

Policy, Office of the Assistant Secretary of Defense for Force Management Policy, OASD (FMP), 4000 Defense Pentagon, Washington, D.C. 20301-4000. This will allow OASD (FMP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(f) *Clause for award documents.* The following clause is to be included in grants and cooperative agreements with institutions of higher education:

As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy of denying, and that it is not an institution of higher education that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.

Dated: March 4, 1996.

Linda M. Bynum,

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

[FR Doc. 96-5556 Filed 3-7-96; 8:45 am]

BILLING CODE 5000-04-M

## 32 CFR Part 216

[DoD Directive 1322.13]

RIN 0790-AG13

### Military Recruiting at Institutions of Higher Education

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense adopts this final rule to implement the National Defense Authorization Act for Fiscal Year 1995. It updates policy, procedures, and responsibilities for identifying and taking action against any institution of higher education that has a policy of denying, or that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student directory information. No funds available to the Department of

Defense (DoD) may be provided by grant or contract to any such institution. The new law allows no basis for waivers.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ronald G. Liveris, Accession Policy, Room 2B271, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Telephone: (703) 697-9268.

#### SUPPLEMENTARY INFORMATION:

##### Responses to Comments

This final rule revises the interim-final rule adopted by DoD on May 30, 1995 (60 FR 28050). The Department of Defense received four comments on the interim-final rule. Each comment was reviewed and given careful consideration.

Two commenters favored the interim-rule. One of these commenters asked whether the interim-rule prohibits DoD contract and grant awards at institutions of higher education that have a policy against Reserve Officer Training Corps (ROTC) programs. 10 U.S.C. 503 note does not address policy and practices affecting ROTC programs. The final rule only applies to institutions that have a policy of denying, or that effectively prevent, entry to campuses, access to students on campuses, or access to student directory information for military recruiting purposes.

The other commenter in favor of the interim-rule specifically supported the provision that restricts the prohibition on the use of DoD funds to subelements of an institution of higher education that have a policy of denying, or that effectively prevent military recruiters access to campuses, access to students, or access to student directory information. A third commenter took the opposite view, arguing that the prohibition on the use of DoD funds should apply to an entire institution when the institution or any of its subelements are determined to have such a policy or practice. The final rule retains the provision that restricts the prohibition on DoD funds to subelements that deny access.

Subordinate elements of an institution of higher education that administer their own placement policies to permit recruiting will not be subject to a prohibition on receiving DoD funds. This reflects DoD's interpretation of the law and its legislative history and DoD's intent to avoid entanglement with the internal decisionmaking processes of institutions of higher education.

The fourth commenter stated that to protect individual privacy and "since the Department of Defense discriminates

against gays in the military," that the Department should not have any access to students on campus or to student directory information. DoD policies concerning gays in the military are the result of implementing 10 U.S.C. chapter 37, section 654 concerning homosexual conduct in the Armed Forces.

This final rule implements 10 U.S.C. 503 note, as added by section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337).

Executive Order 12866

This final rule is not a "significant regulatory action," as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

#### Regulatory Flexibility Act

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

#### Paperwork Reduction Act

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

#### List of Subjects in 32 CFR Part 216

Armed Forces, Colleges and universities, Recruiting personnel.

Accordingly, 32 CFR Part 216 is revised to read as follows:

### PART 216—MILITARY RECRUITING AT INSTITUTIONS OF HIGHER EDUCATION

Sec.

216.1 Purpose.

216.2 Applicability.

216.3 Definitions.

216.4 Policy.

216.5 Responsibilities.

Appendix A to Part 216—Sample of Letter of Inquiry.

Authority: 10 U.S.C. 503 note.

**§ 216.1 Purpose.**

This part:

(a) Implements 10 U.S.C. 503 note.

(b) Updates policy and responsibilities for identifying and taking action on institutions of higher education that either have a policy of denying, or that effectively prevents military recruiting personnel from entry to their campuses, from access to their students, or from access to student directory information.

**§ 216.2 Applicability.**

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Uniformed Services University of Health Sciences, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

**§ 216.3 Definitions.**

(a) *Directory information.* Referring to a student means the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student.

(b) *Institution of higher education.* A domestic college, university, or subelement of a university providing post-secondary school courses of study, including foreign campuses of such domestic institutions. That includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. That term does not include entities that operate exclusively outside the United States, its territories, and possessions. A subelement of a university is a discrete (although not necessarily autonomous) organizational entity that establishes policy or practices affecting military recruiting and related actions covered by 10 U.S.C. 503 note and this part. For example, a subelement may be an undergraduate school, a law school, medical school, or graduate school of arts and sciences.

(c) *Student.* An individual who is 17 years of age or older and enrolled in an institution of higher education.

**§ 216.4 Policy.**

It is DoD policy that:

(a) Under 10 U.S.C. 503 note, no funds available to the Department of Defense may be provided by grant or contract to any institution of higher education that either has a policy of denying, or that effectively prevents, the

Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, or access to directory information on students. That prohibition on use of DoD funds applies only to subelements of an institution of higher education that are determined to have such a policy or practice.

(b) An evaluation to determine whether an institution of higher education has a policy of denying, or is effectively preventing, the Secretary of Defense from obtaining entry to campuses, access to students on campuses, or access to student directory information shall be undertaken when:

(1) Military recruiting personnel cannot obtain permission to recruit on the premises of the institution or when they are refused directory information. Military recruiting personnel shall accommodate an institution's reasonable preferences as to times and places for scheduling on-campus recruiting, if any such restrictions are not based on the policies or practices of the Department of Defense and that the Military Services are provided entry to the campus and access to students on campus and to directory information; or,

(2) The institution is unwilling to declare in writing as a prerequisite to an education and training award that the institution does not have a policy of denying, and that it does not effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student directory information.

(3) The institution does not accept terms or conditions of a DoD contract or grant specified under § 216.5(b)(2).

(c) A determination that military recruiting personnel are denied access shall not be made when the institution does the following:

(1) Excludes all employers from recruiting on the premises of the institution.

(2) Permits employers to recruit on the premises of the institution only in response to an expression of student interest, and the institution:

(i) Provides the Military Services with the same opportunities to inform the students of military recruiting activities as are available to other employers.

(ii) Certifies that too few students have expressed an interest to warrant accommodating military recruiters, applying the same criteria that are applicable to other employers.

(3) When not providing any directory information, certifies that such information is not collected by the institution.

(4) When not providing directory information for specific students, certifies that each student concerned (or his or her parent, if a 17-year-old) has formally requested the institution to withhold providing this information from military recruiting personnel for military recruiting purposes.

**§ 216.5 Responsibilities.**

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 30 days after receipt of the name(s) of institutions of higher education under paragraphs (d)(2) and (e)(1) of this section:

(i) Make a final determination about the eligibility of each such institution to receive funds available to the Department of Defense by grant or contract under 10 U.S.C. 503 note, and this part.

(ii) Notify each institution determined under paragraph (a)(1)(i) of this section, that it is ineligible to receive DoD funds under 10 U.S.C. 503 note, and this part. Such notification shall reflect the basis of that determination.

(iii) Disseminate the names of institutions of higher education identified under paragraph (a)(1)(i) of this section to all the DoD Components and to the General Services Administration (GSA) for inclusion in the Federal list of parties excluded from Federal procurement or nonprocurement programs.

(iv) Inform each applicable institution identified under paragraph (d)(2) or (e)(1) of this section, that its eligibility to receive DoD funds may be restored upon the institution providing sufficient new information to enable the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)) to determine that the institution provides entry to its campus(es), access to students on the campus(es), and access to directory information on students.

(2) Not later than 45 days after receipt of an institution's request to restore its eligibility:

(i) Determine whether the institution is qualified to receive DoD funds under 10 U.S.C. 503 note, and this part.

(ii) Inform the institution of that determination.

(iii) Provide the DoD Components and GSA with the name of that institution if its eligibility has been restored.

(3) Provide policy and procedures to:

(i) Cease education and training awards of DoD funds (other than those made by procurement grant or contract under paragraph (b)(1) of this section) to institutions identified as ineligible under paragraph (a)(1)(i) of this section.

(ii) Identify institutions unwilling to declare in writing, as a prerequisite to such an award of DoD funds for education and training, that the institution does not have a policy of denying, and that it does not effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student directory information.

(4) Notify the Defense Finance and Accounting Service of institutions, under paragraph (a)(1)(i) of this section, that either lose or regain eligibility to receive DoD funds under 10 U.S.C. 503 note and this part.

(b) The Under Secretary of Defense for Acquisition and Technology shall establish policy and procedures to:

(1) Deny DoD grant and contract awards to all institutions identified as ineligible under paragraph (a)(1)(i) of this section.

(2) Include terms or conditions in DoD grants and contracts awarded to institutions of higher education to make payments of DoD funds under such awards contingent on the institution's not being one so identified.

(c) The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall establish and promulgate financial management policies and procedures to stop or reactivate payment of DoD funds through contracts, grants, and other agreements made by the Department of Defense or other Federal Agencies to institutions identified as ineligible under paragraph (a)(1)(i) of this section.

(d) The Secretaries of the Military Departments shall:

(1) Identify institutions that, by policy or practice, deny military recruiting personnel entry to the campus(es) of those institutions, access to students, or access to student directory information. When repeated requests to schedule recruiting visits or to obtain directory information are unsuccessful, the Military Service concerned shall seek written confirmation of the institution's present policy from the head of the institution through a letter of inquiry. The sample letter in Appendix A to the part shall be followed as closely as possible. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the institution shall be documented.

(2) Evaluate the responses to the letter of inquiry and of such other evidence obtained in accordance with this part and submit to the ASD(FMP) the names and addresses of institutions of higher education that are recommended to be declared ineligible to receive funds available to the Department of Defense

under 10 U.S.C. 503 note and this part. Full documentation shall be furnished to the ASD(FMP) for each such institution, including the institution's formal response to the letter of inquiry, or oral response or evidence showing attempts to obtain written confirmation or an oral statement of the institution's policies.

(e) The Heads of the DoD Components shall:

(1) Provide the ASD(FMP) with the names and addresses of institutions:

(i) Identified as ineligible as a result of implementing policies and procedures promulgated under paragraph (a)(3)(ii) of this section.

(ii) That do not accept terms or conditions of a DoD grant or contract specified under paragraph (b)(2) of this section.

(2) Take immediate action to deny DoD funds to institutions identified as ineligible under paragraph (a)(1)(i) of this section and to restore eligibility of institutions identified under paragraph (a)(2)(i) of this section.

#### Appendix A to Part 216—Sample Letter of Inquiry

Dr. John Doe  
President  
XYZ College  
Anywhere, USA 12345-0123

Dear Dr. Doe: I understand that military recruiting personnel are unable to recruit on the campus of XYZ College and have been refused directory information on XYZ College students for military recruiting by official policy of the college. Title 10 U.S.C. 503 note, prohibits grant and contract awards of DoD funds to any institution of higher education that has a policy of denying, or that effectively prevents, military recruiting personnel entry to campuses, access to students on campuses, or access to directory information on students. DoD Directive 1322.13, "Military Recruiting at Institutions of Higher Education," (January 26, 1996) codified at 32 CFR part 216, implements 10 U.S.C. 503 note. A copy of 10 U.S.C. 503 note, and of DoD Directive 1322.13 are enclosed.

Under DoD Directive 1322.13, this letter provides you an opportunity to clarify your institution's policy on military recruiting on the campus of XYZ College. In that regard, I request the official written policy of the institution regarding visits of civilian employers (public or private) and military recruiting personnel to the campus for recruiting college students, and access to directory information on students.

Based on this information, a determination shall be made by the Assistant Secretary of Defense for Force Management Policy as to your institution's eligibility to receive DoD funds by grant or contract. Should it be determined that XYZ College is not qualified to receive such funds, all current programs requiring payment to XYZ College shall be stopped, and it shall be ineligible to receive future payments of DoD funds through

grants, contracts, and other applicable agreements.

I regret that this action may have to be taken. Successful recruiting requires that DoD recruiters have reasonable access to students on the campuses of colleges and universities, and at the same time to have effective relationships with the officials and student bodies of those institutions. I hope it will be possible for military recruiters to schedule recruiting visits at XYZ College in the near future. I am available to answer any questions.

Sincerely,

Enclosures

[Note: DoD Directive 1322.13 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. This note is not a part of the sample letter of inquiry.]

Dated: March 4, 1996.

Patricia L. Toppings,  
*Alternate OSD Federal Register Liaison Officer.*

[FR Doc. 96-5555 Filed 3-7-96; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD07-96-013]

RIN 2115-AA97

#### Security Zone; Coast Waters Adjacent to South Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** Pursuant to Presidential Proclamation No. 6867, declaring a national emergency, the Coast Guard is establishing a security zone, restricting the operation of vessels within the internal waters and territorial seas of the United States, adjacent to or within the coastal waters around southern Florida. The Coast Guard Captain of the Port (COTP) may exercise complete control over all vessel operations and movements within the security zone. Private, noncommercial vessels of less than 50 meters (165 feet) in length, may not depart the security zone with the intent to enter Cuban territorial waters, absent express authorization from the COTP. These vessel control measures are necessary to provide for the safety of United States citizens and residents and to prevent threatened disturbance of the international relations of the United States.

**EFFECTIVE DATE:** This rule is effective from 5:30 p.m., March 1996 and will terminate when the National Emergency as declared by the President in