Title I, Part C
Education of Migratory Children

Draft Non-Regulatory Guidance

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Purpose of the Revised Guidance

The purpose of this guidance is to provide information about child eligibility for the Title I, Part C Migrant Education Program. This guidance provides ED's interpretation of various statutory provisions and does not impose any requirements beyond those included in the Elementary and Secondary Education Act of 1965, as amended, ED's Migrant Education Program regulations in 34 CFR part 200, and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

This updated guidance replaces the chapter (Chapter II) on child eligibility that was part of the guidance ED issued on October 23, 2003. If you are interested in commenting on this guidance document, please send your comment to ESEGuidanceDocument@ed.gov

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INTRODUCTION

The No Child Left Behind Act of 2001 (NCLB) reauthorizes the Elementary and Secondary Education Act of 1965 (ESEA). The purpose of the reauthorized ESEA is to close the achievement gap, so that no child is left behind, by providing all children the opportunity to obtain a high-quality education that will enable them to meet the challenging State academic achievement standards.

The new law contains the most sweeping changes to the ESEA since it was enacted in 1965. It changes the Federal Government's role in elementary and secondary education by measuring success in terms of what each student accomplishes. The law contains four basic education reform principles: stronger accountability for results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work. These ideals are the foundation for the changes that schools, districts, and States will implement in the next few years.

The Migrant Education Program (MEP) is authorized by Part C of Title I of the ESEA. The MEP provides formula grants to State educational agencies (SEAs) to establish or improve education programs for migrant children. These grants assist States in improving educational opportunities for migrant children to help them succeed in the regular school program, meet the challenging State academic content and student academic achievement standards that all children are expected to meet, and graduate from high school.

STATUTORY PURPOSE OF THE PROGRAM

The general purpose of the MEP is to ensure that migrant children fully benefit from the same free public education provided to other children. To achieve this purpose, the MEP helps SEAs and local operating agencies address the special educational needs of migrant children to better enable migrant children to succeed academically. More specifically, the purposes of the MEP are to:

- Support high-quality and comprehensive educational programs for migrant children in order to reduce the educational disruption and other problems that result from repeated moves;

- Ensure that migrant children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards;

- Ensure that migrant children are provided with appropriate educational services (including supportive services) that address their special needs in a coordinated and efficient manner;

- Ensure that migrant children receive full and appropriate opportunities to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet;

- Design programs to help migrant children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit their ability to do well in school, and to prepare them to make a successful transition to postsecondary education or employment; and

- Ensure that migrant children benefit from State and local systemic reforms.

(See section 1301 of the statute.)

PURPOSE OF THIS GUIDANCE

This document is designed to help SEAs and local operating agencies use MEP funds to develop and implement supplemental educational and support services to help migrant children. The guidance in this document replaces all prior nonregulatory guidance for the MEP. Compliance with the guidance in this document will be deemed by departmental officials, including the Inspector General, as compliance with the applicable Federal statutes and regulations.

This guidance does not impose requirements beyond those in the ESEA and other Federal statutes and regulations that apply to the MEP. While States may wish to consider the guidance, they are free to develop their own approaches that are consistent with applicable Federal statutes and regulations. The guidance in this document is not intended to be prescriptive or exhaustive. This document is one of many resources for SEAs and local operating agencies to use as they determine how best to meet the needs of migrant students in a manner consistent with the requirements of the ESEA. It is intended to be read in conjunction with the authorizing statute, applicable regulations, and the Department's guidance on other programs (such as Title I, Part A, and Title III) that are relevant to the MEP.

States are responsible for making decisions about how best to implement and operate the MEP. It is critical that staff at the SEA and local levels realize that they should not continue practices simply because they are based on longstanding policy. Looking beyond what programs have done in the past to what they can do in the future to improve teaching and learning for all children is the biggest challenge of educational reform. SEAs and local operating agencies are encouraged to adopt new ideas and practices (particularly those grounded in research and evidence of success) to enable migrant children to succeed in school.

USING THIS GUIDANCE

This guidance uses a variety of strategies to clarify statutory or regulatory requirements, including examples of how to comply with these requirements and information on useful

resources available through the Department. *The examples provided in this document should not be viewed as the "only" or the "best" way to comply with statutory or regulatory requirements.* They are provided to help practitioners consider the range of options available and to stimulate thinking about teaching and learning in the context of local needs and resources.

Several issues addressed in this document (such as parent involvement, schoolwide programs, teacher and paraprofessional qualification requirements, and standards and assessments) are discussed in greater detail in the current or forthcoming guidance for Title I, Part A and Title II, Part A programs. Chapter XII of this guidance identifies cross-cutting issues with the Title I, Part A program.

I. STATE APPLICATION AND FUNDING

Under the MEP, the Department awards grants to SEAs for the purpose of establishing and improving programs and projects that are designed to meet the special educational needs of children of migratory agricultural workers or migratory fishers. Grants are awarded after review and approval of an application that each SEA submits to the Department. This chapter discusses the SEA application process, requirements for receiving MEP funds, and the process that the Department uses to determine the amount of MEP funds for which each SEA may apply.

STATUTORY REQUIREMENTS:

Sections 1301, 1302, 1303, 1304, 1305, 1306(a) of Title I, Part C; Section 9302 of Title IX; Section 421(b) of GEPA

REGULATORY REQUIREMENTS:

34 CFR 76.700 – 76.783 and 80.3

A. Eligibility of an SEA

A1. Who is eligible to receive a MEP grant?

Only an SEA may receive a MEP grant from the Department. However, local educational agencies (LEAs), other public agencies, and private nonprofit organizations, including institutions of higher education, may participate in the program through subgrants or contracts with SEAs.

A2. May two or more SEAs jointly apply for a MEP grant?

Yes. Section 1302 of the statute provides that either an individual SEA or a combination of SEAs may apply for a MEP grant. If SEAs apply jointly, one of the SEAs should be designated as a principal contact with the Department for program and fiscal matters related to the proposed project. A joint application should describe how SEAs will cooperate on the migrant education project and outline each SEA's responsibilities.

B. SEA Application Process

B1. How does an SEA apply for a State MEP grant?

Although an SEA may apply for a MEP grant by submitting either a consolidated application or a MEP-specific application, all SEAs have chosen to submit a consolidated application.

B2. What is the difference between a consolidated application and an MEP-specific application?

In a consolidated application, an SEA applies for many Federal programs in a single application, rather than submitting separate applications for each program. Programs that an SEA may choose to include in a consolidated application are: Title I –Part A (Improving Basic Programs Operated by Local Educational Agencies), Part B (Even Start Family Literacy), Part C (Education of Migrant Children), Part D (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk), and Part F (Comprehensive School Reform); Title II –Part A (Teacher and Principal Training and Recruiting Fund), and Part D (Enhancing Education Through Technology); Title III –Part A (English Language Acquisition, Language Enhancement, and Academic Achievement); Title IV –Part A, Subpart 1 (Safe and Drug Free Schools and Communities), Subpart 2 (Community Service Grants), and Part B (21st Century Community Learning Centers); Title V –Part A (Innovative Programs); and Title VI – Part A, Subpart 1, Section 6111 (State Assessment Program), Section 6112 (Enhanced Assessment Instruments Competitive Grant Program), and Part B (Rural and Low – Income Schools).

The MEP–specific application is an application that only pertains to the MEP.

B3. What type of information is required in a consolidated application?

The consolidated application package is available on the Department's website at http://www.ed.gov/admins/lead/account/consolidated/index.html. In a consolidated application, the SEA does not have to submit most of the information that would otherwise be required in an individual ESEA program application. Instead, an SEA's consolidated application for FY 2002 generally must: 1) confirm that it has adopted the five ESEA goals and the corresponding indicators that the Department has established; 2) describe key steps it will take to implement the State administrative responsibilities (such as definitions of adequate yearly progress used in Title I, Part A and discretionary subgrant formulas and procedures); and 3) address how it will comply with key programmatic and fiscal requirements, which the Department has identified in the consolidated application package, for the programs for which it has applied. To receive FY 2003 funding for programs included in the consolidated application, an SEA must submit to the Department baseline data and annual performance targets for each of the ESEA performance indicators specified in the FY 2002 application.

B4. What type of information is required in a MEP-specific application?

The SEA's application must contain sufficient detail on various aspects of the State's migrant education program as described in section 1304(b) of the statute and in the application package. Such topics include: how the SEA will develop, implement, and document a comprehensive needs assessment that identifies the special educational needs of migrant children; how the SEA will integrate services and plan jointly with local, State, and Federal programs; how the SEA will provide migrant children the opportunity

to meet challenging State content and academic achievement standards; how the SEA will promote interstate and intrastate coordination of services; a description of the SEA's priorities for the use of funds and how these priorities relate to the needs identified in the comprehensive needs assessment; how the SEA will award and distribute subgrants to local operating agencies; and how the SEA will evaluate the effectiveness of its program.

B5. What period does a consolidated and MEP-specific application cover?

The application covers the period that the MEP is authorized under the ESEA. However, regardless of the length of time covered in the application, grants are made on an annual basis.

B6. Are there circumstances under which an approved consolidated or MEP-specific application must be amended before the end of the period covered in the application?

Yes. If, during the course of carrying out the MEP, the SEA finds that there is a significant change in the information it submitted regarding the program-specific requirements or program assurances pertaining to the MEP, it must submit a description of the changes to the Department for approval. Significant changes occur when there are changes in State-wide priorities, changes in the delivery of MEP funding or services, or when there are changes in the needs of migrant students. For example, changes in the performance targets for migrant students and major changes in the State's subgranting process would be considered significant.

B7. What responsibilities does an SEA assume when the Department has approved its application?

The SEA is required to implement the MEP in accordance with its approved application, subsequent amendments, and all applicable Federal laws and regulations. The SEA is responsible for all aspects of the program, whether performed directly by the SEA, by a local operating agency, or by a contractor. This responsibility also applies in cases where different units of the SEA are assigned responsibility for one or more components of the State's MEP. Therefore, the SEA should ensure that lines of authority and responsibility are clear and that all fiscal and programmatic aspects of the State's MEP are properly coordinated.

C. Amount Available for an SEA Grant

C1. How does the Department determine the amount of MEP funds for which each SEA may apply?

To the extent that a future year's appropriation equals or exceeds the FY 2002 appropriation, under section 1303(a)(2), the MEP allocation for a State (other than Puerto Rico) for FY 2003 and thereafter will generally consist of –

- A base amount equal to the State's FY 2002 MEP allocation

Plus

- An additional amount (if any) calculated based on the sum of the State's most recent Category 1 and Category 2 child counts (see Question C3 below) multiplied by 40 percent of the State's average per-pupil expenditure (PPE), except that this amount may not be more than 32 percent nor more than 48 percent of the average PPE in the United States. (For more detail, see Question C5 below.)

Because the total amount actually appropriated by Congress is far less than the total amount generated by the above formula, the amounts are ratably reduced, under section 1303(c), to determine the final State MEP allocations. That is, each State's amount is ratably reduced by multiplying the State's amount by the following fraction:

[the total amount appropriated by Congress]

divided by

[the national total generated by the formula].

[Note: Section 1303(a)(2)(B) of the statute provides that the Department may adjust the base amounts if any additional States that did not receive an FY 2002 allocation – i.e., the outlying areas – apply for funds in subsequent fiscal years.]

C2. What are Category 1 and Category 2 child counts?

States must annually submit to the Department, by early December, accurate and unduplicated Category 1 and Category 2 child counts, as well as a written explanation of the procedures used to calculate and validate the accuracy of the two child counts. The Category 1 child count is an unduplicated count of migrant children aged 3 through 21 who, within 3 years of a qualifying move, resided in the State for one or more days in a 12-month period. The Category 2 child count is an unduplicated count of migrant children who were served for one or more days in MEP-funded summer or intersession programs in the State during a 12-month period.

C3. How does the Department calculate a State's adjusted PPE?

SEAs' fiscal offices submit annually the State's most recent current expenditures for education and the most recent State average daily attendance data to the Department's National Center for Education Statistics (NCES). NCES uses these data to calculate *adjusted* State PPE figures and a national average PPE that are used in the MEP formula allocation. The adjusted PPE figures reflect certain exclusions, required under sections 9101(2) and (14) of ESEA, for expenditures for capital outlay, debt service, community services, and expenditures from Title I and Title V-A of the ESEA.

C4. How does the Department use the State's adjusted PPE to calculate the State's MEP award?

Under section 1303(a)(2)(B)(ii), the Department multiplies the State's adjusted PPE by 40 percent in order to determine the State's formula PPE. It compares the State's formula SPPE with the average PPE in the United States and –

1. In cases where a State's formula PPE is less than 32 percent of the national PPE, raises the State's formula PPE to 32 percent of the national PPE.

2. In cases where a State's formula PPE is more than 48 percent of the national PPE, reduces the State's formula PPE to 48 percent of the national PPE.

3. In cases where a State's formula PPE falls within the ranges described in 1 and 2 above, no adjustment is made.

C5. Is an SEA entitled to receive the amount of MEP funds that the Department computes under the MEP formula?

No. The formula does not establish an SEA's entitlement. When the total amount appropriated for the MEP is insufficient to pay the amounts computed by formula, the amounts available for allocation to the SEAs are ratably reduced to the amount appropriated.

D. <u>Carryover Funds</u>

D1. What are "carryover funds"?

After approving an SEA's application, the Department provides a grant award to the SEA to support MEP activities that are conducted during the 15-month period between July 1 (or the date of the grant award) and September 30 of the following year. Section 421(b) of the General Education Provisions Act (GEPA) provides that any funds the SEA does not obligate by the end of this 15-month period remain available to the SEA for obligation in the succeeding fiscal year. Funds in this category – that is, funds that are not obligated in the first 15-month period but that remain available for obligation in the succeeding fiscal year – are known as "carryover funds." Thus, an SEA (and its subrecipients) has a total of 27 months in which to obligate any fiscal year's award of MEP funds.

D2. If unexpected events occur that prevent the SEA from obligating MEP funds in a given year, must the SEA obtain prior approval in order to spend the carryover funds?

No. The SEA may obligate the carryover funds in accordance with the MEP statute and regulations, without requesting approval from the Department.

D3. Is there any limitation on the percentage of funds an SEA may carry over?

No. However, if an SEA carries over a significant percentage of funds on a yearly basis, this failure to expend funds promptly may indicate a problem in the administration of the program. Congress appropriates MEP funds to meet the "bona fide needs" of migrant students in the Federal fiscal year for which funds are appropriated, and thereby anticipates that SEAs and their operating agencies will use their annual MEP allocation to meet the needs of migrant students during the initial 15-month period of obligation. As mentioned in Question D1 above, Section 421(b) of GEPA permits each SEA to carry over unobligated MEP funds into the next fiscal year. However, given the purpose of the appropriation, this provision is meant to enable grantees to deal with unanticipated situations that prevent them from obligating these funds for the benefit of migrant students during the initial 15-month period. Therefore, an SEA's carryover from one year to another of large amounts of MEP funds may reflect significant deficiencies in its planning and use of MEP funds.

D4. Are program funds that an SEA subgrants to a local operating agency, but that remain unobligated by that local operating agency at the end of the Federal fiscal year (September 30) considered a part of the SEA's carryover?

Yes. All MEP funds that are unobligated at the end of the fiscal year are included in carryover funds.

D5. Should SEAs examine the amount of MEP funds that local operating agencies carry over from one fiscal year to the next?

Yes. SEAs should examine how much money local operating agencies carry over in order to determine whether to reallocate funds that remain unobligated at the end of the fiscal year. If a local operating agency has a significant amount of carry over, the SEA might choose to adjust the local operating agency’s subgrant downward to make available the funds that the local operating agency did not spend in the prior year. This allows the SEA to reallocate unobligated MEP funds for new uses in the subsequent fiscal year.

D6. What are "obligations"?

Under Section 80.3 of EDGAR, obligations are “the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, that will require payment by the grantee during the same or a future period.” Examples of obligations include:

- a contract with a CPA firm to conduct an audit;
- a purchase order issued for student standardized tests; and
- a salary and fringe benefit agreement.

Sections 76.703 through 76.710 of EDGAR contain the specific rules governing obligations.

D7. Under what program requirements must carryover funds be used?

Carryover funds must be used in accordance with the statute and regulations that are in effect for the carryover period – not the legislation or regulations in effect during the year for which the funds were appropriated (if different legislation or regulations were then in effect).

D8. When should the SEA report the actual amount of carryover to ED?

Each SEA should submit its report of actual carryover by December 1. If the actual amount cannot be reported by this date, the SEA should request an extension in writing.

E. Reallocation of Excess Funds

E1. What are "excess funds," and how does the Department determine whether they are available for reallocation?

In determining the amount of an SEA grant, the Department may decide that the amount available under the MEP funding formula is more than the amount that the SEA needs to carry out program activities. The remaining funds are then "excess funds" that may be provided to other SEAs whose MEP grants otherwise would be insufficient to serve the eligible migrant children residing in their States. Excess funds also might become available if an SEA determines that the amount that it receives, or for which it could apply, is greater than the amount it needs to carry out activities described in its MEP application.

E2. How does the Department distribute excess funds?

Depending on when the Department determines that excess funds are available, the Department may either: (1) notify SEAs that they may apply for a share of these funds that is proportionate to the relative size of their grant awards; or (2) request and evaluate, on a competitive basis, supplemental SEA applications for additional MEP funds to meet unmet needs of their States' migrant children.

F. Bypass of an SEA

F1. What is a "bypass?”

The MEP is a State-operated and administered program. However, under certain circumstances the Department may enter into a special arrangement with one or more public or nonprofit private agencies to implement the migrant education program in all or part of the State. This special arrangement is called a "bypass." (See Section 1307 of the statute.)

F2. When may the Department make a special "bypass" arrangement with another agency to operate all or part of the State's MEP?

The Department may make such an arrangement upon a determination that –

- an SEA is unable or unwilling to conduct an educational program for migrant children (including those attending private schools) who are eligible to be served;
- the arrangement would result in more efficient and economic administration of the program; or
- the arrangement would add substantially to the welfare or educational achievement of the migrant children who are eligible to be served.

F3. How does a bypass work?

The Department would announce an intent to provide services by bypass and invite bids from eligible agencies. After reviewing the bids, the Department then would execute a grant or contract with a public or nonprofit agency that establishes the terms and conditions of the bypass. The agency selected to implement the special arrangement would then be responsible for administering the program consistent with the SEA's obligations under the MEP statute and regulations.

F4. What is the SEA's role in the case of a bypass?

The SEA does not have a role in the administration or operation of the program covered by a bypass. Full responsibility for the program rests with the agency funded through the bypass. However, the funded agency must be able to coordinate activities with the SEA (consistent with the statutory requirements in Section 1304(b) for coordination with other Federal, State, and local programs).

F5. Where do the funds for a bypass come from?

The Department uses MEP funds that would otherwise be distributed to the SEA.

II. CHILD ELIGIBILITY

Children are eligible to receive MEP services if (1) they meet the definition of "migratory child" and "eligible children" in the statute and regulations that apply to the MEP (or met them previously and qualify for continuation of services under section 1304(e)), and if (2) the basis for their being a "migratory child" is properly recorded on a certificate of eligibility (COE). The term "migratory child" is defined in section 1309(2) of the statute and § 200.81(e) of the MEP regulations. The term "eligible children" is defined in section 1115(b)(1)(A) of the statute and the term "children" is defined in § 200.103(a) of the Title I regulations. Determining whether a child meets these definitions requires careful consideration and depends on a recruiter's assessment of information presented by a parent, spouse, or guardian responsible for the child, or by the child if the child is the migratory worker who is eligible for MEP services in his or her own right.

This chapter discusses issues of child eligibility and how SEAs may make these important determinations.

STATUTORY REQUIREMENTS:

Sections 1115(b)(1)(A) and 1309 of Title I, Part C

REGULATORY REQUIREMENTS:

34 CFR 200.81, 200.103

A. Migratory Child

A1. What is the definition of "migratory child"?

According to sections 1115(b)(1)(A) (incorporated into the MEP program by virtue of sections 1304(c)(2)) and 1309(2) of the statute and §§ 200.81(e) and 200.103(a) of the regulations, a child is a "migratory child" and is eligible for MEP services if all of the following conditions are met:

4. The child is not older than 21 years of age; *and*

5. The child is entitled to a free public education (through grade 12) under State law or is below the age of compulsory school attendance; *and*

6. The child is a migratory agricultural worker or a migratory fisher, or the child has a parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher; *and*

7. The child moved within the preceding 36 months in order to seek or obtain qualifying work, or to accompany or join the migratory agricultural worker or migratory fisher identified in paragraph 3, above, in order to seek or obtain qualifying work; *and*

8. With regard to the move identified in paragraph 4, above, the child:

    a. Has moved from one school district to another; *or*

    b. In a State that is comprised of a single school district, has moved from one administrative area to another within such district; *or*

    c. Resides in a school district of more than 15,000 square miles and migrates a distance of 20 miles or more to a temporary residence to engage in or to accompany or join a parent, spouse, or guardian who engages in a fishing activity. (This provision currently applies only to Alaska.)

Note that the terms "migratory agricultural worker," "migratory fisher," "move or moved," "in order to obtain," and "qualifying work" are defined in § 200.81 of the regulations and discussed in sections C through H of this chapter.

A2. Is there a difference between a child who is eligible to receive MEP services and one who is counted for State funding purposes?

Yes. Any child, birth through age 21, who meets the statutory definition of "migratory child" (or who is eligible for continuation of services under section 1304(e)) is eligible to receive MEP services. However, as provided in section 1303(a)(1)(A) of the statute, only migratory children ages 3 through 21 may be counted for State funding purposes.

A3. Is a child eligible for MEP services after finishing high school?

Generally, no. Under section 1309(2), a migratory child is a "child" who meets the specific eligibility requirements for the MEP. While the MEP statute does not further define who is a "child," section 1304(c)(2) incorporates by reference the requirement to carry out MEP projects consistent with the basic objectives of section 1115(b), which defines eligible children to include:

(i) children not older than age 21 who are entitled to a free public education through grade 12, and

(ii) children who are not yet at a grade level at which the local educational agency provides a free public education.

See also 34 CFR § 200.103(a).

Given paragraph (i), once a migrant child has received a high school diploma or its equivalent, the individual is generally no longer entitled under State law to a free public education through grade 12 and, therefore, is not eligible as a "child" to receive MEP services.

However, in some circumstances, it might be possible that a child who finished high school may be eligible for MEP services because, under State law, he or she may still be

entitled to a free public education through grade 12. For example, a child who received a certificate of completion or attendance but failed the State high school exit exam *might* be allowed to re-enroll in high school under State law. If so, as long as the child is not yet 22 years of age, the child remains eligible for MEP services. An SEA should consult with its own legal counsel to determine whether children who have received a certificate of completion or attendance rather than a diploma or equivalency certificate are still eligible for a free public education through grade 12 in its State.

A4. Is a child who graduated from high school in his or her native country eligible for the MEP?

It depends on State law. If the child is considered under State law to be eligible to receive a free public education through grade 12 and otherwise meets the definition of "migratory child," the child is eligible for the MEP.

A5. What is the definition of "out-of-school youth?" Are such youth eligible for MEP services?

For the purposes of the MEP, the Department considers the term "out-of-school youth" to mean youth up through age 21 who are entitled to a free public education in the State and who meet the definition of "migratory child," but who are not currently enrolled in a K-12 school. This could include students who have dropped out of school, youth who are working on a general education development credential (GED) outside of a K-12 school, and youth who are "here-to-work" only. It would not include children in preschool. Out-of-school youth who meet the definition of a "migratory child" as well as all other MEP eligibility criteria are eligible for the MEP.

A6. What is the definition of "emancipated youth"?

The Department considers emancipated youth to be children under the age of majority (in accordance with State law) who are no longer under the control of a parent or guardian and who are solely responsible for their own welfare. In order to be eligible for the MEP these youth may not be older than 21 years of age.

A7. Are emancipated youth eligible for MEP services?

Yes. Emancipated youth are eligible for the MEP so long as they meet the definition of a "migratory child" and all other MEP eligibility criteria. Out-of-school youth may or may not be "emancipated youth." See A5 of this section.

B. Guardians and Spouses

B1. May MEP eligibility be based on a guardian's status as a migratory worker?

Yes. Section 200.81(e) of the regulations specifically includes a child's move to accompany or join a guardian who is a migratory agricultural worker or a migratory fisher as a basis for a child's eligibility.

B2. Who is a "guardian" for MEP purposes?

The Department considers a guardian to be any person who stands in the place of the child's parent ("*in loco parentis*"), whether by voluntarily accepting responsibility for the child's welfare or by a court order.

B3. Is a legal document necessary to establish guardianship?

No. As long as the guardian stands in the place of the child's parent and accepts responsibility for the child's welfare, a legal document establishing the guardianship is not necessary.

B4. May a sibling act as a guardian to other siblings?

Yes. If a working sibling acknowledges responsibility for the child's welfare and stands in the place of the child's parent, the child may be eligible based on the working sibling's qualifying employment and qualifying move.

B5. Must a recruiter see a marriage certificate or other legal document in order to establish a spousal relationship when MEP eligibility is based on a spouse's status as a migratory worker?

No.

C. Migratory Workers

C1. Who is a "migratory agricultural worker"?

According to § 200.81(d) of the regulations, a "migratory agricultural worker" is a person who, in the preceding 36 months, has moved from one school district to another, or, in a State that is comprised of a single school district, from one administrative area to another, in order to obtain temporary employment or seasonal employment in agricultural work (including dairy work). Note, the regulations also define the terms "move," "in order to obtain," "temporary employment," "seasonal employment," and "agricultural work." These terms are discussed later in this chapter.

C2. Who is a "migratory fisher"?

According to § 200.81(f) of the regulations, a "migratory fisher" is a person who, in the preceding 36 months, has moved from one school district to another, or, in a State that is comprised of a single school district, from one administrative area to another, in order to obtain temporary employment or seasonal employment in fishing work. The definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles and moved a distance of 20 miles or more to a temporary residence in order to obtain temporary employment or seasonal employment in fishing work. Note, the regulations also define the terms "move," "in order to obtain," "temporary employment," "seasonal employment," and "fishing work." These terms are discussed later in this chapter.

C3. Does an individual's visa status as an H-2A temporary agricultural worker have any impact on whether he or she may be considered a migratory child, migratory agricultural worker, or a migratory fisher?

No. The only criteria for being considered a migratory child, migratory agricultural worker, or migratory fisher are those established in § 200.81(d), (e), or (f) of the regulations.

D. <u>Qualifying Move</u>

D1. What is a "qualifying" move?

A qualifying move:

1. is across school district boundaries*; *and*
2. is a change from one residence to another residence; *and*
3. is made due to economic necessity; *and*
4. is made in order to obtain qualifying work; *and*
5. occurred in the preceding 36 months.

Note that the terms "move," "in order to obtain," and "qualifying work" are defined in § 200.81 of the regulations and discussed in sections D through H of this chapter.

*In a State that is comprised of a single school district, a move qualifies if it is from one administrative area to another within such a district. In addition, in a school district of more than 15,000 square miles, a move qualifies if it is over a distance of 20 miles or more to a temporary residence to engage in, or to accompany or join a parent, spouse, or guardian who engages in, a fishing activity.

D2. What is the definition of "move" or "moved"?

Under § 200.81(g) of the regulations, "move" or "moved" means "a change from one residence to another residence that occurs due to economic necessity."

Change of Residence and Economic Necessity

D3. What is the definition of a "residence"?

For the purposes of the MEP, the Department considers a "residence" to be a place where one lives and not just visits. In certain circumstances, boats, vehicles, tents, trailers, etc., may serve as a residence.

D4. What does it mean to "change from one residence to another residence"?

The Department considers this to mean leaving the place where one currently lives and going to a new place to live, and not just to visit. For example, the Department believes that, generally, a person who goes to a new place to seek or obtain work, or because the person cannot afford to stay in his or her current location, is leaving the place where he or she currently lives and is going to a new place to live--and thus, has "changed from one residence to another residence" (or "changed residence"). Similarly, the Department believes that a person who goes to a new place to help sick or elderly family members on an extended basis is living with those family members, and thus might meet the MEP's change of residence requirement if the person makes a return move to obtain qualifying work.

Thus, a person who leaves, on a short-term basis, the place where he or she lives to, for example, (1) visit family or friends, (2) attend a wedding or other event, (3) take a vacation, (4) have an educational or recreational experience, or (5) take care of a legal matter, would not have "changed residence" because the person did not go to the new place to live, but rather to visit. Similarly, this person would not have "changed residence" upon returning home from one of these visits. Note that, in these examples, the person also has not "moved" within the meaning of § 200.81(g) of the regulations since the move was not made "due to economic necessity." See also D5 of this chapter.

The Department strongly recommends that the recruiter document on the COE his or her reason(s) for concluding that a person "changed residence" if it appears that an independent reviewer might question that a change of residence occurred.

D5. What does it mean to move "due to economic necessity"?

The Department considers this to mean that the worker moved either because he or she could not afford to stay in the current location, or went to a new location in order to earn a living. In general, the Department believes that if the worker's move is related to work, e.g., a move to seek or obtain work, a move because of the loss of work, or a move because of the unavailability of work, the worker moved "due to economic necessity."

However, with respect to a move that is of such short duration (*e.g.*, less than a week) that an independent reviewer might question whether the move was really "due to economic necessity," the Department strongly recommends that each SEA establish a statewide written policy for determining and documenting whether and why these moves do and do not qualify for the MEP.

The Department also recommends that recruiters provide a comment on the COE if there appears to be any other reason that an independent reviewer would question whether a worker changed residence "due to economic necessity."

D6. If a worker and his or her children go on vacation and the worker engages in qualifying work during the vacation, would the children qualify for the MEP?

In general, as noted in D4 of this chapter, vacations (*e.g.*, visits to family and friends, trips for entertainment purposes, etc.) do not constitute a change of residence, much less a change of residence due to economic necessity. In these cases, the family is not moving because it cannot afford to stay and live in the current location or because it needs to go to a new location to make a living. Therefore, even if the worker engages in qualifying work, a move for vacation purposes is not a qualifying move. The Department recognizes that there might be cultural differences in how people describe the reason for their relocation and, therefore, recommends that the recruiter question the worker carefully to determine what is meant when the worker asserts that his or her family is going on or returning from a vacation during which family members worked.

D7. Is determining whether a worker changed residence due to economic necessity sufficient for determining that the worker made a qualifying move?

No. In order for a move to qualify under the MEP, all of the conditions in D1 of this chapter must be met.

"In order to obtain"

D8. What is the definition of the phrase "in order to obtain"?

Under § 200.81(c) of the regulations, the phrase "in order to obtain," when used to describe why a worker moved, means that one of the purposes of the move is *to seek or obtain* qualifying work. This does not have to be the only purpose, or even the principal purpose of the move, but it must be one of the purposes of the move.

D9. May a worker who asserts more than one purpose for moving be considered to have moved "in order to obtain" qualifying work?

Yes. A worker who asserts more than one purpose for moving, for example, to be closer to other family members or to find a better school for the children, may be considered to have moved "in order to obtain" qualifying work if the recruiter determines that one of

the purposes of the move was also to seek or obtain qualifying work. As explained in D10 of this chapter, the phrase "in order to obtain" includes determining that the worker moved to find any kind of employment, provided that the worker obtained qualifying work soon after the move.

D10. May a worker, who states that he or she moved in order to obtain (or seek) any employment and who obtained qualifying work "soon after the move," be considered to have moved "in order to obtain" qualifying work?

Under certain circumstances, yes. The Department recognizes that workers may not always express a clear intent to move and obtain qualifying work. According to § 200.81(c)(1) of the regulations, in those situations where a worker's intent is not clearly expressed, an SEA may infer that individuals who express a general intent to have moved, for example, "for work," "to obtain work," "to obtain any type of employment," or to "take any job," may be deemed to have moved with a purpose of obtaining qualifying work if he or she obtained qualifying work soon after the move. See D22 of this chapter regarding "soon after the move."

D11. May a worker who asserts that he or she moved specifically to find only non-qualifying work be considered to have moved "in order to obtain" such work if the worker obtains qualifying work soon after the move?

No. Section 1309(2) of the statute requires migratory agricultural workers and fishers, to move "in order to obtain" temporary or seasonal employment in agricultural or fishing work, that is, "in order to obtain" qualifying work. The phrase "in order to obtain" in this provision brings in the worker's purpose or intent. See, in this regard, the July 29, 2008 notice of final MEP regulations at 73 FR 44102, 44105.

The Department considers the phrase "in order to obtain" to include workers who (a) moved to obtain qualifying work and obtained that work, and (b) moved with no specific type of work in mind and obtained qualifying work soon after the move. (*Id.*, at 44106.) Therefore, if the worker who moved to obtain any work obtains qualifying work soon after the move, it is presumed that one of the purposes of the move was to seek or obtain qualifying work.

However, if the worker asserts that he or she moved with only non-qualifying work (*e.g.*, construction work) in mind, given the definition of a migratory child in section 1309(2) of the ESEA and § 200.81(c) of the Title I regulations, one may not presume that one of the purposes of the worker's move was to obtain qualifying work – even if the worker obtained qualifying work soon after the move.

D12. Must a recruiter ask a worker why he or she moved if the worker is engaged in qualifying work?

Yes. The fact that a worker moved and is engaged in qualifying work does not automatically establish that the worker moved "in order to obtain" that work. Consistent

with the MEP regulations, the recruiter must determine whether one of the purposes of the worker's move was to obtain qualifying work or any employment, or conversely that the purpose was specifically to obtain non-qualifying work.

D13. How can a recruiter determine if one of the purposes of the worker's move was to obtain qualifying work if the recruiter finds the worker is engaged in qualifying work?

Even though a worker is engaged in qualifying work, the recruiter needs to ask the worker why he or she moved. In many cases, the response will clearly indicate that one purpose of the move was to obtain qualifying work or any employment. If this is not clear from the worker's response, the recruiter should ask whether the worker would have moved if he or she knew that no work was available. If the answer is "no," then the recruiter can presume that obtaining qualifying work was one purpose of the move.

If the worker indicates that he or she was looking for a specific type of work, which would be considered non-qualifying work, *e.g.*, construction, for purposes of the MEP, the recruiter may follow up by asking whether the worker would have moved to the area to take any kind of work, in other words qualifying or non-qualifying work, if construction work was not available. If the answer is "yes," and the worker obtained qualifying work, then the recruiter can presume that obtaining qualifying work was one purpose of the move. However, if the worker continues to express that his or her specific intent was to obtain only non-qualifying work, the recruiter cannot find this worker eligible for the MEP based on this move, regardless of whether the worker is engaged in qualifying work.

D14. May a worker who did <u>not</u> obtain qualifying work soon after the move, be considered to have moved "in order to obtain" qualifying work?

Under certain circumstances, yes. A worker who did not obtain qualifying work "soon after a move" may *only* be considered to have moved "in order to obtain" qualifying work if (1) the worker states that one purpose of the move was specifically to obtain qualifying work, AND

(2) The worker has a prior history of moving to obtain qualifying work;

OR

(3) There is other credible evidence that the worker actively sought qualifying work soon after the move but, for reasons beyond the worker's control, the work was not available.

See § 200.81(c)(2) and D22 of this chapter regarding the phrase, "soon after the move."

D15. If a worker states that he or she moved to obtain *any* employment and the worker has a prior history of moves to obtain qualifying work, may this worker be considered to have moved "in order to obtain qualifying work" if the worker did not obtain qualifying work soon after the move?

No. The worker must have moved *specifically* for qualifying work, and not *any* employment, regardless of whether the worker has a prior history of moves to obtain qualifying work, or there is other credible evidence that the worker sought qualifying work. See § 200.89(c)(1) of the regulations.

D16. How may a recruiter determine whether a worker has a prior history of moving to obtain qualifying work?

The Department believes that the recruiter should ask the worker whether he or she has ever moved for temporary or seasonal employment in agricultural or fishing work, *i.e.*, qualifying work. The recruiter may also search the State's MEP database or the Migrant Student Information Exchange (MSIX) system (a web-based system that allows States to share education and health information on migrant children who travel from State to State) to see if the worker's child, or the child, if the child is the worker, was identified as eligible for the MEP in another part of the State or in another State.

After considering the available information, if the recruiter is satisfied that (1) one of the purposes of the worker's move was specifically to obtain qualifying work and (2) the worker has a prior history of moves to obtain qualifying work, the recruiter may deem the worker's children eligible for MEP services. The recruiter should document the basis for the decision in the comment section of the COE and, if available, attach the evidence he or she relied on for the decision.

D17. How far back may a recruiter look in considering "prior history of moves to obtain qualifying work"?

The Department does not believe that a worker's "prior history of moves to obtain qualifying work" had to have occurred within a certain time period before the most recent move, so long as the worker states that one of the purposes of his or her move was *specifically* to obtain qualifying work and not just any work, as explained in D14 and D15 of this chapter.

D18. What are examples of "other credible evidence" that a recruiter might rely on to determine that the worker actively sought qualifying work soon after a move but the work was unavailable for reasons beyond the worker's control?

Other credible evidence that a recruiter might consider includes:

- Information obtained from conversations with an employer, crew chief, employment agency, or credible third party that indicates that the worker sought the qualifying work;

- Written information from the employer, such as a copy of an employment application or a list of recent applicants;
- Information in the public domain (*e.g.*, newspaper) that confirms a flood or crop failure in the area.

After considering all of the available information, if the recruiter is satisfied that the worker *actively* sought qualifying work *soon after the move* and that the work was unavailable due to reasons beyond the worker's control, the recruiter may deem the worker eligible for MEP services. The recruiter should document the basis for the decision in the comment section of the COE, and if available, attach the evidence he or she relied on for the decision.

D19. As discussed in criteria (1) and (3) of D14, may a worker's or family member's statement about the purpose of the move serve as both (1) the statement that the worker moved specifically to obtain qualifying work and (2) the necessary "other credible evidence" that the worker actively sought the work soon after the move?

No. The Department considers the term "other credible evidence" to refer to additional information that supports the worker's or family member's statement that the worker moved in order to obtain qualifying work. Therefore, this information would need to be obtained in addition to the information about the purpose of the move provided by the worker or his or her family.

D20. What happens if a worker, who moved to obtain qualifying work or any kind of job, first takes a non-qualifying job and only afterwards obtains qualifying work?

A worker does not necessarily forfeit MEP eligibility by taking a non-qualifying job for a limited period of time, so long as the worker moved in order to obtain qualifying work or any kind of job, and then obtains qualifying work that is still "soon after the move". See D22 of this chapter.

D21. If a worker and his or her child move weeks before qualifying work is available (*e.g.*, three weeks prior to the tomato harvest) in order to secure housing, and at the time of the interview the worker does not yet have qualifying work, may the worker be considered to have moved "in order to obtain" qualifying work?

Yes. The regulatory definition of "in order to obtain" does not expressly address this situation. However, the Department believes that the recruiter may find this move to have been made "in order to obtain" the work so long as the recruiter determines that one purpose of the move was to seek or obtain qualifying work, and not just any employment – which presumably would be the case in this situation. In this situation, the recruiter should check box 4a of the COE (the section on Qualifying Move & Work), which states that "the worker moved due to economic necessity in order to obtain qualifying work and

obtained qualifying work." The recruiter should document in the COE Comments section that (1) the worker moved in advance to secure housing, (2) one purpose of the move was to secure the qualifying employment, and (3) the date that the worker is or was expected to start work. The children would be considered eligible upon the SEA's approval of the COE.

In this type of situation, consistent with § 200.81(c)(1) of the regulations, the recruiter must follow up with the worker to verify that the worker obtained qualifying work "soon after the move (see D22 of this section)." If the recruiter discovers that the worker did not obtain qualifying work "soon after the move," the recruiter must then determine, consistent with § 200.81(c)(2) of the regulations, that the worker has either a prior history of moves to obtain qualifying work or some other credible evidence that the worker actively sought qualifying work. The COE must be updated accordingly. If the recruiter cannot document a prior history or other credible evidence, this worker's children are not eligible for the MEP and must be removed from the rolls of eligible children.

"Soon After the Move"

D22. How much time may separate the date of the worker's move and the date the worker obtains qualifying work to permit an SEA to reasonably conclude that the worker obtained qualifying work "soon after the move"?

Because one of the purposes of the worker's move must be to seek or obtain qualifying work, the Department established the "soon after the move" test in the belief that the time between when the worker moves and when he or she obtains qualifying work must be small enough to reasonably presume that one of the purposes of the move was to obtain qualifying work. We think that in these circumstances, a worker generally should obtain qualifying work within 30 days of the move. However, we recognize that this period of time may vary depending on local conditions in agricultural or fishing operations or personal circumstance, which may cause the worker to delay obtaining qualifying work for a limited period of time beyond 30 days. If the recruiter believes that such circumstances exist and that he or she can still reasonably conclude that the worker obtained qualifying work "soon after the move," the Department recommends that the recruiter document in the comment section of the COE the factors that led him or her to this conclusion.

Duration and Distance

D23. Is there a minimum duration for a qualifying move?

Although the statute and regulations are silent on the duration of a qualifying move, a migratory worker must stay in a new place long enough to show that the worker "moved," *i.e.*, changed residence due to economic necessity, and that one of the purposes of the move was to seek or obtain qualifying work, or any kind of work so long as the worker obtained qualifying work soon after the move. Recruiters should carefully examine and evaluate relevant factors, such as whether the worker obtained, or could

have obtained, a place to live that would allow the worker and the migratory child to remain in the new location long enough for the worker to engage in qualifying work or whether the move to work was a one-time act or a series of short moves to work in order to augment the family's income. If the worker sought but did not obtain qualifying work soon after the move (or at all), the recruiter should determine whether the worker meets the requirements for moving "in order to obtain" qualifying work, as described in D14-D21 of this chapter. With respect to moves of such short duration (*e.g.*, less than a week) that an independent reviewer might question whether the move was "due to economic necessity," the Department strongly recommends that the SEA establish a written policy for determining and documenting when and why these moves qualify for the MEP.

D24. Is there a minimum distance requirement for a qualifying move?

No. The only requirement is that the move be across school district boundaries. In a State that is comprised of a single school district (*e.g.*, Hawaii), the move must be across the established boundaries of intra-district administrative areas. In a State where school districts are more than 15,000 square miles (*e.g.*, Alaska), the move must be either across established school district boundaries or, a distance of 20 miles or more to a temporary residence to engage in temporary or seasonal fishing work. See § 200.81(d), (e), and (f) of the regulations.

D25. Has a worker who travels back and forth between a residence and an agricultural or fishing job within the same day made a qualifying move?

No. Such a worker is a "day-haul" worker whose travel is a non-qualifying commute, not a qualifying migration involving a change of residence.

Moves by Boat

D26. Are there special issues that affect only the moves of migratory fishers who travel by boat?

No. These workers' moves must be across school district boundaries (*i.e.*, from one school district to another), whether the moves are by water or by land. As with any other MEP eligibility determination, the SEA must maintain documentation of school district boundaries as they extend into the water. In addition, all other eligibility criteria must be met.

D27. Has a fisher who travels by boat and docks in a new school district made a qualifying move?

It depends. A fisher who travels by boat to a new school district, or travels 20 miles or more in Alaska, must stay in the new place long enough to show that the worker "moved," *i.e.*, changed residence due to economic necessity, and that one of the purposes of the move was to seek or obtain qualifying work (or any kind of work, so long as the worker obtained qualified work soon after the move). See D23 of this chapter regarding

moves of short duration. The Department recommends that recruiters obtain sufficient information about this type of trip to document in the COE that the move meets these requirements.

Stopover Sites

D28. What are stopover sites?

Stopover sites are rest centers where migrant families who are in transit stop for a night or two before moving on to another locale.

D29. May SEAs *serve* eligible migrant families who stay at a stopover site?

Yes.

D30. May SEAs *count* the eligible migrant children they serve at stopover sites for funding purposes?

It depends. An SEA may count eligible migrant children who have already established residency in the State prior to staying at the stopover site. (See D3 of this section for an explanation of the term "residence" as it pertains to the MEP.) However, an SEA may not count migrant children who have stopped at the stopover site but have not established residency in the State – the move was not made to obtain qualifying work at the stopover site. Moreover, simply stopping in the State for a rest period does not establish residency. In these cases, the SEA must wait for the migrant family to complete the qualifying move and establish residency in the State before it may count the children.

International Moves

D31. May a worker's move to the United States from another country qualify for the MEP?

Yes. A worker's move from another country to the U.S. may qualify if one of the purposes for the move was to seek or obtain qualifying work. For example, orchard growers in the Northeast hire contract workers from Guatemala to pick crops for a short period of time. Assuming all other eligibility criteria are met, the children of these workers would qualify because one of the purposes of the move to the U.S. was to obtain qualifying work. The workers are not disqualified if they have other reasons for moving to the U.S., even permanent relocation, so long as one of the purposes of the move is to obtain qualifying work and the other conditions are met.

D32. Is a move from the United States to another country a qualifying move?

No. The MEP was established to benefit families who perform qualifying work in the United States. Therefore, the Department does not view the MEP statute as authorizing moves to another country to engage in temporary or seasonal employment in agricultural

or fishing work to be considered qualifying moves. However, if a worker's move to another country is a "change of residence," the worker's move back to a school district in the U.S. might be a qualifying move.

D33. If a worker and his or her children make a non-qualifying move to the U.S. from another country, may the children be considered eligible for the MEP based on a subsequent qualifying move?

Yes.

E. Qualifying Arrival Date (QAD) and Move "to Join" Issues

E1. When does a child's eligibility for MEP services begin?

A child may be identified as a "migratory child" when the child and the worker complete the qualifying move. This is often referred to as the qualifying arrival date, or QAD, for purposes of the COE. However, a child is only eligible for MEP services once the SEA has determined that the child meets all eligibility criteria outlined in A1 of this chapter.

E2. Must a child move at the same time as the worker to be eligible for the MEP?

No; however, both the worker and child must make the move. Section 1309(2) of the ESEA provides that if the child is not the qualifying worker, the child must move to "accompany" the worker who moved in order to obtain or seek qualifying work. The regulations expand the term "accompany" to include a child who moves separately to "join" a parent, spouse, or guardian. That is, under the definition of "migratory child" in § 200.81(e) of the regulations, a child who is not a migratory agricultural worker or migratory fisher qualifies if the child accompanies or "joins" a parent, spouse, or guardian who is a migratory agricultural worker or migratory fisher who moves in order to obtain qualifying work. The Department considers this provision to mean that the child's move may either precede or follow the worker's move. For example, the child may move before the worker in order to start the school year on time, or the worker may move before the child in order to secure housing. In either case, the fact that the child and his or her parent, spouse, or guardian do not move at the same time does not nullify the child's eligibility for the MEP.

E3. What is the QAD when a child moves before or after the worker?

In situations where the child and worker do not move at the same time, the Department considers the QAD to be the day that the child and worker complete the move to be together. That is, if the child's move precedes the worker's move, the QAD is the date that the worker arrived. If the child's move follows the worker's move, the QAD is the date the child arrived.

E4. How much time may separate the worker's move from a child's move "to join" a worker?

The time limit depends on the circumstances. The Department believes that, as a best and safe practice, the child's move should generally occur within no more than 12 months of the worker's move to obtain qualifying work, and that after one year it is difficult to link the child's move to the worker's move to obtain qualifying work. Nonetheless, there may be unusual circumstances that prevent a child from moving within 12 months of the worker's move. In these cases, the Department recommends that an SEA document in the comment section of the COE the basis for determining that the child moved to "accompany" a worker after such a prolonged period of time between the two moves.

F. Qualifying Work

F1. What is "qualifying work"?

Under § 200.81(i) of the regulations, "qualifying work" means temporary employment or seasonal employment in agricultural work or fishing work.

G. Agricultural Work or Fishing Work

Agricultural Work

G1. What is the definition of "agricultural work" for purposes of the MEP?

"Agricultural work" is:

1. the production or initial processing of crops, dairy products, poultry, or livestock; as well as

   the cultivation or harvesting of trees,

   that is—

2. performed for wages or personal subsistence.

See § 200.81(a).

G2. What does "production" mean?

The Department considers agricultural production to mean work on farms, ranches, dairies, orchards, nurseries, and greenhouses engaged in the growing and harvesting of crops, plants, or vines and the keeping, grazing, or feeding of livestock or livestock products for sale. The term also includes, among other things, the production of bulbs, flower seeds, vegetable seeds, and specialty operations such as sod farms, mushroom cellars, and cranberry bogs.

G3. What is a crop?

The Department considers a crop to be a plant that is harvested for use by people or by livestock.

G4. What are examples of agricultural work related to the production of crops?

The production of crops involves work such as preparing land or greenhouse beds, planting, seeding, watering, fertilizing, staking, pruning, thinning, weeding, transplanting, applying pesticides, harvesting, picking, and gathering.

G5. Is work such as gathering decorative greens considered agricultural work?

Yes. The Department considers the term "plants" to include decorative greens or ferns grown for the purpose of floral arrangements, wreaths, etc. Therefore, the collection of these plants can be considered agricultural work. For the purposes of the MEP, the collection of these greens for recreation or personal use would not be considered agricultural work.

G6. What is livestock?

The term "livestock" refers to any animal produced or kept primarily for breeding or slaughter purposes, including, but not limited to, beef and dairy cattle, hogs, sheep, goats, and horses. For purposes of the MEP, livestock does not include animals that are raised for sport, recreation, research, service, or pets. The Department does not consider the term "livestock" to include animals hunted or captured in the wild.

G7. What are examples of agricultural work related to the production of livestock?

The Department considers the production of livestock to involve raising and taking care of animals described in the previous question. Such work includes, but is not limited to: herding; handling; feeding; watering; milking; caring for; branding; tagging, and assisting in the raising of livestock.

G8. Are animals such as deer, elk, and bison raised on farms considered "livestock"?

Yes, so long as these animals, sometimes referred to as specialty or alternative livestock, are raised for breeding or slaughter purposes and not for sport or recreation.

<u>Cultivation or Harvesting of Trees</u>

G9. What does "cultivation" mean in the context of trees?

In the context of trees, "cultivation" refers to work that promotes the growth of trees.

G10. What are examples of work that can be considered the cultivation of trees?

For the purposes of the MEP, examples of work that can be considered the cultivation of trees include, but are not limited to: soil preparation; plowing or fertilizing land; sorting seedlings; planting seedlings; transplanting; staking; watering; removing diseased or undesirable trees; applying insecticides; shearing tops and limbs; and tending, pruning, or trimming trees.

G11. What does "harvesting" mean in the context of trees?

For the purposes of the MEP, "harvesting" refers to the act of gathering or taking of the trees.

G12. What are examples of work that can be considered the harvesting of trees?

The Department considers the harvesting of trees to include work such as topping, felling, and skidding.

G13. What types of work are not considered part of the cultivation or harvesting of trees"?

The Department believes that the following activities are *not* part of the cultivation or harvesting of trees: clearing trees in preparation for construction; trimming trees around electric power lines; and cutting logs for firewood.

G14. Does transporting trees from a harvesting site to a processor (sawmill) qualify as agricultural work?

No. Transporting trees is not agricultural work for purposes of the MEP because it occurs after the cultivation and harvesting of trees.

G15. Is processing trees considered agricultural work?

No. According to § 200.81(a) of the regulations, only the cultivation or harvesting of trees is considered agricultural work. Processing trees occurs after the cultivation and harvesting.

<u>Fishing Work</u>

G16. What is the definition of "fishing work" for purposes of the MEP?

"Fishing work" is:

1. the catching or initial processing of fish or shellfish; as well as

   the raising or harvesting of fish or shellfish at fish farms,

that is--

2. performed for wages or personal subsistence.

See § 200.81(b).

G17. What is a "fish farm"?

For purposes of the MEP, the Department considers a fish farm to be a tract of water, such as a pond, a floating net pen, a tank, or a raceway reserved for the raising or harvesting of fish or shellfish. Large fish farms sometimes cultivate fish in the sea, relatively close to shore. The fish are artificially cultivated, rather than caught, as they would be in "fishing." Fish species raised on fish farms include, but are not limited to, catfish, salmon, cod, carp, eels, oysters, and clams.

G18. What are examples of work on a fish farm that would qualify as fishing work?

For the purposes of the MEP, examples of work on a fish farm that would qualify as "fishing work" include, but are not limited to, raising, feeding, grading, collecting, and sorting of fish, removing dead or dying fish from tanks or pens, and constructing nets, long-lines, and cages.

G19. Is the act of catching fish or shellfish for recreational or sport purposes "fishing work"?

No. These activities are not performed for wages or personal subsistence.

<u>Initial Processing</u>

G20. What does "initial processing" mean?

The Department considers "initial processing" to be work that (1) is beyond the production stage of agricultural work and (2) precedes the transformation of the raw product into something more refined. It means working with a raw agricultural or fishing product.

G21. What are examples of "initial processing" work in the poultry and livestock industries?

For the purposes of the MEP, examples of "initial processing" work in the poultry and livestock industries include, but are not limited to: stunning; slaughtering; skinning; eviscerating; splitting carcasses; hanging; cutting; trimming; deboning; and enclosing the raw product in a container.

G22. What are examples of "initial processing" work in the crop industry?

For the purposes of the MEP, examples of "initial processing" work in the crop industry include, but are not limited to: cleaning; weighing; cutting; grading; peeling; sorting; freezing, and enclosing the raw product in a container.

G23. What are examples of "initial processing" work in the fishing industry?

For the purposes of the MEP, examples of "initial processing" work in the fishing industry include, but are not limited to: scaling; cutting; dressing; and enclosing the raw product in a container.

G24. When does "initial processing" end?

The Department considers a product no longer to be in the stage of "initial processing" once the transformation of the raw product into something more refined begins. The Department believes that work up to, but not including, the start of the transformation process is agricultural or fishing work for purposes of the MEP. However, work such as placing raw chicken breasts into the oven for cooking, adding starter cultures to milk to make cheese, or applying necessary ingredients to a raw pork belly to begin the curing process is the beginning of the transformation process and therefore is not agricultural or fishing work for purposes of the MEP.

G25. What work is <u>not</u> considered production or initial processing?

Work such as cooking; baking; curing; fermenting; dehydrating; breading; marinating; and mixing of ingredients involves transforming a raw product into a more refined product. Therefore, the Department does not consider this work to be production or initial processing. In addition, the Department does not consider the following work to be production or processing: placing labels on boxes of refined products; selling an agricultural or fishing product; landscaping; managing a farm or processing plant; providing accounting, bookkeeping, or clerical services; providing babysitting or childcare services for farmworkers; or working at a bakery or restaurant. With regard to work such as repairing or maintaining equipment used for production or processing, or cleaning or sterilizing farm machinery or processing equipment, the Department does not consider individuals whose *profession* is to do this work, or who were hired solely to perform this work, to be performing agricultural work.

G26. Is hauling a product on a farm, ranch or other facility considered agricultural work?

Yes. The Department considers hauling a product <u>on</u> a farm, ranch, or other facility an integral part of production or initial processing and therefore, is agricultural work. However, it does not consider transporting a product to a market, wholesaler, or processing plant to be production or initial processing. "Shipping and trucking" is work that is often carried out by a third-party retailer, wholesaler, or contractor paid to

transport various products. Therefore, the service these companies or contractors provide is "shipping" or "trucking" and not production or initial processing.

G27. May a worker who performs both qualifying and non-qualifying work still be eligible for the MEP?

Yes. A worker is only required to meet the definition of a migratory agricultural worker or migratory fisher as defined in § 200.81(d) and (f) of the regulations. The fact that the worker performs non-qualifying work in addition to qualifying work has no bearing on his or her eligibility for the MEP.

Wages and Personal Subsistence

G28. What does "personal subsistence" mean?

As used in the definitions of agricultural work and fishing work in § 200.81(a) and (b) of the regulations, and as defined in § 200.81(h) of the regulations, "personal subsistence" means that the worker and the worker's family, as a matter of economic necessity, consume, as a substantial portion of their food intake, the crops, dairy products, or livestock they produce or the fish they catch.

G29. May a worker who is "self-employed" qualify as a migratory agricultural worker or migratory fisher?

Yes, in some circumstances. In general, the Department considers migratory agricultural workers and fishers to be either employed for wages or performing work for personal subsistence. However, while some workers, such as those who glean leftover crops from fields or fishers who own their own boats, might consider themselves "self employed," for purposes of MEP eligibility the Department considers the provisions regarding personal subsistence to mean that the money such workers earn from the sale of the product is equivalent to "wages" (and to the extent that gleaners consume the food they gather as a substantial portion of their food intake, "performed for personal subsistence").

H. Temporary and Seasonal Employment

H1. What is seasonal employment?

According to § 200.81(j) of the regulations, seasonal employment is employment that occurs only during a certain period of the year because of the cycles of nature and that, by its nature, may not be continuous or carried on throughout the year.

H2. How does the phrase "cycles of nature" pertain to seasonal employment?

For purposes of the MEP, the phrase "cycles of nature" is used to describe the basis for why certain types of employment in agricultural or fishing work only occur during certain, limited periods in the year. The length of "seasonal" employment is based on the

distinct period of time associated with the cultivation and harvesting cycles of the agricultural or fishing work, and is not employment that is continuous or carried on throughout the year.

H3. How long may seasonal employment last?

The definition of seasonal employment in § 200.81(j) of the regulations states that it is employment that occurs only during a certain period of the year and may not be continuous or carried on throughout the year. Therefore, like temporary employment, seasonal employment may not last longer than 12 months.

H4. How may an SEA determine that a worker's job is "seasonal employment"?

A worker's employment is seasonal if:

1. it occurs during a certain period of the year; and

2. it is not continuous or carried on throughout the year

H5. What is temporary employment?

According to § 200.81(k) of the regulations, temporary employment means "employment that lasts for a limited period of time, usually a few months, but no longer than 12 months."

H6. How may an SEA determine that a worker's job is "temporary employment"?

Section 200.81(k) of the regulations identifies three ways in which an SEA may determine that employment is temporary:

a. Employer Statement - The employer states that the worker was hired for a limited time frame, not to exceed 12 months;

b. Worker Statement - The worker states that he or she does not intend to remain in that employment indefinitely (*i.e.*, the worker's employment will not last longer than 12 months);

c. State Determination - The SEA has determined on some other reasonable basis that the employment will not last longer than 12 months.

H7. Is a worker who was hired to perform a series of different jobs, which together lead to the worker being employed by the same employer for more than 12 months, employed on a temporary or seasonal basis?

No. Workers who are hired to work for more than 12 months by the same employer regardless of how many different jobs they perform are not employed on a temporary or seasonal basis as defined in 200.81(j) and (k) of the MEP regulations.

H8. What is an example of a statement from an employer that indicates that the employment is temporary?

An example of a statement from an employer who harvests ferns for the floral industry might be: "employer _____ (name) stated that she will hire the worker only for the months of February through May to accommodate the increase in floral gifting around Valentine's Day, Easter, and Mother's Day." In this example, the employer stated that she is hiring the worker for a short period of time that will not exceed 12 months.

H9. What is an example of a statement from a worker that indicates that the employment is temporary?

An example of a worker's statement might be: "the worker stated that he plans to leave the job after seven months in order to return to his home with his family." Similar to the employer's statement, the worker's statement indicates that he will only remain in the job for a short period of time that will not exceed 12 months.

H10. When would an SEA rely on its own determination that a worker's employment is temporary?

In general, the Department believes that a determination about the temporary nature of a worker's employment is best obtained through a recruiter's interview with the worker or employer. However, § 200.81(k) of the regulations authorizes an SEA to make its own determination that employment is temporary so long as the SEA has some other reasonable basis for determining that the employment will not last more than 12 months.

For employment that appears constant and available year round, § 200.81(k) of the regulations permits an SEA to conclude that the employment is "temporary" for purposes of the MEP only if it determines and documents that, given the nature of the work, of those agricultural and fishing workers whose children the SEA determined to be eligible using some other reasonable basis, virtually none remained employed by the same employer more than 12 months. For more information about how to determine and document that virtually no workers remained employed by the same employer for more than 12 months, please see section I of this chapter.

H11. What are examples of "other reasonable bas[e]s" that an SEA might consider when determining that employment will not last longer than 12 months?

Examples of information that an SEA might consider include:

1. A recent survey of workers (e.g., an attrition rate study—see I8 through I19 of this chapter), by worksite, whom the SEA previously determined to be employed temporarily.
2. A recent survey of workers (e.g., an attrition rate study—see I8 through I19 of this chapter) from another State that documents the temporary nature of employment at a similar worksite.
3. A relevant and timely literature review that supports the temporary nature of employment at a similar worksite(s) and that can be considered for the worksite in question.

The SEA should maintain appropriate documentation to support the basis for its determination. In the case of examples 2 and 3 above, this documentation should include the basis for finding that the worksite in the State is similar to those discussed in another State's documentation or in the literature review.

As mentioned in H10, an SEA that relies on some other reasonable basis to determine the temporary nature of employment that appears constant and available year round must later confirm its conclusion by documenting that virtually none of the agricultural or fishing workers whose children were determined to be eligible, based on its determination of temporary employment, were still employed by the same employer for more than 12 months. See Section I of this chapter for more information.

H12. What are examples of information that would not be considered "reasonable" for purposes of determining that employment will not last more than 12 months?

The Department does not consider information such as the following to be reasonable for purposes of determining that employment will not last more than 12 months:

1. Anecdotal information about a worksite or industry, for example, the working conditions are such that a worker is unlikely to remain employed for more than 12 months.
2. Newspaper ads announcing a job opening on a farm or at a worksite. The fact that an employer plans to hire new workers by announcing job openings is not necessarily a signal that employment at a worksite is to be temporary. Specificity about the nature of the jobs to be filled, *e.g.*, whether the work is agricultural or fishing and the employment is temporary or seasonal, would be needed.

3. After February 28, 2010, "industrial surveys" as described in the Department's 2003 Non-Regulatory Guidance or other studies of turnover within job categories. See I7 of this chapter.

The Department does not believe that this type of information is sufficiently reliable for determining whether a worker's employment is likely to last less than 12 months.

H13. Must the SEA stop serving children whose parent or guardian remains employed by the same employer after 12 months even though the worker was originally employed on a temporary basis?

In general, an SEA may continue serving these children and keep them on its rolls for the duration of their 36-month eligibility period. MEP eligibility is determined at the time of the interview and is based on the worker's (or employer's) stated intention at the time of the move, or on the SEA's evidence of an "other reasonable basis" for determining the work may be considered to be temporary.

The Department would expect a situation in which the worker continues to be employed after 12 months to be a rare occurrence and not the norm for workers who are recruited on this basis. However, if a significant number or percentage of workers recruited on this basis remains employed at a particular worksite beyond 12 months, either in the same job or in another job at the same worksite, the Department believes the SEA should examine the reasons why workers are remaining employed. In some cases, the reasons may be justifiable. For example, if the economy took a turn for the worse, employees who intended to leave their employment much earlier did not do so because other jobs were not available. On the other hand, the recruiter might have made an incorrect eligibility determination because he or she did not understand the MEP definition of temporary employment. There even could be reasons to suspect fraud. In both of these latter situations, children's eligibility should be terminated immediately if the SEA determines that the original eligibility determinations were erroneous.

Thus, the reasons workers remain employed for more than 12 months will determine whether and what action the SEA needs to take.

H14. If a worker planned to work at an agricultural or fishing worksite permanently, can the worker be recruited for the MEP if the recruiter finds out later that the worker did not remain employed more than 12 months?

In general, no. A worker who moved to seek permanent employment did not move "in order to obtain temporary or seasonal employment in agricultural or fishing work" as required by the statute.

However, if the SEA has determined and documented that employment at the worksite, despite appearing to be constant and available year-round, is temporary in accordance

with 200.81(k) of the regulations, the worker can be considered eligible for the MEP (assuming that all other eligibility criteria are met). See Section I of this chapter.

H15. Should jobs that occur only at certain times of the year because of a holiday or event be considered as temporary employment or seasonal employment?

Jobs that occur only at certain times of the year because of a holiday or event (*e.g.*, Thanksgiving, Christmas, etc.) should be considered temporary employment because the time of year that the work is performed is not dependent on the cycles of nature, but rather the holiday or event.

I. Employment That Appears Constant and Available Year-Round

I1. Is an SEA always required to determine whether employment that appears constant and available year-round may be considered temporary?

No. An SEA is required to determine whether employment that is constant and available year-round may be considered temporary only if it intends to qualify the children of workers employed in these types of jobs.

I2. May SEAs consider employment that appears to be constant and available year-round to be temporary employment?

Yes. The Department recognizes that some agricultural and fishing jobs, for example certain jobs at processing plants or dairy farms, may appear to be constant and available year-round, but, perhaps because of the nature of the work, workers typically do not stay long at these jobs. In cases of employment that appears to be constant and available year-round, recruiters can base their determination that the employment is temporary on:

1. the worker's or the employer's statement that even though the work appears to be constant and available year- round, he or she intends to remain no longer than 12 months, or
2. the SEA's determination that even though the work appears to be constant and available year-round, the SEA has determined and documented, in accordance with § 200.81(k) of the regulations, that the employment is temporary.

I3. How does an SEA determine and document that certain employment that appears to be constant and available year-round is temporary employment for purposes of the MEP?

Consistent with § 200.81(k) of the regulations, an SEA determines the temporary nature of employment that appears to be constant and available year-round by:

Step 1: establishing its basis for reasonably concluding that particular employment that appears to be constant and available year-round can

be considered temporary. (See H11 and H12 of this chapter regarding "reasonable bases" for determining temporary employment.)

AND

Step 2: later confirming the basis of this conclusion by documenting that virtually none of the migratory agricultural or fishing workers whose children were determined to be eligible, based on the SEA's determination of the temporary nature of such employment, remained employed by the same employer for more than 12 months. One way an SEA might confirm the basis of its subsequent conclusion is through an "attrition rate study." See I1 – I7, which apply to the requirements for documenting the temporary nature of work that appears to be constant and available year-round, and I8 – I21, which address attrition rate studies.

I4. May an SEA continue to rely on the documentation it used consistent with prior regulations and prior non-regulatory guidance to determine the temporary nature of employment that appears constant and available year round?

No. For a limited time, the July 29, 2008, regulations allowed the SEA to rely on documentation consistent with prior regulations and prior guidance (*e.g.*, "industrial surveys) when determining the temporary nature of employment that appears constant and available year round. However, this allowance ended on February 28, 2010 (*i.e.*, 18 months from the effective date of the July 2008 regulations). To continue to find whether agricultural and fishing workers employed in what appears to be constant and year-round employment are, in fact, engaged in temporary employment, § 200.81(k) requires that by February 28, 2010, the SEA establish and implement procedures for determining which *employers,* whose agricultural and fishing workers it previously determined were employed temporarily, meet the definition of temporary employment established in the July 29, 2008 regulations.

In other words, the SEA must have determined by February 28, 2010, which employers, who offer employment that the SEA previously considered to be temporary based on its prior documentation, met the "virtually no workers remained employed by the same employer for more than 12 months" threshold. For employers (or their worksites – see I10 of this chapter) for which the SEA has made this determination, the SEA may continue to qualify the children of workers employed in agricultural or fishing work at these worksites on the basis of its new documentation. But, for employers (or their worksites) that did not meet the "virtually no workers remained employed…" threshold, the SEA must stop recruiting the children of agricultural and fishing workers at these worksites on the basis of the SEA's prior documentation that work that appears constant and available year-round is temporary. The SEA also must terminate eligibility of any children who were determined to be eligible on or after February 28, 2010, on the basis of

the SEA's prior determination that work that appears constant and available year-round is temporary. See also I20 of this chapter.

I5. What is the purpose of determining that "virtually no workers remained employed by the same employer more than 12 months"?

The purpose is to determine which employers, whose workers' employment appears to be constant and available year-round, may be considered to offer "temporary employment" for purposes of MEP eligibility. This determination only affects whether an SEA may continue, going forward, to consider employment for a particular employer to be temporary based on the *SEA's documentation* (*i.e.*, employment may still be determined temporary based on the worker's or employer's statement that the employment will not last longer than 12 months). See reference to SEA documentation in § 200.81(k) of the regulations.

I6. How often must an SEA test the reasonableness of its temporary determinations for work that appears to be constant and available year-round?

Determinations made on the basis of criteria in the July 29, 2008, regulations must be made at least once every three years. See § 200.81(k). (By February 28, 2010, each SEA must have tested the reasonableness of determinations made according to the 2003 MEP Non-Regulatory Guidance or some other reasonable process that was used prior to the issuance of the July 29, 2008 regulations.)

I7. After February 28, 2010, may an SEA continue to rely on (1) "industrial surveys" as discussed in the 2003 MEP Non-Regulatory Guidance, or (2) some other process that measures employee turnover that SEAs adopted prior to the issuance of the July 2008 regulations, as reasonable documentation of the temporary nature of employment that appears to be constant and available year-round?

No. See § 200.81(k) of the regulations.

The 2003 MEP Non-Regulatory Guidance permitted an SEA to consider certain jobs temporary based on the turnover rate of workers within particular job categories. However, surveys that measure the turnover rate of workers in and out of a particular job do not account for situations in which workers continue to remain employed by the same employer in a succession of jobs. These types of surveys do not measure the temporary nature of a worker's employment, but rather only the turnover within a particular job category. Thus, these types of surveys are not valid measures of "temporary employment" as defined in § 200.81(k) of the regulations. Instead, the SEA should consider conducting an "attrition rate study" to document the temporary nature of employment that appears to be constant and available year-round.

Attrition Rate Study

I8. What is an attrition rate study?

An attrition rate study is one way that an SEA can confirm its basis for reasonably concluding, despite the appearance that employment at a worksite is constant and available year-round, that virtually no migratory agricultural or fishing workers remained employed by the same employer for more than 12 months. For those worksites where the results of the attrition rate study reveal that virtually no migratory agricultural or fishing workers remained employed for more than 12 months, the SEA can continue to conclude that workers who perform agricultural or fishing work at those worksites are employed temporarily. (See Step 2 of I3 of this section.)

In this kind of study, an "attrition rate" means the percent of all migratory agricultural or fishing workers at a particular worksite (1) who were previously identified as eligible for the MEP, and (2) whose employment appears to be constant and available year-round, but who do not remain employed at that worksite more than 12 months.

I9. What attrition rate would permit an SEA to conclude that "virtually no workers remained employed by that employer more than 12 months"?

The Department has adopted a presumption that an attrition rate of at least 90% for any given worksite satisfies the requirement that virtually none of the migratory agricultural or fishing workers hired remained employed at that worksite for more than 12 months – and, therefore, the employment may be considered temporary.

For worksites of five or fewer migratory workers who perform agricultural or fishing work that appears to be constant and available year-round (e.g., small dairy farms), calculating an attrition rate of 90% is impossible. Therefore, the Department considers the termination of employment for four out of five workers to be equivalent to "virtually no workers remained employed by the same employer more than 12 months." Similarly, the Department considers worksites with three out of four workers, and two out of three workers, leaving within 12 months or less to be equivalent to "virtually no workers remained employed by the same employer more than 12 months."

I10. If an SEA is documenting the temporary nature of employment that appears to be constant and available year-round, does it make its temporary determination by employer or by worksite?

An SEA that wants to document the temporary nature of employment that appears to be constant and available year-round is only required to make this determination by employer. Specifically, § 200.81(k) requires an SEA, for employment that appears to be constant and available year-round, to document that virtually no agricultural or fishing workers, whose children the SEA previously identified as eligible for the MEP, "remained employed by the same employer more than 12 months" (emphasis added).

However, in cases where the employer has several worksites, the Department recommends that the SEA consider going further, and conduct its study by each of the employer's worksites. Conducting an attrition rate study by worksite allows an SEA to continue qualifying the children of agricultural or fishing workers who are employed at worksites that have a 90% or higher attrition rate even though the attrition rate for the employer (which combines all of the worksites) might be less than 90%. In this situation, if the SEA only conducted its attrition rate by employer, it would no longer be able to qualify the children of agricultural or fishing workers employed by this employer, because the employer's overall attrition rate is not 90% or higher.

Note, given the possible benefit of conducting an attrition rate study by employer's worksite, the remainder of the discussion about attrition rate studies uses this perspective.

I11. How would an SEA conduct an attrition rate study?

The Department suggests following these steps:

1. Generate a list of migratory agricultural and fishing workers whose children are currently qualified as eligible under temporary employment.
2. Separate COEs for these workers into two categories: Category A – determinations of temporary employment based on the worker's or employer's statement that the job was temporary or the worker would not remain employed longer than 12 months; and Category B – determinations of temporary employment based on employment that appeared constant and available year-round, but which the SEA determined to be temporary. Note, COEs classified as Category A should <u>not</u> be factored into the attrition rate study or calculation since the purpose of the study is to confirm whether the SEA's determination is correct. COEs classified as Category B will represent the pool of workers whose employment appears constant and available year round but that the SEA has determined to be temporary.
3. Further separate the COEs for Category B by worksite if this has not been done already.
4. Contact each of these workers (or the workers' employer) to determine or verify:
    a. whether the worker is still employed at the same worksite listed on the COE;
    b. when the worker started working at that worksite;
    c. when the worker stopped working at the worksite (if the worker has stopped working at the worksite); and
    d. whether the worker's employment was terminated and resumed at any time during the 12 months.
5. Use the information from the results of the interviews to determine which of the Category B workers were employed at the same worksite for 12 months or less.

6. Calculate the percent of agricultural and fishing workers by worksite that the SEA can verify as being employed at that worksite for 12 months or less. See I12, immediately below, for information about calculating the attrition rate.

I12. How can an SEA calculate an attrition rate?

Attrition rates can be calculated as follows:

(1) Determine the total number of agricultural and fishing workers at each worksite whose children were qualified as eligible according to the SEA's determination of temporary employment for employment that appears to be constant and available year-round; *i.e.*, steps 1 through 3 in I11, immediately above. Consider this number to be "Y".

(2) Determine the number of agricultural and fishing workers by worksite identified in Step 1 who were employed for 12 months or less; *i.e.*, step 4 and 5 in I11, immediately above. Consider this number to be "X".

(3) Divide "X" by "Y" and multiply this number ("Z") by 100 to give you the attrition rate for each worksite in a percentage.

Attrition Rate formula:

X / Y = Z ⟶ Z x 100 = Attrition rate (%)

The following example demonstrates how the formula works:

Worksite USA

(X) Total number of agricultural workers from worksite USA that were employed for 12 months or less	(Y) Total number of agricultural workers at worksite USA whose children are qualified as eligible according to the SEA's prior determination of temporary employment that appears to be constant and available year-round
32	120

Calculation:

X / Y = Z ⟶ Z x 100 = Attrition Rate (%)

32 / 120 = 0.266 ⟶ 0.266 x 100 =27% (round to the nearest tenth)

In this example, only 27% of agricultural workers at worksite USA were no longer employed after 12 months (i.e., 73% of workers were employed longer than 12 months). Despite the fact that workers at worksite USA were previously determined to be eligible for the MEP, agricultural or fishing work at worksite USA can no longer be considered temporary employment. This is because the SEA could not determine that "virtually no workers remained employed by [worksite USA] more than 12 months," as required by § 200.81(k) of the regulations. Therefore, the SEA must stop recruiting workers at worksite USA based on the SEA's own determination of temporary employment. Workers at the site may still be determined to be migratory workers if the determination of temporary employment is based on the worker's or employer's statement. See I21 of this chapter.

I13. How would an SEA select the workers for its attrition rate study?

An SEA may use any approach that is reasonable to select workers for participation in its attrition rate study.[1] Below are two suggested approaches. In both examples, the SEA should only include in its sample migratory agricultural workers and fishers whose children (or the children themselves if they were the workers) were previously determined to be eligible based on the SEA's prior determination that the worker's constant and available year-round employment was actually temporary. In other words, these samples would not include the children of workers whose employment was determined to be temporary based on the worker's statement or the employer's statement.

1. This approach relies on workers whose children were identified as eligible for the MEP during a specified 12-month time period. Depending on the 12-month time period that the SEA selects, this option will allow the SEA to determine the temporary nature of employment at a particular worksite as quickly as the SEA can conduct the interviews with the workers and analyze the data. To select workers[2] using this approach, the SEA should generate a list of workers whose children were identified as eligible for the MEP during a specified 12-month time period (*e.g.*, between September 1, 2008, and August 31, 2009). The SEA should select a time period that is sufficiently recent to ensure the most accurate data. However, to complete the attrition rate study as quickly as possible, it might want to ensure that at least 12 months have passed from the date the last child in the study was determined eligible. For example, if the last child in a September 1, 2008 through August 31, 2009 12-month list was determined eligible on August 31, 2009, the worker has until August 31, 2010, to leave his or her job before the SEA can determine whether

[1] This guidance does not address requirements for statistically valid samples. SEAs should consult their own statistical experts if they choose to sample rather than interview the entire population.
[2] Again, as used in these two approaches, the term "workers" should include only migratory agricultural workers and fishers whose children (or the children themselves if they are the workers) were previously determined to be eligible based on the State's prior determination that the workers' employment was temporary.

the worker was employed at the same worksite for longer than 12 months. Thus, the overall timeframe for the attrition rate study would end on August 31, 2010. (That is, the period of analysis for this sampling approach will be no longer than 24 months.)

2. This approach selects workers whose children were identified as eligible for the MEP at a specific date in time. Depending on the date that the SEA chooses, it might have to wait as long as 12 months to complete its attrition rate study. To select workers using this approach, the SEA should generate a list of all workers whose children were eligible for the MEP at a specific date in time, for example, September 1, 2009. (Note: given a child's 36-month period of eligibility, children with qualifying arrival dates as early as September 2, 2006, will be included on this list.) When using this approach, the SEA should select a specific date in time that is sufficiently recent to ensure the most accurate data, but it should keep in mind that, depending on the date chosen, the SEA may have to wait as many as 12 months for the results of its attrition rate study. For example, if the SEA generates a list of children who were eligible on September 1, 2009, the sample could include children whose qualifying arrival date was as recent as August 31, 2009, and whose parent began his or her employment on that same date. In this situation, the worker has until August 31, 2010, to leave his or her job before the SEA can determine whether the worker was employed at the same worksite for longer than 12 months.

These are just two approaches an SEA can use to select its workers to test whether employment that appears constant and available year-round can reasonably be considered temporary employment. The approach an SEA uses will depend on the amount of time the SEA has to complete its attrition rate study and what data the SEA has about such employment: *e.g.*, the number of years the SEA has been collecting needed data, and the specific data the SEA has been collecting.

I14. Is an attrition rate study the only vehicle SEAs may use to determine and document the temporary nature of work that appears to be constant and available year-round?

No. An attrition rate study is one way an SEA might determine and document that of those agricultural and fishing workers whose children were previously determined to be eligible based on the SEA's prior determination of the temporary nature of such employment (or the children themselves if they are the workers), virtually no workers remained employed by the same employer more than 12 months. Any SEA that adopts an alternate process should ensure that its process adequately determines that "virtually no workers remained employed…more than 12 months" and should document its basis for reasonably making this conclusion.

I15. Should an SEA include in its attrition rate study workers whose temporary employment determination was based on the worker's statement or the employer's statement?

No. As we noted in step 2 of I11 of this chapter, the SEA should not include in its attrition rate study workers whose temporary employment determination was based on the worker's statement or the employer's statement. The purpose of the study is to determine whether employment that appears to be constant and year round is, in fact, temporary. In these cases, either the worker or the employer has already determined that the employment will not last longer than 12 months.

I16. Should an SEA include in its attrition rate study workers who sought, but did not obtain, temporary employment in agricultural or fishing work?

No. In this situation, the worker never obtained the employment, therefore, the SEA cannot determine the length of time the worker was employed.

However, if the SEA knows that a specific worker obtained qualifying work after his or her children were recruited in to the MEP, the SEA should include the worker in the study and subsequently determine the length of time he or she was employed.

I17. What should an SEA do if, when conducting its attrition rate study, it cannot locate a worker whom it previously determined was employed temporarily based on its own determination?

In situations where the SEA cannot locate a worker whom it previously determined was employed temporarily based on the SEA's determination, the SEA should contact the employer for information about the worker's length of employment. The SEA should only presume that the worker was not employed more than 12 months <u>if</u> the SEA can document that (1) the worker is no longer employed by the employer listed on the COE and (2) the worker was not employed by that employer for more than 12 months.

If the SEA is unable to verify a worker's length of employment by asking the employer, then the SEA may follow up with the children's school district to see if the worker's children are still enrolled and, if so, to obtain the worker's most up-to-date contact information. The SEA could also check its State database or MSIX to determine if either of these resources has current information on the worker. If the SEA obtains more current contact information, it should again try to speak with the worker to determine that (1) the worker is no longer employed by the employer listed on the COE, and (2) the worker was not employed by that employer for more than 12 months. The Department strongly recommends that the SEA establish a process for recruiters to follow when verifying whether a worker is no longer employed at a worksite.

If the SEA can document that (1) the worker is no longer employed by the employer listed on the COE and (2) the worker was not employed by that employer for more than

12 months, it should include the worker in both the X and Y variables described in question I12 of this section. If the SEA cannot confidently document both of these criteria, then it should not include the worker in either variable.

I18. When calculating attrition rates, how should an SEA take into account a migratory agricultural or fishing worker who changed jobs but is still employed at the same worksite?

The fact that a worker changed jobs is irrelevant. A worker who changes jobs at a worksite should be included, in an attrition rate study, in the same manner as all other workers—by considering whether he or she remained employed at the worksite for 12 months or less.

I19. What should an SEA do if it determines that employment at a particular worksite does not meet the "virtually no workers remained employed…more than 12 months" threshold? Must the SEA stop serving, and remove from its rolls, those children whom it recruited in good faith?

If the SEA determines that employment at a worksite does not meet this threshold, it must stop recruiting the children of workers at these worksites on the basis of the SEA's own documentation that the employment at the worksite is temporary, because it has found otherwise. However, the SEA may continue to qualify the children of workers at these worksites if the determination of temporary employment is based on the worker's or the employer's statement that the work is to be temporary and the worker will not remain employed longer than 12 months, the child would still be eligible for the MEP (assuming all other eligibility criteria are met).

Children who were recruited by the SEA (1) on a reasonable basis (i.e., in good faith) that the employment that appeared constant and year-round could be considered temporary (see H11 of this chapter and the corresponding references), and (2) before the SEA completed its attrition rate study, remain eligible for the duration of their 36-month eligibility period starting with their last qualifying move.

I20. Once the SEA has determined which worksites meet the "virtually no workers remained employed by the same employer more than 12 months" threshold, can it find all children of agricultural or fishing workers at those sites to be eligible for the MEP?

Yes, provided that the children meet all other MEP eligibility requirements. The purpose of determining which worksites meet the "virtually no workers remained employed…more than 12 months" threshold is to permit anyone who works in agricultural or fishing work at these worksites to be considered employed on a temporary basis, regardless of any employer or worker statement that the work is intended to be permanent, and thus to permit their children to be considered migrant so long as all other MEP eligibility criteria are met.

I21. If an SEA has determined that employment at a particular worksite is not "temporary employment" (based on the SEA's documentation), but the worker indicates that he or she intended to remain employed at that site less than 12 months, can the SEA qualify the child so long as all other eligibility criteria are met?

Yes. As we noted in I19 of this chapter, an SEA may rely on a worker's statement to determine that employment is temporary even if the SEA's documentation demonstrates that the constant and available year-round employment is not "temporary". In this case, it is the worker's statement about his or her intention that makes the employment temporary.

J. Other Changes to MEP Eligibility

J1. Does the migratory worker's temporary or seasonal agricultural or fishing employment have to be a "principal means of livelihood"?

No. The MEP regulations published on July 29, 2008, removed the prior requirement that one's agricultural or fishing work needs to be a principal means of livelihood.

J2. Does the fact that a worker and child moved to relocate permanently affect the child's eligibility for the MEP?

No. The July 29, 2008 regulations define "move" or "moved" as it pertains to the MEP as a change from one residence to another residence that occurs due to economic necessity. Under this definition, the fact that a worker moved to permanently relocate does not matter so long as (1) another purpose of the worker's move was to obtain either qualifying work or any employment (not to include a move specifically for non-qualifying work), (2) the worker obtained qualifying work soon after the move, and (3) all other conditions of a qualifying move were met.

J3. Must the SEA consider whether an "initial commercial sale" has occurred in order to determine if the agricultural or fishing work can be considered qualifying?

No. The new regulations also removed the phrase "initial commercial sale" from the definition of agricultural work and fishing work. SEAs are no longer required to determine whether an "initial commercial sale" has occurred in order to determine if the work can be considered agricultural work or fishing work for purposes of the MEP.

K. Documenting Eligibility

K1. What responsibility does an SEA have to document eligibility determinations?

An SEA must document eligibility determinations in order to comply with § 76.731 of EDGAR, which provides that "[a] State and a subgrantee shall keep records to show its compliance with program requirements." As the MEP statute and regulations provide that only eligible migrant children (*i.e.*, those who meet the definitions contained in section 1309(2) of the MEP statute and § 200.81 of the MEP regulations) may be counted for and served by the MEP, each SEA must maintain documentation to confirm the eligibility of each child whom the SEA considers to be eligible for the program. In this regard, § 200.89(c) of the regulations requires an SEA and its local operating agencies to use the Certificate of Eligibility (COE) form established by the Secretary to document the State's determination of the eligibility of migratory children. (For more information about ID&R quality control requirements, see Chapter III titled Identification, Recruitment, and Quality Control.)

K2. What does the COE established by the Secretary require?

The COE established by the Secretary (the "national COE") consists of required data elements and required data sections necessary for documenting a child's eligibility for the MEP. A third part, for State-requested or required information, is optional. Each State's COE may look different, but every State's COE must include all of the required data elements and the required data sections contained in the national COE.

K3. What are the required data *elements* of the national COE?

The required data elements of the national COE are organized as Family Data and Child Data. The Family Data are as follows: Male Parent/Guardian Last Name, Male Parent/Guardian First Name, Female Parent/Guardian Last Name, Female Parent/Guardian First Name, Current Address, City, State, Zip Code, and Telephone. The Child Data are as follows: Last Name 1, Last Name 2, Suffix, First Name, Middle Name, Sex, Birth Date, Multiple Birth Flag (or MB), Birth Date Verification Code (or Code), and Residency Date.

K4. What are the required data *sections* for the national COE?

The required data sections mandated by the national COE are as follows: Qualifying Move & Work Section, Comment Section, Parent/Guardian/Worker/Spouse Signature Section, and Eligibility Certification Section. The content of these sections must remain unaltered, with limited exceptions. Certain formatting changes are allowable.

K5. May an SEA include its own State-requested or State-required information on the national COE?

Yes. As mentioned in K2 of this chapter, an SEA may include State-requested or State-required information on the national COE, within certain parameters. An SEA may only include its own information to the extent space is available on the single page in which the required data elements and the required data sections are included. However, an SEA may include its own information on additional pages that are to be attached to the single eligibility page. And, in general, an SEA may not collect any State-required or State-requested information inside any of the required data sections on the national COE. The Department has made limited exceptions to this last standard. For more information about exceptions for State-requested or State-required information, please see the national COE instructions at http://www2.ed.gov/programs/mep/legislation.html.

K6. Where can an SEA find more information about the national COE requirements?

Detailed information about the national COE, including how to complete a COE and specifics about how a State may design its COE to be in compliance with the July 2008 regulatory requirements, is available on the Department's website at http://www2.ed.gov/programs/mep/legislation.html or by calling the Department's Office of Migrant Education at (202) 260-1164.

K7. Must each SEA maintain a COE on all children eligible for the MEP?

Yes. Every child who the SEA determines is eligible for the MEP must have the basis for his or her eligibility recorded on the national COE. Children within the same family may be recorded on one COE so long as all of the children have the same eligibility information.

K8. When should a recruiter complete a new COE?

In order to ensure that children remain eligible to be counted and served by the MEP as long as is appropriate, recruiters should complete a new COE every time a child makes a new qualifying move.

K9. Must the parent or guardian sign the national COE?

Except for a few limited exceptions, yes. (See the instructions for completing the national COE at http://www2.ed.gov/programs/mep/legislation.html for more information about these exceptions.) By signing the national COE, the parent or guardian confirms that the information he or she provided is accurate and identifies who provided the information so that the SEA can verify information contained on the COE at a later date, if necessary.

K10. Must the recruiter sign the national COE?

Yes. The recruiter's signature on the national COE certifies that: (1) the children are eligible for the MEP, and (2) the information upon which the recruiter based the eligibility determination is correct to the best of his or her knowledge. Moreover, under § 200.89(c) and (d), the Department requires this signature on the national COE as an element of a reasonable system of quality control.

K11. Must someone else review the information on the national COE?

Yes. As part of a sound system of quality control, § 200.89(d)(4) of the MEP regulations (as revised on July 29, 2008) requires that the system of quality control that an SEA establishes must include "[a]n examination by qualified individuals at the SEA or local operating agency level of each COE to verify that the written documentation is sufficient and that, based on the recorded data, the child is eligible for MEP services." Therefore, the SEA may designate someone at the State, regional, or local level to assume this responsibility. This person must sign and date the national COE to indicate that this level of review has occurred. (For more information about ID&R quality control requirements, see 34 CFR 200.89.)

K12. May an SEA base its determination of a child's eligibility on a qualifying move that occurred in another State within the past 36 months?

Yes. It is possible that a child and his or her family will make a qualifying move, for example, to State A and then make a subsequent non-qualifying move to State B. So long as State B identifies the child within 36 months of the qualifying move, it may enroll the child in the MEP on the basis of the qualifying move to State A for the remainder of the 36 months. In doing so, State B makes its own independent determination that the child is eligible based on the earlier qualifying move as well as completes its own State's COE. SEAs are encouraged to coordinate with the State in which the qualifying move occurred to confirm the qualifying information.

K13. May a recruiter accept automatically another State's COE as evidence of a child's eligibility for the MEP?

No. Each State is responsible for making its own eligibility determination for the children it enrolls in the MEP. However, the Department encourages States to share information and to utilize each other's information to assist in making eligibility determinations.

III. IDENTIFICATION AND RECRUITMENT

Finding and enrolling eligible migrant children is a cornerstone of the MEP and its importance cannot be overemphasized. Identification and recruitment are critical activities because:

- The children who are most in need of program services are often those who are the most difficult to find.
- Many migrant children would not fully benefit from school, and in some cases would not attend school at all, if SEAs did not identify and recruit them into the MEP. This is particularly true of the most mobile migrant children who may be more difficult to identify than those who have settled in a community.
- Children cannot receive MEP services without a record of eligibility.

The SEA is responsible for the proper and timely identification and recruitment of all eligible migrant children in the State, including securing pertinent information to document the basis of a child's eligibility. Typically, SEAs or their local operating agencies record eligibility data on a Certificate of Eligibility (COE). Recruiters obtain the data by interviewing the person responsible for the child, or the child him or herself, in cases where the child moves on his or her own. The SEA is responsible for implementing procedures to ensure the accuracy of eligibility information.

This chapter addresses the ways in which SEAs and local operating agencies may meet their responsibility to identify and recruit all eligible migrant children in the State. Related issues about how children are determined to be eligible for the MEP are addressed in Chapter II–"Child Eligibility."

STATUTORY REQUIREMENTS:

Sections 1304(c)(7) and 1309(2) of Title I, Part C

REGULATORY REQUIREMENTS:

34 CFR 200.81

A1. What do the terms "identification" and "recruitment" (ID&R) mean?

Identification means determining the location and presence of migrant children.

Recruitment means making contact with migrant families, explaining the MEP, securing the necessary information to make a determination that the child is eligible for the MEP, and recording the basis of the child's eligibility on a COE or like form. Upon successful recruitment of a migrant family, eligible children may be enrolled in the MEP. (See

Questions M1 through M11 in Chapter II – "Child Eligibility" for more information on COEs.)

A2. Why is ID&R a unique and important aspect of the MEP?

The majority of migrant children would not fully benefit from the educational services to which they are entitled and, in some cases, would not attend school at all if SEAs did not identify and recruit them into the MEP. This is particularly true of the most mobile migrant children, who are the most difficult to locate.

A3. Who is responsible for ID&R?

Under section 1304(c)(7) of the statute, the SEA is responsible for identifying and recruiting all eligible migrant children residing in the State.

A4. What are the SEA's statewide responsibilities for ID&R?

In implementing an active statewide ID&R process, the SEA should:

- Implement a formal process to map all of the areas within the State where migrant families are likely to reside.
- Develop procedures to effectively identify and recruit all eligible migrant children in the State, generally through a statewide recruitment plan.
- Train and guide recruiters on how to identify and recruit migrant children and how to make appropriate eligibility determinations.
- Deploy recruiters to carry out statewide identification and recruitment efforts and monitor their efforts.
- Implement quality control procedures designed to ensure the reasonable accuracy of recruiters' eligibility determinations and written eligibility documentation.
- Evaluate periodically the effectiveness of identification and recruitment efforts and revise procedures as needed.

A5. What methods exist to identify all eligible migrant children in the State?

The SEA should consider implementing the following strategies:

- Identify and map the locations of agricultural and fishing areas throughout the State. The U.S. Departments of Agriculture, Labor, and Commerce, and the appropriate State offices (e.g., State employment office, county agricultural office, etc.) may assist in this process.

- Obtain and maintain current information on the State's agricultural and fishing activities and determine: (1) areas of the State in which concentrations of migrant labor exist, and (2) peak employment periods. Growers, the State Office of Employment Security, and the U.S. Departments of Labor or Agriculture may assist in this effort.

- Locate and maintain current lists of migrant housing in each area of the State. State and Federal Departments of Health and Human Services and Labor may have lists of migrant camps.

- Develop and implement an identification and recruitment network by coordinating with organizations and agencies that provide services to migrant workers and their families. These include organizations such as farm worker unions, schools, legal aid agencies, social services offices, local businesses, local churches, Migrant Health offices, Workforce Investment Act (WIA) offices, Migrant Head Start offices, and Supplemental Federal Program for Women, Infants and Children (WIC) offices.

- Conduct community surveys or industrial surveys to confirm the location and presence of migrant workers and their families.

After the SEA implements these methods, it should update its information on the location of migrant children at least on an annual basis.

A6. What procedures exist to recruit migrant children effectively?

The SEA should consider developing the following procedures for effective recruitment:

- Personnel – The SEA should consider the number of recruiters that are necessary; the organizational structure for recruitment (e.g., Should it be done on a statewide or regional basis? Should the recruiters work in teams or individually?); and the different languages that are necessary to communicate with the migrant population.

- Eligibility Policy – The SEA should develop a written policy regarding who is eligible for the MEP, consistent with the statutory and regulatory definition of "migratory child."

- Data collection and documentation – The SEA should have a system for documenting eligibility data on a COE or other written form.

A7. Should the SEA make an effort to determine when a child leaves the State?

Yes. To the extent feasible, the SEA should track the departure as well as the arrival of migrant families in their State. This practice is useful because: (1) it helps the SEA plan the program by determining an accurate number of eligible migrant children in the State; (2) it allows the SEA to initiate procedures for making pertinent records available for

transfer; and (3) it allows the SEA to notify the receiving State in advance that the migrant child is en route.

A8. What are the primary responsibilities of a recruiter?

A recruiter's primary responsibilities are: (1) to obtain information provided by parents, guardians, and others regarding the child's eligibility for the MEP; (2) to make determinations of eligibility; and (3) to accurately and clearly record information that establishes that a child is eligible for the MEP on a COE or like form. In every case, the recruiter (not the individual interviewed) determines the child's eligibility on the basis of the statute, regulations, and policies that the SEA implements through formal procedures.

Because the SEA is responsible for all determinations of MEP eligibility, the information that the recruiter records should be specific enough to be understood by a knowledgeable independent reviewer. For more information on what is appropriate to include in the COE, please see Chapter II – "Child Eligibility."

A9. What qualities make a recruiter effective?

The process of recruiting a migrant child by interviewing migrant parents or guardians requires careful training, planning, cultural sensitivity, knowledge of the MEP, and excellent communication skills. In order to be effective, recruiters should have adequate knowledge of:

- MEP eligibility requirements;
- languages spoken by migrant workers;
- local growers and fishing companies;
- local agricultural and fishing production and processing activities;
- cycles of seasonal employment and temporary employment;
- the local school system, the services available for migrant children and their families, and the most effective strategies for recruiting within each school;
- local roads and the locations of migrant labor camps and other migrant housing;
- MEP services offered by the local operating agency; and
- other agencies that may provide services to migrant workers and their families, such as Migrant Health, WIA, WIC, and Migrant Head start.

A10. Is the SEA responsible for ensuring the accuracy of a recruiter's eligibility determinations?

Yes. The SEA and its local operating agencies are responsible for ensuring the accuracy of the information used to determine each child's eligibility for the MEP.

A11. Why is the accuracy of eligibility determinations important?

The accuracy of a State's eligibility determinations is important both for programmatic decisions regarding which children are eligible to receive MEP services and for fiscal decisions about the size of the State's MEP allocation.

A12. How does the SEA ensure the accuracy of the information used to determine a child's eligibility for the MEP?

The SEA should have a system of "quality control" to ensure that the information used to determine eligibility is accurate. This system provides the SEA and its local operating agencies a reasonable basis for determining that the children who are recruited are, in fact, migrant children and allows the SEA to demonstrate that it is entitled to receive MEP funds.

A13. What does the Department consider to be the components of an acceptable system of quality control at the SEA level?

A quality control system should include at least the following components:

1. Training for recruiters on various aspects of the job;

2. A designated reviewer for each COE to verify that, based on the recorded data, the child is eligible for MEP services;

3. A formal process for resolving eligibility questions raised by recruiters and their supervisors and for transmitting responses to all local operating agencies in written form;

4. A process for the SEA to validate that eligibility determinations were properly made;

5. Apart from steps 2 and 4, a plan for qualified SEA staff to monitor, at least annually, the identification and recruitment practices of individual recruiters;

6. Documentation that supports the SEA's implementation of this quality control system and a record of actions taken to improve the system where periodic reviews and evaluations indicate a need to do so; and

7. A process for implementing corrective action in response to internal audit findings and recommendations.

A14. Should the SEA train recruiters as part of its system of quality control?

Yes. Training for recruiters should include, at a minimum:

1. Knowledge of all MEP eligibility definitions;

2. Understanding of the decision-making process that recruiters should use, consistent with Federal definitions and SEA-adopted procedures, to determine each child's eligibility for the MEP;

3. Knowledge of local agricultural and fishing production and processing activities;

4. Familiarity with local growers, processors, and fishing companies;

5. Skill in the use of studies of the State's agricultural and fishing industries, where available, as guides to determine whether particular employment activities are temporary;

6. Proficiency in accurately, completely, and clearly filling out all sections of the COE; and

7. Knowledge of the types of situations that need additional narrative or documentation beyond what is normally recorded on the COE to demonstrate that the children are eligible for the MEP.

A15. Must the individual who reviews each completed COE (step 2 in Question A13) be a State official?

No. So long as the individual who performs this task is qualified and understands the eligibility requirements, he or she need not be a State official. However, the SEA remains ultimately responsible for ensuring the accuracy of information on the COE. (See Question A10 of this chapter.)

A16. What is an acceptable process for validating eligibility determinations?

As a component of an acceptable quality control system, the SEA should review eligibility determinations at least once annually. This process should include:

1. An examination by qualified individuals at the SEA level of a representative sample of COEs for sufficiency of the written documentation;

2. A process for improvement, as needed, to eliminate the causes of common errors on COEs, such as not providing sufficient information to sustain an eligibility determination. This process should include a mechanism for communicating with reviewers and recruiters on a regular basis regarding these improvements; and

3. A process for corrective action if the SEA finds COEs that do not sufficiently document a child's eligibility for the MEP.

A17. Is re-interviewing a random sample of parents or guardians who provided information to the recruiter an important part of an acceptable system of quality control?

Yes. As a matter of good practice, re-interviewing parents or guardians from a representative sample of COEs on an annual basis should be a part of an SEA's quality control system. SEAs are encouraged to use an outside contractor to perform this task at least once every three years. This helps validate that the data on the COEs are accurate and that eligibility determinations are correct.

A18. Does the current statute allow a State to have a 5 percent margin of error in its child counts?

No. The 5 percent margin of error was part of the ESEA, as amended by the Hawkins-Stafford Amendment of 1988. This provision was eliminated in 1994 through the reauthorization of the ESEA (Improving America's School Act). There is no allowable margin of error in a State's child counts. Therefore, SEAs must ensure that only eligible children are included in the child count.

A19. Should recruiters ask migrant families for their immigration status in order to enroll them in the MEP?

No. In fact, recruiters should not request this type of information because it may discourage undocumented individuals from seeking the services they need and for which they qualify. A social security number or other proof of residency/citizenship is *not* required for recruitment in the MEP.

A20. Should the information that a recruiter records on eligible migrant children be entered into the State's migrant student records system?

Yes. As each child is recruited into the program, information on the child is recorded on a COE. Some or all of this information should also be entered into the State's migrant student records system. Some States use electronic COEs, which allows States to download the data that recruiters enter into the State's database on a regular basis. Other States forward key information from the COE form to a records specialist employed by the State MEP, who sends the information to the State's migrant student records system. Regardless of how the State manages this process, it is good practice to maintain eligibility information electronically so it can easily be transferred to other States and districts to which migrant students may travel.

IV. COMPREHENSIVE NEEDS ASSESSMENT AND SERVICE DELIVERY PLAN

The primary purpose of the comprehensive needs assessment is to guide the *overall design* of the MEP on a statewide basis. It is not sufficient to simply document the need for the program (e.g., 50 percent of migrant students are not proficient in reading, or 30 percent of migrant students do not graduate from high school). Rather, SEAs and local operating agencies must identify the special educational needs of migrant children and determine the specific services that will help migrant children achieve the State's measurable outcomes and performance targets. Because there are never sufficient resources to meet all the needs of migrant children, the comprehensive needs assessment helps SEAs and local operating agencies prioritize those needs.

Local operating agencies conduct individual needs assessments to: (1) determine the needs of migrant students and how those needs relate to the priorities established by the State; (2) design local services; and (3) select students for the receipt of those services. While the SEA and local operating agencies must jointly ensure that needs assessment procedures at the local operating agency level are aligned with those at the State level, local operating agencies are able to narrow their needs assessments because local staff have access to more precise information than is available at the SEA level. This enables the local operating agency to identify such critical elements as the specific needs of children by grade levels, academic areas in which the project should focus, instructional settings, instructional materials, staffing, and teaching techniques.

SEAs are also required to develop a comprehensive State plan for service delivery that describes the strategies the SEA will pursue on a statewide basis to help migrant children achieve the performance targets that the State has adopted for all children in reading and math, high school graduation, reducing school dropouts, school readiness (where applicable), and any other performance target that the State has identified for migrant children.

STATUTORY REQUIREMENTS:

Title I, Part C, Sections 1304(b) and 1306(a)

REGULATORY REQUIREMENTS:

34 CFR 200.83

A. Comprehensive Needs Assessment

A1. What is a "need"?

A "need" refers to the gap or discrepancy between a present state (what is) and a desired state (what should be). The need is neither the present nor the future state; it is the gap between them.

Desired state (What should be)	-	Current state (What is)	=	Need (Gap)
100% of third grade migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.	-	30% of third grade migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.	=	70% of third grade migrant children must learn to use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.
{alternatively, using the performance of all "non-migrant" children to set the desired state}				
85% of third grade non-migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.	-	30% of third grade migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.	=	55% of third grade migrant children must learn to use phonics knowledge and word parts to figure out how to pronounce words they do not recognize to perform as well as their non-migrant peers.

A2. What is a "needs assessment"?

A "needs assessment" is a *systematic* assessment and decision-making process that progresses through a defined series of phases to determine needs, examine their nature and causes, and set priorities for future action. A needs assessment:

- Focuses on the *ends* (i.e., outcomes) to be achieved, rather than the *means* (i.e., process). For example, reading achievement is an outcome, whereas reading instruction is a means toward that end.
- Gathers data by means of *established procedures and methods* that are thoughtfully selected to fit the purposes and context of the needs assessment.
- *Sets priorities and determines criteria* for solutions so that planners and managers can make sound decisions.
- *Sets criteria* for determining how best to allocate available money, people, facilities, and other resources.
- Leads to *action* that will *improve* programs, services, organizational structure and operations, or a combination of these elements.

A3. What does "comprehensive" mean?

A needs assessment is comprehensive if it:

- Includes both needs identification and the assessment of potential solutions;

- Addresses all relevant performance targets established for migrant children (i.e., proficiency in reading, proficiency in math, graduation from high school, reduction of the dropout rate, and any other program goal set for migrant children by the State, including school readiness);
- Identifies the needs of migrant children at a level that is useful for program design purposes;
- Collects data from appropriate target groups (i.e., students, parents, teachers, etc.);
- Examines need data disaggregated by key subgroups; and
- Is conducted on a statewide basis.

A4. What is a Needs Assessment Committee?

A Needs Assessment Committee is a group of key stakeholders, decision makers, policymakers, and content experts who represent the organizations and individuals that are necessary to ensure commitment to the needs assessment process and implementation of the results. The active use of a Needs Assessment Committee is one important method of obtaining expert advice and gaining commitment for both the process and the execution of the results.

A5. What is a "target group"?

A target group is the focus of the needs assessment. Common target groups in education settings include students, parents, teachers, administrators, program staff, and the community at large. Ideally, needs assessments are *initially* conducted to determine the needs of the people (i.e., service receivers) for whom the organization or system exists (e.g., students). However, a "*comprehensive*" needs assessment often takes into account needs identified in other parts of a system. For example, a needs assessment might include the concerns of the "service providers" (e.g., teachers, guidance counselors, or school principals–the people who have a direct relationship with the service receivers) or "system issues" (e.g., availability of programs, services, and personnel; level of program coordination; and access to appropriate facilities).

A6. What are the "special educational needs" of migrant children?

The "special educational needs" of migrant children, as defined in 34 CFR 200.83(a)(2), are those educational *and* educationally related needs that: (1) result from the migrant lifestyle, and (2) must be met in order for migrant children to participate effectively in school. Each SEA must identify the special educational needs of the migrant children who reside in the State. These needs should be the focus of the program's design and interventions.

A7. Must SEAs and local operating agencies identify the special educational needs of all eligible migrant children?

Yes. Sections 1304(b)(1) and 1306(a)(1) of the statute require the SEA to ensure that the State and its local operating agencies identify and address the special educational needs of migrant children. Furthermore, every SEA must develop and update a written comprehensive State service delivery plan that includes an identification and assessment of the special educational needs of migrant children, as described in the previous question. (See 34 CFR 200.83.)

SEAs must conduct a comprehensive needs assessment in order to develop a comprehensive State plan for service delivery that addresses the special educational needs of migrant children. Local operating agencies must conduct a needs assessment in order to provide services that will meet the identified needs in accordance with the comprehensive State plan for service delivery.

A8. Must SEAs identify and address the special educational needs of preschool migrant children?

Yes. Section 1304(b)(1) of the statute requires SEAs to ensure that they will identify and address the special educational needs of preschool migrant children.

A9. What are the benefits of conducting a needs assessment?

The SEA and local operating agency cannot reasonably design the MEP or determine the grade levels and instructional areas on which individual projects should focus without information on the special educational needs of all eligible children identified in the State. At the State level, a comprehensive needs assessment identifies: (1) the needs of migrant children on a statewide basis through a systematic process of prioritizing among competing needs; (2) services, on a statewide basis, that are most likely to enable the MEP to meet its measurable outcomes and contribute to the achievement of the State's performance targets; and (3) the best way to allocate limited resources, including time, money, and organizational efforts.

At the local operating agency level, a needs assessment determines: (1) the extent of the needs of migrant students in that project area and how those needs relate to the priorities the State has established; (2) how to design local services; and (3) which students should receive services. Local operating agencies identify such critical elements as the specific needs of children by grade levels, the academic areas in which the project should focus, the instructional settings, materials, staffing, and teaching techniques.

A10. How may an SEA structure a statewide comprehensive needs assessment?

States are encouraged to examine a three-phase comprehensive needs assessment process, which has been the basis of a needs assessment pilot project sponsored by the Office of

Migrant Education in conjunction with the Comprehensive Regional Assistance Centers. The three phases of the assessment model are:

- *Explore What Is Known*. In the first phase of the process, there are three key objectives: (1) investigate what is already known about the needs of the target group; (2) determine the focus and scope of the needs assessment; and (3) gain commitment from all levels in the organization for the assessment, including the *use* of the findings for program planning and implementation. In this phase, the SEA identifies a project manager and establishes a needs assessment committee that is made up of representatives of the organizations and individuals that are critical to ensuring the successful completion of the process *and* the implementation of the results. Some activities that typically occur during this phase of the needs assessment include developing an overall management plan (including staff commitments, timelines, and milestones) and identifying major areas of concern within the priorities established by the State (e.g., proficiency in reading, proficiency in math, graduation from high school, reducing the dropout rate).

- *Gather and Analyze Data*. In the second phase of the process, the key objectives are to: (1) document the status (or "what is") for each major concern and/or issue that was identified; (2) compare the status with the vision of "what should be;" and (3) determine the magnitude of the needs and their causes. The result of this phase is a set of needs statements, in tentative order of priority, based on how critical the needs and causes are. Some activities that typically occur during this phase are: (1) developing need indicators for each major concern identified in Phase I; (2) developing a data collection and analysis plan (i.e., consider data sources to measure the need indicators); and (3) establishing preliminary priorities for data collection (i.e., determine which need indicators are not feasible to consider because it would be prohibitively expensive to collect data or because the data would not be reliable).

- *Make Decisions*. A needs assessment is *not complete* until the information is used in a practical way. Phase III is the bridge from analysis to action. It answers important questions like: Which needs are the most critical? What are possible solutions? Which solutions are best? Based on the answers to these questions, the committee develops and implements an action plan. Some activities that typically occur during this phase of the needs assessment are establishing priority needs, identifying possible solutions, selecting strategies for implementing the most promising solutions, proposing an action plan, and preparing a final report.

For more information on this needs assessment model, visit the OME website at http://www.ed.gov/admins/lead/account/comprehensive.html.

A11. How often must an SEA and local operating agency conduct a needs assessment?

SEAs and local operating agencies are required to design and operate their programs based on a *current* comprehensive needs assessment. (See 34 CFR 200.83.) Because a quality needs assessment is an extensive undertaking and many of the needs and solutions do not change significantly from one year to the next, it is not practical to conduct a *complete* needs assessment every year. As a rule of thumb, States should conduct a complete needs assessment every 3 years, or more frequently if there is evidence of a change in the needs of migrant children (e.g., project personnel or parents begin recommending changes to improve the program or the demographic characteristics of the migrant student population changes). In addition, key sections of the needs assessment should be updated *annually* to ensure that the results of the needs assessment remain current. Information that is typically updated on an annual basis includes the data required for: (1) the SEA's subgrant process, and (2) the local operating agency's project application.

A12. May the SEA delegate its responsibility to conduct a statewide comprehensive needs assessment to its local operating agencies?

No. The SEA has the responsibility to conduct a comprehensive needs assessment on a *statewide* basis, and it cannot delegate this responsibility to local operating agencies.

A13. Must the SEA ensure that the needs assessment procedures of the local operating agencies are congruent with SEA's needs assessment procedures?

Yes. Because the SEA's comprehensive State plan for service delivery is the basis for all uses of MEP funds in the State, the SEA and local operating agencies must jointly ensure that needs assessment procedures at the local operating agency level align with those at the State level. They also must jointly ensure that local projects focus on the unmet needs of migrant children who have a "priority for services" before serving other migrant children.

A14. What student data should local operating agencies use to design a program?

Local operating agencies should use the best available data to design a program. The data should reflect either: (1) the migrant children who the agency served most recently, or (2) particularly for newly established projects, the migrant children who are likely to be served.

A15. Should SEAs and local operating agencies use student demographic and assessment data to help identify the special educational needs of migrant children?

Yes. Student demographic and assessment data are key data sources that agencies should use to construct a statewide or local profile of migrant children as compared to non-

migrant children and/or other appropriate comparison groups. These data are particularly useful if they are disaggregated by: (1) priority for services, (2) grade level, and (3) project area (where the number of students served is sufficiently large for the data to be reliable).

A16. In conducting a needs assessment, may an SEA and/or local operating agency use testing data or other data that it receives from the student's home base State?

Yes. States are encouraged to obtain and use data from other school districts that migrant students previously attended, particularly for the most mobile students and for students who plan to graduate in another State.

A17. Must SEAs and local operating agencies identify the need for support services (e.g., health, dental, transportation, and counseling services) through the needs assessment?

Yes. The need for support services is considered a part of the special educational needs of migrant children. If a State or local operating agency intends to focus on meeting these support service needs, it should relate them to the children's educational needs and the measurable outcomes and performance targets established by the State. (See Chapter VIII – "Program Evaluation.")

A18. Because enrollment may vary depending on the availability of seasonal agricultural work in the area, should the SEA or local operating agency consider how to include migrant children in its data collection efforts?

Yes. States should consider how to include data of *all* migrant children, including those whose schooling has been interrupted during the regular school year. For States that receive migrant children in the summer, this may involve coordinating data collection efforts with the student's home base State.

B. <u>Comprehensive State Plan for Service Delivery</u>

B1. What is a comprehensive State plan for service delivery?

A comprehensive State plan for service delivery describes the services the SEA will provide on a statewide basis to address the special educational needs of migrant students.

B2. What are the benefits of developing a comprehensive State service delivery plan?

The SEA's comprehensive State plan for service delivery is the basis for the use of all MEP funds in the State. The comprehensive State service delivery plan helps the SEA develop and articulate a clear vision of: (1) the needs of migrant children on a statewide basis; (2) the MEP's measurable outcomes and how they help achieve the State's

performance targets; (3) the services the MEP will provide on a statewide basis; and (4) how to evaluate whether and to what degree the program is effective. It is particularly important for the State to exercise leadership in the design of the program because the MEP, unlike the Title I, Part A program, is administered and operated by the State. Therefore, the SEA plays a significant role in establishing the overall direction of the MEP. The SEA's comprehensive State plan for service delivery is the primary tool for designing and communicating the direction of the program.

B3. How is the comprehensive State plan for service delivery different from the Consolidated State Application?

The Consolidated State Application is a single application that States use to apply for funds under the ESEA programs. The Department reviews and approves the application at the beginning of the reauthorization period. By comparison, the comprehensive State plan for service delivery is the SEA's operational plan for the MEP. The SEA does not submit the plan to the Department but the plan should be available for review by departmental staff. The SEA should also disseminate the plan to all local operating agencies, parent groups, and other interested parties.

B4. What do the statute and regulations require in terms of a comprehensive State plan for service delivery?

Section 1306(a)(1) of the statute requires the SEA and its local operating agencies to identify and address the special educational needs of migrant children in accordance with a comprehensive plan that:

- Is integrated with other Federal programs, particularly those authorized by the ESEA;
- Provides migrant children an opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet;
- Specifies measurable program goals and outcomes;
- Encompasses the full range of services that are available to migrant children from appropriate local, State, and Federal educational programs;
- Is the product of joint planning among administrators of local, State, and Federal programs, including Title I, Part A, early childhood programs, and language instruction education programs under Part A or B of Title III; and
- Provides for the integration of services available under Part C with services provided by such other programs.

Section 200.83(b) of the regulations requires the SEA to develop its comprehensive State service delivery plan in consultation with the State migrant education parent advisory

council or, for SEAs that do not operate programs of one school year in duration (and are thus, not required to have such a council), with the parents of migrant children. The consultation must be in a format and language that the parents understand.

B5. What must a State include in its comprehensive State service delivery plan?

The SEA must include the following components in its comprehensive State service delivery plan:

1. *Performance Targets*. The plan must specify the performance targets that the State has adopted for all migrant children for: (1) reading; (2) math; (3) high school graduation; (4) the number of school dropouts; (5) school readiness (if adopted by the SEA); and (6) any other performance target that the State has identified for migrant children. (See 34 CFR 200.83(a)(1).)

2. *Needs Assessment*. The plan must include identification and an assessment of: (1) the unique educational needs of migrant children that result from the children's migrant lifestyle; and (2) other needs of migrant students that must be met in order for them to participate effectively in school. (See 34 CFR 200.83(a)(2).)

3. *Measurable Program Outcomes*. The plan must include the measurable outcomes that the MEP will produce statewide through specific educational or educationally-related services. (See section 1306(a)(1)(D) of the statute.) Measurable outcomes allow the MEP to determine whether and to what degree the program has met the special educational needs of migrant children that were identified through the comprehensive needs assessment. The measurable outcomes should also help achieve the State's performance targets.

4. *Service Delivery*. The plan must describe the SEA's strategies for achieving the performance targets and measurable objectives described above. The State's service delivery strategy must address: (1) the unique educational needs of migrant children that result from the children's migrant lifestyle, and (2) other needs of migrant students that must be met in order for them to participate effectively in school. (See 34 CFR 200.83(a)(3).)

5. *Evaluation*. The plan must describe how the State will evaluate whether and to what degree the program is effective in relation to the performance targets and measurable outcomes. (See 34 CFR 200.83(a)(4).)

B6. What else may a State include in its comprehensive State service delivery plan?

The SEA may also include the policies and procedures it will implement to address other administrative activities and program functions, such as:

1. *Priority for Services*. A description of how, on a statewide basis, the SEA will give priority to migrant children who: (1) are failing, or most at risk of failing, to meet the state's challenging academic content and student achievement standards, and 2) whose education has been interrupted during the regular school year.

2. *Parent Involvement*. A description of the SEA's consultation with parents (or with the State parent advisory council, if the program is of one school year in duration) and whether the consultation occurred in a format and language that the parents understand.

3. *Identification and Recruitment*. A description of the State's plan for identification and recruitment activities and its quality control procedures.

4. *Student Records*. A description of the State's plan for requesting and using migrant student records and transferring migrant student records to schools and projects in which migrant students enroll.

B7. How often should the SEA update the comprehensive State service delivery plan?

The SEA should update the comprehensive State service delivery plan when the SEA: (1) updates the comprehensive statewide needs assessment; (2) changes the performance targets and/or measurable outcomes; (3) significantly changes the services that the MEP will provide statewide; or (4) significantly changes the evaluation design.

B8. May the SEA fund a local MEP project that addresses different needs than those the SEA identified in its comprehensive service delivery plan?

Yes. However, the SEA must first ensure that the local operating agency has sufficiently addressed the needs the SEA identified in its comprehensive service delivery plan. It is in the SEA's discretion to fund a project that proposes to address other identified special educational needs of migrant children, if funds are available for this purpose and if services to address these needs are not available from another funding source.

V. PROVISION OF SERVICES

For purposes of the MEP, "services" are a subset of all the activities that the MEP provides through its program and projects. Although SEAs and local operating agencies may spend MEP funds on many types of allowable activities, some of these activities do not constitute a "service" (e.g., identification and recruitment or parental involvement activities). "Services" are distinct in that they are the educational or educationally related activities provided to migrant children to enable them to succeed in school. Because student success is the overarching goal of the MEP, services are a vital aspect of the program. In providing services, SEAs must give priority to migrant children who are failing or are most at risk of failing and whose education has been interrupted during the regular school year.

This chapter discusses these and other related topics, such as serving migrant children through schoolwide and summer/intersession programs and issues related to migrant children who are limited English proficient, undocumented, who have disabilities, and who attend private schools.

STATUTORY REQUIREMENTS:

Sections 1304(c)(6); 1306(b) of Title I, Part C; Sections 9101(37) and 9501 of Title IX

REGULATORY REQUIREMENTS:

34 CFR 200.29(c)(1); 200.83; 200.86; 299.6 – 299.9

A. Services

A1. For purposes of the MEP, what are "services"?

"Services" are a subset of all the activities that the MEP provides through its programs and projects. "Services" are those educational or educationally related activities that: (1) directly benefit a migrant child; (2) address a need of a migrant child consistent with the SEA's comprehensive needs assessment and service delivery plan; (3) are grounded in scientifically based research or, in the case of support services, are a generally accepted practice; and (4) are designed to enable the program to meet its measurable outcomes and contribute to the achievement of the State's performance targets.

A2. What is "scientifically based research"?

"Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. This includes research that:

- Employs systematic, empirical methods that draw on observation or experiment;

- Involves rigorous data analyses that are adequate to test the stated hypothesis and justify the general conclusions drawn;

- Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

- Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

- Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

- Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(See section 9191(37) of the statute.) For more information on this subject, see http://www.ed.gov/nclb/methods/whatworks/research.

A3. What types of services may an SEA or local operating agency provide with MEP funds?

SEAs and local operating agencies may use MEP funds to provide the following types of services:

- Instructional services (e.g., educational activities for preschool-age children and instruction in elementary and secondary schools, such as tutoring before and after school); and

- Support services (e.g., educationally related activities, such as advocacy for migrant children; health, nutrition, and social services for migrant families; necessary educational supplies; transportation).

A4. What are some examples of allowable activities that do not constitute a service?

Activities related to identification and recruitment activities, parental involvement, program evaluation, professional development, or administration of the program are examples of allowable activities that are not considered services. Another example would be handing out leaflets to migrant families on available reading programs as part of an effort to increase the reading skills of migrant children. Although this is an

allowable activity, it is not a service because it does not meet all of the criteria in Question A1 of this chapter: (1) it does not directly benefit migrant children; (2) it is not grounded in scientifically based research; and (3) in and of itself, the activity will not increase children's reading skills and thereby increase their ability to meet the State's performance targets. (For more information on how this applies to counting children in summer/intersession programs, see Question B25 in Chapter IX – "Program Performance and Child Count Reporting.")

A5. Why is it important for local operating agencies to provide services of sufficient intensity in operating the MEP?

It is important to design services that are of sufficient intensity to provide reasonable promise of the project's ability to meet its measurable outcomes. In turn, the attainment of these outcomes enables the program to help migrant children succeed in school and to contribute to the achievement of the State's performance targets.

A6. How should an SEA or local operating agency select students for services?

The SEA or local operating agency should:

1. Identify the eligible migrant children with special educational needs who are expected to reside in the area (statewide or locally);

2. Determine the educational and educationally related needs of the children to be served;

3. Determine the focus of the program (i.e., instructional areas and/or grade levels) based on a needs assessment; and

4. Select children with the greatest need for MEP services according to the priority for services criteria in section 1304(d) of the statute.

A7. How may SEAs provide services to migrant children?

SEAs have used a wide variety of service delivery designs. Some examples include:

- Extended day programs;
- Before/after school programs;
- In-class programs;
- Saturday or vacation programs;
- In-home instruction (e.g., the MEP provides family literacy services to the child at home);

- Summer or intersession programs;
- Distance learning programs (e.g., Web-based or portable courses of instruction); and
- Title I Schoolwide programs – See section C below.

A8. Are there any instances in which an SEA or local operating agency may use MEP funds to benefit children who are not migrant?

Yes. Although MEP funds are generally used only to serve eligible migrant children who meet the statutory definition of "migratory child," there are several circumstances in which MEP funds may be used to benefit children who do not meet this definition:

1. Schoolwide Programs – In a schoolwide program, a school may combine MEP funds with funds from other Federal, State, and local programs to serve all of its students, regardless of their eligibility for the program. (See section C of this chapter for more detail on schoolwide programs.)

2. Continuation of Services – Under certain circumstances, section 1304(e) of the statute allows SEAs to continue to provide services to children who are no longer migrant. (See Question A9 below.)

3. Incidental Inclusion – In carrying out the MEP, an agency may serve non-migrant children on an incidental basis if this inclusion does not: (1) decrease the amount, duration, or quality of services to migrant children; (2) increase the cost of providing the services; or (3) result in the exclusion of migrant children who would otherwise receive services.

A9. Are there circumstances in which a local operating agency may continue to provide MEP services to children who are no longer eligible for the MEP?

Yes. The statute provides three circumstances in which a local operating agency may continue to provide services to children whose eligibility has ended:

(1) A child's eligibility ends during the school term and the agency provides services for the duration of the term (see section 1304(e)(1));

(2) A child's eligibility ends and the agency provides services for an additional school year because comparable services are not available through other programs (see section 1304(e)(2)); and

(3) A local operating agency continues to serve secondary school students who were eligible for services in secondary school through credit accrual programs until they graduate (see section 1304(e)(3)).

[Note: Before the agency provides services under these provisions, it should consider whether the child's unmet special educational needs are addressed by the general school program and whether migrant children who have a priority for services have already been served.]

B. Priority for Services

B1. Who has priority for services in the MEP?

Section 1304(d) of the statute gives priority for services to migrant children: (1) who are failing, or most at risk of failing, to meet the State's challenging State academic content standards and challenging State student academic achievement standards, *and* (2) whose education has been interrupted during the regular school year.

B2. How does the SEA determine which children meet the "priority for services" criteria?

SEAs must establish and implement appropriate procedures to identify and target services to migrant children who meet the priority for services requirement. This requirement applies to all migrant children who are at an age that they are required to attend school in the State. In order to determine who meets this criterion, SEAs should first determine which children are failing or most at risk of failing to meet the State's academic content standards and student achievement standards. Among those children who are failing or at most risk of failing, the SEA must identify and give priority for services to children whose education has been interrupted during the regular school year.

B3. How does the SEA determine which children are failing or most at risk of failing the State's academic content standards and student academic achievement standards?

The SEA should examine students' academic performance within the past 12 months on the State assessment. The State assessment is a valuable source of information regarding which children are failing or at risk of failing to meet the State's standards (e.g., students not scoring at the proficient level). If the SEA does not have State assessment data on a particular migrant child (e.g., the child was not present in the district when the State assessment was administered, the State's assessment system is not yet in place for a particular grade, the child attends school but is too young to be included in the State assessment system), the SEA may use other relevant information, like local academic assessment data or the degree to which the child is subject to multiple risk factors (e.g., being retained in grade/overage for grade, eligible for free/reduced price lunch, limited English proficient) to determine if the child is at risk of failing to meet the State's standards.

B4. What is "educational interruption" during the regular school year?

"Educational interruption" means that a student, in the preceding 12 months, changed schools or missed a "significant" amount of school time (e.g., ten days or more) during the regular school year (usually defined as September through June) due to the child's or family's migrant lifestyle. For example, a student who makes a "qualifying move" (see question C1 in Chapter II – "Child Eligibility") during the school year usually enrolls in a new school and, in doing so, may miss a significant amount of school time and thus experience an educational interruption. [Note: Recruiters may collect information on educational interruption during the initial interview and when they perform annual updates of the COE (see sample COE on page 38).]

B5. Does the educational interruption have to be caused by a move to seek qualifying work?

No. While the educational interruption must clearly be related to the migrant lifestyle, it does not need to stem from moves in which a migrant worker seeks qualifying work. For example, the interruption may be caused by an illness, such as an exposure to a pesticide that causes the student to miss a significant amount of school. The move may be a trip back to the home base from qualifying employment to enable the child to return to school, to enable the family to take care of pressing family matters, or to enable the family to get ready for the next migrant move. On the other hand, a move home for a vacation would not constitute an educational interruption due to the migrant lifestyle. It is the SEA's responsibility to clearly define the types of situations that constitute educational interruption as a result of the migrant lifestyle and to communicate these to local operating agencies so that staff apply them consistently on a statewide basis.

B6. Should an SEA or local operating agency use *only* the existence of a qualifying move during the school year to determine which migrant students have priority for services?

No. Although a qualifying move is a proxy measure of educational interruption and student mobility is considered an academic risk factor, an SEA or local operating agency should not rely on one data source to determine whether a student meets both criteria of the priority for services definition. Congress defined "priority for services" as a two-pronged test and SEAs and local operating agencies should use multiple data sources to best determine who meets this definition. If an SEA or local operating agency uses a qualifying move to identify which students experienced educational interruption, it should use data sources such as those outlined in Question B3 of this chapter to determine which students are failing or at risk of failing to meet the State's standards. Such use of multiple indicators will greatly improve the reliability of priority for service determinations.

B7. May the MEP serve children who do not meet the "priority for services" criteria?

Yes. SEAs and local operating agencies may serve children who do not meet the "priority for services" criteria so long as they serve children who meet the criteria first. For example, a MEP project that operates only in the summer may serve migrant children who reside in the area during the summer but whose schooling is not interrupted during the regular school year, if it first serves migrant students who meet the "priority for services" criteria.

C. Schoolwide Programs

C1. What is a Title I schoolwide program?

A Title I schoolwide program is a program in which a school combines funds from various educational programs (e.g., Title I, Part A, Part C, and other State and local resources) to upgrade the entire educational program in order to raise academic achievement of all students. Schoolwide programs do not have to identify particular children as eligible for services, separately track Federal dollars, or show that Part A funds are paying for supplemental services that would otherwise not be provided. Instead, schools that operate schoolwide programs may use Title I funds in the manner they choose, to implement schoolwide reform strategies that provide opportunities for all children to meet the State's proficient and advanced levels of student academic achievement, using effective methods and instructional strategies that are based on scientifically based research. (See section 1114(b) of the statute.)

C2. In planning a schoolwide program, must a school take the needs of migrant children into account?

Yes. (See section 1114(b)(1)(A) of the statute.)

C3. Must a school involve parents in planning a schoolwide program?

Yes. (See section 1114(b)(2)(B)(ii) of the statute.) If migrant children are to be part of the schoolwide program, the school should involve migrant parents in planning the program to ensure that the school effectively identifies and addresses the children's special educational needs. In addition, if the school intends to combine MEP funds in the schoolwide program, it must first meet the special educational needs of migrant children in consultation with migrant parents. (See Question C4 below.)

C4. Are there any limitations on the use of MEP funds in a schoolwide program?

Yes. Section 1306(b)(4) of the statute and sections 200.29(c)(1) and 200.86 of the regulations require schools to first use the MEP funds, in consultation with migrant parents, to meet the special educational needs of migrant children before they may combine MEP funds in a schoolwide program. The special educational needs of migrant

children are: 1) the unique needs that result from the effects of their migratory lifestyle, and 2) those other needs that are necessary to permit these students to participate effectively in school. The school also must document that these needs have been met before it may combine MEP funds in a schoolwide program.

C5. How does a schoolwide program school identify the special educational needs of migrant children if it intends to combine MEP funds?

The SEA identifies the special educational needs of migrant children on a statewide basis through its comprehensive needs assessment. The SEA then communicates these needs to local operating agencies, and the school must determine whether these needs exist. If they do, the school must use MEP funds in consultation with migrant parents to meet these needs and document having done so. After the school meets these needs, it may combine MEP funds with other funds in a schoolwide program.

C6. Who determines whether MEP funds may be combined in a schoolwide program – the school or the SEA?

The SEA provides guidance to schools regarding when it is appropriate to combine funds in a schoolwide program. The school, in consultation with migrant parents, determines whether it may combine MEP funds in a schoolwide program, subject to guidance from the SEA.

D. Summer and Intersession Programs

D1. Does the statute allow the Department to provide additional MEP funding to SEAs that operate MEP summer/intersession programs?

Yes. Section 1303(e)(3) of the statute allows the Department to provide additional funds to SEAs that operate summer or intersession programs to take into account the special educational needs of the migrant children served and the additional costs of operating these programs.

D2. What is a summer term?

A summer term occurs only in a school that operates under a traditional-calendar school year. (Year-round schools, for purposes of the MEP, are not considered to have summer terms.) The summer term is the period of time when the regular term of the school year is not in session.

D3. What is an "intersession"?

For schools on a year-round calendar, an intersession term is one of the periods throughout the year when the school (or part of the school) is not in session or does not provide the annual instruction analogous to the traditional school-year regular term. Any

break in the regular term of a year-round school is considered an intersession term, regardless of the season of the year in which it occurs.

D4. How does a local operating agency design a summer project if it does not have information on the needs of the children it will serve before they arrive?

SEAs and local operating agencies conduct needs assessments based on the characteristics of the children expected to reside in the area that the project will serve. Agencies may rely on past experience with similar children who have moved to the area or other information to determine the characteristics of the children they expect to serve.

E. Serving Limited English Proficient Migrant Children

E1. Do school districts have a responsibility to provide services to migrant students who are limited English proficient?

Yes. Title VI of the Civil Rights Act of 1964 bars discrimination on the basis of race, color, or national origin in any program or activity that receives Federal financial assistance. In *Lau v. Nichols*, 414 U.S. 684 (1974), the Supreme Court held that school districts must offer limited English proficient children meaningful opportunities to participate in the programs they offer other students. Therefore, school districts must offer students with special language needs services that enable them to participate meaningfully in school.

E2. May a school district use MEP funds to meet its Title VI responsibilities?

No. School districts may not use MEP funds to meet their Title VI responsibilities because this would violate the "supplement, not supplant" requirement. (See Supplement, Not Supplant in Chapter X – " Fiscal Requirements.")

E3. May an SEA or local operating agency use MEP funds to provide English language services to migrant children who are limited English proficient?

Yes. Migrant children are designated as limited English proficient after they have been assessed by the State selected English language proficiency assessment. Agencies may provide these services to migrant children who are limited English proficient if: (1) a needs assessment demonstrates that the service is necessary to address an unmet need; and (2) the funds are not used to enable the district to meet its Title VI responsibilities. For example, a school may use MEP funds to hire bilingual staff to help limited English proficient children learn content areas such as reading and math. In addition, a school may use MEP funds to provide English language instruction to help limited English proficient children learn English. In both cases, the MEP services must supplement those that the school district offers in the regular program. (For more information on this subject, see the Title III guidance at http://www.ed.gov/offices/OELA.)

F. Serving Undocumented Children

F1. Must an SEA or local operating agency serve migrant children who are not legally admitted into the U.S.?

Yes. If these children reside within the area that the local operating agency serves, the agency cannot deny them services on the basis that they have not been admitted legally into the U.S. In *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court ruled that the U.S. Constitution prohibits States from withholding financial support to school districts for the education of children not legally admitted into the country, or otherwise discriminating against these children by denying them access to educational programs offered to children of U.S. citizens.

F2. May a school deny children admission because they cannot meet special State or local policies that require birth certificates or social security numbers as preconditions to school enrollment?

Typically, State laws require the provision of a free public education for all children who are residents of the State. Therefore, if an SEA or local school district denies admission to children of undocumented workers who reside in the State, it may be violating State law. Even if this is not so, the SEA and the school district could face legal challenges brought by migrant children and their parents who claim that such policies violate their constitutional rights to equal protection and due process of law.

G. Serving Migrant Children With Disabilities

G1. What responsibilities do SEAs and local operating agencies have to serve migrant children with disabilities?

Under the Part B of the Individuals With Disabilities Education Act (IDEA), SEAs and local districts must ensure that eligible children with disabilities, migrant and non-migrant alike, have available a "free appropriate public education" that includes special education and related services to meet the unique needs of the students. In addition, Section 504 of the Rehabilitation Act of 1973 (Section 504) provides that qualified individuals with a disability may not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program that receives Federal financial assistance solely because of the individual's disability. Also, Title II of the Americans with Disabilities Act of 1990 (Title II) prohibits discrimination on the basis of disability by public entities, regardless of receipt of Federal funds.

G2. Who is eligible to receive services under IDEA?

Generally, all children with disabilities between the ages of 3 and 21, inclusive, who need special education and related services, are eligible. (For exceptions to this general rule, see section 612(a)(1)(B) of IDEA.). A child with a disability is defined as a child

evaluated in accordance with procedures in 34 CFR 300.530-300.536 as having any of the physical or mental impairments identified in 34 CFR. 300.7.

G3. What is a "free appropriate public education" under IDEA?

The IDEA defines a "free appropriate public education" as special education and related services that are designed to meet the educational needs of preschool, elementary, and secondary school students with disabilities as adequately as the needs of non-disabled students are met. These services are provided at public expense and under public supervision. They are provided in accordance with the individualized education program (IEP), consistent with the statute and regulations.

G4. What is an IEP?

An IEP is a written plan that includes such matters as how the child's disability affects his or her progress and involvement in the general curriculum, present levels of educational performance, measurable annual goals, benchmarks or short term objectives, and the special education and related services and supplementary aids or services to be provided to or on behalf of the child.

G5. What types of services are available under IDEA?

Special education is specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability including instruction conducted in the classroom, in the home, in hospitals or institutions, and in other settings; and instruction in physical education. Related services are transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. A related service may include speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, orientation and mobility services, medical services for diagnostic or evaluation purposes, school health services, social work services in schools, and parent counseling and training.

(See http://www.nichcy.org and www.ed.gov/offices/OSERS/OSEP/index.html for IDEA guidance and more information.)

G6. What does Section 504 require?

Section 504 requirements include standards for physical accessibility to programs or activities and facilities. The Department's regulations require school districts to provide a "free appropriate public education" to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. The regulations define an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled

students are met and are consistent with applicable requirements regarding educational setting, evaluation and placement, and procedural safeguards.

G7. Who is protected under Section 504 and Title II?

To be protected under Section 504 and Title II, an individual must have a disability, as defined under Section 504 and Title II. Under these laws, a disability means: (1) having a physical or mental impairment that substantially limits one or more major life activities; (2) having a record of such an impairment; or (3) being regarded as having such an impairment. To be qualified for a "free appropriate public education", a preschool, elementary, or secondary school student with a disability must be: (1) of an age during which nondisabled persons are provided such services; (2) of any age during which State law requires provision of educational services to individuals with disabilities; or (3) a person to whom services are required under the IDEA. There may be some students with disabilities who are not eligible for services under the IDEA, but who may still be protected under Section 504 and Title II. (See http://www.ed.gov/about/offices/list/ocr for Section 504 guidance and more information.)

G8. Is it appropriate to educate children with disabilities in a separate setting?

To the maximum extent appropriate, children with disabilities must be educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may occur only if the nature or severity of the disability of the child is such that education in the regular education classes with the use of supplementary aids and services cannot be achieved satisfactorily. In addition, Section 504 provides that qualified individuals with a disability may not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program that receives Federal funds solely because of the individual's disability. Title II also prohibits public entities from discriminating on the basis of disability, regardless of whether they receive Federal funds.

G9. May the MEP serve migrant children with disabilities?

Yes. SEAs and local operating agencies must coordinate their provision of MEP services with other Federal programs, such as IDEA, in order to increase program effectiveness. (See sections 1304(b)(1) and 1306(a)(1)(A) of the statute.) However, in providing services, agencies must be careful not to violate the MEP's "supplement, not supplant" requirement. Local operating agencies are required to provide migrant children access to the same Federal, State, and locally funded services that non-migrant children with disabilities receive to address their needs, and may not use MEP funds to provide services that school districts are required by law to provide through other programs.

G10. How may a local operating agency provide MEP services to migrant children with disabilities without violating the "supplement, not supplant" requirement?

In order for a local operating agency to provide services to migrant children with disabilities without violating the "supplement, not supplant" requirement, the local operating agency must:

- Design the program in such a way that it does not distinguish between disabled and non-disabled participants, but addresses the unique educational needs of migrant children (in accordance with MEP priority for service requirements);
- Select children with disabilities for MEP services on the same basis as other eligible children (i.e., on the basis of unique educational needs and priority for services);
- Coordinate MEP services with other services that migrant children with disabilities receive under Federal, State, and local programs in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the programs.

(See Chapter X – "Fiscal Requirements" for more information on the "supplement, not supplant" requirements.)

G11. What is a State or local operating agency's responsibility regarding migrant children with disabilities who have not been identified as such under IDEA or Section 504?

State and local systems of activities and services related to the identification, location, and evaluation of children with disabilities are commonly referred to as "child find" systems. Under the IDEA, the State must have in effect policies and procedures to ensure that all children with disabilities residing in the State, who are in need of special education and related services are identified, located, and evaluated. This includes migrant children. The IDEA also requires the State to identify the name of the State agency (if other than the SEA) responsible for coordinating the planning and implementation of child find, the name of each agency that participates in the planning and implementation of child find activities and a description of the nature and extent of their participation, and a description of how the policies and procedures governing child find will be monitored.

Under Section 504, a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity is required to identify and locate all children with disabilities residing in the recipient's jurisdiction who are not receiving a public education, and must take appropriate steps to notify individuals with disabilities and their parents or guardians of their rights under Section 504. In addition, all children

who need or are believed to need special education or related services must be evaluated in accordance with the regulations. Those operating the MEP at the State or local levels should be aware of and coordinate with the child find system at the State and local levels. If MEP staff believe that a child may have a disability, staff should inform the appropriate officials at the State or local level so that the child is identified, located, and evaluated to determine eligibility for services under the IDEA, Section 504, and Title II.

H. Serving migrant children who attend private schools

H1. Must an SEA and local operating agency serve eligible migrant children who attend private schools?

Yes. Sections 9501 of the statute and 299.6 of the regulations require SEAs that receive MEP funds to provide special educational services or other benefits on an equitable basis to eligible children who are enrolled in private schools, and to their teachers and other educational personnel. This must be done after timely and meaningful consultation with appropriate private school officials.

H2. Who must comply with the consultation requirement – the SEA or the local operating agency?

The agency that operates the local MEP project must comply with this requirement.

H3. How does an agency meet the consultation requirement with private school officials?

To meet this requirement, the agency must consult with private school officials before making any decision that affects the opportunities of eligible private school children to participate in a MEP project. Consultation must cover all phases of the design and development of the MEP project, including:

- How the agency will identify the children's needs;
- What services the agency will offer;
- How and where the agency will provide those services;
- Who will provide the services;
- How the agency will assess the services and how it will use results of the assessment to improve those services;
- Amount of funds available for services;
- Size and scope of the services to be provided; and
- How and when the agency will make decisions about the delivery of services.

H4. Which children who attend private schools are eligible to receive MEP services?

Children who attend private school are eligible to receive MEP services if they: 1) meet the statutory and regulatory definition of a migrant child; 2) meet the priority for services criteria in section 1304(d); and 3) have special educational needs identified through the State's comprehensive needs assessment and service delivery plan.

H5. May a local operating agency decide not to serve eligible migrant private school children because there are too few of them to serve?

Yes. The SEA and local operating agency have the discretion to determine what number of eligible students is too few to serve, so long as this determination is made on an equitable basis (i.e., on the same basis as public schools). If it is feasible and equitable, agencies may adopt alternative methods that are cost-effective to serve small numbers, such as individual tutoring programs, professional development activities with the classroom teachers of eligible migrant students, or other strategies.

H6. If private school officials do not wish to have their children participate in the MEP, is the SEA or local operating agency still required to serve these children?

No. If, after consultation with private school officials, the officials do not wish to have their students participate in the MEP, neither the SEA nor the local operating agency are required to serve these children. However, in its consultation, the local operating agency should explain the various ways in which the agency can help provide services to children attending private schools.

H7. Should the SEA assess the needs of private school children residing in the State?

Yes. Through the consultation process with private school officials, the local operating agency may assess the needs of eligible migrant children enrolled in private schools in its service area. These children would then be included in the statewide needs assessment.

H8. Must the services the SEA provides private school children be the same as those it provides public school children?

No. Although the statute and regulations require SEAs to provide services on an equitable basis, the services do not have to be the same in order to be equitable. If the needs assessment reveals that private school children have different special educational needs than public school migrant children, the services offered should address those needs. (See 34 CFR 299.7(c).)

H9. How does an agency determine whether services are equitable?

Section 299.7(b)(2) of the regulations provides that services are equitable if the agency:

1. Addresses and assesses the specific needs and educational progress of private school children on a comparable basis as public school children;

2. Determines the number of students to be served on an equitable basis;

3. Meets the equal expenditure requirements; and

4. Provides private school children with an opportunity to participate that –

   - Is equitable to the opportunity and benefits provided to public school children; and

   - Provides reasonable promise that participating private school children will meet the challenging academic standards called for by the State's student performance standards (or equivalent standards applicable to private school children and agreed upon during consultation between public and private school officials).

H10. What happens if, after offering to provide equitable services to private school children, participation is low or the children participate only in some of the services?

If the private school children's participation is low or they choose to participate only in some of the services the agency offers, the agency should examine why this is so and, if appropriate, modify the project in a manner that increases participation. If modification of the project does not increase participation and the agency determines that it is not cost-effective to provide services, the agency may terminate the services, so long as this decision is made on an equitable basis. (See Question G5 of this chapter.)

H11. If children reside in a geographical area served by one local operating agency but their school is located in a geographical area served by another agency, which agency is responsible for serving them?

The local operating agency that serves the geographical area where the school is located is responsible for serving the children. (See section 9501(a)(1) of the statute.)

H12. How might an SEA ensure that local operating agencies collaborate with private school officials to provide appropriate services to migrant children enrolled in private schools?

An SEA might use its subgrant application process as one way to ensure that local operating agencies consult with private school officials in providing services to eligible migrant children. For example, the SEA could establish procedures for refusing to award a subgrant unless the application addresses whether and how the local operating agency consulted with private school officials in designing and developing its migrant education

project. Alternatively, the SEA might use its monitoring process to ensure that local operating agencies meet this requirement.

H13. May MEP personnel go on the premises of religiously affiliated private schools to provide MEP instructional services?

Yes. MEP personnel may provide direct services to eligible private school migrant students on site at private schools, including religiously affiliated schools.

H14. What can a small rural local operating agency with a small MEP allocation do to provide equitable services to private school children?

Rural local operating agencies may have special problems because of small allocations, large distances between private schools, and few locations to provide services. These agencies may consider leasing rather than purchasing equipment, renting a neutral site, or using home tutoring to provide equitable services. They may also consider setting up a joint project with neighboring operating agencies and submitting a combined application.

VI. COORDINATION

The term "coordination" refers to different yet related aspects of the MEP. These aspects include:

- Planning and carrying out programs and projects in coordination with other local, State, and Federal programs;
- Interstate and intrastate coordination between States and local operating agencies to ensure the continuity of services for children who migrate from one State or school district to another, including but not limited to, the transfer of student records; and
- Grants or contracts provided under section 1308 to improve coordination activities among educational programs that serve migrant children.

This chapter discusses these coordination requirements of the MEP in more detail.

STATUTORY REQUIREMENTS:

Title I, Part C, Sections 1304 (b)(1)(B) and (C); 1304 (b)(3); 1304(c)(1)(B); 1306(a)(1)(A), (F), and (G); 1308(a), (b) and (d); Section 3124 of Title III, Part A

A. Coordination With Other Programs

A1. What does the statute require with regard to coordination of the MEP with other programs?

Sections 1304(b) and 1306(a) of the statute require SEAs to identify and address the special educational needs of migrant children by providing them a full range of services from appropriate local, State, and Federal educational programs. In providing these services, SEAs must plan jointly with local, State, and Federal programs and must integrate the MEP with services provided by other programs.

A2. Why should SEAs coordinate MEP services with other programs?

By coordinating with other programs, SEAs ensure that the needs of migrant children are met through a variety of sources in a way that leverages other program funds and optimizes the use of MEP funds for the unique needs of migrant children.

A3. How does an SEA meet the requirement of providing a full range of services to migrant children?

The SEA must determine the children's needs and identify all the available services that address these needs. The SEA should then coordinate with those programs and agencies that provide services that meet the identified needs and help ensure that migrant children have access to appropriate programs and services.

A4. Many migrant children are also eligible to receive services under the Title I, Part A program. How does an LEA determine whether migrant children should receive Title I, Part A services?

Section 1112(b)(1)(J) requires LEAs to ensure that eligible migrant children and formerly migrant children are selected to receive Title I, Part A services on the same basis as other eligible children. In a schoolwide program, sections 1114(b)(1)(B)(i) and (iii) of the statute require schools to implement reform strategies that address the needs of ***all*** children in the school. In a targeted assistance school, section 1115(b)(2)(A) of the statute provides that migrant children are eligible to participate in the Title I, Part A program on the same basis as other eligible children.

A5. Many migrant children are eligible for services under Title III because they are limited English proficient. Are LEAs required to serve these children with Title III funds?

Yes. If the LEA qualifies for a Title III subgrant, migrant children who are limited English proficient must be selected to receive Title III services on the same basis as all other limited English proficient children. Limited English proficiency is determined by the definition in Title IX and by a student's performance on the State selected English proficiency assessment required under Title I, Part A and Title III.

A6. Are programs administered under Title I, Part A and Title III required by law to coordinate services with the MEP?

Yes. Section 1112(b)(1)(E)(ii) of the statute requires LEAs to coordinate and integrate Title I, Part A services with programs that serve migrant children. Also, sections 3113(b)(4) and 3124 require SEAs to coordinate Title III programs with other appropriate programs.

A7. What are some Federal programs with which SEAs and local operating agencies should coordinate MEP services?

SEAs and local operating agencies need to consider a full range of Federal programs and carefully determine which ones to coordinate with in order to maximize the quality and access of educational opportunities for migrant children. For examples of such programs at the Department of Education, Department of Labor, Department of Agriculture, and Department of Health and Human Services, see Table 1 on page 141.

A8. Are there other agencies and organizations that offer services that may benefit MEPs operated at the State or local levels?

Yes. The Office of Migrant Education has compiled a national directory of organizations that provide services to migrant and seasonal farmworkers and their families. A copy of this directory is available from the Department's Publication Center (ED Pubs) upon request. ED Pubs can be reached by telephone at 1-877-433-7827 or publications can be

ordered online at http://www.edpubs.ed.gov/webstore/Content/search.asp. The directory may also be downloaded from the OME website at:
http://www.ed.gov/programs/mep/resources.html or
http://www.ed.gov/programs/mep/resources.html - pubs.

A9. How should an SEA or local operating agency coordinate with other agencies?

An SEA or local operating agency may identify a need for coordination from the results of its annual comprehensive needs assessment or because, in the course of designing its program, it learns that certain services are available through another organization. After identifying the needs and potential services or resources, the SEA or local operating agency should contact the appropriate staff from the other organizations to discuss the types of services that they could coordinate. If the discussion results in a formal agreement or letter of understanding, the agreement should specify the services that each program will provide.

SEAs should communicate on an on-going basis with the organizations that they coordinate with to strengthen cross-program planning and to tap into different resources regarding the location and needs of migrant families. This communication may occur through regular meetings or through an interagency coordinating council, if one exists within the State.

B. Interstate and Intrastate Coordination

B1. What does the statute require in terms of interstate and intrastate coordination?

Section 1304(b)(3) requires SEAs to use MEP funds to promote interstate and intrastate coordination of services to migrant children. This effort must include, but is not limited to, providing educational continuity through the timely transfer of pertinent school records, including health information.

B2. Why is interstate and intrastate coordination an important aspect of the MEP?

Interstate and intrastate coordination helps reduce the effects of educational disruption that migrant children suffer as a result of repeated moves. Specific examples of coordination activities are provided in Question B6 below.

B3. What is meant by interstate coordination?

Interstate coordination refers to collaborative activities undertaken by two or more States to improve the education of migrant children in those States. Ideally, this term refers to the collaborative activities that two or more States assume to improve the education of migrant children who move between those States.

B4. What is intrastate coordination?

Intrastate coordination refers to efforts involving two or more local operating agencies within a State to improve educational services to migrant children in that State. The SEA may facilitate these efforts among local operating agencies or the local operating agencies may conduct them directly.

B5. What are some interstate and intrastate coordination services?

Interstate and intrastate coordination strategies may include, but are not limited to, the following types of services between and among local operating agencies and SEAs:

- Notifying "receiving" school districts about migrant families who have moved to those districts;
- Promoting the exchange of student educational records;
- Developing academic credit accrual and academic credit exchange programs;
- Collaborating in the development of summer-term project curriculum;
- Exchanging teachers and teaching materials;
- Implementing a dropout prevention program in two or more States; and
- Exchanging information on health screenings and health problems that interrupt a student's education;
- Meeting with other States to discuss issues related to the MEP (e.g., how to implement the changes in the new law; how best to serve secondary students; how to develop a subgrant process that comports with the law); and
- Meeting with other States to develop a Comprehensive Needs Assessment Pilot, which all States may use as a model to implement this requirement.

B6. What are some examples of these services?

A study that the Department conducted of coordination efforts in the MEP found that States generally focus on four areas to promote the continuity of education for migrant students: (1) alignment of district policies, (2) improved student information exchange and access, (3) staff resources to promote academic credit accrual, and (4) opportunities for supplemental instruction. For example:

- *Alignment*. Limited English proficient students in a new school are placed in the same type of English acquisition program as in their home base school; States compare individual language assessment scores to place migrant

students in the same types of coursework; and States agree on common grade placement policies.

- *Information*. Districts implement such information systems as the Texas Migrant Interstate Project, the New Generation System, the Red Bag Transfer Packet System, or an e-mail system to improve student information exchange and access to student academic data. These systems rely on a combination of information technologies and technical assistance and staff support.

- *Academic Credit*. To promote secondary credit accrual, particular staff members communicate with other districts to determine appropriate courses for credit accrual purposes; calculate and award partial credit; and follow up on attendance data, grades, and credit accrual information that is sent to other districts.

- *Supplemental Instruction*. There are two basic strategies in providing supplemental instruction: (1) offer flexible courses of study that help secondary students accelerate course completion or finish incomplete courses (the newest versions of these courses use technology – e.g., desktop computer labs, portable laptop computers, and satellite technology – to deliver instruction); and (2) provide migrant students with additional instructional time, in the summer, in the evening, or during the school day.

C. <u>Section 1308 – Coordination of MEP Activities</u>

C1. What are the coordination requirements of Section 1308?

Section 1308 of the statute allows the Department to reserve "not more than $10 million" of the total amount appropriated for the MEP to support and conduct activities that will improve coordination.

- Section 1308(a) authorizes the Department, in consultation with the States, to award special grants or contracts to SEAs, LEAs, institutions of higher education, and other public and private nonprofit entities to improve interstate and intrastate coordination.

- Section 1308(b) requires the Department to assist States in developing effective methods for the electronic transfer of student records and determining the number of migrant children in each State.

- Section 1308(d) authorizes the Department to award up to $3 million per year for consortium incentive grants that focus on improving the delivery of services to migrant children whose education is interrupted.

C2. Why are the coordination activities under section 1308 important?

The coordination activities under section 1308 are important because they allow the Department to focus on coordination efforts of national importance and encourage the participation of States in those efforts. This allows the Department to play a leadership role in facilitating coordination activities beyond those carried out by States under section 1304.

C3. How does the Department determine the areas in which to focus grants or contracts under Section 1308(a)?

The Department considers areas that may be addressed more efficiently and effectively through a coordinated national effort than through individual State efforts and then consults with the States before making final decisions on what projects to fund. For example, the Department has awarded funds to support: (1) a logistics contract that allows State directors and key State staff to meet on coordination issues that are of national importance; (2) the National Identification and Recruitment Hotline; (3) the U.S.– Mexico Binational initiative; (4) the Identification and Recruitment initiative; and (5) the Comprehensive Needs Assessment pilot initiative.

C4. What is an incentive grant under section 1308(d)?

An incentive grant (commonly referred to as a consortium incentive grant) is a discretionary grant that the Department may award to SEAs that propose a consortium agreement with another State or with another appropriate entity, as determined by the Department. The purpose of the consortium is to improve the delivery of services to migrant children whose education is interrupted.

C5. What is a consortium?

A consortium is an association or partnership between two or more SEAs or between an SEA and another appropriate entity or entities that is formed to promote a specific objective.

D. Transfer of Student Records

D1. What does the statute require regarding the transfer of student records?

Section 1304(b)(3) requires SEAs to promote interstate and intrastate coordination by providing for educational continuity through the timely transfer of pertinent school records (including health information) when children move from one school to another, whether or not the move occurs during the regular school year.

D2. Why is this requirement an important aspect of the MEP?

The timely transfer of student records can be an effective means of reducing the effects of educational disruption on migrant students. It enables school officials (e.g., school

registrars, teachers, and guidance counselors) to make appropriate decisions regarding a student's enrollment in school, grade placement, and academic plan (including, but not limited to, credit accrual and exchange).

D3. How do SEAs comply with this requirement?

SEAs or local operating agencies must request the records of eligible migrant children who arrive in their State or district and must transmit records of those migrant children who move out of their State or district to another location in a timely manner.

D4. What methods do SEAs currently use to transfer student records?

Typically, SEAs or local operating agencies obtain student records from local schools and either mail or fax them to the requesting State or district. Most SEAs also have migrant student records systems that maintain basic educational and health information on all migrant students identified within the State. Many, but not all, of these systems are maintained electronically and, in some cases, migrant student records are shared electronically among States.

D5. Will SEAs be required to develop effective methods for electronic transfer of migrant student records?

Yes. Section 1308(b)(1) of the statute requires the Department to assist States in providing for the electronic transfer of migrant student records.

D6. Will SEAs be required to link migrant student record systems for the purpose of electronically exchanging health and educational information regarding migrant children among States?

Yes. Section 1308(b)(2) requires the Department to ensure the linkage of migrant student record systems for this purpose. The statute requires the Department to consult with States in performing this task. The Department is currently in the process of developing and implementing this requirement.

D7. If a parent or guardian refuses to permit the transfer of a child's records, does the refusal affect the child's eligibility for services?

No, such a child remains eligible for services.

D8. What is the Family Educational Rights and Privacy Act of 1974 (FERPA) and how does it affect an agency's decision to transfer a child's academic records to another educational agency through the State's records transfer system?

FERPA (Section 444 of the General Education Provisions Act) is a Federal statute that establishes the rights of parents to examine and question the content of their children's school records and restricts the transfer of school records without parental permission. It

applies to any local educational agency that receives Federal funds. One exception to the restriction on the transfer of school records without parental consent is if the local educational agency transfers the records to other school officials within the agency (whom the agency has determined to have legitimate educational interests) or to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll. (See 34 CFR 99.31.) This exception applies only if the local operating agency notifies parents annually of this policy.

This exception does not apply to SEAs that maintain educational records in a paper or electronic format and wish to transfer such records to another State or local operating agency. In this case, the SEA must obtain parental consent before it transfers the records. Under FERPA, parents have a right to be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record.

D9. May a local operating agency release migrant student records to the SEA without parental consent?

Yes. FERPA provides that parental consent is not required when the disclosure is to authorized representatives of State and local educational agencies for purposes of the enforcement of or compliance with Federal legal requirements which relate to the program. (See 34 CFR 99.35.)

VII. PARENTAL INVOLVEMENT

Parental involvement is an integral part of all Title I programs, including the MEP. Research shows that parents play a significant role in the academic achievement of their children. Therefore, it is important for parents and schools to develop partnerships and build ongoing dialogues to improve student achievement. Title I supports parental involvement by enlisting individual parents to help their children do well in school. In order to receive MEP funds, SEAs and the local operating agencies must implement programs, activities, and procedures that effectively involve migrant parents. An SEA must: 1) develop its comprehensive State plan in consultation with parents; 2) consult with parent advisory councils (PACs) regarding programs that are one school year in duration; and 3) plan and operate the MEP in a manner that provides for the same parental involvement as is required in section 1118.

This chapter discusses the parental involvement requirements in more detail.

STATUTORY REQUIREMENTS:

Section 1118 of Title I, Part A and sections 1304(c)(3) and 1306(a)(1)(B)(ii) of Title 1, Part C

REGULATORY REQUIREMENTS:

34 CFR 200.83(b)

A. Parent Consultation in MEP Planning and Operation

A1. Are SEAs and local operating agencies required to consult with parents in planning the MEP?

Yes. Pursuant to section 1304(c)(3), SEAs and local operating agencies must consult with parent advisory councils in planning and operating the MEP if they operate programs of one school year in duration. The statute also requires the MEP provide for the same parental involvement as is required in section 1118, unless extraordinary circumstances make such provision impractical. This provision requires SEAs and local operating agencies to involve parents, in an organized, ongoing, and timely way, in the planning, review, and improvement of the MEP. (See section 1118(c)(3) of the statute.) In addition, section 200.83(b) of the regulations requires SEAs to develop the comprehensive State plan in consultation with the State parent advisory council if the program is one school year in duration. If the program is less than one school year in duration, the SEA must consult with migrant parents.

A2. Why is parental consultation in planning the MEP important at the State and local level?

As the first teachers of their children, parents know the needs of their children best and can provide insight into their children's strengths and weaknesses. As such, migrant parents can play a pivotal role in planning the educational programs and projects in which their children participate. Involving migrant parents in planning the MEP also builds their capacity to assist in their children's learning at home. In addition, parental involvement in the planning of the program enables parents to understand the program and have informed conversations with MEP and school staff regarding their children's education. Through their participation in the planning process, migrant parents are also more likely to become advocates and supporters of the program because they have a personal stake in its success.

B. Parent Advisory Councils

B1. When is an SEA and local operating agency required to establish a parent advisory council (PAC)?

Section 1304(c)(3) of the statute requires SEAs and local operating agencies to establish and consult with PACs in planning and operating MEP programs and projects of one school year in duration.

B2. What is the function of a PAC?

A PAC advises the SEA and its local operating agency on concerns of migrant parents that relate to the planning, operation, and evaluation of MEP programs and projects in which their children participate. In particular, the SEA and local operating agency must consult with the PAC about: (1) the comprehensive assessment of the needs of migratory children to be served; and (2) the design of the comprehensive service delivery plan.

B3. Section 1304(c)(3) of Title I requires that PACs must be established only for "programs extending for one school year of duration." What does this mean?

The Department interprets this phrase to mean a program or project that provides instructional or support services to migrant children and their families *throughout* the regular school year (i.e., generally, September through June or as otherwise defined by the State). This requirement applies to both SEAs and local operating agencies.

B4. Must a project that operates only in the summer and fall establish a PAC?

No. While such a project operates *during* the regular school year, it does not operate *throughout* the regular school year. Therefore, the project is not required to have a PAC.

B5. Who is eligible to be a member of a PAC?

Parents or guardians of eligible migrant children and individuals who represent the interests of such parents are eligible to serve as PAC members.

B6. How may an SEA and local operating agency select PAC members?

SEAs and local operating agencies should try to select PAC members that are a representative sample of migrant parents. Although there are a number of ways to select PAC members, to the extent feasible, parents of eligible migrant children should elect members of the PAC. The SEA might arrange for local PACs to elect members to the State PAC. In some instances, elections may not be possible because migrant families are very mobile. If elections are not possible, the SEA or local operating agency may select members by appointing volunteers or those nominated by other parents, teachers, or administrators. In any event, the method the SEA or local operating agency selects should provide for maximum parental participation.

B7. Are there any "formal" procedures or scheduling requirements that govern PAC meetings?

No. However, the SEA and local operating agency should establish appropriate procedures and schedules that support effective consultation with the PAC in the planning, operation, and evaluation of each MEP program or local project.

B8. How may SEAs and local operating agencies facilitate effective participation of PAC members at meetings?

Agencies should provide parents the meeting location, time, and agenda well in advance. Meeting times should be convenient for parents and accommodate their work schedules. The SEA or local operating agency may provide transportation, childcare, or other reasonable and necessary costs to facilitate attendance. Meeting agendas, minutes, and other materials should be in a language and format that parents understand. Meeting rules should support open discussion.

B9. Must the MEP comprehensive State plan include names of parents specifically involved in the planning, design, and implementation of the project?

No. Although section 200.83(b) of the regulations requires SEAs to develop the comprehensive State plan in consultation with the State PAC (or migrant parents, if the program is less than one school year in duration), SEAs do not have to include the names of parents who were involved in this process.

B10. What are the SEA and local operating agency's responsibilities if they are unable, after diligent efforts, to maintain a functioning PAC due to lack of participation?

Agencies should pursue all reasonable avenues of obtaining and reviving PAC participation before deciding that maintaining a functioning PAC is not possible. The State and local operating agency should maintain records of their ongoing efforts to maintain or establish a PAC.

B11. May MEP funds be used to pay the reasonable and necessary expenses that PAC members incur to attend PAC meetings?

Yes.

B12. May MEP funds be used to compensate PAC parent members for *lost wages* incurred to attend PAC meetings?

Yes. If necessary, MEP funds may be used to reimburse PAC *parents or guardians of eligible migrant children* (but not other members of the PAC) for lost wages incurred in attending a PAC meeting.

B13. May MEP funds be used to pay *expenses* of PAC members who are not the parents or guardians of eligible migrant children?

Yes. All participating members of the PAC, including teachers and other State operating agency personnel who have been chosen by the parents of migrant children, may receive reimbursement for their expenses.

B14. Does having a PAC meet all the requirements of Section 1118?

No. However, *an active* PAC may be an appropriate focal point of an agency's parental involvement efforts. For example, these PACs may be used to:

- Ensure full parental participation in MEP project planning, design, and implementation;
- Convene an annual meeting of parents, at which school officials explain the MEP projects; and
- Provide opportunities for regular parent meetings to gather input.

To the extent that the SEA or local operating agency relies on a PAC to assist in meeting some of its responsibilities for parental involvement, it must also ensure the participation of individual parents through the policy involvement, shared responsibility, and capacity-building activities under section 1118.

B15. Are there any parental involvement requirements under section 1118 that cannot be implemented through a PAC?

Yes. For example, section 1118 requires school officials to provide parents with reports on their children's progress and to make teachers and other staff available to them for regular meetings. SEAs and local operating agencies cannot accomplish this through PAC meetings or other group sessions. These activities require contact with individual parents.

C. Parental Involvement Activities under Section 1118

C1. What does the statute require regarding parental involvement?

Section 1304(c)(3)(a) requires an SEA and local operating agency to conduct parental involvement activities "in a manner that provides for the same parental involvement as is required for programs and projects under section 1118, unless extraordinary circumstances make such provision impractical." The statute also requires parental involvement activities to be conducted in a format and language understandable to parents.

C2. Is this requirement different than before?

Yes. The parental involvement requirement in 1304(c)(3)(a) is stricter than in past years. Before, an SEA and local operating agency only had to carry out the MEP "in a manner consistent with" section 1118 "to the extent feasible." The current language of the statute creates a higher standard for complying with parental involvement requirements. Now, absent extraordinary circumstances, an SEA and local operating agency must follow the requirements of section 1118 to be in compliance with section 1304(c)(3)(a).

C3. What does section 1118 require?

In general, section 1118 requires:

- A written parental involvement policy;
- Policy involvement of parents in an organized, ongoing, and timely way in the implementation of the MEP;
- Development of a school-parent compact in order to share the responsibility for high student academic achievement;
- Capacity building of parents and school staff for strong parental involvement; and
- Effective access to parental involvement activities.

C4. May MEP funds be used to support parental involvement activities required by section 1118?

Yes. MEP funds may be used to pay the cost of parental involvement activities, such as: parent conferences; resource centers; training programs (including expenditures associated with attending such programs); reporting to parents on children's progress; hiring, training, and use of parental involvement liaison workers; training personnel, including pupil services personnel; providing school-to-home complementary curricula and materials in implementing home-based educational activities; providing timely information on the MEP and responses to parent recommendations; and soliciting parents' suggestions in the planning, development, and operation of MEP projects.

C5. May MEP funds be used to support parents' attendance at workshops and conferences?

Yes. An SEA and local operating agency may use MEP funds for costs that are reasonable and necessary to support the attendance of migrant parents at workshops and conferences that enable them to participate more effectively in the local program or to conduct home-based educational activities. The SEA and local operating agency should develop criteria, in consultation with parents, to determine the reasonable number of parents who may attend national meetings. Upon return, attendees should provide information and, if possible, training on the conference topics to other migrant parents.

C6. May parents be paid a wage or stipend to attend parental involvement activities or meetings?

No. The statute does not authorize a local operating agency to pay wages to a parent to attend a meeting or training session, or to reimburse a parent for salary lost due to attendance at general parental involvement activities. Parental involvement expenditures are limited to actual expenses that a parent may incur. (Note: The rules differ for members of parent advisory councils. See Question B12 of this chapter.)

C7. May MEP funds be spent for food and refreshments provided during parent meetings or training?

Yes. Reasonable expenditures for refreshments or food, particularly when such meetings extend through mealtime, are allowable.

C8. May parents serve as classroom aides and tutors?

Yes. However, parents with instructional duties who are paid to work in a schoolwide school or who are paid with Title I, Part A funds to work in Title I targeted assistance program must meet the paraprofessional education qualification requirements of section 1119. These requirements do not apply to parents who volunteer for such duties. (See Title I, Part A guidance on paraprofessionals available on the Department's website at http://www.ed.gov/policy/elsec/guid/paraguidance.pdf.)

VIII. PROGRAM EVALUATION

States are required to evaluate the effectiveness of the MEP and to provide guidance to their local projects on how to conduct local evaluations. Evaluations allow SEAs and local operating agencies to: (1) determine whether the program is effective and document its impact on migrant children; (2) improve program planning by comparing the effectiveness of different types of interventions; (3) determine the degree to which projects are implemented as planned and identify problems that are encountered in program implementation; and (4) identify areas in which children may need different MEP services. A proper evaluation can provide powerful information regarding how best to use MEP funds to achieve the desired result.

This chapter addresses these and other aspects of evaluation under the MEP. The chapter is designed to help State and local project administrators understand the legal requirements in this area and to help them implement effective evaluation strategies.

STATUTORY REQUIREMENTS:

Title I, Part C, Sections 1301(4); 1303(e); 1304(b)(1) and (2); 1304(c)(5); 1304(d); 1306(a)(1)(C) and (D)

REGULATORY REQUIREMENTS:

34 CFR 200.1-200.8; 200.83; 200.84; 200.85

A. General Evaluation Requirements

A1. What does "evaluation" mean?

Evaluation means systematically and methodically collecting information about a program or some aspect of a program in order to improve the program or make decisions about the merit or worth of the program.

A2. What types of evaluations does an SEA have to conduct?

There are two types of evaluations that SEAs must conduct: 1) an evaluation that examines program *implementation*, and 2) an evaluation that examines program *results*. (See 34 CFR 200.84.) The type of evaluation that a program administrator undertakes depends on what the administrator wants to learn about the program.

A3. What is an evaluation that examines program implementation?

An evaluation that examines program implementation is typically conducted while a program is in operation to provide information on how the program may be improved. For example, a project administrator may want to investigate whether a new or re-designed project is being implemented as described in the approved application and to examine problems that the project is encountering in the implementation. The evaluator

might use tools like structured observations or surveys to answer questions like: (1) Was the project implemented as described in the approved project application? If not, what changes were made? (2) What worked in the implementation? (3) What problems did the project encounter? and (4) What improvements can be made?

Evaluations that examine program implementation provide early feedback to administrators, who use the information to improve or strengthen the project by reallocating resources, including time and money, into the most productive uses. Examples of common improvements include providing more or better training, changing instructional materials, changing inefficient or burdensome operating procedures, and strengthening administrative support.

A4. What is an evaluation that examines program results?

An evaluation that examines program results is conducted for the purpose of making a judgment regarding the merit or worth of a program or some aspect of a program. For example, an SEA may want to: (1) determine whether a particular instructional or support service model that has been in use in the State for some time is achieving the desired results, or (2) compare the results of several interventions to see which one is the most effective. The evaluator would use valid and reliable measures to answer questions like: (1) What results have occurred? (2) With whom? (3) Under what conditions? (4) With what training? and (5) At what cost?

For purposes of the MEP, an evaluation that examines program results must compare the program or project's actual performance to: (1) the measurable outcomes established by the MEP, and (2) the State's performance targets, particularly for those students who have priority for services. (The terms "performance target" and "measurable outcome" are defined below.) Evaluations that examine program results allow administrators and program personnel to make decisions regarding whether to adopt, continue, expand, modify, or terminate a project.

B. <u>Performance Goals, Performance Indicators, Performance Targets, and Measurable Outcomes</u>

B1. What do the following terms mean: (1) "performance goal," (2) "performance indicator," (3) "performance target," and (4) "measurable outcomes"?

For purposes of the MEP, these terms represent the results that educators and education policymakers at the Federal, State, and local levels seek to achieve. They represent the progression from the broad goals of student achievement to very specific, concrete outcomes that are set at the State and local operating agency level. The terms are defined as follows:

1. *State Performance Goals*–The ESEA performance goals are the broad expression of the desired results that *all* States are working to meet. They cut across all of the major ESEA programs and reflect the overall vision of the No Child Left Behind Act of 2001, which is to improve the achievement of all students. All States agreed to adopt a set of five performance goals in their approved Consolidated State Applications. States also have the option of establishing additional State goals for improving student achievement.

2. *Performance Indicators*–The ESEA performance indicators provide a way of measuring whether States have made progress toward achieving each broad performance goal. As with the performance goals, the indicators cut across all major ESEA programs and reflect the overall vision of the No Child Left Behind Act of 2001. In 2002, all States agreed to adopt performance indicators that correspond to the 5 performance goals in their approved Consolidated State Applications. If a State has established additional State goals for improving student achievement, that State should also have established corresponding performance indicators.

3. *Performance Targets*–Performance targets are the results States expect to achieve by a specified date with respect to each ESEA indicator. Each State was required, as part of the Consolidated State Application, to develop performance targets for each performance indicator.

4. *Measurable Program Outcomes*–Measurable outcomes are the results the MEP hopes to achieve at the State and local operating agency level through the provision of specific educational or educationally related services. Measurable outcomes help the MEP determine whether and to what degree it has met the special educational needs of migrant children that the SEA identified through the comprehensive needs assessment. The measurable outcomes at both the State and local operating agency levels help migrant children achieve the State's performance targets. (See section 1306(a)(1)(D) of the statute.)

B2. How do these terms apply?

An example of the application of each term is provided below.

DESIRED RESULT	**ORGANIZATIONAL LEVEL**
Adopted or developed by the *State* for *all* students	
Performance Goal 1: By 2013-2014, all students will reach high standards, at a minimum attaining proficiency or better in reading/language arts and math.	Established by the Department to reflect the requirements in the statute and *adopted* by the *State* for all

	children in its approved Consolidated State application
Performance Indicator: [Insert percentage] of students, in the aggregate and for each subgroup, will be at or above the proficient level in reading/language arts on the State's assessment. (Note: The subgroups are those for which the ESEA requires annual State reporting on student achievement, as identified in section 1111(h)(1)(C)(i) of the statute.)	Established by the Department and *adopted* by the *State* for all children in its approved Consolidated State application
Performance Target: [Insert percentage] of students, in the aggregate and in each subgroup, will be at or above the proficient level in reading/language arts consistent with the State's annual measurable outcomes (e.g., "x" percent for 2002-03, "y" percent for 2003-04 for ensuring that all students reach this level by the end of the 2013-14 school year.) (Note: The State annual measurable outcomes for all students in reading/language arts are the same as those the State includes in its definition of adequate yearly progress.)	*Developed* by the *State* for all children and submitted to the Department as part of the Consolidated State Plan in May 2003
Developed by the *MEP* for *migrant* students	
Measurable Outcome: Of students enrolled in [insert name of MEP Project], [insert percentage] of third-grade migrant students who have scored below [insert score] on [insert instrument] will be able to demonstrate mastery in the use of phonics knowledge and word parts to pronounce words they do not recognize as documented through [insert instrument].	*Developed* by the *State and Local Operating Agencies* and aligned with State performance targets

B3. Which *performance goals* and *performance indicators* must SEAs and local operating agencies address for purposes of the MEP?

All States have agreed to adopt five (5) performance goals and corresponding performance indicators through the approved Consolidated State application. These are broad goals and indicators for *all* of the children in the State, including migrant children. For purposes of program design and evaluation, the MEP will focus on performance goals 1 and 5, which are presented in the following table.

Performance Goals And Performance Indicators that the MEP *Must* Address
***Performance Goal 1*:** By 2013-2014, all students will reach high standards, at a minimum attaining proficiency or better in reading/language arts and math. 1.1. *Performance indicator*: The percentage of students, in the aggregate and for each subgroup, who are at or above the proficient level in reading/language arts on the State's

assessment. (Note: These subgroups are those for which the ESEA requires annual State reporting on student achievement, as identified in section 1111(h)(1)(C)(i).)

1.2. *Performance indicator*: The percentage of students, in the aggregate and in each subgroup, who are at or above the proficient level in math on the State's assessment. (Note: These subgroups are those for which the ESEA requires annual State reporting on student achievement as identified in section 1111(h)(1)(C)(i).)

***Performance Goal 5*:** All students will graduate from high school.

5.1. *Performance indicator*: The percentage of students who graduate from high school each year with a regular diploma,
- disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged;
- calculated in the same manner as used in National Center for Education Statistics reports on Common Core of Data.

5.2. *Performance indicator*: The percentage of students who drop out of school,
- disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged;
- calculated in the same manner as used in National Center for Education Statistics reports on Common Core of Data.

(Note: ESEA section 1907 requires States to report all LEA data regarding annual school dropout rates in the State disaggregated by race and ethnicity according to procedures that conform with the National Center for Educational Statistics' (NCES) Common Core of Data. Consistent with this requirement, States must use NCES' definition of "high school dropout," i.e., a student in grades 9-12 who (a) was enrolled in the district at sometime during the previous school year; (b) was not enrolled at the beginning of the succeeding school year; (c) has not graduated or completed a program of studies by the maximum age established by the State; (d) has not transferred to another public school district or to a non-public school or to a State-approved educational program; and (e) has not left school because of death, illness, or school-approved absence.

B4. Were SEAs required to develop *performance targets* for all children?

Yes. For Performance Goals 1 and 5, all SEAs were required by May 2003 to submit performance targets to the Department for each performance indicator and baseline data for the targets. Performance targets help ensure that all students move closer each year toward meeting the State's performance goals. States are not required to resubmit their performance targets during the application period unless a significant change occurs.

B5. Against which specific *performance targets* must SEAs measure the implementation and results of the MEP?

The State must measure the implementation and results of the MEP against the measurable outcomes the State has established for the MEP and against the performance targets that the State has established for all children in: (1) reading/language arts; (2) math; (3) high school graduation; (4) number of school dropouts; (5) school readiness (if the SEA adopted this performance target); and (6) other State performance targets, if any. SEAs must pay particular attention to those migrant students who have priority for services. (See 34 CFR 200.83(a)(1) and Questions B1 and B6 of Chapter V – "Provision of Services.")

B6. Must the SEA and local operating agency develop *measurable outcomes*?

Yes. The SEA must develop measurable outcomes for the MEP that are appropriate measures of the success of the program and that contribute to the achievement of the State's performance targets. The local operating agency must then develop measurable outcomes that are aligned with the State's measurable outcomes for the MEP. (See section 1306(a)(1)(D) of the statute.)

B7. Should the SEA and local operating agency update the *measurable outcomes* annually?

No. However, SEAs and local operating agencies should update measurable outcomes any time there is a significant change in either the performance targets or the measurable outcomes themselves. SEA approval of the local operating agency's application constitutes SEA approval of the measurable outcomes.

C. Evaluation Requirements

C1. In general, what are the requirements for evaluating the effectiveness of the MEP?

Each SEA must determine the effectiveness of the MEP through a written evaluation that measures the *implementation* and *results* of the program against the State's performance targets, particularly for those students who are a priority for services. (See Question C8 of this chapter.) Furthermore, SEAs and local operating agencies must use the results of the evaluation to improve the services provided to migrant children. (See 34 CFR 200.84 and 200.85.)

In evaluating the results of the program, each local operating agency must evaluate students who participate in the instructional or support-service components of the MEP against the program's measurable outcomes. In addition, depending on the type of project, agencies should measure student achievement through State assessments (for students in grade three or higher) or other objective measures of student performance. (See section 1304(c)(5) of the statute.)

C2. How does an SEA and local operating agency evaluate the effectiveness of the MEP?

SEAs and local operating agencies should evaluate the effectiveness of the program by comparing the results of the program against: (1) the measurable outcomes established for the MEP, and (2) the State's performance targets. (See the definitions of the terms "measurable outcomes" and "performance targets" in Question B1 of this chapter.)

C3. Who is responsible for evaluating the MEP?

Both the SEA and its local operating agencies have evaluation responsibilities. In a written evaluation, the SEA must measure the effectiveness of the implementation and results of its program on a statewide basis against its measurable outcomes and the State performance targets. Likewise, local operating agencies must conduct a local project evaluation that measures both the implementation of the project and student performance against the project's measurable outcomes, the State's measurable outcomes, and the State's performance targets. The SEA must ensure that the local operating agency conducts the local evaluation properly. The SEA should also inform its local operating agencies in advance of any specific data that it will need to evaluate the statewide program and how to collect the data. (See 34 CFR 200.84.)

C4. What are some operational challenges that SEAs may need to consider in conducting an evaluation?

There are a number of operational challenges that SEAs may encounter in conducting an evaluation. These are illustrated by the following questions:

- What are the best methods of evaluating short-term summer programs or other brief interventions as compared to longer-term or more intensive interventions?
- What are the best methods of evaluating support services as compared to direct instructional services?
- How can evaluators ensure reliable evaluation results in projects that have a high rate of attrition among participants, as is typical of a mobile migrant population?
- How can evaluators compare the effectiveness of different interventions, given the number and variation of program designs nationwide?
- How can small programs and projects with a limited budget and staff conduct a reliable evaluation without compromising the provision of direct services?
- What is the best evaluation design for measuring the effects of a supplement to the primary program of instruction, given that all migrant services are supplementary in nature?

C5. When and how often should SEAs and local operating agencies conduct an evaluation?

An SEA should conduct an evaluation as soon as possible after establishing a program, preferably within the first or second year of implementation, to determine where improvements can be made. It is not necessary to conduct an evaluation of the *implementation* of the program on an annual basis. An SEA should conduct such an evaluation on a *2-3 year cycle*, after the initial implementation evaluation to enable programs and projects an opportunity to implement modifications and revisions that result from the evaluation.

By comparison, SEAs and local operating agencies should examine the *results* of the program (i.e., the degree to which the program has met the measurable State and local outcomes) on an *annual* basis. A results-based evaluation is necessary for monitoring progress toward established goals.

C6. Should SEAs use the *same* approach as the Title I, Part A program in evaluating the effectiveness of the MEP?

Yes. When it is feasible, SEAs should evaluate the effectiveness of the MEP statewide and locally by using the same approaches and standards that are used to assess the performance of students, schools, and local operating agencies under Title I, Part A. (See section 1304(c)(5) of the statute.) The Title I, Part A program requires States and school districts to measure the educational progress of all children (including migrant children) against the State's student academic assessment in the required content areas and at the required grade levels from grades 3-12. (See 34 CFR 200.5.) SEAs should use and rely on State assessment data to help evaluate the effectiveness of the MEP, just as the Title I, Part A uses this information to determine the adequate yearly progress of schools, districts, and the State.

C7. How will evaluations of the MEP *differ* from evaluations of the Title I, Part A program?

Evaluations of the MEP will differ from evaluations of Title I, Part A because SEAs have the additional responsibility of evaluating the implementation and results of the MEP against the measurable outcomes that the State has established for the MEP, as well as the State's overall performance targets. (See 34 CFR 200.83(a)(1) and (4) and Questions B5 and B6 of this chapter.) Likewise, local operating agencies should assess their programs against the measurable outcomes they developed. Thus, in order to determine whether a project achieved the measurable outcomes, the SEA and local operating agency may need to collect additional data that are not required under Title I, Part A.

C8. Must an SEA focus on migrant children who have "priority for services" in its evaluation?

Yes. The SEA must focus on migrant children who are "priority for services." (See 34 CFR 200.84.) "Priority for services" children are those who: (1) are failing, or most at risk of failing, to meet the State's challenging State academic content and student achievement standards, and (2) whose education has been interrupted during the regular school year. (See section 1304(d) of the statute.) States should develop methods of disaggregating State assessment data and measurable outcomes in order to determine the impact of the MEP in children who have this priority for services.

C9. Must a local operating agency evaluate the MEP if it is part of a schoolwide program?

No. Local operating agencies are not required to evaluate the use of MEP funds provided in schoolwide programs in part because it is impossible to distinguish which services in those schools are supported with MEP funds given that the school combines MEP funds with other Federal, State, and local funds. Furthermore, the Title I, Part A program evaluates schoolwide programs by determining if a school makes adequate yearly progress. However, the SEA should periodically examine the State assessment scores of migrant students in schoolwide programs to ensure that they are making progress toward meeting the State's measurable outcomes and performance targets.

C10. Are MEP preschool programs subject to the MEP program evaluation requirements?

Yes. A local operating agency that operates a MEP preschool project must evaluate the progress of migrant children who participate in the project. The agency must measure the project's progress against the project's measurable outcomes and must report its evaluation results to the SEA. SEAs and local operating agencies must ensure that the results of the evaluations are used to improve services for children who participate in MEP preschool projects.

D. Written Evaluation Reports

D1. Must an SEA produce both a *written* evaluation plan and a *written* evaluation report?

Yes. The SEA must develop and update a written comprehensive State service delivery plan that includes a plan of how the State will evaluate the effectiveness of its program. (See sections 1304(b)(1) of the statute and 34 CFR 200.83.) In addition, the SEA must determine the effectiveness of its program through a *written* evaluation that measures the implementation and results achieved by the program against the State's measurable outcomes for the MEP and the State's performance targets, particularly for migrant children who have priority for services as defined in section 1304(d) of the statute. (See 34 CFR 200.84.)

D2. What should the SEA include in its *written* evaluation report?

The SEA should provide the following information in the evaluation report:

1. *Purpose*. This section describes why the SEA conducted the evaluation, including answers to questions like: (1) Who requested the evaluation? (2) Who the audience is (e.g., funders, administrators, project staff, and parents)? and (3) What information they need (e.g., information to improve the implementation of the program or to make a decision about the program)?

2. *Methodology*. This section describes the evaluation process and answers questions like: (1) What basic evaluation design (or designs) did the SEA use and what did it measure, describe, or observe? (2) How did the SEA select the evaluation design and what were the limitations of that design, if any? (3) What data did the SEA collect and what instruments did it use? How did the SEA test the instruments for reliability, validity, examinee appropriateness, and relevance to the program? (4) Did the SEA use representative sampling? (5) What was the timeframe and schedule for the evaluation (e.g., when did the SEA administer instruments or conduct interviews)? (6) What limitations or deficiencies existed in the instruments, data collection procedures, or other methodology?

3. *Results*. This section addresses the findings of the evaluation. An evaluation of the *implementation* of the program answers questions like: (1) Did the agency implement the project as described in the approved project application? If not, what changes were made? (2) What worked in the implementation? (3) What problems did the project encounter?

4. By comparison, an evaluation of the *results* of the program answers questions like: (1) How did migrant students perform in relation to the MEP's measurable outcomes? (2) How did the results compare with what might have been expected in the absence of the program, or did one intervention produce significantly better results than another? (3) Are there special factors that the agency considered in analyzing the results (e.g., participant attrition)?

5. *Implications*. This section addresses what the agency learned from the evaluation and the recommendations for action based on the evaluation. The major question that an evaluation of the *implementation* of the program answers is what specific improvements are necessary. For an evaluation of the *results* of the program, the major questions are: (1) What major conclusions can the agency draw regarding the effectiveness of the program or some part of the program? and (2) What should decision makers consider in determining whether to continue, expand, modify, or terminate the program?

E. Program Improvement

E1. What, if any, program improvement requirements apply to the MEP?

As discussed in Questions C2 and C3 of this chapter, although the school improvement requirements in section 1116 of the statute do not apply to the MEP, SEAs and local operating agencies must use evaluation results to improve services provided to migrant children. (See 34 CFR 200.85.) Section 200.84 of the regulations requires SEAs to determine the effectiveness of the MEP through a written evaluation that measures the implementation and results achieved by the programs against the State's measurable outcomes and performance targets, particularly for those students who are a priority for services. In addition, the SEA should not subgrant additional MEP funds to a local operating agency if the evaluation results demonstrate that its MEP project is not making substantial progress toward meeting its measurable outcomes. If the evaluation results indicate that a local operating agency's project is ineffective or needs to be improved, the SEA must require appropriate changes in the project.

Program improvement is advanced by prompt and careful study of evaluation, needs assessment, and other types of data. At any point in the year, these data may suggest a need to adjust the current program or justify a modification in program services.

E2. What documentation should the SEA and local operating agencies keep to demonstrate that they have used the results of their evaluations to improve MEP projects?

The SEA and local operating agencies should keep any information that documents how programs have changed in response to evaluation findings. Such information might include: (1) the evaluation procedures and results; (2) the previous and current applications; (3) other descriptions of program design that identify changes in the program; (4) summaries of programmatic changes that were made on the basis of evaluation results; and (5) any other evidence of program improvement.

F. Evaluation of Summer Programs

F1. How should SEAs and local operating agencies evaluate MEP summer programs and projects?

SEAs and local operating agencies must evaluate both the implementation and results of summer school programs and projects in the same way they evaluate MEP programs and projects that operate during the regular school year. Local operating agencies must measure summer projects against State and local measurable outcomes and the State's performance targets. Although a summer project poses special challenges because of its short duration, it is important to measure its impact on migrant children to determine whether the project is effective. For example, in a summer reading project, the MEP could assess the children's reading proficiency before the program starts and after it ends to determine whether the project met its objectives.

G. Evaluation of Support Services

G1. How should a local operating agency evaluate the success of MEP support services?

The local operating agency should measure the effects of support services against the project's measurable outcomes. For example, the project may measure whether a specified percentage of migrant children who were identified as having easily treatable visual impairments received eyeglasses or other comparable interventions during the project period in order to allow them to participate effectively in school. To measure the success of this intervention, the project would assess whether: (1) the percentage of migrant children who received the treatment is equal to or greater than the percentage of children that the project proposed to treat in the measurable outcomes of its approved project application, and (2) the extent to which this service helped achieve the State's measurable outcomes and performance targets.

IX. PROGRAM PERFORMANCE AND CHILD COUNT REPORTING

States are required to report certain information on the MEP and other formula grant programs through a Consolidated State Performance Report. The purpose of the report is to provide timely information on the implementation of their approved Consolidated State Plans. (See section 9303 of the statute.)

Each year, States must provide MEP specific program performance information, including: (1) the annual count of migrant children; and (2) a detailed narrative that describes the procedures the States followed to obtain and verify the child count. Each SEA must have procedures in place to ensure that the child counts: (1) are accurate; (2) reflect only eligible migrant children; and (3) are sufficiently well documented so that an outside reviewer who is unfamiliar with the MEP would understand the process. The questions and answers in this chapter are meant to complement the instructions that the Department provides each year in the Consolidated State Performance Report because the child count has such important implications on the amount of funding that States receive.

This chapter addresses these and other aspects of performance reporting under the MEP that the Department has approved as part of the Consolidated State Performance Report.

STATUTORY REQUIREMENTS:

Title I, Part C, Sections 1303(e); 1304(c)(7) and (e); Title IX, Part C, Section 9303

REGULATORY REQUIREMENTS:

34 CFR 200.81

A. Performance Reporting

A1. What is the "Consolidated State Performance Report"?

The Consolidated State Performance Report is the instrument SEAs use to report to the Department on the performance of many ESEA formula grant programs, including the MEP. (See section 9303 of the statute.)

A2. What information must the SEA provide in the annual Consolidated State Performance Report?

In terms of the MEP, SEAs are generally required to submit information about the numbers and characteristics of participating children, the types of services provided, and the number of participants by grade level. The SEA must also submit unduplicated annual counts of the number of migrant children eligible for formula funding purposes.

A3. When is the Consolidated State Performance Report due?

The Department establishes a due date for the Consolidated State Performance Report each year. Typically, most reporting information for the annual Consolidated State Performance Report is due on December 1.

A4. The MEP uses the terms (1) "eligible," (2) "entered in," (3) "enrolled," and (4) "participate" to describe aspects of a child's participation in the MEP. What do these terms mean, and which ones are used in relation to evaluation requirements and to the MEP performance report?

The following terms are *not* interchangeable:

1. The term "eligible" refers to establishing that a particular child is eligible for the MEP, generally through an interview process that results in the completion of a Certificate of Eligibility (COE). (Chapter II – "Child Eligibility.")

2. The term "entered in" refers to entry of a child, or a child's education or health records, into the State's electronic migrant student record system, where, if he or she is age 3 through 21, the child will be counted for funding purposes. Generally, only States that have electronic systems use this term.

3. The term "enrolled" is generally used to refer to the enrollment of a child in any school program. In addition, the term is sometimes also used in connection with special summer funding counts to refer to students who participate in summer MEP projects. These children generate additional summer funding for those States in which they reside beyond the funding generated because of their residency. (See Chapter I – "State Application and Funding.")

4. The term "participate" refers to a migrant child who the SEA determines is eligible for the MEP *and* who receives a service that is included in the comprehensive State plan for service delivery and that contributes to the attainment of the State's measurable outcomes and performance targets. (See the definition of a "service" in Chapter V – "Provision of Services.")

A5. For purposes of the Consolidated State Performance Report, how should an SEA classify a child whose migrant status ended during a school term?

A child who ceases to be a migrant child during a school term is eligible for services until the end of the term and should be included in all counts and data collection efforts during that term. (See 1304(e) of the statute.) However, a child whose eligibility ends during the regular school term cannot be included in the Category 2 child count even if he/she participates in a summer program.

A6. Is there a minimum amount of time that a child must participate in the MEP to be included in the Consolidated State Performance Report?

No. All students who receive instruction or support services should be included in the appropriate parts of the performance report, even if some of those students were absent during some of the time that the project operated.

B. Child Count

B1. What is a "child count"?

For purposes of the MEP, a "child count" is the State's numeric calculation of the total unduplicated number of eligible migrant students statewide who can be counted for funding purposes. The Department collects two separate child counts, known as the Category 1 and Category 2 child counts.

B2. What is the "Category 1" child count?

The Category 1 child count is the 12-month unduplicated statewide total of children who are eligible to be counted for funding purposes. It consists of all of the migrant children ages 3 through 21 who, within three years of a qualifying move, resided in the State for one or more days during the September 1 to August 31 performance period. A "migrant child" must meet the definition in section 1309 of the statute and section 200.81 of the MEP regulations. (See Chapter II – "Child Eligibility.")

B3. What is the "Category 2" child count?

The Category 2 child count is the unduplicated statewide total summer/intersession count of eligible MEP project participants who can be counted for funding purposes. It consists of all of the migrant children who were served for one or more days in MEP-funded summer or intersession programs in the State during the September 1 – August 31 performance period.

B4. What is a "summer term"?

A summer term is any period of time in a locality that operates a traditional-calendar school year when the regular term of that school year is not in session and a federally sponsored instructional program is offered. Year-round schools, for purposes of this report, are not considered to have summer terms. Any break in the regular term of a year-round school is considered an intersession term, regardless of the season of the year in which it occurs.

B5. What is an "intersession"?

For schools on a year-round calendar, an intersession term is the aggregate of all those periods throughout the year when the school (or part of the school) is not in session or does not provide the annual instruction analogous to the traditional school-year regular

term. Even though the intersession periods occur at different times throughout the year, for purposes of this report, those periods are all considered a single term. Thus, a student who participates in intersession programs in October, February, and June would be counted as participating in one intersession term (not three).

B6. Should all of the migrant children who are counted in the Category 2 child count also be counted in Category 1?

Yes. As discussed previously, the Category 1 count is the unduplicated statewide total number of eligible migrant children who were resident in a State for one or more days during the September 1 – August 31 performance period. The Category 2 unduplicated count of eligible migrant children served in summer/intersession projects is a subset of the larger Category 1 count. If an eligible migrant child was documented as being served by the MEP during the summer, he/she was clearly residing in the State that year and, therefore, should be included in the Category 1 child count. Children whose 36-month eligibility for the MEP expired prior to the beginning of the summer/intersession program may be entitled to continue receiving services under the "continuation of services" provision in section 1304(e) of the statute, but they may *not* be included in the Category 2 child count.

B7. What must a State include in its annual child count submission?

The State must provide: (1) the annual unduplicated count of migrant children in Category 1 and Category 2; and (2) a detailed narrative that describes the procedures the State followed to obtain and verify the child count. The SEA is responsible for the accuracy of the child count data. Each SEA must have procedures in place to ensure that the child counts: (1) are accurate; (2) reflect only eligible migrant children ages 3-21; and (3) are sufficiently well documented that an outside reviewer who is unfamiliar with the MEP would understand the process.

B8. When are the annual child counts due to the Department?

The Department establishes a due date for the child counts. The child count is typically submitted as part of the annual Consolidated State Performance Report, which is generally due on December 1.

B9. What does the Department do with the annual child count data after the SEA submits it?

The Department reviews these written procedures, as well as the child counts themselves, in order to ensure the accuracy of the child counts and, thus, the overall integrity of the MEP allocation process. The Department then uses the data to compute the annual State MEP allocations when funding for the MEP exceeds the base amount established in 2002, based on the 2000-01 child count data. (See the discussion of the allocation process in Chapter I – "State Application and Funding.")

In this review, departmental staff compare the new child counts to the child counts reported the previous year. Staff also compare the Category 2 count against the participation data. Staff examine the summary of procedures on its merit and in the context of any issues that emerged from previous years' counting/verification processes and subsequent discussions. To the extent that issues remain, staff conduct additional follow-up.

B10. Is it necessary for a State or its subgrantees to verify and document that a child counted under Category 1 met the definition of a migrant child and was actually resident for at least one day during the September 1 – August 31 performance period?

Yes.

B11. Must a new COE be completed for every child included in the Category 1 count in order to document residency during the September 1 – August 31 performance period?

No. The SEA may use a COE from a prior year for a child whose eligibility has not expired because of age or the 3-year limit. If the SEA uses an existing COE, it should indicate on the COE that it is an update of an older record. For example, the COE may have a box marked "update" for the recruiter to check, which indicates that the child was still resident during the September 1 – August 31 residency period. Alternatively, the SEA may use another written form of documentation to establish residency.

B12. Is a child's record that is maintained in a data base (i.e., data base record) indicating a residency or enrollment date that is on or after September 1 of that year sufficient to document residency during that 12-month period?

Yes. Except when an SEA uses a mass enrollment procedure to update student records on a data base (see Question B15 below), the residency or enrollment date (on/after September 1 of that year and before August 31 of the following year) on a child's record is sufficient, assuming that the SEA knows that written documentation of residency (e.g., an updated COE or a school attendance record) exists at the local level and SEA staff can review it.

B13. In documenting residency, is it sufficient for the SEA to check that there was no withdrawal date recorded on a migrant child's data base record when the child's last recorded residency or enrollment date was prior to September 1 of that year?

No. The absence of a withdrawal date may simply reflect missing data in a student record. The SEA must ensure that the system includes some check of residency for each child who is included in the child counts.

B14. What is a "mass enrollment" process?

A "mass enrollment" process permits State or local staff, as a convenience, to enter the first day of a new school year or term as the new enrollment date in the data base records of all children who were reported in the school district at the end of the last school year/term.

B15. May an SEA use a "mass enrollment" process to enter student-level data into the State data bases that generate the child counts?

Yes. However, if an SEA calculates its child counts (whether Category 1 or Category 2) using a data base that permits mass enrollment of students at the beginning of the regular school year and/or the summer term, it should not rely exclusively for its child counts on the number of children with an enrollment date and a subsequent withdrawal date. This is because some data base systems that employ a mass enrollment process do not allow for the correction of an erroneously generated enrollment date. Instead, they generate a withdrawal date reflecting the date the updated information is received. In this way, a migrant child's record might report an enrollment and a subsequent withdrawal date even though the child never resided in the State between those dates. If such dates overlapped or were after September 1 of that year (or the start of the following summer term), the SEA would include a child who no longer resided in the State in Category 1 (or Category 2). If the SEA uses such as system, it must check whether children with enrollment and withdrawal dates close to each other near the beginning of a new school year or term actually resided in the State between those dates.

For example, 100 children were mass enrolled by an MEP project on 9/3/03 (the beginning of the new school year in the project's school district). Several working days later, on 9/10/03, the project sent updates indicating that 10 of the children left the district sometime during the summer and should have not been enrolled. However, the data base does not allow an enrollment date, once created, to be removed. Instead, 9/10/03 is entered as a withdrawal date for each of the 10 children. In this example, 10 children would be inappropriately included in the Category 1 count because, while not in residence at any time during the 9/1/03 – 8/31/04 child count period, an edit check based simply on the presence of enrollment/withdrawal dates erroneously includes them in the Category 1 count.

B16. May an SEA do manual edit checks or must it edit the child count by computer?

The SEA may use either a manual or computer editing process. However, SEAs are strongly encouraged to use a computerized data base to compile and edit data used to generate the Category 1 and Category 2 child counts. Even States with a small number of identified migrant children will likely find that entering student-level data into a personal computer-based spreadsheet or data base program will enable them to compile and check the pertinent data more easily and accurately than trying to do so manually.

B17. What is an "unduplicated count"? How does an SEA check for and eliminate duplication in its child counts?

An "unduplicated count" is one in which an individual child is included in a State's count only once, regardless of how many places within the State that child may have resided or was served by the MEP. Each SEA is required to submit unduplicated Category 1 and Category 2 child counts.

It is not sufficient to assume that there is no duplication because a State's child count database assigns a unique identification number to each child enrolled in the system. In order for an SEA to eliminate duplication when several local sites compile data, it should compare, either manually or by computer, particular data elements for possible matches whether a single child may have generated duplicate records. For example, comparing records in terms of same/similar last names, including English/Spanish cognates of names; dates of birth; dates and locations of the last qualifying move; home base location; or parents' names, especially the mother's maiden name, will yield lists of possible duplicates. Children whose records match on two or more of the items may well be the same individuals who have moved within the State from one site to another. The SEA should flag these children as possible within-State duplicates and conduct additional follow-up on these children with the local projects who reported them, to ensure that the same individual is not counted more than once in the statewide child counts.

B18. May the SEA calculate the child counts by compiling the numerical counts of children that local operating agencies served?

No. It is not sufficient simply to compile numerical counts submitted by local projects and report the total as the statewide child count. Such Category 1 and Category 2 counts would likely include duplication. The SEA must establish a process to eliminate duplication by checking the underlying student data across the local sites.

B19. Must the SEA check that children included in the child counts are between the ages of 3 and 21?

Yes. The SEA must establish some procedure to ensure that the children it includes in the child counts are between the ages of 3 and 21.

B20. Must the SEA check records of 2 year olds to determine whether they resided in the State after they turned 3 years old?

Yes. The child counts must not include any migrant child below the age of 3. However, if records (e.g., COEs or data base records) indicate a child was below 3 years of age at the time the SEA identified him/her, the SEA should check (either by examining the recorded withdrawal date or by having a recruiter check with the family) to determine if the child resided in the State for at least one day on or after his or her third birthday. The SEA may include such a child in the child count only if it has documentation that the

child was past his or her third birthday while residing during the September 1 – August 31 performance period.

B21. Should an SEA check the qualifying arrival date (QAD) of children included in the child count?

Yes. SEAs should check the QAD to ensure that only eligible migrant children who are resident in the State are included in the child count. This is particularly important for States that include children in their data base who are no longer eligible for the MEP but who continue to receive services under sections 1304(e)(2) and 1304(e)(3) of the statute. The SEA must ensure that these children are not included in the child count because they are no longer eligible.

B22. Should the SEA verify that children included in the two child counts are eligible for the MEP?

Yes. The SEA may only include children who meet the definition of a "migratory child" in the child counts. (See section 1309(2) of the statute and 34 CFR 200.81.) Each SEA must have a quality control process in place by which it checks the completeness and accuracy of the eligibility documentation for children included in the child count. Such a process might include periodic reviews of all or a sample of COEs by SEA staff.

B23. Should the SEA check the names of children included in Category 2 against documentation at local sites to verify that the local projects served the children?

Yes. As part of a quality control process, SEA staff should verify that children included in Category 2 actually received a summer service. To do so, staff may review local documentation, such as a project's enrollment lists, attendance rosters or teacher logs, to confirm that the local project actually served all the children included in the State's Category 2 count. Again, SEA staff need only review a sample of children or local projects.

B24. Is verification of eligibility and the provision of summer/intersession services sufficient for purposes of quality control?

No. For child count purposes, quality control involves more than reviewing and verifying the accuracy of eligibility and service delivery documentation. The SEA must also implement quality control checks of its data input, update, and compilation procedures. Such procedures may include, but are not limited to: double-keying input data; generating and examining periodic status reports (by numbers and types of children, by region); and reviewing data records in the student information system against physical documentation, such as a COE or supplementary data report on summer/intersession participation.

B25. Is there a requirement that services have to be of minimum duration and intensity to enable the SEA to count participating children under Category 2?

No, the Department has not established such a requirement. However, SEAs are responsible for determining whether summer and intersession services are of sufficient duration and intensity to enable the program to meet its measurable outcomes and to contribute to the achievement of the State's performance targets in order to count participating children under Category 2. (See Question A5 in Chapter V – "Provision of Services.")

B26. Must a student participate in the entire summer program in order for the SEA to include him/her in the Category 2 count?

No. However, the student must participate in the program for at least one day in order to be counted in Category 2.

B27. May an SEA include children who participated in a summer service project that involved distance learning in its Category 2 count?

Yes. A child who is served through a distance learning project may be counted by both the home base State originating the transmission and each receiving State that provides access and assistance to the child in viewing (and completing assignments that result from) the transmissions. Each State should maintain documentation regarding the substance of the services it provided under the project for each child it includes in the child count.

B28. May an SEA count a child who received only a support service (and no instructional service) under Category 2?

Yes. Subject to the considerations discussed in Question B24 above, an SEA may count a migrant child who received a support service through a MEP-funded summer or intersession program. Although the service does not need to be part of an instructional program, it should enable the program to meet its measurable outcomes and contribute to the achievement of the State's performance targets.

B29. May an SEA count an eligible migrant child who was served in a summer/intersession project that was not supported by MEP funds in Category 2?

No. If no MEP funds were used to provide a summer/intersession service, the child may not be counted in the Category 2 count. The purpose of the Category 2 child count is to generate an adjustment to reflect the additional costs to the MEP of serving migrant children beyond the regular school year.

B30. May States begin summer projects before the end of the regular school year?

Yes. SEAs and local operating agencies may begin MEP summer projects before the end of the regular school year, depending on when children arrive and what their needs are. However, these children may not begin generating a summer child count for the State until the local operating agency's regular school year has ended.

SEAs and local operating agencies that operate a MEP summer program before the end of the regular school year should be careful not to violate the "supplement, not supplant" requirement. (See Chapter X – "Fiscal Requirements.") Migrant children who arrive in the State before the end of the school year are entitled to receive services from the regular school program. Therefore, the MEP summer program cannot provide services that "supplant" (i.e., "replace") the services that the regular school program offers.

B31. May an SEA include children in its child count who cease to be migrant during the school term and who the SEA continues to serve in accordance with section 1304(e)(1) of the statute?

Yes. The SEA may include children whose eligibility expired during a school term and who the SEA continued to serve until the end of that term (fall, spring, or summer). Such children only generate a Category 2 count if their eligibility expired after they began to be served in the summer or intersession term.

B32. May the SEA include children who are no longer migrant but who it continues to serve under sections 1304(e)(2) and 1304(e)(3) of the statute?

No. Under section 1304(e)(2), SEAs may serve children who cease to be migrant for one additional year if comparable services are not available through other programs. Section 1304(e)(3) allows SEAs to continue to serve secondary students who were eligible for services in secondary school through credit accrual programs until graduation. An SEA may not count these children in its child counts because they do not meet the definition of a "migratory child."

B33. What does "term" mean in section 1304(e)?

The Department interprets the word "term" to mean one of the following discrete periods of the school year: fall, spring, summer, intersession. Therefore, regarding section 1304(e)(1), a migrant child whose eligibility expires "during a school term" such as the fall term (e.g., on October 1) can still be served until the end of the fall term (e.g., the Christmas break) but not in the subsequent spring term, unless the exception in section 1304(e)(2) applies.

X. FISCAL REQUIREMENTS

SEAs and local operating agencies must comply with two fiscal requirements regarding the expenditure of State and local funds to ensure that MEP funds are used to provide services that are supplemental to the regular services migrant children receive. The statute requires SEAs and local operating agencies to: (1) use MEP funds to "supplement, not supplant" non-Federal funds; and (2) provide services to migratory children with State and local funds that are at least comparable to services provided non-migratory children. (See sections 1120A(b) and (c) of the statute.) The statute and regulations provide an exclusion from these requirements for special State and locally funded programs that meet the intent and purposes of the MEP. (See section 1120A(d) of the statute and 34 CFR 200.88.)

In addition to these fiscal requirements, this chapter discusses the use of MEP funds, especially as it relates to equipment, indirect costs, and travel.

STATUTORY REQUIREMENTS:

Sections 1120A and 1304(c)(2) of Title I; sections 9101 and 9521 of Title IX

REGULATORY REQUIREMENTS:

34 CFR 200.88 and 299.5

A. "Supplement, Not Supplant" Requirement

A1. What does "supplement, not supplant" mean?

"Supplement, not supplant" is the phrase used to describe the requirement that MEP funds may be used only to supplement the level of funds that would, in the absence of MEP funds, be made available from non-Federal sources for the education of children participating in MEP projects. SEAs and local operating agencies may not use MEP funds to supplant (i.e., replace) non-Federal funds.

A2. Does the "supplement, not supplant" requirement apply to the use of MEP funds to serve migrant children who are not enrolled in grades K-12 (e.g., preschool children or older children who have dropped out of school)?

The "supplement, not supplant" requirement applies if the SEA or the local operating agency has a non-federally funded program that serves these children in the area in which they reside. If not, the "supplement, not supplant" requirement does not apply because there is no program for MEP funds to supplant.

B. Comparability Requirement

B1. What is comparability?

Comparability refers to the requirement that local operating agencies ensure that schools that receive MEP funds provide services that, taken as a whole, are at least comparable to services provided by schools that do not receive MEP funds. This comparison is done on a grade-span by grade-span basis or school by school basis. (See section 1120A of the statute.)

B2. How does the SEA ensure that local operating agencies meet the comparability requirement?

Prior to awarding MEP subgrants, the SEA must receive from each local operating agency a written assurance that it has established and implemented the following: (1) a district-wide salary schedule; (2) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and (3) a policy to ensure equivalence among students in the provision of curriculum materials and instructional supplies. (See section 1120A(c)(2)(A).)

B3. What records should a local operating agency maintain to document compliance with the comparability requirement?

The local operating agency must maintain records that document the salary schedule and policies that the agency implemented to achieve equivalence among schools in staff, materials, and supplies.

C. Monitoring Comparability and "Supplement, Not Supplant" Requirements

C1. Does an SEA have a responsibility to monitor compliance with the comparability and "supplement, not supplant" requirements?

Yes. The SEA is ultimately responsible for ensuring that its local operating agencies comply with these requirements. The SEA typically reviews compliance with these requirements through its monitoring of the Title I, Part A program or other cross-program monitoring.

C2. What may the SEA do if it finds that a local operating agency has not complied with the comparability or "supplement, not supplant" requirements?

If the exclusion in 34 CFR 200.88(b) does not apply (see Questions D1 through D3), the SEA must withhold funds or require repayment of funds from the local operating agency.

D. Exclusion of Supplemental State and Local Funds from the Comparability and "Supplement, Not Supplant" Requirements

D1. What supplemental State and locally funded services may a local operating agency exclude from the "supplement, not supplant" and comparability requirements?

An SEA and its local operating agencies may exclude from the "supplement, not supplant" and comparability requirements State and local funds that are used to carry out special programs that meet the intent and purposes of the MEP. In order for this exclusion to apply, the SEA must make an advance *written* determination that the State or local program meets the following requirements:

1. The program is specifically designed to meet the unique educational needs of migrant children;

2. The program is based on performance targets related to educational achievement that are similar to those used in MEP programs and is evaluated in a manner consistent with those program targets;

3. The SEA or the local operating agency keeps, and provides access to, records that ensure the correctness and verification of these requirements; and

4. The SEA monitors program performance to ensure that these requirements are met.

(See section 1120A(d) of the statute and 34 CFR 200.88(b).)

D2. What purpose is served by this exclusion?

The exclusion allows SEAs, LEAs, and other local operating agencies to use State, local and other non-Federal funds for supplemental programs that benefit migratory children without regard to the comparability and "supplement, not supplant" requirements. In doing so, the exclusion promotes greater flexibility in the use of MEP funds by eliminating the need for SEAs or local operating agencies to worry about comparability or "supplement, not supplant" considerations that might otherwise arise in the use of State and local funds spent on these supplemental programs.

For example, suppose an LEA provides school A with $10,000 of local funds for a supplemental reading program for migrant students enrolled at that school. Consistent with the comprehensive needs assessment and service delivery plan, the exclusion allows the LEA to use MEP funds for a similar reading program for migrant students enrolled at school B, without regard to requirements governing:

- Comparability – which otherwise would require levels of State and local funding (on an aggregate or per-pupil basis) at the two schools to be roughly equivalent, or

- Supplement, not supplant – which otherwise would require migrant students at School B to receive an equal share of State-funded migrant reading services as those enrolled in School A.

If the exclusion did not exist, the LEA either: (1) could not allocate the State or local funds for these supplemental programs without meeting the comparability and supplanting requirements; or (2) might choose to avoid funding a project in School B altogether. Without the exclusion, SEAs and local operating agencies might decide that, given the comparability and "supplement, not supplant" requirements, there is little incentive to create these State or locally funded supplemental programs for migrant students.

D3. May State and locally funded programs that are subject to the exclusion serve non-migrant children?

No. The regulation provides that the exclusion applies only to State or locally funded supplemental programs that "meet the intent and purposes" of the MEP. Because the intent and purpose of the MEP is to provide supplemental services only to migrant children, State and local programs subject to the exclusion must do the same.

E. Maintenance of Effort

E1. What is "maintenance of effort"?

"Maintenance of effort" refers to the requirement that a local educational agency's combined fiscal effort per student or the aggregate expenditures of the agency and the State on free public education in the preceding fiscal year must not be less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. (See sections 1120A and 9521 of the statute.)

E2. Must local operating agencies comply with "maintenance of effort" requirements with respect to the MEP?

No. Section 299.5(b) of the regulations excludes the MEP from this requirement.

F. Use of Funds

F1. What is an "allowable activity" for which an SEA or local operating agency may use MEP funds?

An "allowable activity" is an activity that meets the requirements of section 1306(b) of the statute, comports with the cost principles in the Office of Management and Budget

(OMB) Circular A-87, and meets the applicable requirements of EDGAR, particularly Parts 76 and 80. (See also Chapter XI – "State Administration.")

F2. What does section 1306(b) require?

Section 1306(b) requires that –

- The activities and services SEAs fund must comport with the results of the comprehensive statewide needs assessment and the requirements of the comprehensive service delivery plan.
- SEAs must first use MEP funds to meet the identified needs of migrant children that result from their migrant lifestyle, and to permit these children to participate effectively in school.
- In general, SEAs must use MEP funds to meet the needs of migrant children that are not addressed by services available from other Federal or non-Federal programs.

F3. What are the cost principles contained in OMB Circular A-87?

Among other things, these cost principles establish that, in order for costs to be allowable (and thus charged to the MEP), they must be:

1. Necessary and reasonable for the proper and efficient performance and administration of the MEP;
2. Allocable to the MEP under the provisions of the Circular;
3. Consistent with policies, regulations, and procedures that apply uniformly to both Federal and non-Federal funds; and
4. Permitted by the "Selected Items of Cost" in Attachment B of the Circular.

F4. What are some examples of allowable activities for which an SEA or local operating agency may use MEP funds?

In general, SEAs and local operating agencies may use MEP funds for:

- Instructional services (e.g., activities for preschool-age children and instruction in elementary and secondary schools, such as tutoring before and after school);
- Support services (e.g., acting as an advocate of migrant children, providing access to health and social service providers; providing migrant families with necessary supplies);

- Professional development (e.g., training programs for school personnel to enhance their ability to understand and appropriately respond to the needs of migrant children);
- PAC and other parental involvement activities (see Questions B11-B13 and C4-C7 in Chapter VII – "Parental Involvement");
- Identification and recruitment;
- Coordination activities with other agencies, both within the State and with other States nationwide, including the transfer of student records;
- Comprehensive needs assessment activities; and
- Evaluation of the MEP.

F5. May an SEA or local operating agency use MEP funds to construct school facilities?

No. This is not permitted because the MEP statute does not authorize the use of MEP funds for construction.

F6. May an SEA or local operating agency use MEP funds to pay for the utilities of a school building (e.g., janitorial and maintenance costs) that the MEP uses for a summer program?

Yes. This is an allowable cost, provided that the agency does not include the costs in its indirect cost pool during the same period.

G. Combining MEP funds with other programs

G1. May an SEA or local operating agency use MEP funds to support the participation of migrant students in another Federally-funded educational program (e.g., a program for limited English proficient students funded by Title III)?

Yes. However, section 1306(b)(2) and requirements of other Federal programs place certain conditions on when and how this may be done. Section 1306(b)(2) requires SEAs and local operating agencies to provide services to migrant students from other Federal programs *before* they use MEP funds to provide services. Furthermore, while each Federal program has its own eligibility requirements, none permits migrant students to be excluded from services because they are eligible for the MEP. Therefore, other Federal programs must select and provide services to eligible migrant students on the same basis as other eligible children. After the other Federal program selects students for services, an SEA or local operating agency may use MEP funds to increase the number of migrant students who participate in the project and/or enhance the services that participating migrant students otherwise receive.

One such example would be a Title III program that provides English classes to limited English proficient students during the summer. Many migrant children will be eligible for the Title III program because they are limited English proficient. These children may not be excluded from the Title III program simply because they are also eligible for the MEP. They must be selected for the Title III program on the same basis as other eligible children. Furthermore, section 1306(b)(2) provides that these children should receive services from the Title III program *before* the MEP provides the same or similar service. After the Title III program selects the students who will participate, the local operating agency may use MEP funds to increase the number of migrant students who participate in the program by paying for the salary of an extra teacher or paying a proportional amount of the per pupil expenditure for additional migrant students.

G2. May an SEA or local operating agency use MEP funds to provide services that are available under Title I, Part A?

Yes, under limited circumstances. Section 1306(b)(2) provides an exception to the requirement that other Federal program funds must be used *before* MEP funds to provide a service in cases where migrant children are eligible for both the MEP and another Federal program. In the case of Title I, Part A, an agency may use MEP funds to provide services available under Title I, Part A to migrant children who are eligible for both programs. However, this exception applies only if MEP funds remain *after* the agency has met all of the identified needs of migrant students that result from their migrant lifestyle and that permit these children to participate effectively in school. SEAs and local operating agencies are encouraged to document that they have met the special educational needs of migrant children if they use MEP funds under this exception. If no MEP funds remain after meeting the needs that result from the migrant lifestyle and that permit children to participate effectively in school, Title I, Part A must provide services to those migrant children who are eligible for the program on the same basis as other children who are eligible for Title I, Part A.

G3. May an SEA or local operating agency use MEP funds to support the participation of migrant children in a non-Federally funded program?

Yes. However, SEAs and local operating agencies must ensure that the use of MEP funds does not violate the "supplement, not supplant" requirement. This requirement prohibits SEAs and local operating agencies from using MEP funds to replace services that are otherwise available from non-Federal sources. Title I regulations permit one exception in cases where the non-Federally funded program meets the intent and purposes of the MEP. (See Questions A1-A2 and D1-D3 of this chapter.)

G4. How may an agency combine MEP funds with a non-Federally funded program?

SEAs and local operating agencies may jointly fund activities for migrant children in a variety of ways. For example, consistent with the "supplement, not supplant" considerations, an agency may use MEP funds to pay for the salary of an extra teacher to

enable more migrant students to participate in a program. The agency may also contribute to the cost of the program by paying a proportional amount of per pupil expenditure for additional migrant students who can thereby participate.

Another example may involve co-funding a supplementary summer program for migrant and non-migrant students. A State may fund a compensatory education program during the summer that teaches reading to students who scored less than 30 percent in the State reading assessment. The MEP could not pay for those migrant students who scored less than 30 percent on the State reading assessment to attend the program because this would "supplant" the State funds (i.e., the MEP funds would replace the State funds to which these students are entitled). However, the MEP may pay for students who are not eligible for the State program under the State's criterion (e.g., migrant students who scored above 30 percent on the assessment) because this supplements the program with MEP funds.

H. Equipment

H1. May an SEA or local operating agency purchase equipment with MEP funds?

Yes. However, before doing so, the SEA must determine that: (1) the equipment is reasonable and necessary to operate the MEP effectively; (2) existing equipment is not sufficient; and (3) the costs are reasonable. (See in Question F3 in this chapter.) [Please note that section 80.36 of EDGAR also has requirements regarding procurements, particularly for local operating agencies.]

H2. What procedures govern the use and management of equipment purchased with MEP funds?

Section 80.32(b) of EDGAR requires a State to use and manage equipment "in accordance with State laws and procedures." Local operating agencies, as subgrantees, must follow the procedures described in sections 80.32(c) and (d) of EDGAR and any State procedures that are consistent with these regulations.

H3. How may a local operating agency increase its flexibility to use equipment purchased with MEP funds?

A local operating agency has several options available to increase flexibility in using MEP equipment. For example, when the SEA permits a local operating agency to purchase equipment with MEP funds, it may share the cost on a proportional basis with other Federal, State, or local programs that will also use the equipment. Likewise, a local operating agency may allow other programs to use equipment purchased with MEP funds for a reasonable user fee. In some cases, a local operating agency may allow other programs to use MEP equipment for non-MEP activities without charging a user fee, so long as the standards described in Question H5 below are met.

H4. Under what circumstances may a local operating agency allow the use of MEP equipment in non-MEP activities without charging a user fee?

In general, sections 1301 and 1302 of the statute require an SEA or local operating agency to use MEP funds only for programs and projects designed to meet the special educational needs of migrant children. However, the Department recognizes that, under some circumstances, equipment purchased for a MEP project may, without constituting an improper expenditure, be used on a less than full-time basis. In particular, equipment purchased with MEP funds may be made available for other educational uses if it does not interfere with its use in the MEP project or significantly shorten the useful life of the equipment.

This guidance is consistent with section 80.32(c)(2) of EDGAR, which allows equipment to be made available for use on other projects or programs currently or previously supported by the Federal Government, "providing such use will not interfere with the work on the projects or program for which it was originally acquired." Because a State may adopt its own procedures for use of MEP equipment, it could make use of the flexibility provided in section 80.32(c)(2).

H5. How may an SEA or local operating agency ensure that use of MEP equipment in non-MEP activities does not interfere with the MEP project and is consistent with the MEP statute and regulations?

A local operating agency that allows MEP equipment to be used in non-MEP activities on a part-time basis must do so in a manner that protects the integrity of the equipment as a MEP expenditure. Accordingly, the local operating agency should document that the following standards are met:

- the MEP equipment is part of a MEP project that meets the special educational needs of migrant children;
- the equipment purchased with MEP funds is reasonable and necessary to conduct the MEP project, without regard to use in non-MEP activities;
- the project has been designed to make maximum appropriate use of the equipment for MEP purposes; and
- the use of the equipment in non-MEP activities does not decrease the quality or effectiveness of the MEP services provided to migrant children, increase the cost of using the equipment for the MEP project, or result in the exclusion of MEP children who otherwise would have been able to use the equipment.

H6. Are there circumstances when a local operating agency does not have to document that these standards have been met?

Yes. If use of the equipment in non-MEP activities does not exceed 10 percent of the time the MEP uses the equipment, there is a presumption that the non-MEP use is proper. In these circumstances, the non-MEP use is incidental and the local operating agency does not have to document that the standards in Question H5 above have been met.

H7. What are some examples of the proper use of MEP equipment in non-MEP activities?

The following examples illustrate some situations in which MEP equipment may be used in non-MEP activities:

- Computers purchased with MEP funds are used full-time during the school day but are idle during evening hours and would be beneficial to adult education classes or parent training classes that meet twice a week. Use of the computers in these classes would not be extensive and, therefore, would not significantly shorten the useful life of the equipment. Under these circumstances, the MEP computers may be used for the adult education or parent training classes.

- MEP computers are used full-time except for one period each school day. The proper amount of computer equipment was purchased for the MEP project and the MEP project cannot be redesigned effectively to use the computers in every period. Under these circumstances, the MEP computers may be used for other educational activities during the period they are idle.

- Ten listening centers were purchased with MEP funds and are used regularly but not continuously in the MEP project. The MEP project cannot be designed effectively to use the centers more frequently. The listening centers are used in an extracurricular foreign language program for periods of time averaging 10 percent or less of the time devoted to MEP.

H8. Is it appropriate for an SEA or local operating agency to consider non-MEP use of equipment in deciding whether to purchase equipment for the MEP?

No. The SEA or local operating agency must purchase MEP equipment solely on the basis of the needs of the MEP program, without regard to contributions from other programs. It is improper for an agency to consider the needs of other programs in deciding to purchase equipment for the MEP. In addition, the agency must document that the equipment is a reasonable and necessary expense for the MEP program. To ensure proper use of MEP equipment, the SEA should review, approve, and monitor the use of MEP equipment in non-MEP activities.

H9. How does an SEA or local operating agency dispose of property purchased with MEP funds?

Section 80.32(b) of the regulations provides that an SEA must dispose of equipment "in accordance with State laws and procedures." Local operating agencies, as subgrantees, must follow the procedures in section 80.32(e) of EDGAR.

I. Indirect Costs

I1. What is an indirect cost?

Fiscal accounting procedures classify the costs charged for all program components as either "direct costs" or "indirect costs." These terms have precise meanings in terms of salary, materials and supplies, equipment, utilities, and other kinds of expenses ("cost objectives") for which program funds may be charged.

Indirect costs are those costs that: (1) are incurred in the course of pursuing a common or joint purpose that benefits more than one cost objective; and (2) are not readily assignable to those cost objectives without an effort that is disproportionate to the benefits of doing so. They differ from direct costs which, because they can be identified specifically with a particular cost objective, may be charged directly to a particular grant or contract. While any cost conceivably could be charged to either a direct or indirect cost, those that might be charged to the MEP most readily as indirect costs include costs for electricity, janitorial service, refrigerator space, central computer use, and the air conditioning that an SEA (or local operating agency) incurs to operate a building in which many programs are administered.

To determine the amount that an agency may charge to its MEP grant as indirect costs, the agency applies an "indirect cost rate" to the total of its program expenditures. Under section 76.561 of EDGAR, the Department approves the indirect cost rate for any SEA wishing to charge indirect costs to its MEP grant. The SEA then approves a rate for each local operating agency that requests one based on the rate the Department approved.

I2. May an SEA and local operating agency charge indirect costs to the MEP?

Yes. Indirect costs are allowable at both the State and local operating agency levels. (See sections 76.560, 76.561, and 76.563 of EDGAR.)

I3. What is a "restricted" indirect cost rate?

Section 76.563 of EDGAR provides that both SEAs and local operating agencies must apply a restricted indirect cost rate to their MEP grants. The "restricted" rate is lower than the general "unrestricted" rate because it is based on an exclusion of certain agency-wide costs that, because of the "supplement, not supplant" provision, cannot be charged to MEP funds. Sections 76.564 through 76.569 of EDGAR describe how these restricted rates are calculated.

J. Travel

J1. May an SEA authorize the use of MEP funds for travel and conference costs?

Yes. MEP funds may be used if the travel and conference expenditures are reasonable and necessary and are specifically related to the MEP projects, not to the general needs of the local operating agency or LEA. (See OMB Circular A-87, Attachment B, Item Cost 30, regarding specific rules on conference costs.)

K. Transferability of Funds

K1. Does the "transferability of funds" provision in section 6123 of the statute apply to the MEP?

No. Although section 6123(a)(1) allows States to transfer up to 50 percent of nonadministrative funds for State activities among certain programs listed in the statute, the MEP is not included as one of those programs. Furthermore, although section 6123(a)(2) allows States to transfer funds from certain programs to the "Title I program," the Department has interpreted the reference to Title I to mean "Title I, Part A." Therefore, these provisions do not apply to the MEP, and an SEA may not transfer MEP funds under this authority.

XI. STATE ADMINISTRATION

SEAs may reserve funds from their Title I, Parts A, C, and D allocations to administer the programs authorized under these parts. (See section 1004 of the statute.) In addition, SEAs may use MEP funds for administrative functions that are unique to the MEP.

In administering the MEP, SEAs may choose to operate the MEP directly or through subgrants to local operating agencies. If an SEA chooses to subgrant, it remains responsible for the overall administration and operation of the MEP and has sole authority to determine which local operating agencies will operate the program. In making subgrants, the SEA must comply with certain statutory requirements, which are explained in further detail below.

SEAs must also keep records related to the administration and operation of the MEP and must monitor local operating agencies to ensure that they are in compliance with the statute and regulations.

This chapter addresses these significant administrative requirements of the MEP.

STATUTORY REQUIREMENTS:

Section 1004 of Title I, Part A; sections 1302, 1304(b)(5), 1304(d), and 1309 of Title I, Part C; section 9201 of the ESEA; sections 437(a) and 452(a) of GEPA

REGULATORY REQUIREMENTS:

34 CFR 76.300-76.401, 76.560, 76.561, 76.563, 76.730, 76.731, 76.770; 77.1; Part 80; 200.82; 200.83(c); 200.100(b)

A. Funds for State Administration

A1. How is the SEA paid for the costs of administering the MEP?

Sections 1004(a) of the statute and 200.100(b)(1) of the regulations provide that SEAs may reserve the greater of 1 percent of the total amount appropriated under Title I, Parts A, C, and D *or* $400,000 ($50,000 in the case of outlying areas) to pay the State for the costs of administering these programs. (See section 200.100(b)(2) and Title I, Part A guidance for more information on how to reserve the $400,000 amount proportionately for each program.) SEAs may combine the reserved amounts into a general Title I account for administration of these programs or maintain the funds in separate accounts and administer the MEP with the program funds specifically available for administration.

In addition, section 9201 of the statute allows States that receive more than 50 percent of the resources available for administration from non-Federal sources to consolidate administrative funds for Title I and many other ESEA formula grant programs. SEAs

may use these funds both for administration of any of the programs that contribute to the pool and for additional uses identified in section 9201(b)(2).

A2. What types of MEP administrative costs may be paid out of the funds available for State administration?

ESEA funds available for State administration may be used for general administrative activities, such as:

- Design and distribution of forms required to operate the program, such as LEA applications, performance and financial reports, and evaluation reports;
- Processing of project applications (but not necessarily the costs of reviewing them for compliance);
- Review and aggregation of reported data of the type generally reported under the ESEA;
- Monitoring of projects for fiscal compliance with the statutory and regulatory requirements;
- Maintenance of fiscal control and accounting procedures; and
- Dissemination of information.

A3. Are there record keeping requirements regarding the use of administrative funds?

Yes. SEAs must comply with the record keeping requirements in Section 80.42 of EDGAR regarding expenditure of State administrative funds. (See section C on Record-keeping of this chapter.) If the SEA consolidates the administrative funds, its records need only reflect that the funds were obligated for the administration of one or more of the programs that contributed to the administrative cost pool. There is no need to track these funds by the particular program that may have benefited.

A4. Are there any administrative costs incurred at the SEA level for which the SEA may use MEP funds, beyond the amount the SEA reserves for general administration?

Yes. Section 200.82 of the regulations permits SEAs to use MEP funds at the State level to perform administrative functions that are unique to the MEP, including those functions that are the same or similar to the administrative activities performed by LEAs under the Title I, Part A program. Those activities include, but are not limited to:

1. Statewide identification and recruitment;

2. Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

3. Procedures beyond those required generally by State and local agencies for providing educational continuity for migrant children through the timely transfer of educational and health records;

4. Collecting and using information needed for accurate distribution of subgrant funds;

5. Collecting and using information needed to report Category 1 and Category 2 child counts;

6. Development of the statewide needs assessment and comprehensive State plan for MEP service delivery;

7. Supervision of instructional and support staff;

8. Establishment and implementation of the State parent advisory council; and

9. Conducting an evaluation of the effectiveness of the State MEP.

(See 34 CFR 200.82(a) through (f).)

A5. Must the SEA reserve MEP funds for school improvement?

No. Section 1003(a) of the statute and section 200.100(a) of the regulations provide that the reservation of funds for school improvement applies only to Title I, Part A funds.

B. Subgranting

B1. How may an SEA operate the MEP?

Section 1302 of the statute provides that the SEA, upon approval of its application, receives a grant to establish or improve education programs for migrant children in accordance with the statute. The SEA may operate the program directly or subgrant the MEP's operations to local operating agencies. If the SEA chooses to subgrant, it has sole authority for determining which local operating agencies will operate the program. The SEA remains responsible for the overall administration and operation of the MEP in the State.

If the SEA chooses to operate the MEP through subgrants to local operating agencies, it must ensure that those agencies comply with all applicable statutory and regulatory requirements. (See section 76.770 of EDGAR.)

B2. What is a subgrant?

A subgrant is an award of financial assistance, in the form of money, made under a grant by a grantee (the SEA) to an eligible subgrantee (the local operating agency). (See section 80.3 of EDGAR.)

B3. What agencies may the SEA subgrant to if it chooses to operate the MEP this way?

The SEA may subgrant to local operating agencies, which may be local educational agencies, other public agencies, or nonprofit private agencies. (See section 1309(1) of the statute for the definition of a local operating agency and section 77.1 of EDGAR for the definition of a local educational agency and nonprofit agency.)

B4. May two or more local educational agencies enter into a cooperative arrangement to apply for a MEP subgrant?

Yes, this type of arrangement is permitted.

B5. How does an SEA decide which local operating agencies will receive subgrants?

In deciding which subgrantees will best deliver services to migrant children, the SEA should consider the results of its comprehensive needs assessment, the types of services necessary to address the needs of migrant children, and the capacity of the local operating agencies.

B6. Is any local operating agency *entitled* to receive an MEP subgrant?

No. The SEA has the option to operate the MEP directly or through subgrants to local operating agencies. The SEA determines which agencies, if any, receive subgrants to operate the MEP.

Determining Subgrant Amounts

B7. Who is responsible for determining the amount of a subgrant to a local operating agency?

The SEA has sole responsibility for determining amounts of subgrants.

B8. May the SEA distribute funds to a local operating agency solely on the basis of the number of migratory children residing in the area it will serve?

No. In determining the amount of a subgrant, the SEA must distribute funds based on the requirements in section 1304(b)(5) of the statute. The SEA must take into account:

1. the numbers of migrant children;

2. the needs of migrant children;

3. the statutory priority to first serve children who are failing, or most at risk of failing to meet the State's challenging State academic content standards and whose education has been interrupted during the regular school year; and

4. the availability of funds from other Federal, State, and local programs.

B9. How does the SEA take into account the number of migrant children in determining the amount of a subgrant?

In determining the amount of its subgrants, the SEA must take into account the number of migrant children who reside and/or are expected to reside in the project area. SEAs have considerable latitude in deciding how to include this factor in the subgrant process. However, the method should take into account the nature, scope, and cost of the projects to be implemented.

SEAs may meet this requirement by considering the number of eligible children who:

- reside or are expected to reside in the project area, and/or
- are enrolled or expected to be served in a project.

B10. How does the SEA take into account the needs of migrant children in determining the amount of a subgrant?

Based on the results of its comprehensive statewide needs assessment, the SEA will identify the "special educational needs" of migrant children. The SEA is required to take the needs of migrant children into account in determining the amount of subgrants. However, the SEA does not have to take into account *all* of the identified special educational needs of migrant children in its subgrant procedure.

In addition, in cases where there is insufficient information regarding an identified need, the SEA may use the best available proxy. For example, if the SEA has identified the need for additional instructional time in reading (to make up for the instructional time migrant students lose due to family mobility)– but specific information on the amount of time lost per migrant student is not available– the results of State and/or local assessments in reading could be used as a proxy for this need. In determining which needs and measures to use, the SEA must balance achieving effectiveness and efficiency in implementing its subgrant process.

B11. How does the SEA take into account the statutory "priority for services" in determining the amount of a subgrant?

The SEA must take into account the "priority for services" requirement of section 1304(d) in determining the amount of a subgrant. Students who have "priority for services" are those migrant children who are: (1) failing, or most at risk of failing, to

meet the State's challenging State academic content standards and challenging State student academic achievement standards; and (2) whose education has been interrupted during the regular school year. An SEA's subgrant process may take this factor into account by considering the number of "priority for services" children who reside in the areas to be served or are expected to be served by a local operating agency.

B12. How does the SEA take into account the availability of other Federal, State, or local funds in determining the amount of a subgrant?

In determining the size of a subgrant, the SEA must take into account the availability of other funds that a local operating agency may leverage to provide services to migrant children. The SEA may examine the funding levels of programs that the local operating agency conducts and that are available to migrant children, or evaluate the availability of other Federal, State, or local funds by collecting data on per-pupil expenditures. Alternatively, an SEA may consider this factor by collecting data on the programs and/or services that are available and offered to migrant children in a local operating agency.

B13. May the SEA consider other factors (in addition to the four required factors) in determining the amount of a subgrant?

Yes. The SEA may consider any other relevant criteria, consistent with the State's service delivery priorities and the nature, scope, and cost of the projects to be implemented.

B14. What are the most common approaches SEAs use to determine subgrant amounts?

The most common approaches in determining the amount of a subgrant are: (1) a “formula” approach, (2) a “negotiation” approach, or (3) a combination of the formula and negotiation approaches.

In the formula approach, the SEA uses quantitative data to generate a total number of points for each local operating agency. The amount of a subgrant is based on the amount of MEP funds the SEA sets aside for subgrants and the subgrantee’s share of those funds based on the proportion that its points are of the grand total of points generated by all eligible subgrantees.

In the negotiation approach, the SEA reviews a description of the proposed activities and a budget request that the local operating agency submits. The SEA determines the final subgrant amounts based on the quality of the proposal and any negotiated adjustments.

In the combination approach, local operating agencies submit project applications based on a preliminary subgrant amount that the SEA determines by formula. The SEA determines the final subgrant amounts based on the quality of the applications and any negotiated adjustments.

B15. What is a "hold-harmless" provision?

"Hold-harmless" provisions cap the year-to-year change in subgrant amounts (e.g., a "hold-harmless" provision might guarantee that each local operating agency receives at least 95 percent of the prior year's allocation), regardless of the numbers or needs of migrant students to be served each year by the various local operating agencies in the State.

B16. May SEAs apply a "hold-harmless" provision in subgranting MEP funds?

No. The statute does *not* authorize SEAs to apply a hold-harmless provision in determining the amount of subgrants. SEAs have great flexibility in determining the best way to distribute MEP funds among their subgrantees. However, in exercising this flexibility, SEAs need to ensure that their subgrant procedures take into account the numbers and needs of migrant children, the priority for services, and the availability of other State, local, and Federal funds. (See Questions B8 through B12 of this chapter.) While the SEA may take into account the amount of funds that a local operating agency carries over from the previous fiscal year, the amount of funds that the local operating agency received in the previous year should not be a factor in subgranting MEP funds.

B17. Should the SEA examine the effects of its subgrant process?

Yes. The SEA should test its subgrant process to determine whether it will permit subgrantees to receive sufficient MEP funds to adequately serve priority for services children and those with the greatest needs.

Subgrant Process

B18. What type of information should an SEA request before making a subgrant to a local operating agency?

The SEA should request information specific enough to allow the SEA to determine if the proposed project will satisfy the requirements of the statute, MEP regulations, the approved SEA application, and the SEA's comprehensive needs assessment and service delivery plan. For example, such information may include:

- the number of eligible migrant children, including the number of those children who are "priority for services";
- an assessment of the special educational needs of those children;
- a description of the measurable goals and outcomes the agency has established in order to address the needs of migrant children;
- the estimated number of students the project will serve;

- a description of the project and the services it will provide, including how the agency will select children for services;
- a description of how the agency will evaluate whether the program achieved its goals and outcomes;
- if schools within the local operating agency intend to combine MEP funds in a schoolwide program, written documentation that the school has met the special educational needs of migrant children in that school;
- for programs of one school year in duration, evidence of the involvement of a PAC;
- a description of the agency's intrastate and interstate coordination efforts, particularly with regard to the transfer of student records;
- a description of the agency's coordination efforts with other local, State, and Federal programs;
- a description of the agency's consultation with private school officials, if there are eligible migrant children attending private schools;
- a budget for carrying out the project's activities, including the availability of other funds from Federal, State, or local programs; and
- any necessary assurances that the SEA requires.

B19. May the SEA approve a project that addresses special educational needs that are not identified in the SEA's comprehensive needs assessment and service delivery plan?

Yes. However, the SEA should first ensure that the local operating agency has sufficiently addressed the needs the SEA identified in its comprehensive needs assessment. It is within the SEA's discretion to fund a project that proposes to address other identified special educational needs of migrant children, if funds are available for this purpose and if services to address these needs are not available from another funding source.

B20. If the number or needs of children to be served or the services to be provided change significantly after the SEA approves the project, may the local operating agency continue to operate the project without providing updated information?

No. The local operating agency should submit updated information and include the following:

- a description of any significant changes in the number or needs of children to be served or the services to be provided;
- a revised budget for the expenditure of MEP funds, if appropriate; and
- other information that the SEA may request.

B21. What constitutes the kind of "significant change" that may require a local operating agency to provide updated information?

SEAs have discretion in determining what constitutes "significant changes in the number or needs of children to be served or the services to be provided." Some examples of "significant changes" might be those that require budget modification, such as: (1) unanticipated needs for major purchases; (2) a change in the type of program needed (e.g., extended day program versus in-school program); or (3) a change in the student population (e.g., the assessment was based on single, school-age males who migrate on their own, but the population is actually families with young children). Other changes in program services, such as a change in the subject areas offered or change in some of the instructional materials used, might not be considered a "significant change" unless they substantially affect the local operating agency's MEP budget.

C. Record keeping

C1. What MEP records are SEAs and subgrantees required to keep?

Sections 76.730 and 76.731 of EDGAR require SEAs and subgrantees to keep records that show:

- the amount of funds under the grant or subgrant;
- how the SEA or subgrantee uses the funds;
- the total cost of the project;
- the share of that cost provided from other sources; and
- other records as needed to facilitate an effective audit.

In addition, the SEA and its subgrantees are required to keep records to show their compliance with program requirements.

C2. How long must the SEA and local operating agency maintain MEP records?

Generally, records must be maintained for three years after the date the grantee or local operating agency submits its last expenditure report for the period in question. (See sections 80.42(b) and (c) of EDGAR.) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year

period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

C3. How long must an SEA or local operating agency keep a COE?

The length of time that an SEA must keep a COE depends on whether the child makes subsequent qualifying moves, which will increase the amount of time. For example, a certificate of eligibility that indicates that a child made a qualifying move in October 2000 means that the child will remain eligible, without another qualifying move, until October 2003. A child eligible in October 2003 would be included in the Category 1 child count for the period September 1, 2003 – August 31, 2004 and would generate FY 2005 funding for the State. FY 2005 funds may be used, with carryover, until September 30, 2007. The SEA does not need to submit the final expenditure report for these funds to the Department until as late as December 31, 2007. *The three year record retention period begins in December 2007 when the SEA submits the final expenditure report and runs until December 31, 2010. Therefore, the SEA would have to keep this particular certificate of eligibility until December 31, 2010.*

C4. What records are necessary to support the salary costs charged to MEP funds for an employee who has both MEP and non-MEP responsibilities?

A grantee must maintain appropriate time distribution records. Actual costs charged to each program must be based on the employee's time distribution records. For instructional staff, including teachers and instructional aides, class schedules that specify the time that such staff members devote to MEP activities may be used to demonstrate compliance with the requirement for time distribution records so long as there is corroborating evidence that the staff members actually carried out the schedules.

C5. For record keeping purposes, may an SEA and local operating agency substitute copies for original records?

Yes. Section 80.42(d) of EDGAR allows SEAs and local operating agencies to substitute original records with copies made by microfilming, photocopying, or similar methods.

C6. Do Federal officials have the right to access official records of a grantee or subgrantee?

Yes. Section 80.42(e) of EDGAR provides that, for purposes of making audits, examinations, excerpts, and transcripts, the Department and the Comptroller General of the United States, or any of their authorized representatives, have the right to access any books, documents, papers, or other records of grantees and subgrantees that are pertinent to the grant.

D. Federal and State Monitoring

D1. What areas may a Federal program review cover?

The Department usually conducts its review of the MEP at the SEA and local level. The review typically covers three areas:

- compliance with applicable Federal laws and regulations, and with the approved State plan;
- identification of exemplary programs and projects; and
- potential need for technical assistance.

D2. May the Department cite an SEA for non-compliance with MEP requirements or the consolidated State application?

Yes. The SEA, as the grantee, is responsible for implementing its program in accordance with the MEP requirements and the consolidated State application. Any failure to adhere to these requirements may expose the SEA to a finding of noncompliance. This could result in the need for either corrective action or a refund of MEP funds. (See section 452(a) of GEPA.)

D3. Must an SEA monitor all grant and subgrant activities?

Yes. Section 80.40(a) of the regulations requires SEAs to "...monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved." This provision also requires the SEA to manage the day-to-day operations of subgrant activities and to monitor each program, function, or activity of the grant. Therefore, the SEA should monitor its subgrantees for compliance with Federal statutes and regulations, applicable State rules and policy, needs assessment findings, the consolidated State application, and the SEA-approved operating agency agreement. To do so, SEAs are encouraged to conduct a systematic review of all MEP activities on a periodic basis to determine whether local operating agencies have made progress toward meeting all approved project objectives.

D4. How often should an SEA monitor a local operating agency project on site?

An SEA should monitor local operating agencies as often as it deems necessary to ensure that the local operating agencies comply with MEP requirements. Thus, if the SEA has reason to believe that one or more local operating agencies are not adequately implementing their projects, it should monitor them more frequently. It is reasonable and appropriate for an SEA to schedule monitoring reviews of these agencies prior to awarding new subgrants.

E. State Rulemaking

E1. Does the statute permit SEAs to adopt their own rules, regulations, and policies regarding the Title I programs, including the MEP?

Yes. Section 1903(a)(1) provides generally that each State may issue rules, regulations, or policies so long as they are consistent with the Title I statute, regulations, and other applicable provisions.

E2. What are the requirements of State rulemaking?

A State that decides to issue rules, regulations, or policies that either govern the State's Title I programs or interpret Federal requirements must: (1) formally involve a committee of practitioners in the State rulemaking process; (2) minimize rules, regulations, and policies to which the State's local educational agencies and schools are subject; (3) eliminate or modify State or local fiscal requirements as needed to facilitate the ability of schools to consolidate funds under schoolwide programs; and (4) identify any such rule, regulation, or policy as a State-imposed requirement. (See section 1903(a)(1) of the statute.)

E3. In what ways must the SEA involve the committee of practitioners in rulemaking?

Section 1903(b) requires the SEA to convene a State committee of practitioners to review any proposed or final rule before publication. Additionally, if a State issues policies, rather than regulations, that the SEA and local operating agencies are required to follow, the State must comply with the same consultation requirements for issuing rules and regulations.

An SEA may issue an interim rule or regulation relating to the administration or operation of the Title I programs (including the MEP) without consulting the committee of practitioners only in an emergency, when time constraints prevent consultation. However, the committee must be convened to review the emergency rule or regulation before it is issued in final form. (See section 1903(b)(3) of the statute.)

E4. How are members of the committee of practitioners chosen?

Members of the committee are chosen under State procedures. Typically, SEAs will select the membership. The SEA is encouraged to solicit nominations for membership from organizations with an understanding of the MEP and of the culture and lifestyle of migrant children and their families.

E5. Are there any requirements regarding who must be included in the committee of practitioners?

Yes. Section 1903(b)(2) of the statute requires the committee to include administrators, teachers, school board members, parents, representatives of private school children, and pupil services personnel. A majority of committee members must be representatives of LEAs or other operating agencies, such as local administrators, teachers, and local school board members.

E6. May members of the State parent advisory council (PAC) be members of the committee of practitioners?

Yes. It may be appropriate to have State PAC members join the committee of practitioners to fulfill the parent membership requirement. However, the State PAC cannot be used as a substitute for the committee of practitioners. The committee serves a broader purpose and its membership differs from that of the PAC in that it includes local operating agency representatives who represent local educational concerns and the interests of local operating agencies.

E7. May the MEP use the same committee of practitioners as the one used by other Title I programs?

Yes. The MEP may use all or part of a committee of practitioners that has been empanelled to review rules or policies for the Title I programs, so long as the committee members are familiar with issues relating to migrant children and the MEP. In such case, the SEA should ensure that the members understand: 1) that the administration and operation of the MEP is the SEA's responsibility (not the LEA's, as in the Title I, Part A program); and 2) that decisions about rules and policies are made at the SEA level unless the SEA delegates this duty to the local operating agencies.

F. Audits

F1. What does the Single Audit Act of 1984 require?

The Single Audit Act of 1984 (as amended by the Single Audit Act Amendments of 1996) requires that an independent auditor annually audit, for internal control and compliance, SEAs or LEAs receiving $300,000 or more a year in Federal assistance. Those receiving less than $300,000 a year are governed by audit requirements prescribed by State or local law or regulation. Under a single audit, auditors test the charges of each major Federal assistance program.

F2. What document do auditors use to conduct audits under the Single Audit Act?

Auditors use the Compliance Supplement to Office of Management and Budget Office (OMB) Circular A-133 (entitled “Audits of States, Local Governments and Non-Profit

Organizations"). The Compliance Supplement identifies important fiscal and programmatic compliance requirements that the Federal Government expects auditors to examine for each major Federal program that they review in a State or local single audit. For the 2003 Compliance Supplement, in addition to cross-cutting program requirements (such as allowable activities and cash management), auditors who audit charges to the MEP are asked to consider compliance with the "priority for services" requirement (See Questions B1-B6 in Chapter V – "Provision of Services.") and the SEA's subgrant process (i.e., whether it takes into account the four factors in the statute). (See Questions B7-B17 of this chapter.)

F3. May an SEA use MEP funds to pay for the cost (or portion of the cost) of a Single Audit?

Yes. An SEA may use MEP funds to pay a prorated share of the cost of the audit according to the percentage the MEP contributes toward the total amount of Federal assistance received by the SEA or LEA. The percentage may be exceeded in cases where appropriate documentation shows that higher actual costs were incurred to audit the MEP program.

F4. Who resolves audit findings?

The Department resolves audits regarding SEAs and SEAs resolve audits regarding local operating agencies.

F5. Who has the authority to conduct audits of the use of MEP funds?

At the Federal level, both the Department's Office of Inspector General (OIG) and the General Accounting Office (GAO) may conduct audits of the use of program funds. The OIG conducts three types of audits: (1) external audits of grantee or contractor operations; (2) internal audits of the Department's administration and management; and (3) national audits of issues or problem areas having national significance and potentially requiring corrective action at the Federal level.

At the State level, audits are conducted annually by independent auditors, as required by the Single Audit Act. States implement this provision through use of a State auditor or hiring an independent auditing firm.

F6. What is the Office of Inspector General (OIG)?

Congress created the OIG through the Inspector General Act of 1978. Although it reports to the Secretary, it is separate and distinct from the program office units in the Department. The authorizing statute establishes OIG as an independent and objective unit that:

- Conducts and supervises audits and investigations relating to the programs and operations of the Department;

- Provides leadership, coordination, and recommendations on activities that: (1) promote economy, efficiency, and effectiveness; and (2) reduce or detect fraud and abuse in the administration of programs; and

- Provides a means of keeping the Secretary and Congress informed about problems and deficiencies relating to the administration of the Department's programs and the necessity for corrective action.

F7. How does a grantee prepare for an audit?

There are certain ongoing activities that assist in preparing for an audit. They are:

- Establishing internal controls;

- Complying with Federal requirements;

- Establishing and maintaining proper record keeping and record retention systems; and

- Requesting and performing internal audits.

F8. What types of internal controls should a grantee have in place?

A grantee should have internal controls that demonstrate, among other things, that:

- Payroll records support charges to Federal funds;

- Procedures exist to verify that charges are allowable under the grant or contract;

- Procedures exist to verify that program participants are eligible; and

- Corrective actions result from monitoring reviews.

F9. What are some characteristics of a good internal control system?

Internal controls should include these components:

- A plan of organization that segregates duties as appropriate in order to safeguard resources;

- A system of authorization and recording procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenses;

- Established practices that each organizational component follows to perform its duties and functions;

- Qualified personnel trained to perform their responsibilities; and

- Effective systems of internal review.

F10. What kinds of activities might be the subject of an audit?

An audit will review such compliance requirements as:

- Eligibility of participants;
- Consolidation of administrative funds;
- Use of unneeded program funds;
- Use of funds in coordinated service projects and schoolwide programs;
- Allowable costs;
- Supplement, Not Supplant compliance;
- Comparability compliance;
- Participation of private school children;
- Period of availability of Federal funds; and
- Financial reporting.

F11. How long must a grantee keep, for audit purposes, records related to a grant?

Grant records that are the subject of an audit initiated prior to the end of the record retention period must be retained until the audit, audit resolution, or audit appeal is complete. Record keeping should establish an audit trail beginning with the preparation of the application, and should include records to support the application. (See Chapter XI – "State Administration" for general record-keeping requirements.)

F12. What happens after the SEA submits the audit to the Department?

The Department reviews the auditor's findings and the SEA's response to determine whether the audit findings are sustainable. If the findings are not sustainable, the Department will inform the SEA that no further action is necessary. If the findings are sustainable, the Department may, depending on the nature of the finding, provide technical assistance, require corrective action, or request a reimbursement of funds. If the Department requires the SEA to take corrective action or reimburse funds, it will issue a program determination letter (PDL) stating the reasons for this determination.

F13. What are the SEA's rights in audit proceedings?

SEAs have a right to comment on the draft and final audit reports. They also have a right to appeal a program determination letter (PDL) to the Department's Office of Administrative Law Judges (OALJ).

G. Complaint Procedures

G1. Should an SEA adopt procedures for resolving complaints about the way it operates the MEP?

Yes. An SEA should adopt written procedures for receiving and resolving any complaint that an SEA or local operating agency is violating a Federal statute or regulation that applies to the MEP. These written procedures should include how the SEA will review appeals of decisions made by local operating agencies and how the SEA will conduct independent onsite investigations of a complaint.

XII. CROSS–CUTTING ISSUES

This chapter includes questions and answers regarding migrant children or the MEP that are addressed in the guidance documents of other programs authorized under ESEA, as amended by NCLB. As the Department issues additional guidance, OME will update this chapter to include other policy guidance that pertains specifically to migrant children or the MEP. Currently, the chapter includes questions from the draft non-regulatory policy guidance issued by the Department for the Title I, Part A program on standards and assessments and paraprofessional qualification requirements. The reader should note that this chapter is not meant to be a substitute for reading these guidance documents in full. It is necessary to read the entire guidance document on a particular subject to understand the context and gain a better understanding of the topic.

A. Standards and Assessments

A1. Must a state include migrant and other mobile students who have not attended a school or LEA for a full academic year in the State's assessment system?

Yes. States must include all children in their State assessments, regardless of the amount of time students have been enrolled in a school or district in the State and regardless of whether the students are to be included for reporting and accountability purposes.

A2. Must a State include migrant students in its assessments if the migrant children are on schedule to return to their "home base" school and will participate in that State's assessment?

Yes. In this situation, some students may be tested twice if they travel between two States that test at different times. However, the ESEA, as amended by NCLB, requires a State to use the same assessment system to measure the achievement of all children. The law and regulations also require a State to test all students in the State in the grades assessed at the time of the assessment. There are no exceptions to this rule. Thus, all migrant students who are enrolled in a grade in which a State assessment is administered must be included in that assessment–regardless of the amount of time they have been enrolled in a school or their anticipated enrollment in another State.

A3. How might States work together to ensure that migrant children who are absent for the State assessment in their "home base" State have an opportunity to take the test?

In accordance with a State's responsibility to promote interstate coordination of services for migratory children (section 1304(b)(3) of Title I, Part C), a State that receives a migratory student for a short period of time during the school year is encouraged to contact and work with the student's "home-base" State regarding the feasibility of an out-of-state administration of the "home-base" State's assessments. For example, Texas has

arranged to have the Texas Assessment of Academic Skills (TAAS), a test required for high school graduation in Texas, administered to migratory students in several other States using local school personnel trained by Texas in the administration of the TAAS. Some States currently participating in this arrangement with Texas include Arkansas, Delaware, Illinois, Iowa, Missouri, Montana, Nebraska, North Dakota, and Washington.

A4. What procedures might a State implement to ensure that assessment data are reliably disaggregated for migrant children for reporting purposes?

It is important for States to develop reliable procedures to ensure that those children who are assessed and who meet the definition of "migratory child" in section 1309(2) of Title I, Part C are properly included in the disaggregation by migrant status. Methods such as self-reporting or teacher identification are not sufficient because of the complexity of the statutory definition of "migratory child."

An acceptable method might include a State providing each school with a list of eligible migrant children enrolled in the school. The list should contain sufficient information for the teacher or assessment proctor to properly identify and code the assessment forms for all eligible migrant children. To the extent that a State's database of student assessment information can be modified electronically, a State might also use data in its migrant student records system to code each assessment record that contains identical student identification information. Additionally, States are encouraged to cross-check the number of disaggregated assessment results for migrant students with school and grade enrollment data on migrant students maintained by the State Migrant Education Program to ensure the accounting for all students.

A5. Should States work together to share the student assessment data for migrant students and other mobile students?

It is recommended that States coordinate with one another so that assessment data of migrant and other mobile students are available to program planners and project staff who work with these students who temporarily reside in their district or State for a short period of time. For example, receiving States that operate summer-term only programs could coordinate with a student's "home base" State to obtain academic assessment data that can be used in improving the alignment of supplemental educational services to student needs.

B. <u>Paraprofessional Qualification Requirements under NCLB</u>

B1. How do the new paraprofessional qualification requirements apply to paraprofessionals in a schoolwide program?

The requirements in B-1 apply to all paraprofessionals with instructional duties in a schoolwide program, without regard to whether the position is funded with Federal, State, or local funds. In a schoolwide program, Title I funds support all teachers and paraprofessionals.

B2. How do the new paraprofessional qualification requirements apply to paraprofessionals in a targeted assistance program?

In a Title I targeted assistance program, the requirements in B-1 apply to all paraprofessionals with instructional duties who are paid with Title I funds.

B3. Do the paraprofessional requirements apply to persons paid with funds under Title I, Part B (Student Reading Skills Improvement Grants), Part C (Education of Migratory Children) or Part D (Programs for Children and Youth who are Neglected, Delinquent, or At-Risk)?

The paraprofessional qualification requirements in B-1 do not apply to individuals paid with funds under Title I, Part B (Student Reading Skills Improvement Grants), Part C (Education of Migratory Children) or Part D (Programs for Children and Youth who are Neglected, Delinquent, or At-Risk), unless these individuals are working in a schoolwide program school. (See Question B1 above for additional information.)

Table 1: Federal Agencies and Programs With Which MEPs Coordinate

Agency	Program	Descripton
Department of Education	Title I, Part A	Provides financial assistance to LEAs and schools with high percentages of poor children to help ensure that all children meet challenging State academic content and student academic achievement standards.
	Reading First – Title I, Part B, Subpart 1	Provides funds to train teachers in the essential components of reading (phonemic awareness, phonics, fluency, vocabulary, comprehension) and to select and administer screening, diagnostic and classroom-based instructional reading assessments to identify those children who may be at risk of reading failure. Also provides funds for professional development for special education teachers, kindergarten through grade 12.
	Early Reading First – Title I, Part B, Subpart 2	Provides early language, literacy, and prereading development of preschool age children, particularly those from low-income families.
	Even Start – Title I, Part B, Subpart 3	Combines adult literacy, parenting education, early childhood education, and interactive literacy activities between parents and children, primarily from birth through age seven.
	Migrant Education Even Start (MEES) – Title I, Part B, Subpart 3	Provides the same services as Even Start with significant concentrations of migrant families.
	English Language Acquisition, Enhancement and Academic	Provides programs that help children who are limited English proficient attain English proficiency, develop high levels

	Achievement – Title III, Part A	of academic attainment in English, and meet the same challenging State academic content and achievement standards as all children are expected to meet.
	Improving Language Instruction Educational Programs – Title III, Part B	Assists in improving and reforming educational programs that serve limited English proficient children.
	21st Century Community Learning Centers – Title IV, Part B	Provides tutorial services and academic enrichment opportunities designed to reinforce and complement the regular academic program in low performing schools.
	Rural Education Initiative – Title VI, Part B	Provides funds to rural districts that lack the personnel and resources to compete effectively for Federal competitive grants and that receive grant allocations in amounts that are too small to be effective in meeting their intended purposes.
	High School Equivalency Program (HEP) – Title IV of the Higher Education Act	Assists migrant students who are 16 years or older in obtaining a General Education Development certificate or the equivalent of a high school diploma.
	College Assistance Migrant Program (CAMP) – Title IV of the Higher Education Act	Assists migrant students in completing their first year of college and provides follow-up services to help them continue in postsecondary education.
	Individuals with Disabilities Education Act (IDEA)	Provides early intervention, transitional services, professional development, technical assistance, and dissemination of knowledge about best practices to improve

		results for children with disabilities, including migrant children with disabilities.
	Migrant and Seasonal Farmworkers with Disabilities Program – Title III of the Rehabilitation Act	Provides comprehensive vocational rehabilitation services to migrant or seasonal farmworkers with disabilities to increase their employment opportunities.
	McKinney-Vento Homeless Assistance Act – Title VII, Subtitle B of the Public Health and Welfare Act	Provides funds to SEAs to ensure that homeless children have equal access to public education, including access to services that enable them to meet the same State student academic and achievement standards to which all students are held.
Department of Labor	Migrant and Seasonal Workers Protection Act (MSWPA) Program	Monitors the adequacy of wages, housing, and transportation for agricultural workers.
	Temporary Alien Agricultural Labor Certification Program (H-2A Program)	Provides temporary, foreign farmworkers for employers who meet certification requirements.
	National Farmworker Jobs Program (NFJP)	Assists migrant farmworkers and their families achieve economic self-sufficiency through job training and other related services that address their employment needs.
Department of Agriculture	National School Breakfast Program	Provides subsidized breakfast services for school children who meet family size and income eligibility standards.
	Summer Food Service Program	Offers free meals to children during months when their schools are closed for vacation. Migrant children, age 18 and younger, may receive up to three meals a day.
	Special Milk Program	Supplies milk to children who do not have access to other meal

		programs and subsidizes milk for school children who meet family size and income eligibility standards.
	Special Supplemental Program for Women, Infants and Children (WIC Program)	Provides food and nutrition services to supplement the diets of low income women, infants, and children up to age 5 who are at nutritional risk.
	Child and Adult Care Food Program	Provides nutritious meals to migrant children, age 15 and younger, who receive day care or whose families live and receive meals in emergency shelters. School-aged children, through age 18, may receive free suppers in afterschool care programs in Delaware, Illinois, Michigan, Missouri, New York, Oregon, and Pennsylvania. In all other states, free afterschool care snacks may be available.
Department of Health and Human Services	Head Start Program	Provides comprehensive developmental services to income eligible children from birth to age 5 in order to increase their school readiness.
	Migrant Head Start Program	Provides the same services as Head Start to migrant children from birth to age five.
	Migrant Health Program	Provides grants to community-based, nonprofit organizations that provide a broad array of culturally and linguistically competent medical and support services to migrant and seasonal farmworkers and their families, including both primary and preventative health care.

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