§ 771.130 Supplemental environmental impact statements.

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(e) A supplemental draft EIS may be necessary for FTA major public transportation capital investments if there is a substantial change in the level of detail on project impacts during project planning and development.

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15. Amend § 771.133 by revising the last sentence to read as follows:

§ 771.133 Compliance with other requirements.

* * * The Administration's approval of a NEPA document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

16. Add § 771.139 to read as follows:

§ 771.139 Statute of Limitations.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the **Federal Register** indicating that such decisions are final within the meaning of 23 U.S.C. 139(*l*). Claims arising under Federal law seeking judicial review of any such decisions are barred unless filed within 180 days after publication of the notice. This 180-day time period does not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed.[5] This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

Issued in Washington, DC, this 23rd day of July, 2007.

James S. Simpson,

Administrator, Federal Transit Administration.

Issued in Washington, DC, this 23rd day of July, 2007.

J. Richard Capka,

Administrator, Federal Highway Administration.

[FR Doc. 07–3781 Filed 8–6–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF EDUCATION

34 CFR Part 691

[Docket ID ED–2007–OPE–0135]

RIN 1840–AC92

Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs. The Secretary is amending these regulations to reduce administrative burden for program participants and to clarify program requirements.

DATES: We must receive your comments on or before September 6, 2007.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, 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 *http://www.regulations.gov.* Under ''Search Documents'' go to ''Optional Step 2'' and select ''Department of Education'' from the ''Federal Department or Agency'' drop-down menu, then click ''Submit.'' In the Docket ID column, select ED–2007–OPE–0135 to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Sophia McArdle, U.S. Department of Education, 1990 K Street, NW., room 8019, Washington, DC 20006–8544.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT:

Topic	Contact person and information
General information and information related to recognition of rigorous secondary school programs and eligible majors.	Sophia McArdle. Telephone: (202) 219–7078 or via the Internet: *sophia.mcardle@ed.gov.*
Information related to successful completion of a rigorous secondary school program.	Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet: *jacquelyn.butler@ed.gov.*
Information related to grade point average	Anthony Jones. Telephone: (202) 502–7652 or via the Internet: *anthony.jones@ed.gov.*
Information related to academic year progression and prior enrollment	Fred Sellers. Telephone: (202) 502–7502 or via the Internet: *fred.sellers@ed.gov.*

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the first contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

As outlined in the section of this notice entitled ''Negotiated Rulemaking,'' significant public

[5] The FHWA published a detailed discussion of DOT's interpretation of 23 U.S.C. 139(*l*), together with information applicable to FHWA projects about implementation procedures for 23 U.S.C. 139(*l*), in Appendix E to the ''SAFETEA–LU Environmental Review Process: Final Guidance,'' dated November 15, 2006. The implementation procedures in Appendix E apply only to FHWA projects. The section 6002 guidance, including Appendix E, is available at *http://www.fhwa.dot.gov//*, or in hardcopy by request.

participation, through four public hearings and three negotiated rulemaking sessions, has occurred in developing this NPRM. Therefore, in accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations within 30 days. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8019, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the first person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA (Title IV, HEA programs), to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations for the Title IV, HEA programs to a negotiated rulemaking process. The proposed regulations that the Department publishes must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants in that process stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/nr.html.*

On August 18, 2006, the Department published a notice in the **Federal Register** (71 FR 47756) announcing our intent to establish up to four negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to the ACG and National SMART Grant programs. A second committee would address issues related to the Federal student loan programs. A third committee would address programmatic, institutional eligibility, and general provisions issues. Lastly, a fourth committee would address accreditation. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee. The four committees met to develop proposed regulations over the course of several months, beginning in December 2006. This NPRM proposes regulations relating to the ACG and National SMART Grant programs that were discussed by the first committee mentioned in this paragraph (the ''ACG and National SMART Grant Committee'').

The Department developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in testimony submitted to the Department in a series of four public hearings held on:

- September 19, 2006, at the University of California-Berkeley in Berkeley, California.
- October 5, 2006, at the Loyola University in Chicago, Illinois.
- November 2, 2006, at the Royal Pacific Hotel Conference Center in Orlando, Florida.
- November 8, 2006, at the U.S. Department of Education in Washington, DC.

In addition, the Department accepted written comments on possible regulatory changes submitted directly to the Department by interested parties and organizations. All regional meetings and a summary of all comments received orally and in writing are posted as background material in the docket and can also be accessed at *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/hearings.html.* Staff within the Department also identified issues for discussion and negotiation.

The members of the ACG and National SMART Grant Committee were:

- Gabriel Pendas, United States Students Association, and Justin McMartin, Minnesota State Colleges and Universities (alternate).
- George Chin, City University of New York, and Catherine Simoneaux, Loyola University New Orleans (alternate).
- Thomas Babel, DeVry, Incorporated, and Matthew Hamill, National Association of College and University Business Officers (alternate).
- Margaret Heisel, University of California, and Katherine Haley Will, Gettysburg College (alternate).
- Cecilia Cunningham, Middle College National Consortium, and Tim Martin, University of Arkansas (alternate).
- Lee Carrillo, Central New Mexico Community College, and Patricia Hurley, Glendale Community College (alternate).
- June Streckfus, Maryland Business Roundtable for Education, and Denise Hedrick, Educational Collaborative (alternate).
- Stanley Jones, Indiana Commission for Higher Education.
- Joan Wodiska, National Governors Association, and Robin Gelinas, Texas Education Agency (alternate).
- Mary Beth Kelly, Pennsylvania Higher Education Assistance Agency.
- Linda France, Kentucky Department of Education, and Wandra Polk, North Carolina Department of Public Instruction (alternate).
- Joe McTighe, Council for American Private Education, and William Estrada, Home School Legal Defense Association (alternate).
- Elaine Copeland, Clinton Junior College.
- Bill Lucia, Educational Testing Service, and Nancy Segal, ACT (alternate).
- Carney McCullough, U.S. Department of Education.

During its meetings, the ACG and National SMART Grant Committee reviewed and discussed drafts of proposed regulations. It did not reach consensus on the proposed regulations in this NPRM. More information on the work of this committee can be found at: *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/acg.html.*

Significant Proposed Regulations

We discuss substantive issues by subject matter. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Academic Year Progression (§ 691.6(a), (b), and (c))

Statute: Section 401A(c)(3)(A), (B), (C), and (d)(2) of the HEA requires that a student's eligibility for an ACG or National SMART Grant be based on the student's progression in academic years during the student's enrollment in an undergraduate program of study. For purposes of any program under Title IV of the HEA, which includes the ACG and National SMART Grant programs, section 481(a)(2) of the HEA defines an academic year based on two minimum measures—weeks of instructional time and credit or clock hours. Under section 481(a)(2) of the HEA, an academic year for an undergraduate program of study must be at least: (1) 30 weeks of instructional time for a course of study that measures its program length in credit hours, or 26 weeks of instructional time for a course of study that measures its program length in clock hours; and (2) 24 semester credit hours, 36 quarter credit hours, or 900 clock hours. Accordingly, a student may be eligible for an ACG during the first and second academic years of the student's undergraduate education and for a National SMART Grant during the third and fourth academic years of the student's undergraduate education. Section 401A(d)(2)(B) makes clear that a student may not receive more than two ACGs and two National SMART Grants.

General (§ 691.6(a), (b), and (c))

Current Regulations: Under current § 691.6(a), (b), and (c) an institution must determine a student's eligibility for ACGs and National SMART Grants by determining the student's academic year progression, taking into account the student's attendance in all ACG and National SMART Grant eligible programs at all institutions attended by the student during the course of that student's undergraduate education. Thus, under the current regulations, a student's academic year progression is not based on the student's enrollment in each eligible program separately, but rather is based on all eligible programs at all institutions in which a student has enrolled over the course of the student's undergraduate education. Under the current regulations, an institution must determine whether a student's previous enrollment, as measured in both weeks of instructional time and credit or clock hours, affects the student's eligibility for an ACG or National SMART Grant in an academic year. For example, consider a student who completes the weeks and hours of an academic year over three semesters at one institution while enrolled in an ACG eligible program. Although the student attended the institution on a full-time basis for only one semester and received only half of the first-year ACG, under the current regulations, because the student completed the weeks and hours of an academic year, the student is no longer eligible as a first-year student at any institution. If the student transferred to another institution and that institution accepted less than the credit hours of an academic year for that student, for purposes of determining ACG eligibility, the student would be unable to receive the second half of the first-year ACG because the student is considered to have completed the first academic year in an ACG eligible program.

Proposed Regulations: We are proposing to revise current § 691.6(a), (b), and (c) to require an institution to determine a student's academic year progression based on the student's attendance in all ACG and National SMART Grant eligible programs only at the institution in which the student is currently enrolled. Under the proposed regulations, the student who completes the weeks and hours of an academic year over three semesters at one institution while enrolled in an ACG eligible program may be eligible to receive the remaining portion of the first-year ACG at another institution upon transfer if the second institution determines that the student has remaining eligibility for a first-academic-year Scheduled Award and considers the student to be enrolled in the first academic year of an ACG eligible program because it accepted less than an academic year in credit hours.

Reason: We are proposing these changes because we believe that they would reduce the administrative burden for institutions implementing the ACG and National SMART Grant programs.

During negotiated rulemaking, the Committee discussed the issue of academic year progression at length. Many of the non-Federal negotiators were concerned about the impact the regulations would have on a student's eligibility and the resulting difficulties for institutions administering the grant programs. Specifically, many of the non-Federal negotiators asked the Department to interpret the terms ''first academic year,'' ''second academic year,'' ''third academic year,'' and ''fourth academic year'' in section 401A of the HEA as a student's grade level (*e.g.,* freshman, sophomore, junior and senior years).

Given that section 481(a)(2) of the HEA specifically describes the minimal requirements for an ''academic year'' for purposes of any Title IV, HEA program and that the ACG and National SMART Grant programs are Title IV, HEA programs, the Department is unable to interpret the term ''academic year'' in any way that would be contrary to the statutory requirements in section 481(a)(2) of the HEA. Many of the non-Federal negotiators disagreed with the Department's position and suggested that the Department has taken a more flexible approach when defining a ''year'' in other contexts. For example, section 428(b)(1)(A) of the HEA sets loan limits based on whether the student has ''successfully completed'' a ''year'' of a program of undergraduate education. We have interpreted the term ''successfully completed the first year of a program of undergraduate education'' in section 428 of the HEA to relate to a student's grade level, as determined by the institution. We have the authority to interpret the statutory language in this way because Congress had not provided us with a statutory definition of the term ''first year.'' In contrast, Congress clearly defines the minimum requirements of an ''academic year'' in section 481(a)(2) of the HEA. Accordingly, we are unable to interpret ''academic year'' as the student's grade level for purposes of the ACG and National SMART Grant programs because it would be contrary to the HEA.

We appreciate the impact of administering the academic year progression requirements for the ACG and National SMART Grant programs on institutions and share the objective of reducing the administrative burden of the programs. We believe that the proposed regulations, which require an institution to determine a student's academic year progression during the student's attendance in all ACG and National SMART Grant eligible programs only at the institution in which the student is currently enrolled, would simplify the academic year progression analysis for the institution, especially when administering aid for transfer students, as discussed in the following section.

Transfer Student (§ 691.6(d))

Current Regulations: None.

Proposed Regulations: We propose to modify § 691.6(d) to codify, with changes, the guidance provided in the preamble of the November 1, 2006 final regulations (71 FR 64401, 64405). Proposed § 691.6(d)(3) would provide that when determining the appropriate

academic year for a transfer student, the institution to which the student transferred must count both (a) the number of credit or clock hours earned by the student at prior institutions that are accepted for the student, and (b) an estimated number of weeks of instructional time completed by the student. Under the proposed regulations, the estimated number of weeks of instructional time that are counted must correspond to the credit or clock hours accepted in the same ratio as the weeks of instructional time in the eligible program's academic year is to the credit or clock hours in the academic year of the student's ACG or National SMART Grant eligible program. To determine how many weeks of instructional time to count, proposed § 691.6(d)(3)(ii) would require that an institution multiply the number of credit or clock hours that the institution accepted on transfer, except as prohibited under § 691.6(d)(2), by the number of weeks of instructional time in the academic year and divide the product of the multiplication by the credit or clock hours in the academic year. For example, consider an institution that accepts 12 semester hours on transfer into a student's eligible program that has an academic year of 24 semester hours and 30 weeks of instructional time. The institution would determine the estimated weeks of instructional time associated with the 12 semester hours by multiplying 12 times 30, which would equal 360, and dividing 360 by 24 and determine that the student is considered to have completed 15 weeks of instructional time based on the 12 hours transferred. Under these proposed regulations, institutions may not include in this estimate credit or clock hours that were not earned in an ACG or National SMART Grant eligible program.

Reason: We propose adding § 691.6(d)(3) because we believe this change would facilitate the implementation of proposed § 691.6(a), (b), and (c) by clarifying how an institution would determine the academic year progression—both in terms of credit and clock hours and weeks of instructional time—of students who transfer to the institution.

Alternative Methods for Determining Weeks of Instructional Time (§ 691.6(e), (f), (g), and (h))

Current Regulations: Section 691.6(d) of the current regulations allows programs with traditional academic calendars (*i.e.,* programs for which an institution determines payments under current § 691.63(b) and (c)) to treat summer terms as the same length as other terms when counting weeks of instructional time for purposes of determining a student's eligibility for an ACG or National SMART Grant. For these programs, ''traditional academic calendars'' are calendars that consist of two semesters or three quarters in the fall through spring and have a summer term with a minimum full-time enrollment standard of 12 semester or 12 quarter hours.

Proposed Regulations: We propose to remove current § 691.6(d) because this provision would be superseded by the alternative methods of determining weeks of instructional time included in proposed § 691.6(f), (g) and (h).

For programs with traditional academic calendars, proposed § 691.6(e)(2) would provide three alternative methods for determining the weeks of instructional time for a student's academic year progression. These methods would allow institutions with traditional academic calendar programs, based on specified criteria that assure general compliance with the academic year requirements, to (a) count weeks of instructional time based on the number of terms the student has attended, (b) attribute weeks of instructional time to the credit hours earned by the student, or (c) use the student's grade level as a basis for determining weeks of instructional time completed. Because these alternatives would not apply to eligible programs without traditional academic calendars, an institution would always be required to provide an exact determination of student academic year progression for these nontraditional programs.

Under the ''terms-attended'' alternative reflected in proposed § 691.6(f), an institution would determine the weeks of instructional time a student has attended at the institution based on the number of terms the student has attended. For each term completed, a student in an eligible program would be considered to have completed the same portion of an academic year (in weeks of instructional time) as the portion of the academic year used to calculate the student's payment for a payment period. For example, consider an eligible program with two semesters with 15 weeks of instructional time in each term and a summer term of 12 weeks of instructional time that has a defined academic year of 24 semester credit hours and 30 weeks of instructional time. A payment for a payment period in this eligible program would be one-half of a student's Scheduled Award under current § 691.63(b). Under proposed § 691.6(f), a student in this eligible program who has completed four consecutive terms, including a summer term, may be considered to have completed 60 weeks of instructional time without reference to the number of credits earned in those terms. The institution must, under § 691.6(a), determine both the number of credit hours the student earned as well as the weeks of instructional time completed by the student in order to determine the student's academic year progression. So, if the student in the example in this paragraph completed four terms with only six credits in each term, that student would not have been eligible for a first-year ACG because the student was enrolled as a less-than-full-time student. That student, therefore, would be considered a second-year student at the end of the fourth term despite the fact that the student completed the equivalent of two academic years in weeks of instructional time under the ''terms-attended'' alternative. This is because a student must meet both the ''weeks of instructional time'' and ''credit or clock hours'' requirements to progress from one academic year to the next. The student in this example did not meet the credit or clock hours requirement necessary to progress to third-year status. Therefore, regardless of the number of weeks of instructional time the student completed, he or she is not considered a third-year student. Based on both weeks of instructional time and credit hours, the student is a second-year student.

Under the ''credits-earned'' alternative reflected in proposed § 691.6(g), an institution would determine the weeks of instructional time that a student has attended based on the credit hours the student actually earned in his or her ACG or National SMART Grant eligible program. The weeks of instructional time attended would be considered to be in the same proportion to weeks of instructional time in the academic year as the credit hours that the student has earned are in proportion to the credit hours in the academic year. For example, consider an eligible program with two semesters with 16 weeks of instructional time in each term and a summer term of 12 weeks of instructional time that has an academic year of 30 semester credit hours and 32 weeks of instructional time. Under proposed § 691.6(g), a student who earned 60 credit hours in this eligible program would be considered to have completed 64 weeks of instructional time, while a student who earned 45 credit hours in this eligible program would be considered to have completed 48 weeks of

instructional time. The student who had earned 60 credit hours would be considered to have completed his or her second academic year, while the student who had earned 45 credit hours would still be considered to be in his or her second academic year.

To use the ''grade-level'' alternative reflected in proposed § 691.6(h)(1), an eligible program must qualify under proposed § 691.6(h)(1)(ii) and (2)(i) by establishing that at least two-thirds of the full-time students in the program are completing at least the weeks of instructional time in the academic year for each grade level completed. Thus, under this alternative method, a student who completes a grade level at the institution is considered to have completed the academic years through that grade level in weeks of instructional time as long as the student has also earned at least the minimum number of credit hours for the academic year. For example, consider an eligible program with two semesters with 15 weeks of instructional time in each term and a summer term of 12 weeks of instructional time that has an academic year of 24 semester hours and 30 weeks of instructional time. The institution considers a student in this eligible program to advance in grade level after earning 30 semester hours. Thus, under the ''grade-level'' alternative method, a student who has earned 60 credit hours would be classified as a junior in a National SMART Grant eligible program. As a junior, the student would be considered to have completed the weeks of instructional time of the first and second academic years because the student also would have met the credit hour requirement at the institution by earning 60 semester hours, which is more than the minimum number of credit hours required for two academic years (in this example, the minimum credit hours would be 48 semester hours).

Under proposed § 691.6(d)(2), the ''credits-earned'' and ''grade-level'' alternative methods reflected in proposed § 691.6(g) and (h), respectively, would not permit an institution to allocate weeks of instructional time to certain credits that were not earned at postsecondary institutions or as part of an ACG or National SMART Grant eligible program, as discussed under the next heading *Limitations on Determining Weeks of Instructional Time.*

In addition, under proposed § 691.6(e)(2)(ii), an institution that chooses to use one of the alternative methods of determining weeks of instructional time would need to do so for all students enrolled in the eligible program. Under proposed § 691.6(e)(3), upon request from a student, an institution must also provide an exact determination of the academic progression for that student. An exact accounting of academic year progression for a student would always preempt any use of the three alternative methods for determining the weeks of instructional time that the student has attended. We discuss the requirements of proposed § 691.6(e)(3) in more detail in the *Student Request to Determine Academic Year Level* section of this notice.

Reason: We propose the changes reflected in § 691.6(f), (g) and (h) because we believe that the proposed alternative methods for determining weeks of instructional time would help alleviate the administrative burden on institutions, especially those with traditional academic calendars, to calculate the weeks of instructional time component of a student's academic year progression.

Limitations on Determining Weeks of Instructional Time (§ 691.6(d)(2))

Current Regulations: None.

Proposed Regulations: In proposed § 691.6(d)(2), we make clear that an institution may not assign any weeks of instructional time to credit or clock hours accepted toward meeting a student's eligible program if the student earned (a) the credit or clock hours from Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or other similar competency measures, (b) the credit or clock hours while not enrolled as a regular student in an ACG or National SMART Grant eligible program, or (c) the credit or clock hours for coursework that is not at the postsecondary level, such as remedial coursework. Under these proposed regulations, an institution could not consider these credits when determining a student's weeks of instructional time under an exact accounting. Moreover, an institution would not be permitted to assign any weeks of instructional time to these credits when determining a transfer student's academic year progression, or when determining any student's academic year progression under the ''credits-earned'' or ''grade-level'' alternate methods reflected in proposed § 691.6(g) and § 691.6(h), respectively. Proposed § 691.6(d)(2)(ii) would provide an exception that would require an institution to assign weeks of instructional time to determine National SMART Grant eligibility for periods in which a student was enrolled in an ACG eligible program prior to declaring, or certifying his or her intent to declare, an eligible major.

Reason: Students earn the credits described in proposed § 691.6(d)(2)(i)(A) through (C) while not enrolled in an ACG or National SMART Grant eligible program, and, therefore, these credits do not have weeks of instructional time in an ACG or National SMART Grant eligible program associated with them. Proposed § 691.6(d)(2)(i) is intended to ensure that an institution accurately determines a student's academic year progression in his or her ACG or National SMART Grant eligible program. We believe that excluding the credits described in proposed § 691.6(d)(2)(i)(A) through (C) from the calculation of weeks of instructional time is appropriate because it would treat students consistently and would preserve two full years of ACG eligibility for many students who might otherwise have such credits counted in a way that could make them ineligible for a first-year ACG. We also believe that it is appropriate to consider weeks of instructional time completed by a student while enrolled in an ACG eligible program in determining a student's academic year progression for National SMART Grants.

Student Request To Determine Academic Year Level (§ 691.6(e))

Current Regulations: None.

Proposed Regulations: In proposed § 691.6(e)(2)(iii), we have added language to clarify that a student can request and receive an exact determination of the student's academic year standing at an institution based on his or her attendance in all ACG and National SMART Grant eligible programs at that institution and on any qualifying credit hours accepted on transfer into the student's ACG or National SMART Grant eligible program. Proposed § 691.6(e)(3) also would provide that if an institution performs an exact accounting of a student's standing, it may not use any of the alternative methods in proposed § 691.6(f), (g) and (h) for determining that student's academic year standing.

Reason: We believe that it is appropriate to add proposed § 691.6(e) to the regulations because we consider an exact determination of the weeks of instructional time completed by a student to always be the best evaluation of that student's academic year standing when determining the student's eligibility for an ACG or National SMART Grant. We encourage institutions to use an exact determination whenever possible because it is necessarily more accurate than any of the estimates obtained

under the alternative methods reflected in proposed § 691.6(f), (g) and (h).

Grade Point Average (GPA) (§ 691.15)

Statute: Section 401A(c) of the HEA establishes the general criteria for a student's eligibility for payment under the ACG and National SMART Grant Programs. Section 401A(c)(3)(B)(ii) of the HEA requires a student to have obtained a cumulative GPA of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the student's first academic year in order to be eligible for ACG funds during the student's second academic year of a program of undergraduate education. For a student to be eligible to receive a National SMART Grant award for the third and fourth academic years, section 401A(c)(3)(C)(ii) of the HEA requires a student to have obtained a cumulative GPA of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the coursework required for the eligible major.

Numeric Equivalent (§ 691.15(b)(1)(iii)(D), 691.15(c)(3), and 691.15(g))

Current Regulations: Under current § 691.15(b)(1)(iii)(C), to receive second-year ACG funds, a student must have obtained a GPA of 3.0 or higher on a 4.0 scale, or the equivalent, for the first academic year of the student's enrollment in an ACG eligible program. Under current § 691.15(c)(3), to receive a National SMART Grant, a student must have obtained, through the most recently completed payment period, a cumulative GPA of 3.0 or higher on a 4.0 scale, or the equivalent, in the student's National SMART Grant eligible program.

Proposed Regulations: We propose to revise § 691.15 by clarifying in proposed § 691.15(b)(1)(iii)(D) and (c)(3) that, for purposes of eligibility for ACG and National SMART Grants, institutions that assess grade point averages on a numeric scale other than a 4.0 scale must ensure that the minimum GPA requirement on that scale is the numeric equivalent of a cumulative GPA of 3.0 or higher on a 4.0 scale. We also propose to add a new § 691.15(g) providing minimum standards for determining numeric equivalencies for purposes of the ACG and National SMART Grant programs.

Reason: During negotiated rulemaking, the non-Federal negotiators requested that the Department clarify the meaning of the words ''or the equivalent'' in current § 691.15(b)(1)(iii)(C) and (c)(3). Some of the non-Federal negotiators asked whether the ''or the equivalent'' language meant that an institution could determine its own equivalency of a grading scale or simply an equivalent measure on a different numeric scale. We believe Congress clearly intended for the equivalency to relate to an objective means of assessing a student's GPA and not to permit institutions to use a subjective measure. The non-Federal negotiators discussed this topic and, ultimately, agreed with the Department's interpretation of the HEA.

In accordance with proposed § 691.15(g), an institution that has one or more academic programs that measure academic performance using alternatives to standard numeric grading procedures would be required to develop and apply an academically defensible equivalency policy with a numeric scale for purposes of determining student eligibility under the ACG and National SMART Grant programs. That equivalency policy would need to be in writing and available to students upon request. The policy would also need to include clear differentiations of student performance to support a determination that a student has performed, in his or her ACG or National SMART Grant program, at a level commensurate with at least a 3.0 GPA on a 4.0 scale. Generally, a grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments would not be a numeric equivalent under the proposed regulations. However, such assessments would be considered numeric equivalents if the institution could demonstrate that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.0 GPA on a 4.0 scale, or that a student's performance for tests and assignments in the ACG or National SMART Grant program yielded a numeric equivalent of a 3.0 GPA on a 4.0 scale. Under proposed § 691.15(g), the institution's equivalency policies would need to be consistent with any other standards that the institution may have developed for academic and other Title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

Transfer GPA—ACG (§ 691.15(f)(1))

Current Regulations: In the case of a transfer student who has completed the first academic year of enrollment in an ACG eligible program at the prior institution, for the first payment period of enrollment at the institution to which the student transfers, current § 691.15(d)(1) provides that the institution must calculate the student's GPA using the grades earned by the student in the coursework from any prior institution accepted toward the student's ACG eligible program, regardless of the number of weeks associated with the credit or clock hours accepted for the student on transfer. In instances when a student completes his or her first academic year after transferring, institutions have been able to use their own policies on how transfer credits are counted to determine whether the grades for the transfer credits are included in the GPA calculated to determine the student's eligibility for another ACG award.

Proposed Regulations: Proposed § 691.15(f)(1)(i) would provide that, for a student who transfers to an institution that accepts at least the credit or clock hours for an entire academic year, but less than for two academic years, the GPA to determine second-year eligibility is calculated using the grades from all coursework accepted by the current institution into the student's eligible program. Under proposed § 691.15(f)(1)(ii), for a student who transfers to an institution that accepts less than the credit or clock hours for an academic year from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility is calculated by combining the grades from all coursework accepted on transfer by the current institution into the student's eligible program with the grades for coursework earned at the current institution through the payment period in which the student completes the credit or clock hours for the student's first academic year in the eligible program. In conjunction with the proposed changes to § 691.6(a), (b), and (c), an institution would no longer consider a student's GPA from the student's first academic year in an eligible program at another institution.

Reason: The changes in proposed § 691.15(f)(1) are being made in response to requests from the non-Federal negotiators to clarify how to determine the GPA for transfer students. The non-Federal negotiators said that the GPA calculations for the ACG and National SMART Grant programs were confusing because the programs have different requirements. The non-Federal negotiators also sought to reduce the administrative burden on institutions when determining transfer student GPA for ACGs.

Proposed § 691.15(f)(1) would clarify that, for a second-year ACG, the GPA

must be calculated at the end of the student's first academic year (in contrast to the requirement under the National SMART Grant Program that a 3.0 cumulative GPA be maintained for every payment period). The requirement that the GPA for a transfer student be determined based on the coursework accepted into the ACG-eligible program at the current institution, which is reflected in proposed § 691.15(f)(1)(i), would clarify that an institution only needs to track the coursework it accepts into the student's ACG-eligible program. Finally, under proposed § 691.15(f)(1)(ii), an institution could combine grades from coursework earned at prior institutions with grades from coursework earned at the current institution to calculate the GPA for the first academic year in an ACG eligible program for the purpose of establishing eligibility for the second-year ACG in a way that minimizes institutional burden.

Transfer GPA—National SMART Grant (§ 691.15(f)(2))

Current Regulations: Current § 691.15(c)(3) states that, in order to be eligible to receive a National SMART Grant for the third or fourth academic year of the student's eligible program, the student must have a cumulative GPA through the most-recently completed payment period of at least 3.0 or higher on a 4.0 scale, or the equivalent, consistent with other institutional measures for academic and Title IV, HEA program purposes, in the student's National SMART Grant eligible program. For a transfer student, current § 691.15(d) requires an institution to calculate the student's GPA for the student's first payment period of enrollment using the grades earned by the student in the coursework from any prior institution that it accepts towards the student's National SMART Grant eligible program if the student would be otherwise eligible for a National SMART Grant. However, under current § 691.15(d)(2), if the institution accepts no credits towards the student's eligible program, the institution must consider the student to be ineligible for National SMART Grant funds until the student completes at least one payment period in an eligible program with a qualifying GPA. Under the current regulatory framework, after the initial payment period, an institution should calculate a student's GPA consistent with its other measures for academic and Title IV, HEA program purposes.

Proposed Regulations: Under proposed § 691.15(f)(2), if a student transfers from one institution to an institution at which the student is eligible for a National SMART Grant, the institution to which the student transfers would be required to determine that student's eligibility for the first payment period using one of two methods, whichever method coincides with the institution's academic policy.

Under the first method, which is reflected in proposed § 691.15(f)(2)(i)(A), if an institution's academic policy does not incorporate grades from coursework that it accepts on transfer into the student's GPA at that institution, then it would be required to calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts toward the student's National SMART Grant eligible program. That GPA would be used only for the first payment period of the student's program. The institution would then be required to apply its academic policy for subsequent payment periods and not incorporate, into the student's GPA, the student's grades from the coursework the institution accepts on transfer.

Under the second method, which is reflected in proposed § 691.15(f)(2)(i)(B), if an institution's academic policy incorporates grades from coursework that it accepts on transfer into the student's GPA at that institution, then the grades assigned to the coursework accepted by the institution into the student's National SMART Grant eligible program would be used as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and would be included in the student's cumulative GPA for all subsequent payment periods in accordance with the institution's academic policy.

Reason: During negotiated rulemaking, the non-Federal negotiators believed the current regulations sufficiently and appropriately addressed the GPA calculation for a transfer student eligible for a National SMART Grant, but they requested that the proposed regulatory language clarify how an institution should calculate a GPA based on whether its academic policy incorporated transfer grades into the GPA at that institution. The proposed regulations for calculating a GPA for a transfer student who is eligible for a National SMART Grant would codify existing practice and the non-Federal negotiators were comfortable with taking this approach.

Prior Enrollment in a Postsecondary Educational Program and Student Eligibility (§ 691.15)

Statute: Section 401A(c)(3)(A)(ii) of the HEA provides that, for a student to be eligible for a first-year ACG, the student must not have been previously enrolled in a program of undergraduate education.

Current Regulations: Current § 691.15(b)(1)(ii)(B) provides that a student is eligible for a first-year ACG if the student was not previously enrolled as a regular student in an ACG eligible program while enrolled in high school. Under the current regulations, therefore, a student is eligible for a first-year ACG after graduating from high school even if—

- While in high school, the student enrolled in an ACG ineligible program, *e.g.*, a certificate program, or postsecondary courses without being admitted as a regular student; or
- After high school, the student was enrolled in an ACG eligible program as long as the student had not completed his or her first academic year of enrollment in the eligible program.

Under the current regulations, a student enrolled in dual-credit or early college programs may be eligible for an ACG after completing secondary school if the student is not admitted as a regular student in an eligible program while in secondary school.

Proposed Regulations: Proposed § 691.15(b)(1)(ii)(C)(2) would amend the current regulations by extending ACG eligibility to a postsecondary student who previously enrolled as a regular student in an ACG eligible program while in high school provided that the student was beyond the age of compulsory school attendance during that prior enrollment.

Reason: During discussions at negotiated rulemaking, the non-Federal negotiators noted current statutory and regulatory restrictions on postsecondary institutions that limit an eligible institution from admitting most high school students as regular students. The non-Federal negotiators considered potential problems under the current regulations, especially in relation to dual-credit and early college programs.

We agree with the concerns raised by the non-Federal negotiators and believe it is important to narrow this restriction on ACG student eligibility resulting from a student participating in dual-credit or early college programs while enrolled in secondary school. Thus, we propose to change current § 691.15(b)(1)(ii)(B) to ensure that a student would not be disqualified for a first-year ACG award if that student

enrolled in an ACG eligible program while in high school, so long as the student was above the age of compulsory school attendance at the time and never received Federal student aid funds while in high school. Because the student in this example could not qualify for any Federal student aid funds while enrolled in high school under section 484(a)(1) of the HEA, the student's enrollment would not disqualify the student for an ACG at a later date. This proposed change would conform with the institutional eligibility requirement in 34 CFR 600.4, 600.5, and 600.6 that an institution may admit as regular students only persons who have a high school diploma or the equivalent, or who are beyond the age of compulsory school attendance.

Eligible Majors (§§ 691.15 and 691.17)

Statute: Section 401A(c)(3)(C)(i) of the HEA provides that a student may receive a National SMART Grant if the student is pursuing a major in the physical, life, or computer sciences; mathematics; technology; or engineering (as determined by the Secretary); or a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines to be critical to the national security of the United States.

Documenting Major (§ 691.15)

Current Regulations: Current § 691.15(c)(2) requires that, to be eligible for a National SMART Grant, a student must formally declare his or her eligible major in accordance with the institution's academic requirements. However, if under an institution's procedures, a student would not be able to formally declare a major in time to qualify for a National SMART Grant, the student must demonstrate his or her intent to declare an eligible major as documented by the institution. Under current § 691.15(c)(2), as soon as the student is able to formally declare a major, the student must do so in order to remain eligible for a National SMART Grant. In the case of a student who has declared or intends to declare an eligible major, the student must enroll in the courses necessary to complete the degree program and to fulfill the eligible major requirements.

Proposed Regulations: Proposed § 691.15(d)(1) and 691.15(e) would clarify how an institution must document a student's eligible major, and progress in the eligible program and major, by requiring the institution to maintain the following documentation: (a) Documentation of the declared major or, in the case of a student's intent to declare a major, a written declaration of intent provided by the student that has been received recently enough for the institution to determine that it still correctly reflects the student's stated intent; and (b) written documentation showing that the student is completing coursework at an appropriate pace in the student's declared eligible major or the eligible major that the student intends to declare.

Reason: During negotiated rulemaking, the non-Federal negotiators sought clarification on how institutions should document a student's intent to declare a major to ensure appropriate compliance. Specifically, the non-Federal negotiators asked the Department to provide examples of how institutions should document a student's intent to declare a major. The changes reflected in proposed § 691.15(d)(1) and 691.15(e) would clarify how institutions must document a student's declared major or intent to declare a specific major and also how institutions must confirm that the student is taking the appropriate courses for the student's eligible program and eligible major. We think that these procedures are appropriate because they would enable the Department to monitor compliance with the statutory requirement that, to be eligible for a National SMART Grant, a student must pursue an eligible major.

Determination of Eligible Majors (§ 691.2(d) and § 691.17)

Current Regulations: Current § 691.17(a) provides that, for each award year, the Secretary identifies eligible majors in the physical, life, or computer sciences; mathematics; technology; engineering; and, after consulting with the Director of National Intelligence, critical foreign languages.

Proposed Regulations: Proposed § 691.17(d) would provide a process by which institutions of higher education could request that additional majors be added to the Department's list of eligible majors for National SMART Grants. Under proposed § 691.17(d), an institution would identify a proposed additional eligible major by its Classification of Instructional Programs (CIP) code developed by the National Center for Education Statistics. For the sake of clarity, we also have proposed to add to current § 691.2(d) a definition of the term CIP as it pertains to the National SMART Grant Program.

Reason: The non-Federal negotiators requested a mechanism by which institutions of higher education could ask the Department to consider adding majors to its list of eligible majors. We believe it is reasonable to incorporate a process in the proposed regulations to facilitate requests from institutions to add additional majors in a consistent manner, for the purpose of establishing a student's National SMART Grant eligibility.

The CIP is a taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics. For purposes of the National SMART Grant Program, the CIP coding scheme is currently used to identify eligible majors. As part of the new process, reflected in proposed § 691.17(d), institutions would need to identify additional majors by referencing the name of the proposed additional major and its CIP code. We would continue the current process of publishing the final list of eligible majors for each award year on the Federal Student Aid Information for Financial Aid Professionals Web site.

Rigorous Secondary School Program of Study (§§ 691.15 and 691.16)

Successful Completion of a Rigorous Secondary School Program of Study (§ 691.15)

Statute: Section 401A(c)(3)(A)(i) and (B)(i) of the HEA requires that a student must have successfully completed a rigorous secondary school program of study, after January 1, 2006 for first-year students and after January 1, 2005 for second-year students, in order to receive an ACG.

Current Regulations: Under current § 691.15(b)(2)(i), an institution must document a student's completion of a rigorous secondary school program of study using documentation from the appropriate cognizant authority provided by that authority or by the student.

Proposed Regulations: Proposed § 691.15(b)(1)(ii)(A) and § 691.15(b)(1)(iii)(A) would clarify that, in order to successfully complete a rigorous secondary school program of study, a student must, in addition to completing the rigorous program of study, obtain a high school diploma or for a home-schooled student, receive a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian. Proposed § 691.15(b)(2)(i) would clarify that an institution must document a student's successful completion of a rigorous secondary school program of study using documentation provided by the student or cognizant authority.

Reason: The non-Federal negotiators requested that the regulations clarify the meaning of the term ''successful'' in the context of completing a rigorous

secondary school program of study. Specifically, the non-Federal negotiators asked that the proposed regulations clarify that to ''successfully'' complete a rigorous secondary school program of study, a student must both (a) receive a high school diploma or, for a home-schooled student, receive a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian; and (b) successfully complete a rigorous secondary school program of study as recognized by the Secretary under current § 691.16. We believe that the proposed changes address the non-Federal negotiators' concerns.

Under proposed § 691.16, in the case of a rigorous secondary school program of study established by a State educational agency (SEA) or local educational agency (LEA), the specific requirements for successfully completing a rigorous secondary school program of study would be determined by that SEA or LEA and may include, for example, a qualitative measure such as a minimum GPA, in addition to receiving a high school diploma or, for a home-schooled student, receiving a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian.

The concept of ''success'' in relationship to completing a rigorous secondary school program of study for ACG purposes is also addressed in proposed § 691.16(d), which is substantially the same as current § 691.16(d). First, the requirement for successfully completing the set of courses designated by the Secretary under proposed § 691.16(d)(2) would be that a student must receive credit for those courses, in addition to receiving a high school diploma or, for a home-schooled student, receiving a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian. The proposed regulations would not require that a student meet a minimum qualitative standard for the courses, such as receiving a minimum GPA, as long as the student received credit for those courses. Moreover, the proposed regulations would not include any minimum qualitative measure for successful completion of the coursework associated with AP or IB courses under current § 691.16(d)(4) and (5) as long as the student completes the AP or IB coursework and receives a passing grade. Thus, nothing in these proposed regulations would change current § 691.16(d)(4) and (5), under which a student is considered to have successfully completed a rigorous secondary school program of study by completing and passing the required IB or AP courses and scoring a 4 or higher on the corresponding IB exams or a 3 or higher on the corresponding AP exams, and obtaining a high school diploma or, for a home-schooled student, a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian.

Recognition of a Rigorous Secondary School Program of Study (§ 691.16)

Statute: Section 401A(f) of the HEA requires the Secretary to recognize at least one rigorous secondary school program of study in each State for the purpose of determining student eligibility for an ACG. Section 401A(c)(3)(A)(i) and (B)(i) provides that a rigorous secondary school program of study is established by an SEA or LEA.

Current Regulations: Current § 691.16 provides that, for an award year, the Secretary recognizes in each State at least one rigorous secondary school program of study established by an LEA the State has authorized to establish a separate secondary school program of study or an SEA. The current regulations also provide for the Secretary to recognize additional secondary school programs of study as rigorous, in addition to any that may subsequently be established by SEAs and LEAs and recognized by the Secretary. These additional programs include certain advanced and honors programs established by States and in existence for the 2004–2005 or 2005–2006 school year.

Proposed Regulations: Proposed § 691.16(b)(2) would allow SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year. Proposed § 691.16(d)(1) would include a new element providing for the continued recognition of advanced or honors secondary school programs of study by the Secretary for school years subsequent to the 2005–2006 school year.

Reason: We believe that the proposed regulations would provide an efficient process for the Secretary to recognize rigorous secondary school programs of study for multiple years into the future. This process would allow SEAs and LEAs to provide students with information about what constitutes a rigorous secondary school program of study now and in future years. We believe that providing students with this information would have several positive outcomes. First, the information would provide certainty for a student that his or her secondary school program of study will qualify as rigorous for that student's State and graduation year. Second, having this information would allow a student to perform long-range planning of his or her secondary school program of study to ensure that a recognized rigorous secondary school program of study is completed. Third, SEAs and LEAs would be able to perform long-term resource allocation planning to ensure that the recognized rigorous secondary school program of study is actually available to students.

Executive Order 12866

1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the 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 set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined that this proposed regulatory action would not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. In accordance with the Executive order, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations address a range of issues affecting students and institutions participating in the ACG and National SMART Grant programs. Prior to the start of negotiated rulemaking, through a notice in the **Federal Register** and four regional

hearings, the Department solicited testimony and written comments from interested parties to identify those areas of the Title IV regulations that they felt needed to be revised. Areas identified during this process that are addressed by these proposed regulations include:

- Difficulties experienced by institutions in determining academic year progression. The Department has proposed changes to simplify determination of academic year progression, in general, and for transfer students, in particular. The Department also has proposed certain alternative methods for determining weeks of instructional time.
- Concerns regarding student GPA calculation at an institution that uses a numeric scale other than a 4.0 scale. The Department has proposed changes to clarify how to calculate GPA at an institution that assesses GPA on a numeric scale other than a 4.0 scale.
- Confusion in both the ACG and National SMART Grant programs regarding GPA calculation for transfer students. The Department has proposed changes to clarify the GPA calculation for transfer students in each program.
- Concerns regarding a student's prior enrollment in a postsecondary educational program and student eligibility. The Department has proposed extending eligibility to students who enroll as regular students in an ACG eligible program while in high school and who are beyond the age of compulsory school attendance.
- Confusion regarding the documentation of a student's declared major or intent to declare a major, and the student's progress in the eligible major. The Department has proposed changes to clarify the documentation requirements.
- Lack of a process by which institutions of higher education can request additional majors to be added to the list of eligible majors under the National SMART Grant program. The Department has proposed a process by which institutions can request additional majors.
- Confusion regarding what constitutes successful completion of a rigorous secondary school program of study. The Department has proposed changes to clarify this requirement.
- Concerns regarding recognition of a rigorous secondary school program of study. The Department has proposed permitting State educational agencies and local educational agencies to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year.

Regulatory Alternatives Considered

A broad range of alternatives to the proposed regulations were considered as part of the negotiated rulemaking process. These alternatives are reviewed in detail elsewhere in this preamble under the *Reasons* sections accompanying the discussion of each proposed regulatory provision. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on student eligibility for ACG and National SMART Grants or on the size or timing of student awards. In all cases, the alternatives considered, which generally dealt with the clarification of existing definitions, procedures, or processes to simplify program administration, did not have a measurable effect on Federal costs.

Benefits

Many of the proposed regulations merely clarify the current regulations, codify subregulatory guidance, or make relatively minor changes intended to streamline program operations. In the absence of data to the contrary, the Department believes the additional clarity and enhanced efficiency resulting from the proposed changes represent benefits with little or no countervailing costs or additional burden. This belief is supported by the fact that the ACG and National SMART Grant committee reached tentative agreement in many areas, and, where it failed to reach tentative agreement, the failure generally did not reflect objections to the imposition of burdensome new or additional requirements. Nonetheless, the Department is interested in comments on possible administrative burdens related to the proposed regulations.

Benefits provided in these proposed regulations include the elimination of the requirement that institutions determine a student's academic year progression based on the student's attendance in ACG or National SMART Grant eligible programs at all institutions, rather than at the institution the student currently attends; the ability for institutions of higher education to use three alternative approaches for determining weeks of instructional time in a student's academic year progression; and clarification of how institutions determine a student's GPA for the purpose of determining eligibility for an ACG or National SMART Grant, document a student's intent to major in an eligible subject, and define successful completion of a rigorous secondary school program of study. In addition, the proposed regulations would allow States to designate a rigorous secondary school program of study for more than one year, and create a process for institutions to suggest additions to the list of majors in which students are eligible to receive a National SMART Grant. Lastly, the proposed regulations would allow students beyond the age of compulsory education who enroll as a regular student in an ACG eligible program while in high school to be eligible for an ACG if they meet the other eligibility requirements after graduating from high school. None of these provisions were determined to have a substantial economic impact.

Costs

The only provision included in the regulations that directly affected student eligibility and potentially could result in increased Federal costs involves extending eligibility to students who enroll in an ACG-eligible program while in high school and who are beyond the age of compulsory school attendance. These students, ineligible to receive an ACG under current regulations, would be eligible under the proposed regulations. The Department believes this provision will affect so few students that it will not result in measurable Federal costs.

Because institutions of higher education affected by these regulations already participate in the ACG and National SMART Grant programs, these schools must have already established systems and procedures in place to meet program eligibility requirements. The proposed regulations involve discrete changes in specific parameters associated with existing guidance rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the programs have already absorbed most of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. The Department is particularly interested in comments on possible administrative burdens related to these proposed regulations.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995*.

Accounting statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. As shown in the table, the Department estimates that these proposed regulations would have no impact on Federal student aid payments.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers	$0

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 proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed 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, § 691.16 Recognition of a Rigorous Secondary School Program of Study.)
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, States, State agencies, and individual students. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. States, State agencies, and individuals are not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of institutions participating in the ACG and National SMART Grant programs meet the definition of ''small entities'' under the Regulatory Flexibility Act. While these institutions fall within the SBA size guidelines, the proposed regulations would not impose significant new costs on these entities.

The Secretary invites comments from small institutions as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Sections 691.15 and 691.16 contain information collection requirements. We also address the potential for burden in proposed § 691.17. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Collection of Information: Academic Competitiveness Grant (ACG) Program and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program, (Information Collection 1845–0078: State Proposals for Recognition of Rigorous Secondary School Programs of Study).

Section 691.15—Eligibility To Receive a Grant, Prior Enrollment in a Postsecondary Education Program, and Student Eligibility

The proposed regulations would extend eligibility to a student who may enroll as a regular student in an ACG eligible program while in high school if the student is beyond the age of compulsory school attendance. This proposed change does not represent a change in burden. The eligibility determination process would simply include an additional category of eligible students for the ACG Program.

Documenting Major

The proposed regulations would clarify how institutions may document a student's declaration of an eligible major or intent to declare an eligible major. This documentation is needed for a student to qualify for a National SMART Grant. The proposed changes would not result in a change in burden for the institution because an institution is currently required to document a student's declaration of an eligible major or intent to declare an eligible major.

Transfer GPA—ACG

The proposed regulations would provide clarification on how to calculate the GPA to determine a transfer student's second-year ACG eligibility as well as on the ACG requirement that GPA be calculated at the end of the student's first academic year. This proposed change would provide additional clarity about the determination of the transfer student's GPA from the grades of the coursework accepted by the current institution and therefore would not impose any additional institutional burden.

Transfer GPA—National SMART Grant

The proposed regulations would specify how an institution must calculate a GPA for a transfer student under the National SMART Grant program based on whether the institution's academic policy incorporated transfer grades into the GPA at that institution. The proposed changes would not result in a change in burden for the institution because an institution is currently required to calculate a GPA for a transfer student.

Successful Completion of a Rigorous Secondary School Program of Study

The proposed regulations would clarify that, for a student to successfully complete a rigorous secondary school program of study, the student must obtain a high school diploma, or for a home-schooled student, receive a high school diploma or a certification of completion of a secondary school education provided by the student's parent or guardian. The student also must successfully complete a rigorous secondary school program of study as identified under § 691.16. The proposed changes would not represent a change in burden because the changes will only clarify the term ''successfully'' and clarify that a student must receive a high school diploma or, in the case of a home-schooled student, a high school diploma or certification of completion provided by the student's parent or guardian.

Section 691.16 Recognition of a Rigorous Secondary School Program of Study

The proposed regulations would allow SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year. The proposed regulations also would amend the provision regarding advanced or honors secondary school programs of study to provide for continued recognition of these programs by the Secretary for school years subsequent to the 2005–2006 school year. The proposed changes do not increase burden because there is an annual process for the recognition of a rigorous secondary school program of study currently in place. The proposed changes simply permit submission by the SEAs and LEAs, and recognition by the Secretary, for multiple years rather than a single year, and therefore do not increase the burden.

Determination of Eligible Majors

While the proposed regulations in 34 CFR 691.17(d) provide a process by which institutions of higher education may request that additional majors be added to the approved list of eligible majors for the National SMART Grant Program, we anticipate only one or two requests per year, thus the anticipated additional burden is below the minimum threshold to be considered a burden to the affected entity—institutions of higher education.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Commenters need only submit comments via one submission method. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF format at the following site: *http://www.ifap.ed.gov.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.375 Academic Competitiveness Grants; 84.376 National SMART Grants)

List of Subjects in 34 CFR Part 691

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

Dated: August 2, 2007.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 691 of title 34 of the Code of Federal Regulations as follows:

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

1. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a–1, unless otherwise noted.

2. Section 691.2(d) is amended by adding, in alphabetical order, the definition of ''Classification of Instructional Programs (CIP)'' to read as follows:

§ 691.2 Definitions.

* * * * *

(d) * * *

Classification of Instructional Programs (CIP): A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics used to identify eligible majors for the National SMART Grant Program. Further information on CIP can be found at *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002165.*

* * * * *

3. Section 691.6 is amended by:

A. In paragraphs (a) and (b), removing the words ''undergraduate education'' and adding, in their place, the words ''enrollment at an institution''.

B. In paragraph (c), adding the words ''during the student's undergraduate education in all eligible programs'' before the punctuation ''.''.

C. Revising paragraph (d).

D. Adding new paragraphs (e), (f), (g), and (h).

The revision and additions read as follows:

§ 691.6 Duration of student eligibility—undergraduate course of study.

* * * * *

(d)(1)(i) Institutions must count credit or clock hours earned by a student toward a student's completion of the

credit or clock hours of an academic year if the institution accepts those hours toward the student's eligible program, including credit or clock hours that are earned—

(A) From Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures; or

(B) At an institution while not enrolled as a regular student in an eligible program.

(ii) Institutions may not count credit or clock hours awarded for coursework that is at less than the postsecondary level, such as remedial coursework. These credit or clock hours may not be considered in determining the credit or clock hours that a student has completed in an academic year.

(2)(i) An institution may not assign any weeks of instructional time to credit or clock hours accepted toward meeting the student's eligible program if the student earned the credit or clock hours—

(A) From Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures;

(B) At a postsecondary institution while not enrolled as a regular student in an eligible program except as provided in paragraph (d)(2)(ii) of this section; or

(C) For coursework that is not at the postsecondary level, such as remedial coursework.

(ii) An institution must assign weeks of instructional time to determining National SMART Grant eligibility for periods in which a student was enrolled in an ACG eligible program prior to declaring, or certifying his or her intent to declare, an eligible major.

(3) For a transfer student, an institution determining the academic years completed by the student must count—

(i) The number of credit or clock hours earned by the student at prior institutions that comply with paragraph (d)(1) of this section, and that the institution accepts on transfer into the student's eligible program; and

(ii) The weeks of instructional time, except as prohibited in paragraph (d)(2) of this section, determined by multiplying the number of credit or clock hours that the institution accepts on transfer by the number of weeks of instructional time in the academic year and dividing the product of the multiplication by the credit or clock hours in the academic year.

(e)(1) Except as provided in paragraph (e)(2) of this section, an institution must determine a student's progression in the weeks of instructional time of an academic year through an exact accounting of those weeks of instructional time.

(2) An institution may use, on an eligible program-by-program basis, an alternative method to determine the weeks of instructional time taken by its students during an academic year under paragraphs (f), (g), and (h) of this section if the institution—

(i) Determines payments for the student's eligible program under § 691.63(b) or (c);

(ii) Uses, for all students enrolled in the eligible program, the same alternative method described in paragraph (f), (g), or (h) of this section to determine the students' progression in the weeks of instructional time of an academic year; and

(iii) Upon request from a student, performs an exact accounting of the student's academic year progression for that student based on the actual weeks of instructional time the student attended in all eligible programs at the institution and on any qualifying credit or clock hours accepted on transfer into the student's eligible program.

(3) An institution may not use an alternative method under paragraphs (f), (g), or (h) of this section if it performs an exact accounting for a student, including an accounting pursuant to paragraph (e)(2)(ii) of this section. Once an institution initiates an exact accounting for a student under this section, the institution must use the determination for that student based on the exact accounting and not the determination based on an alternative method.

(f)(1) For an eligible program for which the institution may determine payments under § 691.63(b) or (c), an institution may determine a student's completion of the weeks of instructional time in an academic year under the procedures set forth in paragraphs (f)(2) and (f)(3) of this section.

(2) For an eligible student enrolled in an eligible program that has a single summer term that provides at least 12 semester, trimester, or quarter hours of coursework and for which payments are calculated under § 691.63(b), the student's term is considered to be—

(i) For an eligible program offered in semesters or trimesters, one-half of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(i), or one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(ii); or

(ii) For an eligible program offered in quarters that has a single summer term, one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(i), or one-fourth of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(ii).

(3) For an eligible student enrolled in an eligible program with a single summer term that provides at least 12 semester, trimester, or quarter hours of coursework for which the institution may determine payments under § 691.63(c), the student's term is considered to be—

(i) For an eligible program offered in semesters or trimesters, one-half of the weeks of instructional time in the fall through spring terms if payments may be determined under § 691.63(c)(4)(i), or one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(c)(4)(ii); or

(ii) For an eligible program offered in quarters, one-third of the weeks of instructional time in the fall through spring terms if payments may be determined under § 691.63(c)(4)(i), or one-fourth of an academic year in weeks of instructional time if payments may be determined under § 691.63(c)(4)(ii).

(g)(1) Except as provided in paragraph (d)(2) of this section, an institution with an eligible program for which the institution may determine payments under § 691.63(b) or 691.63(c) may determine a student's completion of the weeks of instructional time in an academic year under the procedures set forth in paragraph (g)(2) or (g)(3) of this section.

(2) For an eligible student enrolled in an eligible program for which payments may be determined under § 691.63(b), an institution must determine the number of weeks a student is considered to have completed in an academic year by multiplying the number of credit hours a student has earned in an eligible program by the number of weeks of instructional time in the academic year and dividing the product of the multiplication by the credit or clock hours in the academic year.

(3) For an eligible student enrolled in an eligible program for which payments may be determined under § 691.63(c), an institution must determine the number of weeks a student is considered to have completed in an academic year by multiplying the number of credit hours a student has earned in an eligible program by the number of weeks of instructional time in the fall through spring terms and dividing the product of the multiplication by the credit or clock hours in the academic year.

(h)(1) Except as provided in paragraph (d)(2) of this section, a student at a grade level can be assumed to have completed an academic year for each of the prior grade levels if for each grade level of a student's eligible program—

(i) A student has completed at least the minimum credit hours for the prior academic years for that program in accordance with this section; and

(ii) Most full-time students in the student's eligible program complete the weeks of instructional time of an academic year during the period of completing each grade level as determined in accordance with paragraph (h)(2) of this section.

(2)(i) For purposes of an award year, in making a determination under paragraph (h)(1)(ii) of this section, an institution must first determine that at least two-thirds of the full-time, full-year students complete at least the weeks of instructional time of an academic year while completing each grade level during the three most recently completed award years prior to the award year immediately preceding the award year for which the determination is made.

(ii) For each of the ACG or National SMART Grant programs, an institution may make a determination under paragraph (h)(2)(i) of this section on an eligible program basis or an institutional basis.

* * * * *

4. Section 691.15 is amended by:

A. Revising paragraphs (b), (c), and (d).

B. Adding new paragraphs (e), (f), and (g).

The revisions and additions read as follows:

§ 691.15 Eligibility to receive a grant.

* * * * *

(b) *ACG Program.* (1) A student is eligible to receive an ACG if the student—

(i) Meets the eligibility requirements in paragraph (a) of this section;

(ii) For the first academic year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed after January 1, 2006, as determined by the institution, a rigorous secondary school program of study recognized by the Secretary under § 691.16; and

(C) Has not previously been enrolled as a regular student in an eligible program while—

(*1*) Enrolled in high school; and

(*2*) Being at or below the age of compulsory school attendance; and

(iii) For the second academic year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2005, as determined by the institution, a rigorous secondary school program of study recognized by the Secretary under § 691.16;

(C) Has successfully completed the first academic year of his or her eligible program; and

(D) For the first academic year of his or her eligible program, obtained a grade point average (GPA) of 3.0 or higher on a 4.0 scale, or the numeric equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes.

(2)(i) An institution must document a student's successful completion of a rigorous secondary school program of study under paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) If an institution has reason to believe that the documentation provided by the student under paragraph (b)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's successful completion of a rigorous secondary school program of study by using documentation provided directly to the institution by the cognizant authority.

(3) For purposes of paragraph (b) of this section—

(i) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency;

(C) A public or private high school; or

(D) A testing organization such as the College Board or State agency; or

(ii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation required under paragraph (b) of this section. This documentation must show that the home-schooled student successfully completed a rigorous secondary school program under § 691.16(d)(2). This documentation may include a transcript or the equivalent or a detailed course description listing the secondary school courses completed by the student.

(4) For a student who transfers from an eligible program at one institution to an eligible program at another institution, the institution to which the student transfers may rely upon the prior institution's determination that the student successfully completed a rigorous secondary school program of study in accordance with paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A), and (b)(1)(iii)(B) of this section based on documentation that the prior institution may provide, or based on documentation of the receipt of an ACG disbursement at the prior institution.

(c) *National SMART Grant Program.* A student is eligible to receive a National SMART Grant for the third or fourth academic year of his or her eligible program if the student—

(1) Meets the eligibility requirements in paragraph (a) of this section;

(2)(i)(A) In accordance with the institution's academic requirements, formally declares an eligible major; or

(B) Is at an institution where the academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant on that basis and the student demonstrates his or her intent to declare an eligible major in accordance with paragraph (d) of this section; and

(ii) Enrolls in the courses necessary both to complete the degree program and to fulfill the requirements of the eligible major as determined and documented by the institution in accordance with paragraph (e) of this section;

(3) Has a cumulative GPA through the most recently completed payment period of 3.0 or higher on a 4.0 scale, or the numeric equivalent measure, consistent with other institutional measures for academic and title IV, HEA program purposes, in the student's eligible program;

(4) For the third academic year, has successfully completed the second academic year of his or her eligible program; and

(5) For the fourth academic year, has successfully completed the third academic year of his or her eligible program.

(d) *Intent to declare a major.* (1) For a student whose institution's academic policies do not allow the student to declare an eligible major in time to qualify for a National SMART Grant disbursement, the institution must obtain and keep on file a recent self-certification of intent to declare an eligible major that is signed by the student.

(2) The student described in paragraph (d)(1) of this section must formally declare an eligible major when he or she is able to do so under the institution's academic requirements.

(e) *Documentation of progression in the major.* The institution must document a student's progress in taking the courses necessary to complete the intended or declared major that establishes eligibility for a National SMART Grant. Documentation of coursework progression in the eligible program and major under paragraph(c)(2)(ii) of this section may include, but is not limited to:

(1) Written counselor or advisor tracking of coursework progress toward a degree in the intended or declared eligible major at least annually.

(2) Written confirmation from an academic department within the institution that the student is progressing in coursework leading to a degree in the intended or declared eligible major. This confirmation must be signed by a departmental representative for the intended eligible major at least annually.

(3) Other written documentation of coursework that satisfies the ongoing nature of monitoring student coursework progression in the intended or declared eligible major at least annually.

(f) *Transfer students.* (1)(i) Under the ACG Program, if a student transfers to an institution that accepts for enrollment at least the credit or clock hours for one academic year but less than the credit or clock hours for two academic years from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from all coursework accepted by the current institution into the student's eligible program.

(ii) Under the ACG Program, if a student transfers to an institution that accepts for enrollment less than the credit or clock hours for one academic year from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from—

(A) All coursework accepted from all prior postsecondary institutions by the current institution into the student's eligible program; and

(B) The coursework earned at the current institution through the payment period in which the student completes the credit or clock hours of the student's first academic year in an eligible program based on the total of the credit or clock hours accepted on transfer and the credit or clock hours earned at the current institution.

(2)(i) Under the National SMART Grant Program, if a student transfers from one institution to the current institution, the current institution must determine that student's eligibility for a National SMART Grant for the first payment period using either the method described in paragraph (f)(2)(i)(A) of this section or the method described in paragraph (f)(2)(i)(B) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(A) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted in the eligible program upon transfer—

(*1*) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts toward the student's eligible program; and

(*2*) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(B) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, an institution must use the grades assigned to the coursework accepted by the current institution into the eligible program as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(ii) If the institution accepts no credit or clock hours toward the student's eligible program, the institution must consider the student to be ineligible until the student completes at least one payment period in an eligible program with a qualifying GPA.

(g) *Numeric equivalent.* (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing ACG or National SMART Grant eligibility. That institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.0 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.0 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.0 GPA on a 4.0 scale; and

(ii) The institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

* * * * *

5. Section 691.16 is amended by:

A. Revising paragraph (b).

B. In the introductory text of paragraph (c), removing the word ''identifying'' and adding, in its place, the word ''establishing''.

C. In paragraph (c)(2), removing the word ''successfully'' before the punctuation '';'' and adding the word ''successfully'' immediately before the word ''pursue''.

D. In the introductory text of paragraph (d), removing the word ''identified'' and adding, in its place, the word ''established''.

E. In paragraph (d)(1), removing the words ''or 2005–2006 school year'' and adding, in their place, the words ''school year or later school years''.

F. In the introductory text of paragraph (d)(2) adding the word ''successfully'' immediately after the word ''student''.

The revision reads as follows:

§ 691.16 Recognition of a rigorous secondary school program of study.

* * * * *

(b) For each award year, the Secretary establishes a deadline for SEAs and LEAs to submit information about the secondary school program or programs that the SEA or LEA establishes as a rigorous secondary school program of study, and, in the case of an LEA, documentation that the LEA is legally authorized by the State to establish a separate secondary school program of study. An SEA and LEA, if applicable, may submit information—

(1) For students graduating during the current school year; and

(2) For students graduating during one or more specified upcoming school years.

* * * * *

6. Section 691.17 is amended by redesignating paragraph (c) as paragraph (e), and adding new paragraphs (c) and (d) to read as follows:

§ 691.17 Determination of eligible majors.

* * * * *

(c) *Designation of eligible majors.* For each award year, the Secretary publishes a list of eligible majors identified by CIP code.

(d) *Designation of an additional eligible major.* For each award year, the Secretary establishes a deadline for an institution to request designation of an additional eligible major.

(1) Requests for designation of an additional eligible major must include—

(i) The CIP code and program title of the additional major;

(ii) The reason or reasons the institution believes the additional major should be considered an eligible program under this part; and

(iii) Documentation showing that the institution has actually awarded or plans to award a bachelor's degree in the requested major.

(2) For each award year, the Secretary will confirm the final list of eligible majors.

* * * * *

§ 691.75 [Amended]

7. Section 691.75 is amended by:

A. In paragraph (b)(2), removing the regulatory citation ''691.15(b)(1)(iii)(C)'' and adding, in its place, the regulatory citation ''691.15(b)(1)(iii)(D)''.

B. In paragraph (c), removing the regulatory citation ''691.15(b)(1)(iii)(C)'' and adding, in its place, the regulatory citation ''691.15(b)(1)(iii)(D)''.

C. In paragraph (d)(1)(i), removing the regulatory citation ''691.15(b)(1)(iii)(C)'' and adding, in its place, the regulatory citation ''691.15(b)(1)(iii)(D)''.

[FR Doc. E7–15306 Filed 8–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV40

Endangered and Threatened Wildlife and Plants; Notice of Scoping Meetings and Intent To Prepare an Environmental Impact Statement and Socio-Economic Assessment for the Proposed Amendment of the Rule Establishing a Nonessential Experimental Population of the Arizona and New Mexico Population of the Gray Wolf (''Mexican Gray Wolf'')

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; notice of intent; and notice of public scoping meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, us, or we), will prepare a draft environmental impact statement (EIS) and socio-economic assessment, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, in conjunction with a proposed rule to amend the 1998 final rule that authorized the establishment of a nonessential experimental population of the ''Mexican gray wolf'' in Arizona and New Mexico, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). We will hold 12 public informational sessions and scoping meetings.

Through this notice and the public scoping meetings, we are seeking comments or suggestions from the public, concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the scope of the EIS, pertinent issues we should address, and alternatives that should be analyzed.

DATES: Comments should be submitted directly to the Service's New Mexico Ecological Services Field Office (see **ADDRESSES** section) on or before December 31, 2007 or at any of the 12 scoping meetings to be held in November and December 2007. See **SUPPLEMENTARY INFORMATION** for the locations and dates of these scoping meetings.

ADDRESSES: Information, comments, or questions related to preparation of the draft EIS through the NEPA process should be submitted to Brian Millsap, State Administrator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113. Alternatively, information presented at the 12 public scoping meetings can be viewed on a ''virtual public meeting'' Web site at *http://www.mexicanwolfeis.org* and comments can be submitted from the same Web site. Written comments may also be sent by facsimile to (505) 346–2542 or by e-mail to *R2FWE_AL@fws.gov.* For directions on how to submit electronic comments, see the ''Public Comments Solicited'' section below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or development of a proposed rule amending the 1998 NEP final rule should be directed to John Morgart at (505) 346–2525. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Listed Entity

The Mexican gray wolf was listed as an endangered subspecies in 1976 (April 28, 1976; 41 FR 17736) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). In 1978, the Service listed the gray wolf species in North America south of Canada as endangered, except in Minnesota where it was listed as threatened, in 1978 (March 9, 1978; 43 FR 9607). The 1978 listing of the gray wolf species as a whole, subsumed the subspecies listing, however, the preamble to the rule continued to recognize the Mexican gray wolf as valid biological subspecies for purposes of research and conservation (43 FR 9607). After the 1978 listing of the gray wolf, the 50 CFR 17.11(h) List of Endangered and Threatened Wildlife (List) did not explicitly refer to an entity called the ''Mexican gray wolf.'' Due to its previous status as a subspecies, the Service has continued to refer to the gray wolves in the southwestern United States as the ''Mexican gray wolf.'' A 1998 final rule (January 12, 1998; 63 FR 1752) established a nonessential experimental population (NEP) of the Mexican gray wolf in Arizona and New Mexico.

In 2007, we published a final rule (February 8, 2007; 72 FR 6052) designating the Western Great Lakes Distinct Population Segment (DPS) of the gray wolf and removing that DPS from the List. On the same date, we also published a proposed rule (72 FR 6105) to designate the Northern Rocky Mountain DPS of the gray wolf and remove that DPS from the List as well. The nonessential experimental