based on historical religious affiliation;

(3) When not providing requested access to campuses or to students on campus, certifies that all employers are similarly excluded from recruiting on the premises of the covered school, or presents evidence that the degree of access by military recruiters is the same access to campuses or to students on campuses provided to the nonmilitary recruiter receiving the most favorable access;[7]

(4) When not providing any student-recruiting information, certifies that such information is not maintained by the covered school; or that such information already has been provided

[2] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297, 1305 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.*' (Emphasis added [by Court].) The statute does not call for an inquiry into why or how the 'other employer' secured its access * * * We do not think that the military recruiter has received equal 'access' [when a law firm is permitted on campus to interview students and the military is not]—regardless of whether the disparate treatment is attributable to the military's failure to comply with the school's nondiscrimination policy.

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

[3] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. at 1308.

[4] *Id.* at 1305.

[5] *Id.* at 1306.

[6] *Id.* at 1312.

[7] *Id.* at 1304.

to the Military Service concerned for that current semester, trimester, quarter, or other academic term, or within the past four months (for institutions without academic terms);

(5) When not providing student-recruiting information for a specific student certifies that the student concerned has formally requested, in writing, that the covered school withhold this information from all third parties;

(c) A covered school may charge military recruiters a fee for the costs incurred in providing access to student-recruiting information when that institution can certify that such charges are the actual costs, provided that such charges are reasonable, customary and identical to fees charged to other employers.

(d) An evaluation to determine whether a covered school maintains a policy or practice covered by paragraphs (a)(1) through (6) of this section shall be undertaken when:

(1) Military recruiting personnel are prohibited, or in effect prevented, from the same access to campuses or access to students on campuses provided to the nonmilitary recruiter receiving the most favorable access, or are denied access to student-recruiting information; [8]

(2) Information or alerts on military visits are not distributed at least on par with nonmilitary recruiters since schools offering such services to nonmilitary recruiters must also send e-mails, post notices, etc., on behalf of the military recruiter to comply with the Solomon Amendment; [9]

(3) Military recruiters are prohibited from scheduling their visits at requested times that coincide with nonmilitary recruiters' visits to its campus if this results in a greater level of access for other recruiters than for the military as schools must ensure their recruiting policy operates in such a way that military recruiters are given access to students at least equal to that provided to any other employer; [10]

(4) Military recruiters do not receive a mainstream recruiting location amidst nonmilitary employers to allow unfettered access to interviewees since military recruiters must be given the same access as recruiters who comply with the school's nondiscrimination policy; [11]

(5) The school has failed to enforce time, place, and manner policies established by that school such that military recruiters experience an inferior or unsafe recruiting climate, as schools must allow military recruiters on campus and must assist them in whatever way the school chooses to assist other employers; [12]

(6) Evidence is discovered of an institution-sponsored policy or practice that in effect denied students permission to participate, or prevented students from participating in recruiting activities.

(7) The costs being charged by the school for providing student-recruiting information are believed by the military recruiter to be excessive, and the school does not provide information sufficient to support a conclusion that such are the actual costs, provided that they are reasonable and customary, and are identical to those costs charged to other employers; or

(8) The covered school is unwilling to declare in writing, in response to an inquiry from a representative of a DoD component or a representative from the Department of Homeland Security, that the covered school does not have a policy or practice of prohibiting, or in effect preventing, the Secretary of a Military Department or Secretary of Homeland Security from the same access to campuses or access to students on campuses provided to the nonmilitary recruiter receiving the most favorable access, or access to student-recruiting information by military recruiters for purposes of military recruiting.

(e) An evaluation to determine whether a covered school has an anti-ROTC policy covered by paragraph (a)(7) of this section shall be undertaken when:

(1) A Secretary of a Military Department or designee cannot obtain permission to establish, maintain, or efficiently operate a unit of the Senior ROTC; or

(2) Absent a Senior ROTC unit at the covered school, students cannot obtain permission from a covered school to participate, or are effectively prevented from participating, in a unit of the Senior ROTC at another institution of higher education.

§ 216.5 Responsibilities.

(a) The Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 45 days after receipt of the information described in paragraphs (b)(3) and (c)(1) of this section:

(i) Inform the Office of Naval Research (ONR) and the Director, Defense Finance and Accounting Service that a final determination will be made so that those offices can make appropriate preparations to carry out their responsibilities should a covered school be determined ineligible to receive Federal funds.

(ii) Make a final determination under 10 U.S.C. 983, as implemented by this part, and notify any affected school of that determination and its basis, and that the school is therefore ineligible to receive covered funds as a result of that determination.

(iii) Disseminate to Federal entities affected by the decision, including the DoD components and the General Services Administration (GSA), and to the Secretary of Education and the head of each other department and agency the funds of which are subject to the determination, the names of the affected institutions identified under paragraph (a)(1)(ii) of this section.

(iv) Notify the Committees on Armed Services of the Senate and the House of Representatives of the affected institutions identified under paragraph (a)(1)(ii) of this section.

(v) Inform the affected school identified under paragraph (a)(1)(ii) of this section that its funding eligibility may be restored if the school provides sufficient new information that the basis for the determination under paragraph (a)(1)(ii) of this section no longer exists.

(2) Not later than 45 days after receipt of a covered school's request to restore its eligibility:

(i) Determine whether the funding status of the covered school should be changed, and notify the applicable school of that determination.

(ii) Notify the parties reflected in paragraphs (a)(1)(i), (a)(1)(iii), and (a)(1)(iv) of this section when a determination of funding ineligibility (paragraph (a)(1)(ii) of this section) has been rescinded.

(3) Publish in the **Federal Register** each determination of the PDUSD(P&R) that a covered school is ineligible for contracts and grants made under 10 U.S.C. 983, as implemented by this part.

(4) Publish in the **Federal Register** least once every 6 months a list of covered schools that are ineligible for contracts and grants by reason of a determination of the Secretary of Defense under 10 U.S.C. 983, as implemented by this part.

(5) Enter information into the Excluded Parties List System [13] about

[8] *Id.* at 1304.

[9] *Id.* at 1308.

[10] *Id.* at 1305.

[11] *Id.* at 1306.

[12] *Id.* at 1312.

[13] The Excluded Parties List System (EPLS) is the system that the General Services Administration maintains for Executive Branch agencies, with

each covered school that the PDUSD(P&R) determines to be ineligible for contracts and grants under 10 U.S.C. 983 and/or this part, generally within 5 days of making thedetermination.

(6) Provide ONR with an updated list of the names of institutions identified under paragraph (a)(1)(ii) of this section whenever the list changes due to an institution being added to or dropped from the list, so that ONR can carry out its responsibilities for post-award administration of DoD Components' contracts and grants with institutions of higher education.

(7) Provide the Office of the Deputy Chief Financial Officer, DoD, and the Director, Defense Finance and Accounting Service with an updated list of the names of institutions identified under paragraph (a)(1)(ii) of this section whenever the list changes due to an institution being added or dropped from the list, so that those offices can carry out their responsibilities related to cessation of payments of prior contract and grant obligations to institutions of higher education that are on the list.

(8) Publish in the **Federal Register** the list of names of affected institutions that have changed their policies or practices such that they are determined no longer to be in violation of 10 U.S.C. 983 and this part.

(b) The Secretaries of the Military Departments and the Secretary of Homeland Security shall:

(1) Identify covered schools that, by policy or practice, prohibit, or in effect prevent, the same access to campuses or access to students on campuses provided to the nonmilitary recruiter receiving the most favorable access, or access to student-recruiting information by military recruiters for military recruiting purposes.

(i) When requests by military recruiters to schedule recruiting visits are unsuccessful, the Military Service concerned, and the Office of the Secretary of Homeland Security when the Coast Guard is operating as a service in the Department of Homeland Security, shall seek written confirmation of the school's present policy from the head of the school through a letter of inquiry. A letter similar to that shown in Appendix A of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the submission to the PDUSD(P&R).

(ii) When a request for student-recruiting information is not fulfilled within a reasonable period, normally 30 days, a letter similar to that shown in Appendix A shall be used to communicate the problem to the school, and the inquiry shall be managed as described in 216.5.(b)(1)(ii). Schools may stipulate that requests for student-recruiting information be in writing.

(2) Identify covered schools that, by policy or practice, deny establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or deny students permission to participate, or effectively prevent students from participating in a unit of the Senior ROTC at another institution of higher education. The Military Service concerned, and the Office of the Secretary of Homeland Security when the Coast Guard is operating as a service in the Department of Homeland Security, shall seek written confirmation of the school's policy from the head of the school through a letter of inquiry. A letter similar to that shown in Appendix B of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the submission to the PDUSD(P&R).

(3) Evaluate responses to the letter of inquiry, and other such evidence obtained in accordance with this part, and submit to the PDUSD(P&R) the names and addresses of covered schools that are believed to be in violation of policies established in § 216.4. Full documentation shall be furnished to the PDUSD(P&R) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies.

(c) The Heads of the DoD components and Secretary of Homeland Security shall:

(1) Provide the PDUSD(P&R) with the names and addresses of covered schools identified as a result of evaluation(s) required under § 216.4(d) and (e).

(2) Take immediate action to deny obligations of covered funds to covered schools identified under paragraph (a)(1)(ii) of this section, and to restore eligibility of covered schools identified under paragraph (a)(2) of this section.

§ 216.6 Information requirements.

The information requirements identified at § 216.5(b) and (c)(1) have been assigned Report Control Symbol DD–P&R–(AR)–2038 in accordance with DoD 8910.1–M.[14]

Appendix A of Part 216—Military Recruiting Sample Letter of Inquiry

(Tailor letter to situation presented)

Dr. John Doe
President
ABC University
Anywhere, USA 12345–9876

Dear Dr. Doe:

I understand that military recruiting personnel [have been unable to recruit or have been refused student-recruiting information[15] at (subelement of) ABC University)] by a policy or practice of the school. Specifically, military recruiting personnel have reported [here state policy decisions or practices encountered]. [If preliminary information coming to the attention of a Military Service indicates that other Military Services' recruiting representatives have been similarly informed of the policy or experienced a similar practice affecting their ability for military recruiting purposes to have the access or information require, so state.]

Current Federal law[16] denies the use of certain Federal funds through grants or contracts, to include payment on such contracts or grants previously obligated, (excluding any Federal funding to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance) from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies to institutions of higher education (including any subelements of such institutions) that have a policy or practice of denying military recruiting personnel access to campuses or access to students on campuses, in a manner that is at least equal in quality and scope,[17] as it provides to the

names and other pertinent information of persons who are debarred, suspended, or otherwise ineligible for Federal procurement and/or covered non-procurement transactions.

[14] Copies may be obtained at *http://www.dtic.mil/whs/directives/*.

[15] Student-recruiting information refers to a student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major(s).

[16] 10 U.S.C. 983.

[17] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 126 S. Ct. 1297 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer*.' (Emphasis add [by Court].) * * *

Continued

nonmilitary recruiter receiving the most favorable access, or access to student recruiting information. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding military recruiting on the campus of [University]. In that regard, I request, within the next 30 days, a written policy statement of the institution with respect to access to campus and students by military recruiting personnel. Your response should highlight any difference between access for military recruiters and access for recruiting by other potential employers.

Based on this information and any additional facts you can provide, Department of Defense officials will make a determination as to your institution's eligibility to receive funds by grant or contract. That decision may affect eligibility for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies. Should it be determined that [University] as an institution of higher education (or any subelement of the institution) is in violation of the aforementioned statutes and regulations, such funding would be stopped, and the institution of higher education (including any subelements of the institution) would remain ineligible to receive such funds until and unless the Department of Defense determines that the institution has ceased the offending policies and practices.

I regret that this action may have to be taken. Successful recruiting requires that Department of Defense recruiters have equal access to students on the campuses of colleges and universities [and student-recruiting information], and at the same time, have effective relationships with the officials and student bodies of those institutions. I hope it will be possible to identify and correct any policies or practices that inhibit military recruiting at your school. [My representative, (name), is] [I am] available to answer any of your questions by telephone at [telephone number]. I look forward to your reply.

Sincerely,

Appendix B of Part 216—ROTC Sample Letter of Inquiry

(Tailor letter to situation presented)

Dr. Jane Smith
President
ABC University
Anywhere, USA 12345–9876

Dear Dr. Smith:

I understand that ABC University has [refused a request from a Military Department to establish a Senior ROTC unit at your institution][refused to continue existing ROTC programs at your institution][prevented students from participation at a Senior ROTC program at another institution] by a policy or practice of the University.

Current Federal law [18] denies the use of certain Federal funds through grants or contracts, to include payment on such contracts or grants previously obligated, (excluding any Federal funding to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance) from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies to institutions of higher education (including any subelements of such institutions) that have a policy or practice of prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding ROTC access on the campus of ABC University. In that regard, I request, within the next 30 days, a written statement of the institution with respect to [define the problem area(s)].

Based on this information, Department of Defense officials will make a determination as to your institution's eligibility to receive the above-referenced funds by grant or contract. That decision may affect eligibility for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies. Should it be determined that [University] as an institution of higher education (or any subelement of the institution) is in violation of the aforementioned statutes and regulations, such funding would be stopped, and the institution of higher education (including any subelements of the institution) would remain ineligible to receive such funds until and unless the Department of Defense determines that the institution has ceased the offending policies and practices.

I regret that this action may have to be taken. Successful officer procurement requires that the Department of Defense maintain a strong ROTC program. I hope it will be possible to [define the correction to the aforementioned problem area(s)]. [My representative, (name), is] [I am] available to answer any of your questions by telephone at [telephone number]. I look forward to your reply.

Sincerely,

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text of the statute support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

[18] 10 U.S.C. 983.

Dated: May 1, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–8662 Filed 5–4–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–007]

RIN 1625–AA00

Safety Zone, Chicago Harbor, Navy Pier East, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Safety Zone in Chicago Harbor. This zone is intended to restrict vessels from portions of Chicago Harbor during fireworks displays that pose a hazard to public safety. This zone is necessary to protect the public from the hazards associated with fireworks displays.

DATES: Comments and related materials must reach the Coast Guard on or before June 6, 2007.

ADDRESSES: You may mail comments and related material to Commander Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The Sector Lake Michigan Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09–07–007], indicate the specific section of this document to which each comment applies, and give the reason for each