

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 24, 1998.

**Richard O. Gordon,**

*Acting Director, Flight Standards Service.*

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

#### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

#### § 97.23, 97.27, 97.33, 97.35 Amended

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

#### \* \* \* Effective Upon Publication

Murray, KY, Murray/Kyle-Oakley Field, NDB or GPS RWY 23, Orig CANCELLED

Murray, KY, Murray/Kyle-Oakley Field, NDB RWY 23, Orig Iola, KS, Iola/Allen County, NDB RWY 1, Amdt 1 CANCELLED

Iola, KS, Iola/Allen County, NDB RWY 1, Amdt 1

Scott City, KS, Scott City Muni, NDB or GPS RWY 35, Amdt 1 CANCELLED

Scott City, KS, Scott City Muni, NDB RWY 35, Amdt 1

Appleton, MN, Appleton Muni, NDB or GPS RWY 13, Orig-A CANCELLED

Appleton, MN, Appleton Muni, NDB RWY 13, Amdt 1

Bowman, ND, Bowman Muni, NDB or GPS RWY 29, Amdt 2A CANCELLED

Bowman, ND, Bowman Muni, NDB RWY 29, Amdt 3

[FR Doc. 98–21341 Filed 8–7–98; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 254

#### Guides for Private Vocational and Distance Education Schools

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (FTC or Commission) announces final amendments to its Guides for Private Vocational Schools to: add a provision addressing misrepresentations regarding the availability of employment after completion of training or the success of a school's graduates in obtaining employment; streamline the Guides by eliminating redundancies and provisions that do not offer guidance specific to vocational schools; and change the title of the Guides.

**EFFECTIVE DATE:** This rule is effective October 9, 1998.

**ADDRESSES:** Requests for copies of the amended Guides should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, Sixth St. and Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Joseph J. Koman, Jr., (202) 326–3014, Carol Jennings (202) 326–3010, or Walter Gross III, (202) 326–3319, Federal Trade Commission, Bureau of Consumer Protection, Sixth St. and Pennsylvania Ave., NW, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

The Vocational Schools Guides, adopted by the Commission in 1972, are intended to advise proprietary businesses offering vocational training courses, either on the school's premises or through correspondence or another long-distance method, how to avoid unfair or deceptive advertising and promotional claims when recruiting and enrolling students. The Guides address claims that are descriptive of the school, such as potentially deceptive trade or business names, and claims about accreditation, content of curricula, teachers' qualifications, teaching methods, affiliations with other private or public entities, and approval by other agencies or institutions. The Guides also address misleading representations regarding financial assistance and program costs, as well as enrollment qualification or limitations. Schools are cautioned to avoid using classified advertisements that appear to be “help-wanted” ads, misleading prospective students about opportunities for

employment while undergoing training, and the deceptive use of diplomas or degrees. The Guides suggest certain affirmative disclosures prior to enrolling students and address miscellaneous sales and debt collection practices.

These Guides, like other industry guides issued by the Commission, are “administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.” 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

As part of the Commission's systematic review of all of its rules and guides, the Commission published a request for comments concerning the Vocational Schools Guides on April 3, 1996 (61 FR 14685). The Commission sought information about the costs and benefits of the Guides and their regulatory and economic impact. In response to this notice, nine comments were filed by government agencies, consumers and consumer organizations, and industry members and trade associations.<sup>1</sup> These comments indicated general support for relating the Guides, although some industry members recommended repealing them.

On April 23, 1997, the Commission announced its decision to retain the Guides and sought supplemental comment on some proposed modifications (62 FR 19703). The Commission recognized that there is some overlap between its Guides and regulations of the Department of Education. Because the Department of Education administers student loan and grant money for vocational training, it plays the primary role in addressing abuses in this industry. There is a concurrent role for the Commission, however, in monitoring and addressing deceptive promotional practices.<sup>2</sup> State licensing agencies also regulate vocational training. Increasingly, however, vocational schools are owned by national or regional chains; thus, a federal enforcement presence remains important.

<sup>1</sup> Comments were filed by the New York Regional Office of the U.S. Department of Education Office of Postsecondary Education (two comments); New York State Beauty Schools Association, Inc.; National Consumer Law Center; Career College Association; Distance Education and Training Council; Colorado Aero Tech; American Association of Cosmetology Schools; and one individual consumer.

<sup>2</sup> For example, the Department of Education uses its investigative and enforcement resources primarily to address practices occurring after a student has signed up for training, rather than advertising and promotional practices that take place during recruitment of students.

In its second **Federal Register** notice, the Commission also sought comment on various proposed amendments to the Guides. In particular, the Commission proposed adding to the Guides a provision addressing misrepresentations about a school's placement success following training. While the 1972 Guides addressed claims about placement assistance and the availability of employment during training, they did not address false or deceptive claims about employment prospects after graduation or the success that a school's graduates have realized in obtaining employment related to the training. The Commission believes that such claims are important to prospective students of vocational training and are likely to become even more important in the future.

At the same time, in order to streamline the Guides, the Commission announced a preliminary decision to delete certain provisions that were not specific to vocational schools and merely duplicated other general provisions of law, as well as a section suggesting various affirmative disclosures prior to the signing of a contract.

## II. Amendments to the Guides

The Committee received comments from 39 parties, representing eight government agencies and one association of state regulators, five industry trade associations, an accrediting commission for cosmetology schools, 21 vocational schools in eight states, one consumer organization, and one individual consumer.<sup>3</sup> The

<sup>3</sup> The comments are listed here with the number assigned to the comment by the Office of the Secretary: (1) Career College Association; (2) Texas Higher Education Coordinating Board, Community and Technical Colleges Division; (3) Silicon Valley College; (4) Microcomputer Technology Institutes; (5) Alta Colleges, Inc.; (6) National Accrediting Commission of Cosmetology Arts & Sciences; (7) Mr. Clifton L. Stewart; (8) Eton Technical Institute; (9) Pittsburgh Beauty Academy; (10) Seattle Massage School; (11) Divers Institute of Technology; (12) Pittsburgh Beauty Academy of Charleroi; (13) International Air Academy; (14) Pittsburgh Beauty Academy of New Kensington; (15) Private Career School Association of New Jersey; (17) Apex Technical School; (18) Pennsylvania Association of Private School Administrators; (19) American Association of Cosmetology Schools; (20) Florida Association of Postsecondary Schools and Colleges (21) Gene Juarez Academy of Beauty; (22) and (26) National Association of State Administrators and Supervisors of Private Schools (also attaching comments by the Wisconsin Educational Approval Board, Florida Department of Education, Idaho Department of Education, Washington Workforce Training and Education Coordinating Board, Tennessee Higher Education Commission, and Georgia Nonpublic Postsecondary Education Commission); (23) The Chubb Institute (North Brunswick, N.J.); (24) and (25) The Chubb Institute (Parsippany, N.J.); (27) National Consumer Law

proposed addition to the Guides was generally supported by the government agencies and consumer representatives and generally opposed by the vocational schools and industry trade associations. Oppositions to the proposal seems to be based upon a misperception that this statement in the Guides would somehow increase burdens on schools already subject to regulations of the Department of Education and state agencies.<sup>4</sup> The amendment does not create new requirements, however. As explained in the Background section, above, the Guides merely clarify the Commission's interpretation of its existing laws.

Like other Guides adopted by the Commission, the Vocational Schools Guides provide businesses with information regarding the application of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1), to a particular industry or a specific type of marketing. Section 59a(1) declares unlawful "unfair or deceptive acts or practices in or affecting commerce." The Commission has set forth its interpretation of its Section 5 authority in its Deception Policy Statement,<sup>5</sup> its Policy Statement Regarding Advertising Substantiating Doctrine,<sup>6</sup> and its Unfairness Policy Statement.<sup>7</sup> The Commission will find an advertisement deceptive if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material to the decision to purchase. In addition, objective claims about a product or service imply that they are supported by valid evidence. It is deceptive, therefore, to make a claim unless, at the time is made, the marketer

Center; (28) Yorktowne Business Institute; (29) Laurel Business Institute; (30) Montgomery County (MD) Department of Housing and Community Affairs, Division of Consumer Affairs; (31) Central Pennsylvania School of Massage; (32) Corinthian Colleges, Inc.; (33) South Hills Business School; (34) Harris School of Business; and (35) Technical Career Institute. These comments, as well as the comments filed in response to the earlier notice, are on the public record and available for inspection during business hours at the Federal Trade Commission, Room 130, Sixth St. and Pennsylvania Ave., NW, Washington, DC 20580.

<sup>4</sup> Some comments apparently believed that if the proposed language were adopted, they would be required to report employment information to the Commission. The Guides do not impose any reporting requirements, however.

<sup>5</sup> Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983); reprinted in Cliffdale Associates, Inc., 103 F.T.C. 110, appendix (1984).

<sup>6</sup> 49 FR 30999 (1984); reprinted in Thompson Medical Co., 104 F.T.C. 648, appendix (1984).

<sup>7</sup> Letter from the Commission to Senators Wendell Ford and John Danforth (Dec. 17, 1980); reprinted in International Harvester Co., 104 F.T.C. 949, 1070 (1984).

possess and relies upon a reasonably basis substantiating the claim. The Commission will find an advertisement or practice unfair if it causes, or is likely to cause, substantial consumer injury that is not reasonably avoidable by consumers and is not outweigh counterbalancing benefits to consumers or competition.

Consumers considering enrolling in a vocational school are likely to rely upon claims with regard to employment prospects upon completion of training and the success of a schools' graduates in securing employment relevant to the training. Generally, the prospective student will not be in a position to verify the accuracy of the claim prior to enrollment and must rely upon the representations of the school. As stated in the comment of the National Consumer Law Center:

The essence of a vocational school sales presentation is the availability of employment following graduation. Misrepresentations of these jobs prospects are certainly material is not only the student's decision to invest a sizable amount of money in the schooling, but also considerable amount of the student's time.<sup>8</sup>

For example, a claim that a school has a "90% job placement" rate could be highly persuasive to an individual seeking training. If in fact the placement success is significantly lower than 90%, the claim would also be deceptive. Similarly, a claim could be deceptive if significant information is omitted. For example, a claim that "90% of graduates find jobs" could be deceptive if only a small percentage of those who enroll in the program are able to complete it and graduate. The claim also could be deceptive if a significant number of graduates cannot obtain the kind of employment for which the purportedly were trained, but have to accept other lower level positions at a lower salary.

As noted in a number of industry comments, Department of Education regulations also address employment claims by vocational schools. For example, regulations setting out standards for participation in federal student financial assistance programs state that school that advertise job placement rates will make available to prospective students, at or before the time of enrollment:

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational

<sup>8</sup> Comment 27 at page 1.

program offered by the institution is designed to prepare those prospective students.<sup>9</sup> In addition, the Department of Education "may initiate a proceeding \* \* \* against an otherwise eligible [for participation in the federal student financial assistance programs] institution for any substantial misrepresentation \* \* \* regarding the nature of its educational program, its financial charges or the employability of its graduates."<sup>10</sup> Specific examples of such misrepresentations include (but are not limited to) "false, erroneous or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment;

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates."<sup>11</sup>

Parts (a) and (b) above are also addressed by the FTC Guides, for example in §§ 254.2(b)(2), 254.4(a)(7), and 254.7(a). The Guides have not, however, until the revisions announced herein, specifically addressed deceptive claims regarding employability after graduation or the success a school's graduates have realized in obtaining employment relevant to the training. In addition, the proposed language has been modified to include misrepresentations about salaries that can be expect upon completion of the training. The addition to the Guides of § 254.4(d) merely complements Department of Education oversight of these schools, as it also provides industry-specific guidance with regard to the broad proscription of Section 5 of the FTC Act.

Sections 254.8, 254.9, and 254.10 have been removed from the Guides to streamline them, eliminate repetition, and eliminate general principles articulated elsewhere in the CFR. Many of the areas addressed in § 254.8 are already covered by the Commission's Guides Against Deceptive Pricing, 16 CFR 233, and Guide Concerning Use of the Word "Free" and Similar Representations, 16 CFR 251. In addition, section 254.7 of the Vocational Schools Guides, describing deceptive sales practices, has been revised to include a provision noting that prior to enrollment students should be informed

of the total costs of the program and the school's refund policy for students who drop out before completion.

Section 254.9 addressed debt collection and credit practices. These have been largely superseded by other laws. Debt collection agencies attempting to collect on behalf of an industry member are covered by the Fair Debt Collection Practices Act, 15 U.S.C. 1692. Moreover, under the Commission's Rule on Preservation of Consumer Claims and Defenses ("Holder-in-Due-Course" Rule), 16 CFR 433, the right of a consumer to assert seller misrepresentations in defending against a collection action is preserved even if the credit contract is assigned to a third party.

Section 254.10 set forth various affirmative disclosures that should be made prior to enrollment and signing of a contract. Most of the areas addressed by these disclosures are now covered elsewhere in the Guides. Section 254.7(c) advises disclosure of all requirements for successful completion of the program and the circumstances that would constitute grounds for terminating the student's enrollment prior to completion (formerly addressed by § 254.10(a)). Disclosure of total costs (formerly addressed in § 254.10(b)) is now covered by § 254.7(b). Misrepresentations regarding the school's facilities and equipment (formerly addressed by § 254.10(c)) is covered by § 254.4(a). Misrepresentations concerning placement assistance offered to graduates (formerly addressed by § 254.10(d)) is covered by § 254.4(a)(7).

Section 254.0 has been added to explain the scope and application of the Guides. Various editorial changes have been made to eliminate redundancies, consolidate provisions, and make the Guides clearer and easier to read. Finally, the title of the Guides has been changed to reflect the fact that "distance education" is now the term used for the sale of programs of study—whether offered by correspondence, computer, or some other means—where work is completed by the student at home (or some other location of his or her own choosing) rather than in a school facility.

#### List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

For the reasons set forth above, the Commission amends 16 CFR Part 254 as follows:

1. The title of Part 254 is amended to read as follows:

#### PART 254—GUIDES FOR PRIVATE VOCATIONAL AND DISTANCE EDUCATION SCHOOLS

2. The authority citation for part 254 continues to read as follows:

**Authority:** 38 Stat. 717, as amended; 15 U.S.C. 41–58.

3. Section 254.0 is added to read as follows:

##### § 254.0 Scope and application.

(a) The Guides in this part apply to persons, firms, corporations, or organizations engaged in the operation of privately owned schools that offer resident or distance courses, training, or instruction purporting to prepare or qualify individuals for employment in any occupation or trade, or in work requiring mechanical, technical, artistic, business, or clerical skills, or that is for the purpose of enabling a person to improve his appearance, social aptitude, personality, or other attributes. These Guides do not apply to resident primary or secondary schools or institutions of higher education offering at least a 2-year program of accredited college level studies generally acceptable for credit toward a bachelor's degree.

(b) These Guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These Guides specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the advertising, promotion, marketing, and sale of courses or programs of instruction offered by private vocational or distance education schools. The Guides provide the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with these Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.

4. Section 254.1 is revised to read as follows:

##### § 254.1 Definitions.

(a) *Accredited.* A school or course has been evaluated and found to meet established criteria by an accrediting agency or association recognized for such purposes by the U.S. Department of Education.

(b) *Approved.* A school or course has been recognized by a State or Federal agency as meeting educational standards or other related qualifications as prescribed by that agency for the school or course to which the term is

<sup>9</sup> 34 CFR 668.14(b)(10).

<sup>10</sup> 34 CFR 668.71(a).

<sup>11</sup> 34 CFR 668.74.

applied. The term is not and should not be used interchangeably with "accredited." The term "approved" is not justified by the mere grant of a corporate charter to operate or license to do business as a school and should not be used unless the represented "approval" has been affirmatively required or authorized by State or Federal law.

(c) *Industry member.* Industry members are the persons, firms, corporations, or organizations covered by these Guides, as explained in § 254.0(a).

5. Section 254.2 is revised to read as follows:

**§ 254.2 Deceptive trade or business names.**

(a) It is deceptive for an industry member to use any trade or business name, label, insignia, or designation which misleads or deceives prospective students as to the nature of the school, its accreditation, programs of instruction, methods of teaching, or any other material fact.

(b) It is deceptive for an industry member to misrepresent, directly or indirectly, by the use of a trade or business name or in any other manner that:

(1) It is a part of or connected with a branch, bureau, or agency of the U.S. Government, or of any State, or civil service commission;

(2) It is an employment agency or an employment agent or authorized training facility for any industry or business or otherwise deceptively conceal the fact that it is a school.

(c) If an industry member conducts its instruction by correspondence, or other form of distance education, it is deceptive to fail to clearly and conspicuously disclose that fact in all promotional materials.

6. Section 254.3 is revised to read as follows:

**§ 254.3 Misrepresentation of extent or nature of accreditation or approval.**

(a) It is deceptive for an industry member to misrepresent, directly or indirectly, the extent or nature of any approval by a State agency or accreditation by an accrediting agency or association. For example, an industry member should not:

(1) Represent, without qualification, that its school is accredited unless all programs of instruction have been accredited by an accrediting agency recognized by the U.S. Department of Education. If an accredited school offers courses or programs of instruction that are not accredited, all advertisements or promotional materials pertaining to

those courses or programs, and making reference to the accreditation of the school, should clearly and conspicuously disclose that those particular courses or programs are not accredited.

(2) Represent that its school or a course is approved, unless the nature, extent, and purpose of that approval are disclosed.

(3) Misrepresent that students successfully completing a course or program of instruction can transfer the credit to an accredited institution of higher education.

(b) It is deceptive for an industry member to misrepresent that a course of instruction has been approved by a particular industry, or that successful completion of the course qualifies the student for admission to a labor union or similar organization or for receiving a State or Federal license to perform certain functions.

(c) It is deceptive for an industry member to misrepresent that its courses are recommended by vocational counselors, high schools, colleges, educational organizations, employment agencies, or members of a particular industry, or that it has been the subject of unsolicited testimonials or endorsements from former students. It is deceptive for an industry member to use testimonials or endorsements that do not accurately reflect current practices of the school or current conditions or employment opportunities in the industry or occupation for which students are being trained.

**Note to paragraph (c):** The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

7. Section 254.4 is revised to read as follows:

**§ 254.4 Misrepresentation of facilities, services, qualifications of staff, status, and employment prospects for students after training.**

(a) It is deceptive for an industry member to misrepresent, directly or indirectly, in advertising, promotional materials, or in any other manner, the size, location, services, facilities, or equipment of its school or the number of educational qualifications of its faculty and other personnel. For example, an industry member should not:

(1) Misrepresent the qualifications, credentials, experience, or educational background of its instructors, sales representatives, or other employees.

(2) Misrepresent, through statements or pictures, the nature of efficacy of its

courses, training devices, methods, or equipment.

(3) Misrepresent the availability of employment while the student is undergoing instruction or the role of the school in providing or arranging for such employment.

(4) Misrepresent the availability or nature of any financial assistance available to students. If the cost of training is financed in whole or in part by loans, students should be informed that loans must be repaid whether or not they are successful in completing the program and obtaining employment.

(5) Misrepresent the nature of any relationship between the school or its personnel and any government agency or that students of the school will receive preferred consideration for employment with any government agency.

(6) Misrepresent that certain individuals or classes of individuals are members of its faculty or advisory board; have prepared instructional materials; or are otherwise affiliated with the school.

(7) Misrepresent the nature and extent of any personal instruction, guidance, assistance, or other service, including placement assistance, it will provide students either during or after completion of a course.

(b) It is deceptive for an industry member to misrepresent that it is a nonprofit organization or to misrepresent affiliation or connection with any public institution or private religious or charitable organization.

(c) It is deceptive for an industry member to misrepresent that a course has been recently revised or instructional equipment is up-to-date, or misrepresent its ability to keep a program current and up-to-date.

(d) It is deceptive for an industry member, in promoting any course of training in its advertising, promotional materials, or in any other manner, to misrepresent, directly or by implication, whether through the use of text, images, endorsements, or by other means, the availability of employment after graduation from a course of training, the success that the member's graduates have realized in obtaining such employment, or the salary that the member's graduates will receive in such employment.

**Note to paragraph (d):** The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

8. Section 254.5 is revised to read as follows:

**§ 254.5 Misrepresentations of enrollment qualifications or limitations.**

(a) It is deceptive for an industry member to misrepresent the nature or extent of any prerequisites or qualifications for enrollment in a course or program of instruction.

(b) It is deceptive for an industry member to misrepresent that the lack of a high school education or prior training or experience is not an impediment to successful completion of a course or obtaining employment in the field for which the course provides training.

9. Section 254.6 is revised to read as follows:

**§ 254.6 Deceptive use of diplomas, degrees, or certificates.**

(a) It is deceptive for an industry member to issue a degree, diploma, certificate of completion, or any similar document, that misrepresents, directly or indirectly, the subject matter, substance, or content of the course of study or any other material fact concerning the course for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) It is deceptive for an industry member to offer or confer an academic, professional, or occupational degree, if the award of such degree has not been authorized by the appropriate State educational agency or approved by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses, in all advertising and promotional materials that contain a reference to such degree, that its award has not been authorized or approved by such an agency.

(c) It is deceptive for an industry member to offer or confer a high school diploma unless the program of instruction to which it pertains is substantially equivalent to that offered by a resident secondary school, and unless the student is informed, by a clear and conspicuous disclosure in writing prior to enrollment, that the industry member cannot guarantee or otherwise control the recognition that will be accorded the diploma by institutions of higher education, other schools, or prospective employers, and that such recognition is a matter solely within the discretion of those entities.

10. Section 254.7 is revised to read as follows:

**§ 254.7 Deceptive sales practices.**

(a) It is deceptive for an industry member to use advertisements or promotional materials that misrepresent, directly or by implication, that employment is being offered or that a talent hunt or contest is being conducted. For example, captions such

as, "Men/women wanted to train for \* \* \*," "Help Wanted," "Employment," "Business Opportunities," and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program and the school's refund policy if the student does not complete the program.

(c) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course of program and the circumstances that would constitute grounds for terminating the student's enrollment prior to completion of the program.

11. Section 254.8 is removed.
12. Section 254.9 is removed.
13. Section 254.10 is removed.

By direction of the Commission, Commissioner Swindle dissenting.

**Donald S. Clark,**

*Secretary.*

DISSENTING STATEMENT OF COMMISSIONER ORSON SWINDLE in *Regulatory Reform-Vocational School Guides*, File No. P964220

The Commission today has issued revised Guides for Private Vocational and Distance Schools ("Guides") to address certain claims that private vocational schools make to their students and prospective students. I have voted against the Guides for two reasons. One reason is that the Guides are not likely to promote voluntary compliance because they do not resolve any demonstrated uncertainty among private vocational schools over what claims are likely to be considered deceptive. The other reason is that any need for Commission action would be largely eliminated if other government regulations and private oversight schemes were more actively enforced.

The Commission has a number of weapons in its arsenal to prevent unfair or deceptive acts and practices, each designed to be used for a specific purpose. Guides are issued when the Commission believes that guidance as to legal requirements "would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." Commission Rule of Practice 1.6. The purpose of such guidance is to "provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." Commission Rule of Practice 1.5.

The Commission has successfully used guides and policy statements to provide industry with standards that eliminate or substantially reduce uncertainty over what the Commission is likely to consider deceptive. See, e.g., *Guides for the Use of Environmental Marketing Claims*, 16 C.F.R. Part 260; Federal Trade Commission

Enforcement Policy Statement on Food Advertising (May 1994). However, there is no reason to believe here that private vocational schools are uncertain over what claims the Commission is likely to consider deceptive. Indeed, the public comments we received from schools did not reveal any such uncertainty that needs to be resolved by the Commission to promote voluntary compliance.<sup>1</sup>

Perhaps a better way of combatting misrepresentations would be for the government agencies and private bodies that directly regulate this industry to more vigorously enforce their own prohibitions. The Department of Education ("DOE") can bar a private vocational school from receiving federal financial assistance if it makes misrepresentations in violation of DOE regulations. 34 C.F.R. Part 668. DOE's regulatory requirements provide a particularly powerful incentive for most private vocational schools not to make misrepresentations, given the critical importance to most of them of continuing to participate in federal financial assistance programs. State licensing boards and private accrediting bodies also can revoke the license or accreditation of a private vocational school that make misrepresentations.

Some private vocational schools may make misrepresentations notwithstanding these layers of regulation and oversight. When this occurs, DOE, state licensing boards, and private accreditation bodies should use their authority and their standards to address these misrepresentations in the first instance. Although Commission law enforcement action may also be needed to address such misrepresentations in discrete circumstances, I do not believe this possibility justifies our issuance of the Guides.

I dissent.

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 936**

[SPATS No. OK-022-FOR]

**Oklahoma Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving an amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the

<sup>1</sup> The comments received from private vocational schools overwhelmingly complained that reissuing the Guides would be confusing, frustrating, and burdensome in light of existing regulatory and oversight schemes—not an auspicious beginning for fostering voluntary industry compliance.