

Issued in Washington, DC, this 25th day of May, 2006.

**Elaine L. Chao,**

*Chairman, Board of Directors, Pension Benefit Guaranty Corporation.*

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

**Judith R. Starr,**

*Secretary, Board of Directors, Pension Benefit Guaranty Corporation.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 216

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

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This document re-establishes the Department of Defense's rules addressing military recruiting and Reserve Officer Training Corps program access at institutions of higher education. These rules were inadvertently removed from the CFR by a document published in the **Federal Register** on March 18, 2006. These rules implement the National Defense Authorization Act for Fiscal Year 1995, the National Defense Authorization Act for Fiscal Year 1996, and the Omnibus Consolidated Appropriations Act, 1997 (the Acts). The Acts state that no funds available under appropriations acts for any fiscal year for the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human Services, Education, and Related Agencies may be provided by contract or grant (including a grant of funds to be available for student aid) to 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 obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students, or that has an anti-ROTC policy.

**DATES:** *Effective Date:* June 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** William J. Carr, (703) 697-8444.

**SUPPLEMENTARY INFORMATION:** On March 10, 2006 (71 FR 12280), the Department of Defense removed 32 CFR Part 216 to correlate with the DoD Directive

1322.13 which was canceled in 1998. The part should remain in effect. This part is published as originally published. The only change made was to the first footnote 1 which gives an availability statement directed to the Web site.

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

Armed forces, Armed forces reserves, Colleges and universities, Education.

■ Accordingly, 32 CFR part 216 is added to read as follows:

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

Sec.

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**Authority:** 10 U.S.C. 983.

#### **§ 216.1 Purpose.**

This part:

(a) Implements the National Defense authorization Act of 1995 (108 Stat. 2663),

(b) Implements 10 U.S.C. 983, and (c) Implements the Omnibus Consolidated Appropriations Act, 1997 (110 Stat. 3009).

(d) Updates policy and responsibilities relating to the management of covered schools that have a policy of either denying, or effectively preventing military recruiting personnel entry to their campuses, access to their students, or access to student recruiting information.

(e) 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, 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"). The policies herein also affect the Departments of Transportation, Labor, Health and Human Services, Education, and Related Agencies. 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 Physician Payment Review Commission, the Prospective payment Assessment 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 school.* An institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications:

(1) In the event of a determination (§ 216.5) affecting only a subelement of a parent institution (see § 216.3(d)), the limitations on the use of funds (§ 216.4(a) and (b)) shall apply only to the subelement and not to the parent institution as a whole.

(2) The limitations on the use of funds (§ 216.4(a) and (b)) shall not apply to any individual institution of higher education that is part of a single university system if that individual institution does not prevent entry to campus, access to students, or access to student recruiting information by military recruiters, or have an anti-ROTC policy, even though another campus of the same system is affected by a determination under § 216.5(a).

(c) *Student recruiting information.* For those currently enrolled, the 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.

(d) *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, or other graduate schools). For example, the School of Law of XYZ University is a subelement of its parent institution (XYZ University).

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

(f) *Enrolled*. Registered for a least one credit hour of academic credit at the covered school during the most-recent, current, or next term.

(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.

#### § 216.4 Policy.

It is policy that:

(a) Under 108 Stat. 2663 and 110 Stat. 3009, no funds available under appropriations acts for any fiscal year for the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human Services, Education, and Related Agencies may be provided by contract or by grant (including a grant of funds to be available for student aid) to a covered school if the Secretary of Defense determines that the covered school has a policy or practice (regardless of when implemented) that either prohibits or in effect 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 (student recruiting information).

(b) Under 110 Stat. 3009, no funds available under appropriations acts for any fiscal year for the Departments of Labor, Health and Human Services, Education, and Related Agencies may be provided by contract or grant (including a grant of funds to be available for student aid) to a covered school that has an anti-ROTC policy or practice (regardless of when implemented). Additionally, under 10 U.S.C. 983, no

funds appropriated or otherwise available to the Department of Defense may be made obligated by contract or by grant to a covered school that has such a policy or practice.

(c) 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 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 at least equal in quality and scope to that afforded to other employers;

(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 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 specific students, certifies that each student concerned has formally requested the covered school to withhold this information from third parties;

(6) Permits employers to recruit on the premises of the covered school only in response to an expression of student interest, and the covered school;

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

(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; or

(7) Is prohibited by the law of any State, or by the order of any State court, from allowing Federal military recruiting on campus. Such exemption does not apply to funds available to the Department of Defense, in accordance with 108 Stat. 2663.

Note to paragraph (c)(7): This exemption terminated effective March 29, 1998, in accordance with 110 Stat. 3009.

(d) The limitations established in paragraph (b) 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 (b) of this section;

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

(3) Is prohibited by the law of any State, or by the order of any State court, from allowing Senior Reserve Officer Training Corps activities on campus. Such exemption does not apply to funds available to the Department of Defense, in accordance with 10 U.S.C. 983.

Note to paragraph (d)(3): This exemption terminated effective March 29, 1998, in accordance with 110 Stat. 3009.

(e) A covered school may charge for actual costs incurred in providing military recruiters access to student recruiting information, provided such charges are reasonable and customary; in this case, the school must explain to the military recruiter, within 15 days of a request by the recruiter, its method for determining costs, and its basis for concluding that such charges are reasonable and customary.

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

(1) Military recruiting personnel cannot gain entry to campus, cannot obtain access to students on campus, or are denied access to student recruiting information (however, military recruiting personnel shall accommodate a covered school's reasonable preferences as to times and places for scheduling on-campus recruiting, to the same extent such preferences are applicable to employers, generally);

(2) 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 charges are reasonable and customary; or

(3) The covered school is unwilling to declare in writing, in response to an inquiry from a DoD component, that the covered school does not have a policy or practice 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 campus, or access to student recruiting information.

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

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

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

(i) Make a final determination under 108 Stat. 2663, 10 U.S.C., section 983; and 110 Stat. 3009 and/or this part, and notify any affected school of that determination along with the basis, and that it is therefore ineligible to receive prescribed funds as a result of that determination.

(ii) Disseminate to Federal agencies affected by 110 Stat. 3009, to the DoD components, and to the General Services Administration (GSA) the names of covered schools identified under paragraph (a)(1)(i) of this section, and the basis of the determination.

(iii) Disseminate the names of covered schools identified under paragraph (a)(1)(i) of this section, to the Secretary of Education and to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.

(iv) Inform the applicable school identified under paragraph (a)(1)(i) 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)(i) 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)(ii) and (iii) of this section when a determination of funding ineligibility (paragraph (a)(1)(i) of this section) has been rescinded.

(3) Publish in the **Federal Register** each determination of the Assistant Secretary of Defense for Force Management Policy that a covered school is ineligible for contracts and grants made under 108 Stat. 2663, 10

U.S.C., section 983, and 110 Stat. 3009 and/or this part.

(4) Publish in the **Federal Register** at least once every six months a list of covered schools that are ineligible for contracts and grants by reason of a determination of the Secretary of Defense under 108 Stat. 2663, 10 U.S.C., section 983, and 110 Stat. 3009 and/or this part.

(b) The Secretaries of the Military Departments shall:

(1) Identify covered schools that, by policy or practice, deny military recruiting personnel entry to the campus(es) of those schools, access to their students, or access to student recruiting information.

(i) When requests by military recruiters to schedule recruiting visits or to obtain student recruiting information are unsuccessful, the Military Service concerned 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 to accompany the submission to the ASD (FMP), and shall be provided 30 days to offer such clarifying comments.

(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 of this part shall be used to communicate the problem to the school, and the inquiry shall be managed as described in § 216.5(b)(1)(i). Schools may stipulate that requests for student recruiting information shall 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 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 to accompany the submission to the ASD (FMP), and shall be provided 30 days to offer such clarifying comments.

(3) Evaluate responses to the letter of inquiry, and other such evidence obtained in accordance with this part, and submit to the ASD (FMP) 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 ASD (FMP) 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 shall:

(1) Provide the ASD (FMP) with the names and addresses of covered schools identified as a result of evaluation(s) required under paragraphs 216.4(f) and (g).

(2) Take immediate action to deny obligations of DoD Funds to covered schools identified under paragraph (a)(1)(i) 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 P&R-(AR)-2038 in accordance with DoD 8910.1-M<sup>1</sup>.

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

(Tailor letter to situation presented)

Dr. John Doe  
President  
ABC College

Anywhere, USA 12345-9876

Dear Dr. Doe: I understand that military recruiting personnel (are unable to recruit on the campus of ABC College) (have been refused student recruiting information<sup>1</sup> on ABC College students for the purpose of military recruiting) by a policy or practice of the College. Current law<sup>2</sup> prohibits funds by grant or contract (including a grant of funds

<sup>1</sup> Copies may be obtained at <http://www.dtic.mil/whs/directives/>

<sup>1</sup> Students 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.

<sup>2</sup> 108 Stat. 2663 and 110 Stat. 3009.

to be available for student aid) from appropriations of the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human Services, Education, and Related Agencies to schools that have a policy or practice of denying military recruiting personnel entry to campuses, access to students on campuses, or access to student recruiting information. Implementing regulations are codified at 32 CFR part 216.

This letter provides you an opportunity to clarify your institution's policy regarding military recruiting on the campus of ABC College. 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, and to student recruiting information 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, 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 ABC College is in violation of the aforementioned statutes, such funding would be stopped, and the school would be ineligible to receive such funds in the future.

I regret that this action may have to be taken. Successful recruiting requires that Department of Defense recruiters have reasonable access to students on the campuses of colleges and universities, and at the same time have effective relationships with the officials and student bodies of those institutions. I hope it will be possible to (define the correction to the aforementioned problem area(s)). I am available to answer any questions.

Sincerely,

#### Appendix B of Part 216—ROTC Sample Letter of Inquiry

(Tailor Letter to Situation Presented)

Dr. Jane Smith  
President  
ABC College

Anywhere, USA 12345-9876

Dear Dr. Smith: I understand that ABC College 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 College. Current law<sup>1</sup> prohibits funds by grant or contract (including a grant of funds to be available for student aid) from appropriations of the Departments of Defense, Labor, Health and Human Services, Education, and Related Agencies to schools that have a policy or practice prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior

ROTC unit. Those statutes also bar agency funds for schools that prohibit or prevent a student from enrolling in an ROTC unit at another institution of higher education. Implementing regulations are codified at 32 CFR part 216.

This letter provides you an opportunity to clarify your institution's policy regarding ROTC access on the campus of ABC College. 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 funds by grant or contract. The decision may affect eligibility for funding from appropriations of the Departments of Defense, Labor, Health and Human Services, Education, and Related Agencies. Should it be determined that ABC College is in violation of the aforementioned statutes, such funding would be stopped, and the school would be ineligible to receive such funds in the future.

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)). I am available to answer any questions.

Sincerely,

Dated: March 25, 2006.

**L.M. Bynum,**

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

[FR Doc. 06-5008 Filed 5-31-06; 8:45am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD01-05-106]

RIN 1625-AA11

#### Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule; change in effective period and request for comments.

**SUMMARY:** The Coast Guard is amending the temporary regulated navigation area (RNA) from the entrance of East Rockaway Inlet to the Atlantic Beach Bridge, Nassau County, New York, and is extending its effective period. Significant shoaling in this area has reduced the depths of the navigable channel and has increased the risk of vessels with drafts of greater than 5 feet

carrying petroleum products as cargo grounding in the channel, and the potential for a significant oil spill. This rule will continue to restrict passage of commercial vessels carrying petroleum products with a loaded draft in excess of 5 feet.

**DATES:** The amendment to § 165.T01-106 in this rule is effective May 31, 2006. Section 165.T01-106, added at 70 FR 74676, December 16, 2005, effective from 6 a.m., November 29, 2005, to 11:59 p.m., May 31, 2006, as amended in this rule, is extended in effect until December 1, 2006. Comments and related material must reach the Coast Guard on or before July 31, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01-05-106 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade D. Miller, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468-4596.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On December 16, 2005, we published a temporary final rule (TFR) entitled "Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY" in the *Federal Register* (70 FR 74676). The effective period for that rule is from 6 a.m., November 29, 2005, to 11:59 a.m., May 31, 2006.

We did not publish a notice of proposed rulemaking (NPRM) for this TFR that would revise and extend the effective period of the existing RNA regulation, 33 CFR 165.T01-106. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This TFR is urgently needed to protect the maritime public from shoaling hazards in East Rockaway Inlet. Specifically, action is needed to prevent vessels carrying petroleum products as cargo with a loaded draft of greater than 5 feet from transiting the area so as to avoid the potential hazards associated with a grounding of a vessel.

East Rockaway Inlet has experienced significant shoaling causing the channel to migrate towards the west. Water depths in the federal navigation channel have been reduced in some areas to as low as 5 feet. This channel was last dredged by the Army Corps of Engineers during the winter of 2004-2005. However, the shoaling in this area has

<sup>1</sup> 10 U.S.C. 983 and 110 Stat. 3009.