

subject to the AOC provisions, to read "R645-301-553.500 through R645-301-553.540" and correcting the cross-referenced provisions in the phrase "R645-301-553.650 through R645-301-553.653" to read "R645-301-553.650 through R645-301-553.651."

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 216

#### Military Recruiting at Institutions of Higher Education

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

**SUMMARY:** The Department of Defense adopts this interim 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.

**DATES:** This interim rule is effective on May 30, 1995. Written comments on this rule must be received by July 31, 1995.

**ADDRESSES:** Forward comments to the Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301-4000.

**FOR FURTHER INFORMATION CONTACT:** Ronald G. Liveris, (703) 697-9268.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This interim 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 of 1980 (5 U.S.C. 605(b))

This interim rule will not have a significant adverse impact on a substantial number of small entities.

#### Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35)

This interim rule 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 Responsibility.

Appendix A to part 216—Sample Letter of Inquiry

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

#### § 216.1 Purpose.

This part implements section 558, The National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103-337 (See 10 U.S.C. section 503 note). It updates policy and responsibilities for identifying and taking action regarding institutions of higher education that either have a policy of denying or effectively bar military recruiting personnel from entry to their campuses, 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 and Specified Combatant Commands, the Uniformed Services University of Health Sciences (USUHS), the Defense Agencies, and 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 student.

(b) *Institution of higher education.* A domestic college, university, or sub-element of a university providing post-secondary school courses of study, including foreign campuses of such institutions. This includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term "institution of higher education" does not include entities that operate exclusively outside the United States, its territories, and possessions.

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

#### § 216.4 Policy.

(a) Under section 558 of the National Defense Authorization Act for Fiscal Year 1995, no funds available to the Department of Defense (DoD) 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 or access to students on campuses or access to directory information pertaining to students. This prohibition on use of DoD funds applies only to sub-elements 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 the 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, provided that any such restrictions are not based on the policies or practices of the Department of Defense and the Military Services are provided entry to the campus and access to students on campus and 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 or 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 will not be made when the institution:

(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) In the case of not providing any directory information, certifies that this information is not collected by the institution.

(4) In the case of not providing directory information for specific students, certifies that each student concerned (or his or her parent, in the case of 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 §§ 216.5(d)(2) and 216.5(e)(1):

(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 section 558 of the National Defense Authorization Act for Fiscal Year 1995 and this part.

(ii) Notify each institution determined under § 216.5(a)(1)(i), that it is ineligible to receive DoD funds under section 558 and this part. This notification shall reflect the basis of this determination.

(iii) Disseminate the names of institutions of higher education identified under § 216.5(a)(1)(i), to all 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 institution identified under § 216.5(d)(2), or § 216.5(e)(1), 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 section 558 of the National Defense Authorization Act for Fiscal Year 1995 and this part.

(ii) Inform the institution of this determination.

(iii) Provide the DoD Components and GSA with the name of this 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 subject to § 216.5(b)(1)) to institutions identified under § 216.5(a)(1)(i).

(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.

(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 under § 216.5(a)(1)(i).

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

(c) The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall implement procedures to stop payment of DoD funds through contracts, grants, and other applicable agreements made by the DoD or other Federal Agencies to applicable institutions identified under § 216.5(a)(1)(i).

(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 student 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 enclosure 1 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 as may be appropriate 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 section 558 of the National Defense Authorization Act for Fiscal Year 1995 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 a result of implementing policies and procedures promulgated under § 216.5(a)(3)(ii).

(ii) that do not accept terms or conditions of a DoD grant or contract specified under § 216.5(b)(2).

(2) Take immediate action to deny DoD funds to institutions identified under § 216.5(a)(1)(i) and to restore eligibility of institutions identified under § 216.5(a)(2)(i).

#### 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. Section 558 of Public Law 103-337, the National Defense Authorization Act for Fiscal Year 1995, October 5, 1994, which is codified at 10 U.S.C. section 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 denies, 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," codified at 32 CFR part 216, implements section 558. A copy of section 558 and DoD Directive 1322.13 is 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 this regard, I request the official written policy of the institution about 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 the Department's 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 these 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

Dated: May 22, 1995.

**L.M. Bynum,**

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

[FR Doc. 95-13176 Filed 5-26-95; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 9**

[FRL-5211-8]

**OMB Approval Numbers Under the Paperwork Reduction Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Technical amendment.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table in 40 CFR part 9 that displays the Office of Management and Budget (OMB) control numbers issued under the PRA.

This technical amendment amends the table of OMB control numbers to include the OMB control number for the information collection requirements in the rule entitled "Mandatory Patent Licenses Under Section 308 of the Clean Air Act."

**EFFECTIVE DATE:** This final rule is effective June 29, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Eagles, Office of Policy Analysis and Review (Mail Code 6103), Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260-5585.

**SUPPLEMENTARY INFORMATION:** EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various EPA regulations. Today's amendment updates the table to display accurately the information requirements promulgated under the rule entitled "Mandatory Patent Licenses Under Section 308 of the Clean Air Act" which appeared in the **Federal Register** on December 30, 1994 (59 FR 67636-9). The affected regulation is codified at 40 CFR part 95.

EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists the CFR section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control numbers and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

A final rule entitled "Mandatory Patent Licenses Under Section 308 of the Clean Air Act" was published in the **Federal Register** on December 30, 1994. Notice of the ICR for this rule was previously published for comment on August 29, 1994 (59 FR 44392). OMB approved the ICR on October 3, 1994. The OMB approval of the ICR and the associated OMB control number were published in the **Federal Register** on December 30, 1994 (59 FR 67637). As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend the table of OMB control numbers without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

**List of Subjects in 40 CFR Part 9**

Reporting and recordkeeping requirements.

Dated: May 19, 1995.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, chapter 1, title 40 of the Code of Federal Regulations, is amended as follows:

**PART 9—[AMENDED]**

In part 9:

The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

Section 9.1 is amended by adding a new heading and a new entry to the table under the new heading to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

40 CFR citation	OMB control No.
* * * * *	
Mandatory Patent Licenses:	
* * * * *	
95.2 .....	2060-0307
* * * * *	

[FR Doc. 95-13151 Filed 5-26-95; 8:45 am]

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**40 CFR Part 51**

[AD-FRL-5211-6]

RIN 2060-AE33

**Preparation, Adoption, and Submittal of State Implementation Plans; Test Method 205, Appendix M**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to add a test method which would be used to verify the performance and accuracy of gas dilution systems during a field test. The test method is entitled,