

### Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

### ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T09-0131 to read as follows:

#### § 165.T09-0131 Safety zone; Boom Days Fireworks, Niagara River, Niagara Falls, NY.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Niagara River, Niagara Falls, NY, within a 210 foot radius from position 43°4'24.02" N 78°59'9.18" W (NAD 83).

(b) *Effective period.* This regulation will be effective and the safety zone enforced from 8:00 p.m. until 9:30 p.m. on April 16, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port Buffalo will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or on-scene representative.

Dated: March 28, 2011.

**R.S. Burchell,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2011-8884 Filed 4-12-11; 8:45 am]

**BILLING CODE 9110-04-P**

### DEPARTMENT OF EDUCATION

#### 34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691

[Docket ID ED-2010-OPE-0004]

**RIN 1840-AD02**

### Program Integrity Issues

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final regulations; correction.

**SUMMARY:** On October 29, 2010, the Department of Education published in the *Federal Register* (75 FR 66832) final regulations for improving integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), by amending the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal

Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs. This document makes several corrections to the October 29 final regulations, including in the preamble discussion and the regulatory text.

**DATES:** Effective July 1, 2011, except that the corrections to § 668.58 are effective July 1, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Marty Guthrie, U.S. Department of Education, 1990 K Street, NW., room 8042, Washington, DC 20006-8014. Telephone: (202) 219-7031 or via the Internet at: [Marty.Guthrie@ed.gov](mailto:Marty.Guthrie@ed.gov).

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

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**Corrections to Preamble Discussion**

1. On page 66857, in the third column, in the fourth full paragraph labeled as the *Discussion* section, the

words “enrolled in payment periods or assigned to the 2011–12 and subsequent award years” are corrected to read “enrolled in payment periods assigned to the 2011–12 and subsequent award years”.

2. On page 66858, in the first column, in the second paragraph labeled as *Discussion*, the last sentence of that paragraph is corrected by adding the words “do not” between the words “regulations” and “require”, so that the sentence reads: “While these final regulations do not require the creation of a State licensing agency, a State may choose to rely on such an agency to legally authorize institutions to offer postsecondary education in the State for purposes of Federal program eligibility.”

3. On page 66862, the chart and its notes are removed and the following corrected chart and notes are added in their place to clarify the items in the third column labeled “Approval or licensure process” that correspond to Business entities and Charitable organizations and to correct the third bulleted note:

**MEETS STATE AUTHORIZATION REQUIREMENTS \***

Legal entity	Entity description	Approval or licensure process
Educational institution .....	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business .....	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.
Charitable organization .....	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.

\* Notes:

- Federal, tribal, and religious institutions are exempt from these requirements.
- A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals.
- The chart does not take into account requirements related to State reciprocity.

4. On page 66862, in the first column, under the heading *Institutions considered legally authorized under amended § 600.9*, the fourth bullet is corrected by adding the words “by name” prior to the period of the first sentence so that it reads: “A nonprofit institution has a State charter as a postsecondary institution by name.”

5. On page 66865, in the second column, the words “by name” are removed from the eighth line in the column so the affected sentence reads: “We have amended proposed § 600.9 to provide that, if an institution is an entity that is established by name as an educational institution by the State and the State further requires compliance

with applicable State approval or licensure requirements for the institution to qualify as legally authorized by the State for Federal program purposes, the State may exempt the institution from the State approval or licensure requirements based on the institution’s accreditation by one or more accrediting agencies

recognized by the Secretary or based upon the institution being in operation for at least 20 years.”

6. On page 66873, in the first column, under the paragraph labeled as (2), the sentence is corrected by adding the words “or entity” between the words “person” and “based”, so that the sentence reads: “Whether the commission, bonus, or other incentive payment is provided to any person or entity based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.”

7. On page 66876, in the third column, under the paragraph labeled as (2), the sentence is corrected by adding the words “or entity” between the words “person” and “based”, so that the sentence reads: “Whether the commission, bonus, or other incentive payment is provided to any person or entity based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.”

8. On page 66878, in the first column, in the paragraphs labeled as the *Discussion* section, in the third paragraph, the sentence is corrected by adding the words “or entity” after the word “person” and deleting the words “who is”, so that the sentence reads: “For this reason, we are making a change to § 668.14(b)(22)(ii) to provide that institutions may make payments, including profit-sharing payments, so long as they are not provided to any person or entity engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.”

9. On page 66878, in the paragraph labeled *Changes* that begins at the bottom of the first column, the sentence is corrected by adding the words “or entity” after the word “person” and deleting the words “who is”, so that the sentence reads: “We have revised § 668.14(b)(22)(ii) to clarify that, notwithstanding the ban in § 668.14(b)(22)(i), eligible institutions, organizations that are contractors to eligible institutions, and other entities may make profit-sharing payments, so long as such payments are not provided to any person or entity engaged in student recruitment or admission activity or in making decisions

regarding the award of title IV, HEA program funds.”

10. On page 66895, in the third column, in the first paragraph, the words “or a second disbursement of Pell Grant funds,” are removed so that the sentence reads: “If the student has not begun attendance in enough courses to establish a half-time enrollment status, the institution may not make a first disbursement of a Direct Loan to the student (34 CFR 685.303(b)(2)(i)), although the funds are included as aid that could have been disbursed in the Return of Title IV Funds calculation.”

11. On page 66916, the paragraph labeled *Discussion* that begins at the bottom of the second column and ends in the third column is removed and the following corrected *Discussion* is added in its place to read as follows:

“*Discussion*: As noted elsewhere in this preamble, the Department enforces its regulations, including those in subpart F of part 668 within a rule of reasonableness. We strongly believe that the concerns voiced by many commenters have ignored this fact. For this reason, we agree to limit the reach of the ban on making substantial misrepresentations to statements made by any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services. We have done this by narrowing the language in § 668.71(b) and the definition of the term *misrepresentation*. As a result, statements made by students through social media outlets will generally not be covered by these misrepresentation regulations. Also, statements made by entities that have agreements with the institution to provide services, such as food service, other than educational programs, marketing, advertising, recruiting, or admissions services will generally not be covered by these misrepresentation regulations.”

12. On page 66917, in the third column, the third paragraph is corrected to read as follows:

“With regard to the commenters who stated that the ‘capacity, likelihood, or tendency to deceive or confuse’ language will be confusing, in general, we have no reason to believe that this language will have any such effect. However, we recognize that the word ‘capacity’ is subject to a broad range of interpretations, so we have revised the regulations to state that a misleading statement is one that has the tendency or likelihood to deceive or confuse.”

13. On page 66918, in the first column, the *Changes* paragraph

incorrectly indicated that no changes were made to § 668.71(c). That paragraph is corrected to read as follows:

“*Changes*: We have revised § 668.71(c) to state that a misleading statement is one that has the tendency or likelihood to deceive or confuse.”

## Corrections to Regulatory Text

### § 668.8 [Corrected]

■ 14. On page 66950, in the second column, the introductory text of § 668.8(l)(2) is corrected by adding the word “not” between the words “has” and “identified”.

### § 668.14 [Corrected]

■ 15. On page 66950, in the third column, § 668.14(b)(22)(ii)(B) is corrected by:

- (A) Adding the words “or entity” after the word “person”.
- (B) Removing the words “who is”.

### § 668.58 [Corrected]

■ 16. On page 66957, in the first column, § 668.58(a)(1)(iii) is corrected by removing the word “certified”.

■ 17. On page 66957, in the second column, § 668.58(a)(2)(iii)(B) is corrected by removing the words “Subsidized Stafford Loan or”.

■ 18. On page 66957, in the second column, § 668.58(a)(3)(ii)(C) is corrected by removing the words “Subsidized Stafford Loan or”.

Dated: April 7, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 75

[EPA–HQ–OAR–2009–0837; FRL–9280–9]

RIN 2060–AQ06

### Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing

#### Correction

In rule document 2011–6216 appearing on pages 17288–17325 in the issue of Monday, March 28, 2011, make the following correction:

#### Appendix D to Part 75 [Corrected]

On page 17324, the heading of Appendix D is corrected to read: