two impacts on its business. First, the BPYC expects the NATO conference to severely limit the BPYC's income stream, which is normally generated from the aforementioned services. Second, the BPYC expects the NATO conference to have an impact on the BPYC's membership development, which typically occurs in mid April. In light of these impacts, the BPYC asked to meet with an agent of the Coast Guard to discuss the BPYC's expected losses and to arrive at a reasonable compensation. On April 20, 2012, a member of the Coast Guard's offices in Cleveland, OH, on behalf of the Captain of the Port, Sector Lake Michigan, telephoned the BPYC and confirmed the above understanding of the BPYC's comment and its request.

In light of the BPYC's comment, the Coast Guard will not change the TFR published on April 13, 2012. Although the BPYC raised concerns about the economic impact of the Coast Guard's security zones, the BPYC's comment did not directly speak to the design, the establishment, or the enforcement of these security zones. The BPYC did not ask the Coast Guard to modify the security zones or to reconsider the manner in which they are enforced. Rather, the BPYC simply asked to meet with the Coast Guard to discuss compensation. While the Coast Guard takes seriously the economic impact that its rules might have on small entities, the Coast Guard is unable to provide compensation to small entities so impacted.

Although the Coast Guard is unable to directly compensate small entities for the economic impacts of its rules, the BPYC is encouraged to contact CWO Jon Grob via the contact information provided above to discuss the Coast Guard's enforcement of the security zones discussed herein and options for compliance.

Dated: April 24, 2012.

C.W. Tenney,

Commander, U.S. Coast Guard Captain of the Port, Sector Lake Michigan, Acting.

[FR Doc. 2012–10549 Filed 5–1–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 690

[Docket ID ED–2012–OPE–0006]

RIN 1840–AD11

Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule; request for comments.

SUMMARY: The Secretary amends four sections of the Federal Pell Grant Program regulations to make them consistent with recent changes in the law that prohibit a student from receiving two consecutive Pell Grants in a single award year.

DATES: This interim final rule is effective May 2, 2012. We must receive your comments on or before June 18, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only once in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final regulations, address them to Jacquelyn Butler, U.S. Department of Education, 1990 K Street NW., Room 8053, Washington, DC 20006–8542.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Butler, U.S. Department of Education, 1990 K Street NW., Room 8053, Washington, DC 20006–8542. Telephone: (202) 502–7890 or via Internet at: *Jacquelyn.Butler@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.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Although the Secretary has decided to issue these interim final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We invite your comments. We will consider these comments in determining whether to revise these interim final regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these interim final regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Federal Pell Grant Program.

During and after the comment period, you may inspect all public comments about these interim final regulations by accessing *www.regulations.gov.* You may also inspect the comments in person in Room 8083, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4 p.m. Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Two Federal Pell Grants in One Award Year (§§ 690.63(g)(1), 690.63(h), 690.64, 690.65(c), 690.65(f), and 690.67)

In August of 2008, the Higher Education Opportunity Act (HEOA), Public Law 110–315, added section 401(b)(5) to the Higher Education Act of 1965, as amended (HEA), which provided that a student enrolled in a certificate, associate degree, or baccalaureate degree program at least half-time for more than one academic year may receive up to two consecutive Federal Pell Grant Scheduled Awards during a single award year. Although the addition of section 401(b)(5) was effective beginning with the 2009–2010 award year, we did not publish final

regulations until October 29, 2009 (74 FR 55902). Those regulations were effective beginning with the 2010–2011 award year. Prior to the publication of the October 29, 2009, final regulations, we provided guidance to institutions on how to implement the provisions of section 401(b)(5) to allow certain students to receive two Pell Grants in one award year for the 2009–2010 award year.

Subsequently, section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10) repealed section 401(b)(5) of the HEA. The repeal of this provision became effective with the 2011–2012 award year.

Because there is no longer an opportunity for a student to receive a second Federal Pell Grant Scheduled Award, we are amending current §§ 690.63(g)(1), 690.63(h), 690.64, 690.65(c), 690.65(f), and 690.67.

Significant Regulations

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Part 690—Federal Pell Grant Program

Two Federal Pell Grants in an Award Year (§§ 690.63(g)(1), 690.63(h), 690.64, 690.65(c), 690.65(f), and 690.67)

Statute: Section 401(b)(5) of the HEA, as amended by the HEOA, provided that a student may receive up to two consecutive Federal Pell Grant Scheduled Awards during a single award year if the student is enrolled at least half-time for more than one academic year, more than two semesters, or the equivalent time during a single award year. The student must also be enrolled in a certificate, associate degree, or baccalaureate degree program. Section 484(s)(3) of the HEA provides the authority to waive this provision for students with intellectual disabilities who enroll in a comprehensive transition and postsecondary program. Section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10) repealed section 401(b)(5) of the HEA.

Calculation of a Federal Pell Grant for a Payment Period (§ 690.63(g)(1))

Current Regulations: Current § 690.63(g)(1) provides that the amount of a student's award for the award year may not exceed his or her Scheduled Federal Pell Grant award for the award year unless the student is eligible to receive a second Scheduled Federal Pell Grant award in the same award year under current § 690.67.

New Regulations: We are revising current § 690.63(g)(1) to remove the reference to § 690.67.

Reasons: With the repeal of section 401(b)(5) of the HEA, it is no longer necessary to have procedures for awarding a student his or her second Scheduled Award in an award year. Therefore, these interim final regulations remove § 690.67, and we remove the unnecessary reference to § 690.67 from current § 690.63(g)(1).

Payment From Two Scheduled Awards (§ 690.63(h))

Current Regulations: Under current § 690.63(h), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment is calculated using the annual award for his or her enrollment status for the payment period. The student's payment is the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in the award year up to the total amount of the payment for the payment period.

New Regulations: Current § 690.63(h) is removed.

Reasons: With the repeal of section 401(b)(5) of the HEA, which provided that an otherwise eligible student could receive more than one Federal Pell Grant in an award year, it is no longer necessary to provide regulations that calculate a student's Federal Pell Grant payment when the student is eligible to receive a payment from his or her first and second Scheduled Awards in a payment period. Therefore, we are removing current § 690.63(h).

Payment Period in Two Award Years (§ 690.64)

Current Regulations: Under current § 690.64, if a payment period is scheduled to occur in two award years, an institution must consider this ''crossover'' payment period to occur entirely in one award year and pay the student with funds from the award year to which the payment period is assigned. An institution must assign the payment period to that award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution is required to reassign the payment to the award year providing the greater payment.

New Regulations: Under new § 690.64(a) and (a)(1) of these interim final regulations, if a student enrolls in a payment period that is scheduled to occur in two award years, the entire payment period must be considered to occur within one award year.

New § 690.64(a)(2) provides that the institution must determine for each Federal Pell Grant recipient the award year in which the payment period will be placed.

New § 690.64(a)(3) and (4) require an institution to pay a student with funds from the same award year to which the payment period was assigned.

New § 690.64(b) provides that an institution may not make a payment that will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

Reasons: These interim final regulations amend § 690.64 to conform to the change in the law that repealed section 401(b)(5) of the HEA.

We have retained most of current § 690.64 with the exception of § 690.64(b) which requires an institution to assign a crossover payment period to the award year in which the student receives the greater Federal Pell Grant award. The purpose of current § 690.64(b) was to maximize the student's eligibility over the two award years in which the payment period was scheduled to occur in anticipation of a student receiving a second Federal Pell Grant Scheduled Award. Since a student may not receive a second Federal Pell Grant Scheduled Award, it is no longer necessary to require that the student's award for the payment period be based on the higher Federal Pell Grant payment. Therefore we are removing current § 690.64(b). Instead, under new § 690.64(a)(2), institutions have the ability to assign a crossover payment period in a way that meets the need of its students and maximizes a student's eligibility over the two award years in which the crossover payment period may occur. New § 690.64(b) is necessary to clarify that an institution may not make a payment that will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

Transfer Student: Attendance at More Than One Institution During an Award Year (§ 690.65(c) and (f))

Current Regulations: Current § 690.65(c) provides that a student who receives a Federal Pell Grant at one institution and subsequently enrolls at a

second institution within the same award year may only be paid at the second institution for the period of time the student is enrolled at that institution. The institution must adjust the student's grant to ensure that funds received by the student for the award year do not exceed the student's Scheduled Federal Pell Grant for that award year, unless the student is eligible for a second Scheduled Federal Pell Grant during that same award year.

Current § 690.65(f) provides that a transfer student must repay any amount received in an award year that exceeds his or her first or second Scheduled Federal Pell Grant.

New Regulations: We are revising current § 690.65(c) and (f) to remove the references to § 690.67.

Reasons: With the removal of § 690.67 by these interim final regulations in accordance with the repeal of section 401(b)(5) of the HEA, it is no longer necessary to provide regulations that establish procedures for awarding a student his or her second Scheduled Award in an award year. Therefore the references to § 690.67 are removed from current § 690.65(c) and (f).

Receiving Up to Two Scheduled Awards During a Single Award Year (§ 690.67)

Current Regulations: Current § 690.67(a) provides that an institution participating in the Federal Pell Grant Program shall award a payment of a second Scheduled Award to a student in an award year if an otherwise eligible student is enrolled for credit or clock hours that are attributable to the student's second academic year in the award year.

Current § 690.67(b) provides the methods by which an institution must determine the credit or clock hours that a transfer student has earned at other institutions during the award year.

Current § 690.67(c) provides that a financial aid administrator may waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year if the administrator determines that the student was unable to complete those clock or credit hours due to circumstances beyond the student's control. In this situation, the financial aid administrator is required to make and document the determination on an individual basis.

Current § 690.67(d) provides that in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

New Regulations: Current § 690.67 is removed.

Reasons: With the repeal of section 401(b)(5) of the HEA, which provided that an otherwise eligible student could receive more than one Federal Pell Grant in an award year, it is no longer necessary to provide regulations that establish procedures for awarding a student his or her second Scheduled Award in an award year. Therefore, we are removing current § 690.67.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

1. Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

2. Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impacts of entitlement 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 stated in the Executive Order.

The statutory elimination of the two Pell Grant option as reflected in this regulatory action is economically significant subject to review by OMB under section 3(f)(1) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

1. Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

2. Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

3. In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

4. To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

5. Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

1. Summary of Potential Costs and Benefits

These interim final regulations remove the regulatory provisions related

to the option of receiving two Pell Grants in one year, an option that was eliminated by section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. This option was originally authorized by the HEOA and was first available in the 2009–2010 award year. These interim final regulations generally restore the long-standing policy related to the timing and availability of Pell Grants within an award year as it existed before the 2009–2010 award year. In the following sections, the Department summarizes the effects these interim final regulations are likely to have on the Federal student aid programs, institutions of higher education, and students.

Federal Government: Because Pell Grants are an entitlement to eligible recipients, any changes to the program that reduce eligibility will result in reduced costs of the Pell Grant Program. According to the Department's estimates, the elimination of the option for two Pell Grants in one year will remove the eligibility of about 1.9 million students annually and reduce costs in the program by approximately $24.3 billion over five years. When discounted at a 3 percent rate and a 7 percent rate, this reduces costs in the Pell Grant Program over 5 years by $22.2 billion and $19.7 billion, respectively. These reduced costs were attributed to the passage of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and these interim final regulations make the regulatory changes to give effect to the statute but do not generate any further cost reductions.

Institutions: The effect of the statutory change reflected in these interim final regulations on institutions will depend on the extent to which the availability of two Pell Grants in one year induced students to pursue additional credits. The availability of two Pell Grants in one award year was meant to accelerate students' academic programs and hopefully lead to more completions in a timely period. If this occurred and students who received two Pell Grants were induced to take more courses and progress further in their academic pursuits, the institutions will lose some tuition and fee revenue from the statutory change related to these interim final regulations. To the extent students took classes they otherwise would have taken anyway, the availability of two Pell Grants just substituted one source of tuition and fee revenue for another and may have shifted the timing of when the institutions received those funds. The limited time the two Pell Grants option was available, however, makes it difficult to determine the extent to which revenues will be reduced or shifted to other sources. As shown in Table 1, approximately 10 percent of Pell Grant recipients received a second Pell Grant in Award Year (AY) 2009–2010, and that was expected to increase to 20 percent by AY 2012–2013. Given projected use of the two Pell Grants option, the estimated maximum revenue loss to institutions would be approximately $24.3 billion over 5 years from AY 2011–2012 to AY 2015–2016. However, as stated earlier in this discussion, it is likely that a significant portion of this revenue would be shifted to other sources or be captured over a different time period, so the cost to institutions from the statutory changes should be much less. The institutions' potential loss of revenue related to the elimination of the two Pell option will depend on tuition reductions institutions choose to grant and the students' response in finding alternative sources of funding or reducing credits taken. The exact effect on institutions cannot be quantified, but it is likely to be substantially lower than the $24.3 billion discussed above.

Table 1: AY 2009-2010 Use of Second Pell Grant by Recipients and Aid Amount

AY 2009-10 Pell Program by Sector								
	Second Pell				Total Program			
	Recipients	% of Total	Aid ($m)	% of Total	Recipients	% of Total	Aid ($m)	% of Total
Public 2 yr	200,102	26.18%	455	26.84%	2,206,270	27.25%	8381	27.94%
Public 4 yr	260,989	34.14%	538	31.74%	2,864,634	35.39%	10157	33.86%
Private	74,553	9.75%	157	9.26%	988408	12.21%	3860	12.87%
Proprietary	228,758	29.93%	545	32.15%	2,035,683	25.15%	7595	25.32%
Total	**764,402**		**1,695**		**8,094,995**		**29,993**	

Source: U.S. Department of Education, Pell Sample

Students: The effect of the statutory change reflected in these interim final regulations on students is the loss of grant aid and potential academic delay or decreased likelihood of completion. Students will have to replace the reduced grant aid with savings, earnings, increased debt, or tuition reductions granted by institutions. By AY 2012–2013 approximately 20 percent of Pell Grant recipients were expected to receive two Pell Grants in one year, and they could lose grant aid up to the Pell Grant maximum depending on their eligibility and anticipated credits. The mandatory money available from this statutory change was directed to the Pell Grant Program to maintain the maximum grant, to the benefit of all Pell Grant recipients. According to the Department's estimates, approximately $5 billion in grant aid to almost 2 million students annually would need to be made up through other sources. It is not clear if the option for a second Pell Grant in one year had a significant effect on completion rates, but this is another possible cost to some student recipients of a second Pell Grant.

The Department welcomes comments about the costs and benefits of the changes implemented in these interim final regulations.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these interim final regulations. This table provides our best estimate of the changes in annual

monetized transfers as a result of the statutory elimination of the two Pell Grant option as reflected in these interim final regulations. Expenditures are classified as transfers from recipients of a second Pell Grant to the Federal Government.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$4,813 (7%). $4,838 (3%).
From Whom To Whom?	From recipients of a second Pell Grant to the Federal Government.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 690.64.)
- Could the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

Send any comments that concern how the Department could make these regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA. Notice and comment to amend current § 690.64 is contrary to the public interest because, as discussed in more detail in the following paragraphs, delay in making this regulatory change will cause some students to lose some of their Pell Grant eligibility. Notice and comment to amend §§ 690.63, 690.65, and 690.67 are unnecessary because we are merely updating these sections to reflect statutory changes in Public Law 112–10 that prohibit a student from receiving two Pell Grants in a single award year.

The APA's rulemaking exception '' 'Contrary to the public interest' requires that public rule-making procedures shall not prevent an agency from operating.'' *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1484 n.2 (9th Cir. 1992), *quoting Levesque* v. *Block,* 723 F.2d 175, 184 (1st Cir. 1983), *quoting* S. Rep. No. 752, 79th Cong., 1st Sess. 14 (1945), *reprinted in* Senate Judiciary Committee, 79th Cong., 2d Sess., Administrative Procedure Act Legislative History 185, 200 (1946). It ''connotes a situation in which the interest of the public would be defeated by any requirement of advance notice, as when announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent.''

Rulemaking is ''unnecessary'' when the agency is issuing a minor rule in which the public is not particularly interested. It applies in those situations in which ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001), *quoting* U.S. Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina* v. *Block,* 558 F. Supp. 1004, 1016 (D.S.C. 1983).

The statutory change to prohibit a student from receiving two Pell Grants in a single award year results in unintended adverse effects on students under current § 690.64. Some students may lose Pell Grant eligibility under this provision. For example, under current § 690.64, in the summer of 2012, if a student had remaining eligibility from the 2011–2012 award year, he or she would not receive those funds. Instead, the student would receive funds under the 2012–2013 award year because the 2012–2013 Pell Grant would be greater. This would also reduce the amount of Pell Grant funds that would remain available to the student for the balance of the 2012–2013 award year.

Assuming a student had $1,500 in remaining eligibility for the 2011–2012 award year, the following table shows the student's eligibility under current § 690.64 and under the changes made by these interim final regulations:

	Current rule	Interim final regulations
Award Year 2011–2012 Summer 2012	.....	$1,500
Award Year 2012–2013 Summer 2012	$2,775	.....
Fall 2012	2,775	2,775
Spring 2013	.....	2,775

In this example, under the current regulations, a student would not receive an additional $1,500 of the remaining Pell Grant award and would exhaust eligibility by the Spring of 2013. These interim final regulations avoid this result. The student receives an additional $1,500 of his or her remaining eligible Pell Grant award and has not exhausted his or her eligibility by the Spring of 2013. It is precisely to avoid this harm to students that we are waiving rulemaking for the change to § 690.64.

With respect to §§ 690.63, 690.65, and 690.67, because these interim final regulations merely reflect statutory changes and remove obsolete regulatory provisions, notice and comment are unnecessary. The amendments reflect the statutory change to the HEA that prohibits a student from receiving two Pell Grants in a single award year. Accordingly, the Secretary has good cause to waive rulemaking with respect to the removal of these regulatory provisions.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner. (5 U.S.C. 553(d)(3)). Because these interim final regulations merely reflect statutory changes and remove obsolete regulatory provisions and, in the case of new § 690.64, protect students from receiving reduced amounts of Pell Grant funds, there is good cause to make them effective on the day they are published.

Regulatory Flexibility Act Certification

Initial Regulatory Flexibility Analysis

These interim final regulations affect institutions that participate in Title IV, HEA programs, and individual Pell Grant recipients. The effect of the elimination of two Pell Grants in one year will depend on the extent students replace the funds from other sources or change their academic plans, the distribution of recipients of a second Pell Grant, and the alternative use of the funds. This Initial Regulatory Flexibility Analysis presents an estimate of the effect on small institutions of the statutory changes implemented through these interim final regulations. The Department welcomes comments and information related to this analysis.

Succinct Statement of the Objectives of, and Legal Basis for, These Interim Final Regulations

These interim final regulations remove regulatory provisions related to the availability of two Pell Grants in one year to comply with section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), which repealed section 401(b)(5) of the HEA under which an otherwise eligible student could receive more than one Federal Pell Grant in an award year.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which These Interim Final Regulations Will Apply

These interim final regulations affect institutions that participate in Title IV, HEA programs and loan borrowers. The definition of ''small entity'' in the Regulatory Flexibility Act encompasses ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The definition of ''small business'' comes from the definition of ''small business concern'' under section 3 of the Small Business Act as well as regulations issued by the U.S. Small Business Administration (SBA). The SBA defines a ''small business concern'' as one that is ''organized for profit; has a place of business in the U.S.; operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor * * *'' ''Small organizations'' are further defined as any ''not-for-profit enterprise that is independently owned and operated and not dominant in its field.'' The definition of ''small entity'' also includes ''small governmental jurisdictions,'' which includes ''school districts with a population less than 50,000.''

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 3,448 institutions representing approximately 63 percent of those institutions participating in the Federal student assistance programs meet the definition of ''small entities'' when all private nonprofit institutions are classified as small because none is dominant in the field. If the $7 million in revenue requirement were applied to private nonprofit institutions, the number of small entities would be reduced to 2,386 or 43.6 percent of institutions. Table 2 summarizes small institutions and their percent of AY 2008–2009 Pell Grant recipients and amounts by sector.

Table 2: AY 2008-2009 Pell Grant Recipients and Amounts by Sector

	Small Institutions		% of Pell Grant	
	#	% of Sector	Recipients	$
Public 4-year	4	0.7%	0.0%	0.0%
Private nonprofit 4-year*	444	30.0%	5.6%	5.9%
Private for-profit 4-year	52	24.6%	1.0%	1.0%
Public 2-year	88	8.5%	0.8%	0.7%
Private nonprofit 2-year*	147	86.5%	54.6%	53.3%
Private for-profit 2-year	405	69.6%	21.1%	21.5%
Public <2-year	202	87.4%	62.6%	61.6%
Private nonprofit <2-year*	61	93.8%	51.4%	51.1%
Private for-profit <2-year	983	89.4%	44.5%	44.4%

Source: IPEDS 2008-2009

*Applies $7 million revenue standard to private nonprofit institutions for informational purposes. If not applied, the number of institutions in the private nonprofit sectors would be 1,479 four-year, 170 two-year, and 65 less-than-two-year institutions. All Pell Grant recipients and Pell Grant disbursements in the private nonprofit sectors would be small entities.

Using the distribution of Pell Grant recipients and amounts at small institutions from Table 2 and the Department's estimated two Pell Grant recipients and amounts, the estimated maximum cost to small institutions across all sectors for the period from 2011–2012 to 2015–2016 is approximately $1.67 billion. The estimated recipients and amounts by type of institution are summarized in Table 3. The amount of grant aid lost for any individual institution will depend on the extent the second Pell Grant option was utilized at that school. If distributed evenly across all small entities, with nonprofit institutions subject to the $7 million revenue requirement for a more uniform profile of institutions, an annual average of $150,000 would not be available from second Pell Grants in one award year. As discussed in the Summary of Potential *Cost and Benefits* section, much of this revenue will be available from other sources including the preservation of the maximum grant level in the Pell Grant Program, student earnings or savings, and increased student debt.

Table 3: Estimated Pell Grant Recipients and Amounts at Small Institutions

	Estimated Pell Grant Recipients at Small Institutions				
	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16
Public 2 yr	4,060	4,963	4,997	5,123	5,256
Public 4 yr	143	175	176	181	185
Private	18,152	22,190	22,342	22,904	23,501
Proprietary	78,907	96,459	97,120	99,562	102,157
Total	**101,263**	**123,787**	**124,636**	**127,770**	**131,100**

	Estimated Pell Grant Amounts at Small Institutions				
	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16
Public 2 yr	10.6	13.0	13.3	13.8	14.5
Public 4 yr	0.4	0.5	0.5	0.5	0.5
Private	43.9	53.8	55.1	57.3	59.9
Proprietary	215.7	264.4	270.8	282.0	294.6
Total	**270.5**	**331.6**	**339.6**	**353.7**	**369.4**

Source: IPEDS 2008-2009 and Department of Education estimates

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of These Interim Final Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

These interim final regulations do not impose any new reporting, record keeping, or other compliance requirements on institutions.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap or Conflict With These Interim Final Regulations

These interim final regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

No alternatives were considered for the amendments to §§ 690.63(g)(1), 690.63(h), 690.65(c), 690.65(f), and 690.67 because these changes implement changes to the HEA enacted by Congress and the Department did not exercise discretion in developing these amendments. With respect to § 690.64, the Department could have left the current regulations in place. However, such an action would have led to potentially serious adverse effects on students, as described in the *Waiver of Rulemaking and Delayed Effective Date* section of this preamble.

Paperwork Reduction Act of 1995

These interim final regulations do not create any information collection requirements. With the removal of §§ 690.63(h) and 690.67 and the revision of § 690.64, due to the statutory changes, the paperwork burden associated with those sections are also removed. This change results in the discontinuation of information collection 1845–0098 and, therefore, the elimination of 109,605 burden hours associated with that collection.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these regulations require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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(Catalog of Federal Domestic Assistance Number: 84.063 Federal Pell Grants)

List of Subjects in 34 CFR Part 690

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: April 27, 2012.

Anne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 690 of title 34 of the Code of Federal Regulations as follows:

PART 690—FEDERAL PELL GRANT PROGRAM

■ 1. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

§ 690.63 [Amended]

■ 2. Amend 690.63:

■ a. In paragraph (g)(1), by removing the words and citation, ''except as provided in § 690.67''; and

■ b. By removing paragraph (h).

■ 3. Section 690.64 is revised to read as follows:

§ 690.64 Determining the award year for a Federal Pell Grant payment period that occurs in two award years.

(a) If a student enrolls in a payment period that is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year;

(2) The institution must determine for each Federal Pell Grant recipient the award year in which the payment period will be placed;

(3) If an institution places the payment period in the first award year, it must pay a student with funds from the first award year; and

(4) If an institution places the payment period in the second award year, it must pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

(Authority: 20 U.S.C. 1070a)

■ 4. Section 690.65 is amended:

■ a. In paragraph (c), by removing the words and citation, ''except as provided under § 690.67''; and

■ b. By revising paragraph (f) to read as follows:

§ 690.65 Transfer student: attendance at more than one institution during an award year.

* * * * *

(f) A transfer student shall repay any amount received in an award year that exceeds his or her Scheduled Federal Pell Grant.

* * *

§ 690.67 [Removed and Reserved]

■ 5. Section 690.67 is removed and reserved.

[FR Doc. 2012–10559 Filed 5–1–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0271; FRL–9664–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Removal of the 1980 Consent Order for the Maryland Slag Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision removes a 1980 Consent Order issued to the Maryland Slag Company (now known as MultServ). The 1980 Consent Order is no longer required to satisfy any applicable Federal regulations and the Clean Air Act (CAA). EPA is approving this revision in accordance with the requirements of the CAA.

DATES: This rule is effective on July 2, 2012 without further notice, unless EPA receives adverse written comment by June 1, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0271 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: spink.marcia@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0271, Marcia L. Spink, Associate Director for Policy and Science, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0271. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although