

Wednesday, May 13, 2009

The following is the language that was proposed to the Department of Education (ED) to be published in the Federal Register regarding the requirements for fire safety reporting on campuses. This language has been developed after three meetings of Team V and its safety subcommittee. In the final meeting on May 13, 2009, consensus was not reached on two of the other 31 issues, which meant that there was no consensus on all 31 issues. NOTE: There WAS a tentative agreement on Issue Paper #11 Campus Fire Safety Right-to-Know– the lack of consensus occurred on two other, non-fire, issues.

As a result, the Department of Education will now publish the proposed regulations in the Federal Register using what they believe to be the most appropriate language. While it is hoped that they will use what was recommended for Issue Paper #11, this will not be known until the proposed regulations are published sometime this summer. Therefore, the following proposed regulation may change when it is published in the Federal Register.

The document is organized as follows:

- Black text is the existing regulation
- Red, underlined text is proposed new language
- ~~Red strikethrough text is deleted~~
- Yellow highlighted text is that added after the second meeting of Team V in April and the third meeting in May

If you have any comments or suggestions, please let me know.

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1 **Issue Paper # 11**

2 **Origin:** HEOA

3 **Issue:** Disclosure of Fire Safety Standards and Measures

4 **Statutory cites:** Section 485(i) of the HEA

5 **Regulatory cites:** §668.41 and §668.49

6 **DCL GEN-08-12 cite:** Pages 99-100

7 **Summary of issue:** The HEOA requires that all Title IV eligible
8 institutions that participate in any Title IV program and that
9 maintain on-campus student housing facilities publish an annual
10 fire safety report, maintain a fire log, and report fire
11 statistics to the Secretary.

12 **Updated Information since 4/14-16 meetings:** We have clarified in
13 §668.41(e)(1) that only institutions with an on-campus student
14 housing facility are required to distribute an annual fire
15 safety report. We moved a paragraph describing how an
16 institution may publish its annual fire safety report
17 independently of its annual security report from §668.49 to
18 §668.41. We clarified that publication of the annual fire
19 safety report must begin by October 1, 2010 in §668.49(b). This
20 date mirrors that of the annual security report. Finally, we
21 clarified that the policies for fire safety education should
22 include educating students and employees about the procedures to
23 report a fire in §668.49(b)(6).

24
25 **Regulatory language:**

26 §668.41 Reporting and disclosure of information.

27 * * * * *

28 (e) Annual security report and annual fire safety report -

1 (1) *Enrolled students and current employees - annual*
2 *security report and annual fire safety report*. By October 1 of
3 each year, an institution must distribute 7 to all enrolled
4 students and current employees 7 its annual security report
5 described in §668.46(b), and, if the institution maintains an
6 on-campus student housing facility, its annual fire safety
7 report described in §668.49(b), through appropriate publications
8 and mailings, including--

9 (2) Enrolled students - annual security report and annual
10 fire safety report. If an institution chooses to distribute
11 either its annual security report or annual fire safety report
12 to enrolled students by posting the disclosure or disclosures on
13 an Internet Web site or an Intranet Web site, the institution
14 must comply with the requirements of paragraph (c)(2) of this
15 section.

16 (3) Current employees - annual security report and annual
17 fire safety report. If an institution chooses to distribute
18 either its annual security report or its annual fire safety
19 report to current employees by posting the disclosure or
20 disclosures on an Internet Web site or an Intranet Web site, the
21 institution must, by October 1 of each year, distribute to all
22 current employees a notice that includes a statement of the
23 report's availability, the exact electronic address at which the
24 report is posted, a brief description of the report's contents,
25 and a statement that the institution will provide a paper copy
26 of the report upon request.

27 (4) *Prospective students and prospective employees - annual*
28 *security report and annual fire safety report*. For each of the
29 reports, tThe institution must provide a notice to prospective
30 students and prospective employees that includes a statement of
31 the report's availability, a description of its contents, and an

1 opportunity to request a copy. An institution must provide its
2 annual security report ~~or its~~ and annual fire safety report,
3 upon request, to a prospective student or prospective employee.
4 If the institution chooses to provide either its annual security
5 report ~~or its~~ annual fire safety report to prospective students
6 and prospective employees by posting the disclosure on an
7 Internet Web site, the notice described in this paragraph must
8 include the exact electronic address at which the report is
9 posted, a brief description of the report, and a statement that
10 the institution will provide a paper copy of the report upon
11 request.

12 (5) *Submission to the Secretary - annual security report*
13 and annual fire safety report. Each year, by the date and in a
14 form specified by the Secretary, an institution must submit the
15 statistics required by §668.46(c) and §668.49(c) to the
16 Secretary.

17 (6) Publication of the annual fire safety report. -In
18 complying with section 668.41(e), aAn institution may publish
19 its annual fire safety report concurrently with its annual
20 security report only if the title of the report clearly states
21 that the report contains both the annual security report and the
22 annual fire safety report. If an institution chooses to publish
23 the annual fire safety report separately from the annual
24 security report, it must include information in each of the two
25 reports about how to directly access the other report.

26 * * * * *

27 §668.49 Institutional fire safety policies and fire statistics.

28 (a) Additional definitions that apply to this section.

1 ~~Cause of fire: The cause of ignition of a fire, as defined~~
2 ~~in the National Fire Incident Reporting System Complete~~
3 ~~Reference Guide.~~

4 Cause of fire: The factor or factors that give rise to a
5 fire. The causal factor may be, but is not limited to, the
6 result of an intentional or unintentional action, mechanical
7 failure, or act of nature.

8 Fire: Any instance of open flame or other burning in a
9 place ~~or manner~~ not intended to contain the burning or in an
10 uncontrolled manner.

11 Fire drill: A supervised practice of a mandatory evacuation
12 of a building for a fire.

13 Fire-related injury: Any instance in which a person is
14 injured as a result of a fire, including ~~an injuries~~ sustained
15 from a natural or accidental causes, sustained while involved in
16 the activities of fire control, attempting rescue, or escaping
17 from the dangers of the fire. This term person may include
18 students, faculty, staff, visitors, firefighters, or any other
19 persons injured as a result of a fire individuals.

20 Fire-related death: Any instance in which a person is

21 (1) Is killed as a result of a fire, including deaths
22 resulting from a natural or accidental causes sustained while
23 involved in the activities of fire control, attempting rescue,
24 or escaping from the dangers of a fire; or

25 (2) Deaths also include people who die Dies within one year
26 of injuries sustained as a result of the fire.

27 Fire safety system: Any mechanism or system related to the
28 detection of a fire, the warning resulting from a fire, or the
29 control of a fire. This may include system includes sprinkler

1 systems or other fire extinguishing systems, fire detection
2 devices, stand-alone smoke alarms, devices that alert one to the
3 presence of a fire, such as horns, bells, or strobe lights;
4 smoke-control and reduction mechanisms; and fire doors and walls
5 that reduce the spread of a fire.

6 Value of Property Damage: The estimated value of the loss
7 of the structure and contents, in terms of the cost of
8 replacement in like kind and quantity. This estimate should
9 include contents damaged by fire, and related damages caused by
10 smoke, water, and overhaul; however, it does not include
11 indirect loss, such as business interruption.

12 (b) Annual fire safety report. Beginning by October 1,
13 2010, an institution that maintains any on-campus student
14 housing facility must prepare an annual fire safety report that
15 contains, at a minimum, the following information:

16 (1) The fire statistics described in paragraph (c) of this
17 section.

18 (2) A description of each on-campus student housing
19 facility fire safety system. and sprinkler system. including the
20 type, age, design, area covered, activation sensitivity, and
21 other pertinent information;

22 (3) The number of fire drills held during the previous
23 calendar year.

24 (4) The institution's policies or rules on portable
25 electrical appliances, smoking, and open flames in a student
26 housing facility.

27 (5) The institution's procedures for student housing
28 evacuation in the case of a fire.

1 (6) The policies regarding fire safety education and
2 training programs provided to the students, faculty, and staff.
3 In these policies, the institution must describe the procedures
4 that students and employees should follow in the case of a fire.

5 (7) For purposes of including a fire in the statistics in
6 the annual fire safety report, a list of the titles of each
7 person or organization to which students and employees should
8 report that a fire occurred.

9 (8) Plans for future improvements in fire safety, if
10 determined necessary by the institution.

11 (c) Fire statistics. (1) An institution must report
12 statistics for each on-campus student housing facility, for the
13 three most recent calendar years for which data are available,
14 concerning-

15 (i) The number of fires and the cause of each fire;

16 (ii) The number of injuries related to a fire that resulted
17 in treatment at a medical facility, including at an on-campus
18 health center;

19 (iii) The number of deaths related to a fire; and

20 (iv) The value of property damage caused by a fire.

21 (2) An institution is required to submit a copy of the
22 fire statistics in paragraph (c)(1) of this section to the
23 Secretary on an annual basis.

24 ~~(d) Publication of the annual fire safety report. (1) An~~
25 ~~institution must publish and distribute its annual fire safety~~
26 ~~report in accordance with paragraph (c) of this section.~~

27 ~~(2) An institution may publish its annual fire safety~~
28 ~~report concurrently with its annual security report only if the~~
29 ~~title of the report clearly states that the report contains both~~

1 ~~the annual security report and the annual fire safety report.~~
2 ~~If an institution chooses to publish the annual fire safety~~
3 ~~report separately from the annual security report, it must~~
4 ~~include information in each of the two reports about where or~~
5 ~~how to directly access the other.~~ (Moved to 668.41(e))

6 (ed) Fire log. (1) An institution that maintains on-campus
7 student housing facilities must maintain a written, easily
8 understood fire log that records, by the date that the fire was
9 reported, any fire that occurred in an on-campus student housing
10 facility. This log must include the nature, date, time and
11 general location of each fire.

12 (2) An institution must make an entry or an addition to an
13 entry to the log within two business days, as defined under
14 §668.46(a), of the receipt of the information. ~~of the report of~~
15 ~~the information to the campus fire department.~~

16 (3) An institution must make the fire log for the most
17 recent 60-day period open to public inspection during normal
18 business hours. The institution must make any portion of the
19 log older than 60 days available within two business days of a
20 request for public inspection.

21 (4) An institution must make an annual report to the campus
22 community on the fires recorded in the fire log. This report
23 requirement may be included in satisfied by the annual fire
24 safety report described in paragraph (b) of this section.

25 **Statutory Language:**

26 (i) DISCLOSURE OF FIRE SAFETY STANDARDS AND MEASURES.—

27 (1) ANNUAL FIRE SAFETY REPORTS ON STUDENT HOUSING
28 REQUIRED.—Each eligible institution participating in any program
29 under this title that maintains on-campus student housing
30 facilities shall, on an annual basis, publish a fire safety

1 report, which shall contain information with respect to the
2 campus fire safety practices and standards of that institution,
3 including—

4 (A) statistics concerning the following in each on-campus
5 student housing facility during the most recent calendar years
6 for which data are available:

7 (i) the number of fires and the cause of each fire;

8 (ii) the number of injuries related to a fire that result
9 in treatment at a medical facility;

10 (iii) the number of deaths related to a fire; and

11 (iv) the value of property damage caused by a fire;

12 (B) a description of each on-campus student housing
13 facility fire safety system, including the fire sprinkler
14 system;

15 (C) the number of regular mandatory supervised fire drills;

16 (D) policies or rules on portable electrical appliances,
17 smoking, and open flames (such as candles), procedures for
18 evacuation, and policies regarding fire safety education and
19 training programs provided to students, faculty, and staff; and

20 (E) plans for future improvements in fire safety, if
21 determined necessary by such institution.

22 (2) REPORT TO THE SECRETARY.—Each eligible institution
23 participating in any program under this title shall, on an
24 annual basis, submit to the Secretary a copy of the statistics
25 required to be made available under paragraph (1)(A).

26 (3) CURRENT INFORMATION TO CAMPUS COMMUNITY.—Each eligible
27 institution participating in any program under this title shall—

1 (A) make, keep, and maintain a log, recording all fires in
2 on-campus student housing facilities, including the nature,
3 date, time, and general location of each fire; and

4 (B) make annual reports to the campus community on such
5 fires.

6 (4) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall—

7 (A) make the statistics submitted under paragraph (1)(A) to
8 the Secretary available to the public; and

9 (B) in coordination with nationally recognized fire
10 organizations and representatives of institutions of higher
11 education, representatives of associations of institutions of
12 higher education, and other organizations that represent and
13 house a significant number of students—

14 (i) identify exemplary fire safety policies, procedures,
15 programs, and practices, including the installation, to the
16 technical standards of the National Fire Protection Association,
17 of fire detection, prevention, and protection technologies in
18 student housing, dormitories, and other buildings;

19 (ii) disseminate the exemplary policies, procedures,
20 programs and practices described in clause (i) to the
21 Administrator of the United States Fire Administration;

22 (iii) make available to the public information concerning
23 those policies, procedures, programs, and practices that have
24 proven effective in the reduction of fires; and

25 (iv) develop a protocol for institutions to review the
26 status of their fire safety systems.

27 (5) RULES OF CONSTRUCTION.—Nothing in this subsection shall
28 be construed to—

1 (A) authorize the Secretary to require particular policies,
2 procedures, programs, or practices by institutions of higher
3 education with respect to fire safety, other than with respect
4 to the collection, reporting, and dissemination of information
5 required by this subsection;

6 (B) affect section 444 of the General Education Provisions
7 Act (the Family Educational Rights and Privacy Act of 1974) or
8 the regulations issued under section 264 of the Health Insurance
9 Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2
10 note);

11 (C) create a cause of action against any institution of
12 higher education or any employee of such an institution for any
13 civil liability; or

14 (D) establish any standard of care.

15 (6) COMPLIANCE REPORT.—The Secretary shall annually report
16 to the authorizing committees regarding compliance with this
17 subsection by institutions of higher education, including an up-
18 to-date report on the Secretary’s monitoring of such compliance.

19 (7) EVIDENCE.—Notwithstanding any other provision of law,
20 evidence regarding compliance or noncompliance with this
21 subsection shall not be admissible as evidence in any proceeding
22 of any court, agency, board, or other entity, except with
23 respect to an action to enforce this subsection.

24