## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[DoD–2008–OS–0009; RIN 0790–AH77]**

### 32 CFR Part 260

### Vending Facility Program for the Blind on DoD-Controlled Federal Property

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule reinstates Department of Defense regulations related to the vending facility program for the blind on DoD-controlled Federal property. This rule shall not apply to military dining facilities that are subject to and defined in section 856 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

**DATES:** *Effective Date:* This rule is effective December 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Olivia Smith, 703–602–4601.

**SUPPLEMENTARY INFORMATION:**

### A. Summary

The proposed rule was published in the **Federal Register** on January 16, 2009 (74 FR 2932–2935). In response to the proposed rule, the DoD received 93 submissions with 310 comments during the 60-day comment period. 87 of the submissions contained three identical comments. Other comments fell into one of the following categories: Expanding the scope of the rule beyond the Randolph-Sheppard Act (R–SA) as implemented by the Department of Education (DoEd) in 34 CFR 395; the military dining exclusion; definitions; the military exchange exemption; references to DoD policies; allocation and billing of costs; leasing of privately-owned buildings with existing food facilities; and arbitration.

### B. Identical Comments

1. *Comment:* Make a statement that the DoD intends to comply with the letter and the spirit of the R–SA.

*Response:* DoD's policy to extend priority to the blind when implementing the R–SA is contained in section 260.4.

2. Ensure that the language of the final regulations is consistent with and preferably identical to regulations issued by the DoEd and with the language of the R–SA.

*Response:* The language in the rule is consistent with the DoED regulations. One variation is the definition of ''cafeteria,'' which uses the exact definition contained in the R–SA and 34 CFR 395.1(d), and adds, ''The DoD Component food dispensing facilities that conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not ''cafeterias'' if they engage primarily in full table service operations.'' DoD added this language to ensure that DoD food dispensing facilities that use a serving line for only a brief portion of the day are not considered cafeterias for the purpose of the Final Rule.

3. Clarify that the R–SA priority applies to all vending operations, even when the DoD would not be required to provide a suitable location, and that when there is a change in the contract or permit, the vending opportunity must be re-offered to the State Licensing Agency (SLA) even if that agency has previously declined to exercise the R–SA priority.

*Response:* Section 260.4 gives the blind priority in the establishment and operation of vending facilities, except those vending facilities to which the R–SA does not apply. An SLA shall not forfeit the R–SA priority for future contract solicitations or permits by declining the priority for an earlier solicitation. However, there is no requirement in the R–SA that the DoD terminate an existing contract because an SLA that previously declined a priority asserts the priority at a later date.''

### C. Additional Comments

1. Expanding the Scope of the Rule. Several comments suggested changes to expand the scope of the rule beyond the provisions of the R–SA and the DoEd's implementing rule (34 CFR 395).

*Response:* The DoD rule is consistent with 34 CFR 395, and DoD does not have the authority to expand the scope beyond the RSA. One comment proposed expanding the rule to establish a priority in the operation of vending operations even when the proposed location does not contain a suitable location. This suggestion, which would apparently cover situations when DoD is leasing space in privately owned buildings, is inconsistent with 20 USC 107a(d)(2). A second comment proposed changing the definition of ''individual installation, location or facility,'' but the DoD rule uses the definition contained at 34 CFR 395.1(h). A third comment asked DoD to alter the arbitration procedures delineated at 34 CFR 395.37 by deleting the word ''all'' from section 260.6(f) of the proposed rule. However, section 395.37(a) specifically uses the word ''all'' when referring to informal efforts to resolve issues of noncompliance.

2. Military Dining Exclusion. Several of the comments recommended deletion of references to and the definition of military dining facilities.

*Response:* Section 260.4(b) has been modified to exclude reference to Section 856 of the John Warner National Defense Authorization Act for Fiscal Year 2007, since it only applies to military dining facilities. The definition of military dining facilities is necessary to explain that the rule does not apply to such facilities.

3. Definitions. Several of the comments recommended changes to definitions.

*Response:* The definitions are consistent with the definitions in 34 CFR 395. The one variation occurs in the definition of ''cafeteria,'' where the proposed rule uses the same definition as 34 CFR 395.1(d), but adds, ''the DoD Component food dispensing facilities that conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not ''cafeterias'' if they engage primarily in full table service operations.'' DoD added this language to ensure that DoD food dispensing facilities that use a serving line for only a brief portion of the day are not considered cafeterias for the purpose of the Final Rule. A second comment proposed changing the definition of ''individual installation, location or facility.'' However, the final rule uses the same definition contained at 34 CFR 395.1(h).

4. Military Exchange Exemption. Several of the comments recommended limitations on the income-sharing exemption for vending machines operated by or for the military exchanges or ships store systems.

*Response:* The income-sharing exemption for vending machines operated by or for the military exchanges or ships store systems is codified at § 107d–3(d) of the R–SA and 34 CFR 395.32(h)(1), and the rule is consistent with both.

5. References to DoD Policies. Several of the comments recommended deleting references to DoD policies that may be changed without public notice, comment, or other opportunity for stakeholders to be consulted.

*Response:* Any DoD publication that grants a right or privilege to the public or has a substantial or direct impact on any significant portion of the public is required to be published. Since 32 CFR 260 prescribes implementation of the R–SA within the DoD, it is necessary to reference applicable DoD policies and publications. The DoD publications referenced in the Final Rule are available on the internet at *http://www.dtic.mil/whs/directives.*

6. Allocation and Billing of Costs. One commenter recommended using more explicit language in 260.6(b)(4) to specify the methodology for allocating costs, prohibiting retroactive or prospective billing, limiting costs to similar costs charged to other food vendors, including military exchanges and commercial enterprises, and adapting charges as the number of people using the facility fluctuates.

*Response:* Pursuant to the comment, we have removed the language at section 260.6(b)(4) of the final rule and inserted language consistent with 34 CFR 395.35, which provides that the permit shall state (1) no charge shall be made to the State Licensing agency for the cost of normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas, and (2) no charge shall be made to the DoD for the cost of sanitation and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment.

7. Leasing of Privately-Owned Buildings with Existing Food Facilities. One comment recommended adding language that DoD components should avoid leasing all or part of a privately-owned building in which there is an existing food facility that would be in direct competition with a R–SA operation, resulting in the absence of a requirement to provide a satisfactory site.

*Response:* This comment is inconsistent with 20 U.S.C. 107a(d)(2)(B), which exempts from the R–SA privately owned buildings ''any part of which is leased by any department, agency or instrumentality of the United States and in which, (i) prior to the execution of such lease, the lessor or any of his tenants had in operation a restaurant or other food facility in a part of the building no included in such lease, and (ii) the operation of such a vending facility by a blind person would be in proximate and substantial direct competition with such restaurant or other food facility except that each such department, agency and instrumentality shall make every effort to lease property in privately owned buildings capable of accommodating a vending facility.'' Moreover, the suggested language would overly restrict the DoD's ability to lease facilities.

8. Arbitration. One comment recommended deleting the word ''all'' in section 260.6(f) to clarify who has the authority to determine that all informal attempts to resolve the issues have been unsuccessful.

*Response:* The final rule is consistent with 34 CFR 395.37(a), which specifically uses the word ''all'' when referring to informal efforts to resolve issues.

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

It has been certified that 32 CFR part 260 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal 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 this Executive Order.

**Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''**

It has been certified that 32 CFR part 260 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

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

It has been certified that 32 CFR part 260 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 is consistent with the Randolph-Sheppard Act (20 U.S.C. 107), the implementing regulations of the U.S. Department of Education (34 CFR part 395), and Section 856 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

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

It has been certified that 32 CFR part 260 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, ''Federalism''**

It has been certified that 32 CFR part 260 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 260**

Persons with disabilities, Blind, Vending.

■ Accordingly, 32 CFR part 260 is added to read as follows:

## PART 260—VENDING FACILITY PROGRAM FOR THE BLIND ON DOD-CONTROLLED FEDERAL PROPERTY

Sec.
260.1 Purpose.
260.2 Applicability.
260.3 Definitions.
260.4 Policy.
260.5 Responsibilities.
260.6 Procedures.
260.7 Information requirements.

### § 260.1 Purpose.

This part:

(a) Assigns responsibilities in compliance with 20 U.S.C. 107 *et seq.* and 34 CFR part 395 and establishes the following policies within the Department of Defense:

(1) Uniform policies for application of priority accorded the blind to operate vending facilities;

(2) Requirements for satisfactory vending facility sites on DoD-controlled property; and

(3) Vending machine income-sharing requirements on DoD-controlled property

(b) Prescribes requirements and operating procedures for the vending facility program for the blind on DoD-controlled property.

(c) Does NOT apply to full food services, mess attendant services, or services supporting the operation of a military dining facility.

### § 260.2 Applicability.

This part applies to:

(a) Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) Vending facility sites on DoD-controlled property.

### § 260.3 Definitions.

*Blind licensee.* A blind person licensed by the State licensing agency to

operate a vending facility on DoD-controlled property.

*Cafeteria.* A food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself or herself from displayed selections. A cafeteria may be fully automatic, or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided. The DoD Component food dispensing facilities that conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not ''cafeterias'' if they engage primarily in full table service operations.

*Direct competition.* The presence and operation of a DoD Component vending machine or a vending facility on the same DoD-controlled property as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas serving employees, the majority of whom normally do not have access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor, shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

*DoD-controlled property.* Federal property that is owned, leased, or occupied by DoD.

*Federal employees.* Civilian appropriated fund and nonappropriated fund employees of the United States.

*Federal property.* Any building, land, or other real property owned, leased, or occupied by DoD in the United States.

*Individual location, installation, or facility.* A single building or a self-contained group of buildings. A self-contained group of buildings refers to two or more buildings that must be located in close proximity to each other and between which a majority of the Federal employees working in such buildings regularly move from one building to another in the normal course of their official business during a normal working day.

*License.* A written instrument issued by a State licensing agency to a blind person, authorizing that person to operate a vending facility on DoD-controlled property.

*Military dining facility.* A facility owned, operated, or leased and wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces.

*Normal working hours.* An 8-hour work period between the approximate hours of 0800 and 1800, Monday through Friday.

*On-site official.* The individual in command of an installation or separate facility or location. For the Pentagon Reservation only, the Washington Headquarters Services (WHS) Director of the Defense Facilities Directorate is designated as the on-site official.

*Permit.* The official approval given a State licensing agency by a department, agency, or instrumentality responsible for DoD-controlled property whereby the State licensing agency is authorized to establish a vending facility.

*Satisfactory site.* An area fully accessible to vending facility patrons and having sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of a vending facility in compliance with applicable health laws and building requirements. A ''satisfactory site'' shall have a minimum of 250 square feet available for sale of items and for storage of articles necessary for the operation of a vending facility.

*State.* A state, the District of Columbia, the Commonwealth of Puerto Rico, a territory, or possession of the United States.

*State licensing agency.* The State agency designated by the Secretary of Education, to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

*Substantial alteration or renovation.* A permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

*United States.* The several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

*Vending facility.* Automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment that may be operated by blind licensees and that are necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles and services to be dispensed automatically or manually and that are prepared on or off the premises according to applicable health laws. Also includes facilities providing the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State within such State.

*Vending machine.* For the purposes of assigning vending machine income, a coin or currency operated machine that dispenses articles or services except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

*Vending machine income.* (1) DoD Component receipts from the DoD Component vending machine operations on DoD-controlled property, where the machines are operated by any DoD Component activity, less costs incurred; or

(2) Commissions received by any DoD Component activity from a commercial vending firm that provides vending machines on DoD-controlled property.

(3) ''Costs incurred'' include costs of goods, including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, and accounting for income-sharing.

*Vendor.* A blind licensee who is operating a vending facility on DoD-controlled property.

**§ 260.4 Policy.**

It is DoD policy that a DoD Component having accountability for real property shall extend priority on such property to the blind when implementing the Randolph-Sheppard Act, as set out in the following paragraphs:

(a) The blind shall be given priority in the establishment and operation of vending facilities.

(b) The blind shall be given priority in the award of contracts to operate cafeterias.

(c) In conjunction with acquisition or substantial alteration or renovation of a building, satisfactory sites shall be provided for operation of blind vending facilities.

(d) Specified income from vending machines operated on DoD-controlled property by a DoD Component either directly or by contract shall be given to State licensing agencies.

**§ 260.5 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 establish policies and procedures and monitor the Vending Facility Program.

(b) The Heads of the DoD Components, in monitoring their respective programs, shall:

(1) Approve or disapprove State licensing agency applications for permits and the provision of satisfactory sites;

(2) Issue policies and procedures to designate and establish responsibilities of the on-site official;

(3) Suspend or terminate a permit to operate a vending facility after consulting with the PDUSD(P&R) where circumstances warrant.

(4) Ensure appropriate real property outgrants are accomplished in accordance with DoDI 4165.70, ''Real Property Management,'' [1] and consistent with the Randolph-Sheppard Act (20 U.S.C. 107) and the implementing regulations (34 CFR part 395).

(5) The On-Site Official shall be the point of contact with State licensing agencies and shall:

(i) Consult with State licensing agencies on articles and services to be provided;

(ii) Establish appropriate limitations on the location or operation of a vending facility upon finding that the granting of a priority under the Act would adversely affect the interests of the United States. The On-Site Official shall justify this limitation in writing through the Head of the DoD Component concerned and the PDUSD(P&R) to the Secretary of Education for determination of whether the limitation is warranted.

(iii) Notify State licensing agencies of acquisition or substantial alteration or renovation of property;

(iv) Negotiate with State licensing agencies on other matters and adhere to guidance provided in § 260.6 of this part.

**§ 260.6 Procedures.**

The DoD Components in control of the maintenance, operation, and protection of Federal property shall take necessary action to ensure the requirements set forth in this Section are implemented for these properties.

(a) The blind have a priority to operate vending facilities on DoD property, whenever feasible, in light of appropriate space and potential patronage. Implementation of this priority is not required when:

(1) The number of people using the property is or will be insufficient to support a vending facility; or

(2) The Secretary of Education determines that the limitation on the placement or operation of a vending facility is warranted pursuant to 260.5(b)(5)(ii), which is binding on the DoD Component. Notice of the Secretary of Education's determination will be published in the **Federal Register.**

(b) Applications for permits by the State licensing agency to operate vending facilities (except cafeterias) on DoD-controlled property must be submitted in writing to the Head of the DoD Component concerned through the on-site official. When an application is not approved, the Head of the DoD Component concerned shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval. Permits shall describe the location of the vending facility and shall be subject to the following requirements:

(1) The permit shall be issued in the name of the State licensing agency.

(2) The permit shall be issued for an indefinite period of time subject to suspension or termination upon failure to comply with agreed-upon terms. It shall be subject to termination by either party on 60 days' written notice to the other party, in cases of:

(i) Inactivation of the installation or activity.

(ii) Loss of use of a building or other facility housing the vending facility.

(iii) Change in the DoD Component's requirements for service.

(iv) Inability of the State licensing agency to continue to operate the vending facility.

(3) The permit shall provide:

(i) No charge shall be made by the DoD Component to the State licensing agency for normal repair and maintenance of the building, cleaning areas adjacent to the designated vending facility boundaries, or trash removal from a designated collection point (not to include any hazardous waste).

(ii) The State licensing agency shall be responsible for cleaning and maintaining the vending facility appearance and its security within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise, and other products to be sold, except as provided in paragraph (b)(3)(v) of this section. Neither party shall be responsible for loss or damage to the other's property, unless caused by its acts or omissions. The State licensing agency shall also be responsible for the acts or omissions of the blind vendor, the vendor's employees, or agents.

(iii) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services traditionally found in blind-operated vending facilities operated under 20 U.S.C. 107, as determined by the State licensing agency, in consultation with the on-site official, to be suitable for a particular location. Articles and services may be automatically or manually dispensed.

(iv) Vending facilities shall be operated in compliance with applicable Federal, state, interstate and local laws and regulations, including those concerning health and sanitation, the environment, and building codes.

(v) Installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval of the on-site official and the State licensing agency. The initiating party shall pay the costs of installation, modification, removal, relocation, or renovation. In any case of suspension or termination of a permit to operate a vending facility on the basis of noncompliance by either party, the costs of removal from the building shall be borne by the non-complying party.

(4) The permit shall state that no charge shall be made to the State Licensing Authority for the cost of normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas, and no charge shall be made to the DoD for the cost of sanitation and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment.

(5) In the event the blind licensee fails to provide satisfactory service or otherwise fails to comply with the requirements of the permit issued to the State licensing agency, the on-site official shall, after coordinating with the Head of the DoD Component, notify the State licensing agency of this deficiency in writing and request corrective action within a specified reasonable time. The notice shall indicate that failure to correct the deficiency shall result in temporary suspension or termination of the permit, as appropriate. Suspension or termination action shall be taken by the Head of the DoD Component concerned after consultation with the PDUSD(P&R).

(c) Any DoD Component-acquired (purchased, rented, leased, or constructed), substantially altered, or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility, except as provided in paragraph (c)(1) of this section.

[1] Available from *http://www.dtic.mil/whs/directives/corres/html/416570.htm.*

(1) A determination that a building contains a satisfactory site or sites is presumed if the State licensing agency and the on-site official consult and agree that the site or sites provided are satisfactory.

(i) The Heads of the DoD Components shall notify the appropriate State licensing agency [2] by certified or registered mail, return receipt requested, of buildings to be acquired or substantially altered or renovated. This notification shall be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the State licensing agency should be contacted early in the planning or design stage of a project. This notification shall:

(A) State that a satisfactory site(s) for the location and operation of a blind vending facility is (are) included in the plans for the building.

(B) Include a copy of a single line drawing indicating the proposed location of such site(s).

(C) Advise the State licensing agency that, subject to the approval of the DoD Component, it shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

(ii) Advise that the State licensing agency must respond within 30 days to the DoD Component, acknowledging receipt of the correspondence from the DoD Component and indicating whether it is interested in establishing a vending facility and, if interested, signifying its agreement or alternate selection of a location and its selection of type of vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's response, if any, shall be provided to the Secretary of Education.

(iii) If the State licensing agency's response to the DoD Component indicates it does not desire to establish and operate a vending facility and sets forth any specific basis other than the insufficiency of patrons to support a vending facility, or if the State licensing agency does not respond within 30 days, then a site meeting the anticipated needs of the DoD Component shall be incorporated. Each such site shall have a minimum of 250 square feet for sale of items and for storage of articles necessary for the operation of a vending facility.

(iv) If the State licensing agency indicates that the number of persons using the property is or will be insufficient to support a vending facility, then a satisfactory site to be operated under the auspices of the State licensing agency shall not be incorporated. The On-Site Official shall, through the Head of the DoD component, notify the Secretary of Education of the State licensing agency's response.

(2) The requirement to provide a satisfactory site shall not apply:

(i) When fewer than 100 Federal employees (as defined in § 260.3 of this part) are located in the building during normal working hours; or

(ii) When the building contains fewer than 15,000 square feet to be used for Federal Government purposes and the Federal Government space is used to provide services to the general public.

(iii) The provisions of paragraphs (c)(2)(i) and (c)(2)(ii) of this section do not preclude arrangements under which blind vending facilities may be established in buildings of a size or with an employee population less than that specified. For example, if a building is to be constructed that will contain only 30 Federal employees, upon agreement of the on-site official and the State licensing agency, the DoD Component may decide to provide a satisfactory site for a blind vending facility.

(3) When a DoD Component is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantial direct competition with such restaurant or other food operation, the requirement to provide a satisfactory site does not apply.

(d) Vending machine income generated by the Department of Defense shall be shared with State licensing agencies as prescribed in paragraph (d)(1) of this section. The on-site official is responsible for collecting and accounting for such vending machine income (as defined in § 260.3 of this part) and for ensuring compliance with the requirements of this paragraph.

(1) The vending machine income-sharing requirements are as follows:

(i) One hundred percent of the vending machine income from vending machines in direct competition with blind-operated vending facilities shall be provided to the State licensing agency.

(ii) Fifty percent of the vending machine income from vending machines not in direct competition with blind-operated vending facilities shall be provided to the State licensing agency.

(iii) Notwithstanding paragraph (d)(1)(ii) of this section, thirty percent of the vending machine income from vending machines not in direct competition with blind-operated vending facilities and located where at least fifty percent of the total hours worked on the premises occurs during other than normal working hours (as defined in § 260.3 of this part) shall be provided to the State licensing agency.

(2) The determination of whether a vending machine is in direct competition with the blind-operated vending facility is the responsibility of the on-site official subject to the concurrence of the State licensing agency.

(3) These vending machine income-sharing requirements do not apply to:

(i) Income from vending machines operated by or for the military exchanges or ships' store systems; or

(ii) Income from vending machines, not in direct competition with a blind-operated vending facility, at any individual location, installation, or facility where the total of the vending machine income from all such machines at such location, installation, or facility does not exceed $3,000 annually.

(4) The payment to State licensing agencies under these income-sharing requirements must be made quarterly on a fiscal year basis.

(e) Pursuant to 34 CFR 395.37, whenever any State licensing agency for the blind determines that any DoD activity is failing to comply with the provisions of 20 U.S.C. 107 and all informal attempts to resolve the issues have been unsuccessful, the State licensing agency may file a complaint with the Secretary of Education.

**§ 260.7 Information requirements.**

Within 90 days after the end of each fiscal year, the DoD Components shall forward to the PDUSD(P&R) the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected (as defined in § 260.3 of this part, excluding income exempt from the income sharing requirements by § 260.6(d)(3) of this part), and the amount of such vending machine income disbursed to State licensing agencies in each State. These reporting requirements have been assigned Report Control Symbol DD–P&R(A)2210, according to DoD 8910.1–M, ''Department of Defense Procedures for

[2] See the U.S. Department of Education Web site, Office of Special Education and Rehabilitative Services at *http://www.ed.gov.*

Management of Information Requirements.'' [3]

Dated: November 20, 2009.

**Patricia L. Toppings,**

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

[FR Doc. E9–28356 Filed 11–25–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 100, 117, 147, and 165

**[USCG–2009–1039]**

## Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, and Drawbridge Operation Regulations

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of expired temporary rules issued.

**SUMMARY:** This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between March 2005 and November 2008, that expired before they could be published in the **Federal Register.** This notice lists temporary safety zones, security zones, special local regulations, and drawbridge operation regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible.

**DATES:** This document lists temporary Coast Guard rules between March 26, 2005 and November 29, 2008 that became effective and were terminated before they could be published in the **Federal Register.**

**ADDRESSES:** The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Docket Operations, telephone 202–366–5115.

**SUPPLEMENTARY INFORMATION:** Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register.** Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The temporary rules listed in this notice have been exempted from review under Executive Order 12666, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following unpublished rules were placed in effect temporarily during the period between March 2005 and November 2008 unless otherwise indicated.

Dated: November 20, 2009.

**S.G. Venckus,**

*Chief, Office of Regulations and Administrative Law.*

2ND QUARTER 2008 LISTING

| Docket No. | Location | Type | Effective date |
|---|---|---|---|
| CGD08–06–017 | Illinois Waterway, IL | Drawbridge Operation Regulation (Part 117) | 4/24/2006 |
| CGD09–06–115 | Frankfort, MI | Safety Zones (Parts 147 and 165) | 9/2/2008 |
| CGD09–08–019 | Chicago, IL | Safety Zones (Parts 147 and 165) | 5/15/2008 |
| CGD09–08–020 | Algonac, MI | Safety Zones (Parts 147 and 165) | 6/2/2008 |
| CGD09–08–026 | Toledo, OH | Safety Zones (Parts 147 and 165) | 5/24/2008 |
| CGD09–08–031 | Detroit, MI | Safety Zones (Parts 147 and 165) | 7/21/2008 |
| CGD09–08–033 | Milwaukee, WI | Safety Zones (Parts 147 and 165) | 6/5/2008 |
| CGD09–08–051 | Paradise, MI | Safety Zones (Parts 147 and 165) | 7/4/2008 |
| CGD09–08–054 | Put In Bay, OH | Safety Zones (Parts 147 and 165) | 7/4/2008 |
| CGD09–08–057 | Cedarville, MI | Safety Zones (Parts 147 and 165) | 7/4/2008 |
| CGD09–08–058 | Munising, MI | Safety Zones (Parts 147 and 165) | 7/4/2008 |
| CGD09–08–059 | Sault Ste. Marie, MI | Safety Zones (Parts 147 and 165) | 7/4/2008 |
| CGD09–08–067 | Detroit, MI | Safety Zones (Parts 147 and 165) | 7/4/2008 |
| CGD09–08–081 | Harrisville, MI | Safety Zones (Parts 147 and 165) | 7/7/2008 |

[3] Available from *http://www.dtic.mil/whs/directives/corres/pdf/891001m.pdf.*