likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This proposed rule establishes a safety zone and as such is covered by this paragraph.

A preliminary "Environmental Analysis Check List" and "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.935 to read as follows:

§ 165.935 Safety Zone, Milwaukee Harbor, Milwaukee WI.

(a) *Location.* The following area is a safety zone: the waters of Lake Michigan within Milwaukee Harbor including the Harbor Island Lagoon enclosed by a line connecting the following points: Beginning at 43°02′00″ N, 087°53′53″ W; then south to 43°01′44″ N, 087°53′53″ W; then east to 43°01′44″ N, 087°53′25″ W; then north to 43°02′00″ N, 087°53′53″ W; then west to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zones and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Suspension of Enforcement.* If the event concludes earlier than scheduled, the Captain of the Port or a designated representative will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: March 12, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Commander, Coast Guard Sector Lake Michigan.

[FR Doc. E7–8614 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

[Docket ID ED–2007–OESE–0130]

RIN 1810–AA99

Title I—Improving the Academic Achievement of the Disadvantaged (Subpart C—Migrant Education Program)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Migrant Education Program (MEP) administered under Part C of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These proposed regulations are needed to adjust the base amounts of the MEP Basic State formula grant allocations for fiscal year (FY) 2006 and subsequent years (as well as for supplemental MEP awards made for FY 2005); establish requirements to strengthen the processes used by State educational agencies (SEAs) to determine and document the eligibility of migratory children under the MEP; and clarify procedures SEAs use to develop a comprehensive statewide needs assessment and service delivery plan.

DATES: We must receive your comments on or before June 18, 2007.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal

or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select "Department of Education" from the agency drop-down menu, then click "Submit." In the Docket ID column, select ED–2007–OESE–0130 to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to James J. English, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E315, FB6, Washington, DC, 20202–6135.

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

FOR FURTHER INFORMATION CONTACT: James J. English. Telephone: (202) 260–1394 or via Internet: *James.English@ed.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

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

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 3E315, FB–6, 400 Maryland Ave., SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Background

The Department provides MEP formula grants to SEAs to establish or improve programs of education for the Nation's migrant children. These programs of education are expected to address the identified educational and educationally related needs of migrant children that result from their migratory lifestyle and to permit migrant children to participate effectively in school.

Under the ESEA, a core responsibility of each SEA is to ensure that only those children who are eligible for the MEP are identified, counted, and served. Meeting this responsibility is key to ensuring that— (1) States provide MEP-funded services only to eligible migrant children; (2) Each SEA's MEP allocation accurately reflects its statutory share of the funds that Congress annually appropriates for the MEP; and (3) Public confidence in the program's integrity remains strong.

With regard to State MEP allocations, since FY 2002 the amount of an SEA's annual MEP award under section 1303(a)(2) of the ESEA has been tied to the level of its FY 2002 base-year MEP award, which itself is dependent in large part on the SEA's 2000–2001 count of eligible migratory children residing in the State in relation to the counts of other States.

Over the last few years, the Department has become increasingly concerned about the accuracy and consistency of the processes SEAs have used to determine the eligibility of migratory children and the counts of children eligible for services that the SEAs report to the Department. Since 2004, the Office of Elementary and Secondary Education (OESE) and the Office of Inspector General (OIG) have undertaken efforts to examine SEA processes and child counts more closely. In order to assess and confirm the correctness of SEA eligibility determinations, OESE designed and implemented a process under which SEAs voluntarily re-interviewed a statewide, random sample of children they had identified as eligible for the MEP during the 2003–2004 program year. OESE provided guidance on reasonable ways to choose a random sample and to conduct this re-interviewing process, and requested that, following the re-interviews, participating States determine and report to the Department their "defect rate" (*i.e.,* the percentage of children in the State's 2003–2004 re-interview sample that were determined ineligible under the re-interview process).

To date, the vast majority of SEAs have voluntarily completed a re-interviewing process and reported their defect rates. The State-reported defect rates range from zero percent to 100 percent, with a mean defect rate of 9.8 percent and a median defect rate of 5.6 percent. The States that have reported defect rates account for more than 98 percent of the reported count of migratory children eligible for services nationally in the 2003–2004 program year.

Independently, the OIG has completed or, in some cases, is still conducting audits and investigations in a number of States (including States that did not initially participate in OESE's voluntary re-interviewing initiative) and has found errors in State migratory child eligibility counts. In some cases, the errors the OIG or the States found on their own may be actionable as civil or criminal fraud. In other cases, errors may reflect incorrect interpretations of MEP eligibility requirements. In most cases, however, the errors seem attributable to factors such as: Poor training of State and local personnel responsible for determining eligibility; weak quality-control procedures for reviewing child eligibility determinations; and a lack of uniformity

in the implementation of the MEP eligibility requirements.

The OIG findings and the SEA-reported defect rates are very troubling for several reasons. First, they suggest that the level and quality of MEP-funded services that eligible migrant students needed and deserved have been diluted by the delivery of services to children who were not eligible to receive them. Second, they suggest that, over the last several years, the Department may have awarded MEP funds to States on the basis of inaccurate and, in some cases, perhaps significantly inflated State counts of eligible children. And third, because section 1303 of the ESEA requires the Department to use the FY 2002 State MEP allocation as the "base amount" for allocations made to SEAs in subsequent years, the State MEP allocations for FY 2006 and each subsequent year (as well as supplemental FY 2005 awards that were issued in September 2006) will continue to be flawed unless the Department takes action.

Given these considerations, the Secretary is proposing these regulations, which would: Provide for the adjustment of the base amounts of the FY 2006 and subsequent year MEP allocations; clarify and expand the definitions governing who is a "migratory child"; and establish requirements for SEAs to develop and implement rigorous quality-control procedures in order to improve the accuracy of MEP eligibility determinations and State counts of eligible migratory children. The Secretary would also apply the procedures for determining final MEP allocations for FY 2006 and beyond to supplemental FY 2005 MEP awards that were made in September 2006.

The Secretary also proposes to make minor changes to the current regulations governing development of a comprehensive statewide needs assessment and service delivery plan.

Significant Proposed Regulations

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

Title I, Subpart C—Migrant Education Program

Section 200.81 Program Definitions

Agricultural Activity and Fishing Activity

Statute: The definition of *migratory child* in section 1309 of the ESEA refers to agricultural work and fishing work but does not provide for a definition of these terms or the terms agricultural activity and fishing activity.

Current Regulations: Section 200.81(a) and (b) provides definitions of *agricultural activity* and *fishing activity*. In the current definitions, an *agricultural activity* is defined as any activity directly related to: (1) The production or processing of agricultural products for initial commercial sale or personal subsistence; (2) the cultivation or harvesting of trees; or (3) fish farms. A *fishing activity* is defined as any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.

Proposed Regulations: We propose to revise both the terms and definitions relating to *agricultural activity* and *fishing activity*. Specifically, we propose changing the terms *agricultural activity* and *fishing activity* to *agricultural work* and *fishing work,* respectively. We propose to remove the phrases "an activity directly related to" and "for initial commercial sale" from the definitions of both of these terms and to add the word "initial" before the term "processing" in both definitions. We also propose modifying the definitions of *agricultural work* and *fishing work* to include the phrase "work performed generally for wages or in rare cases personal subsistence." Finally, we would modify the definition of *agricultural work* to remove the phrase "any activity directly related to fish farms"; the reference to fish farms would be added to the definition of *fishing work*.

Reasons: We propose the changes to the current terms and definitions of *agricultural activity* and *fishing activity* in order to clarify and simplify these terms. Changing the terms *agricultural activity* and *fishing activity* to *agricultural work* and *fishing work* provides consistency with the statutory definition of *migratory child* in section 1309(2) of the ESEA, which refers to a move being made to obtain temporary or seasonal employment in agricultural or fishing work. In addition, the phrase "any activity directly related to" in the current definitions of *agricultural activity* and *fishing activity* is unnecessary and confusing because it could be interpreted to include an activity (such as trucking services that transport livestock or fish to a processing plant or managing workers in a field or processing plant) that may be directly related to agriculture or fishing but is not inherently agricultural or fishing work; thus, we propose eliminating this phrase.

Further, the phrase "for initial commercial sale" in the current definitions of *agricultural activity* and *fishing activity* was primarily intended to limit the scope of these definitions to work that is involved with the initial processing of raw agricultural products, fish, or shellfish. However, as the definitions are currently written, use of the term "initial" with respect to a commercial sale is confusing, as there are circumstances in the agriculture and fishing industries where there may be two "initial" commercial sales: one associated with the production of agricultural products, fish, or shellfish, and the other associated with the processing of agricultural products, fish, or shellfish. For example, wheat is harvested and sold to a factory for processing into flour. The sale of the wheat to the factory is the initial commercial sale of a crop to the processor. This sale ends the production phase of the crop. The factory then processes the wheat into flour and sells the flour to a bakery. The sale of the flour to the bakery is an initial commercial sale of a processed product (flour) to a next-stage processor and ends the processing phase as a qualifying agricultural activity. Harvesting the wheat and processing the wheat into flour both meet the definition of agricultural activity because they are the production and processing of a crop for initial commercial sale. On the other hand, the processing of the flour into baked goods does not meet the definition of an agricultural activity because an initial commercial sale of a processed product had already occurred when the flour was sold to the bakery.

While removing the reference to "initial commercial sale", we propose to add the word "initial" before the term "processing" in both definitions in order to clarify that only initial processing of raw products is considered agricultural work or fishing work for the purposes of the MEP.

We propose specifying in the revised definitions of *agricultural work* and *fishing work* that these types of work consist of "work performed generally for wages or in rare cases personal subsistence" to clarify that, while there are some rare circumstances in which the worker and his or her family do the work for personal subsistence, the work is generally performed for wages. It is therefore appropriate to include a reference to work performed "generally for wages or in rare cases personal subsistence." Finally, we propose to move the reference to fish farms in the current definition of *agricultural activity* to the new definition of *fishing work*

because this change reflects a more consistent and simpler way of grouping work that involves fishing.

In Order To Obtain

Statute: Section 1309 of the ESEA provides in part that an individual is considered a migratory child if the child or child's parent, guardian, or spouse moved "in order to obtain" temporary or seasonal employment in agricultural or fishing work.

Current Regulations: The current regulations do not define the phrase " 'in order to obtain' * * * temporary or seasonal employment in agricultural or fishing work."

Proposed Regulations: We propose adding a definition of the term *in order to obtain* to clearly require that one of the purposes of the move must be to seek or obtain temporary or seasonal employment in agricultural or fishing work and that, absent this intent, the worker did not move "in order to obtain" temporary or seasonal employment in agricultural or fishing work. In addition, our proposed definition clarifies that a worker did not move in order to obtain temporary or seasonal employment in agricultural or fishing work if the worker would have moved and changed residence even if the work was unavailable.

Reasons: The statutory phrase in section 1309(2) that a migratory move be made "in order to obtain * * * temporary or seasonal employment in agricultural or fishing work" can only mean that the purpose or intent of the worker in making the move must be to seek or obtain that work. We are proposing this change to ensure consistency with the statute and to clarify that a possible contrary interpretation of this language that was included in non-regulatory guidance for the MEP that the Department issued prior to its current draft guidance, issued on October 23, 2003, is inconsistent with the statute. The former guidance indicated that an SEA could determine that a child qualified under the MEP if the child or the child's parent, guardian, or spouse found temporary or seasonal employment in agricultural or fishing work "as a result of the move." To the extent that this phrase may imply that the purpose or intent of the worker is irrelevant, it is inconsistent with the statute. Thus, our proposed definition of *in order to obtain* temporary or seasonal employment in agricultural or fishing work would distinguish between migratory agricultural workers and migratory fishers who move with the intent of obtaining temporary or seasonal employment in agricultural work or fishing work and individuals who move for other purposes but may end up working as a temporary or seasonal laborer in agriculture or fishing at a later date.

Migratory Agricultural Worker; Migratory Fisher; Principal Means of Livelihood

Statute: The statutory definition of *migratory child* refers to but does not further define a *migratory agricultural worker* or a *migratory fisher*.

Current Regulations: The current regulations in 34 CFR 200.81(c) and (e) define the terms *migratory agricultural worker* and *migratory fisher*. In the current definitions, a *migratory agricultural worker* and *migratory fisher* generally mean a person who, in the preceding 36 months, has moved from one school district to another in order to obtain temporary or seasonal employment in agricultural or fishing activities as a principal means of livelihood. The current regulations further define the term *principal means of livelihood,* in § 200.81(f), to mean that the activity plays an important part in providing a living for the worker and his or her family.

Proposed Regulations: We propose to remove the parenthetical phrase "(including dairy work)" from the definition of *migratory agricultural worker*. We also propose to amend the definition of *migratory fisher* to clarify that, in the special case of moves in a school district of more than 15,000 square miles, the migratory fisher must have moved in order to obtain temporary employment or seasonal employment in fishing. We propose to continue, with minor editorial changes, to use the current term (and the associated separate definition restated in proposed § 200.81(i)), *principal means of livelihood,* in the definitions of *migratory agricultural worker* and *migratory fisher*.

Reasons: We are removing the parenthetical "(including dairy work)" from the definition of *migratory agricultural worker* because it is redundant in view of the proposed definition of *agricultural work,* which includes the production and processing of dairy products. We propose to clarify that moves within a school district of more than 15,000 square miles must be "in order to obtain" temporary or seasonal employment in fishing work because this is consistent with the plain meaning of the statutory language in section 1309(2)(c). We propose to continue to use the term and current definition of *principal means of livelihood* in order to continue to clarify that the migratory work performed by a migratory agricultural worker or a migratory fisher must be an important part of providing a living to the migratory worker and his/her family.

Migratory Child

Statute: Section 1309(2) of the statute provides a basic definition of the term *migratory child*.

Current Regulations: The term *migratory child* is defined in § 200.81(d) and is substantially the same as the statutory definition. In general, a *migratory child* is defined as a child whose parent is a migratory agricultural worker or a migratory fisher, and who, in the preceding 36 months, has moved from one school district to another because the parent has moved in order to obtain temporary or seasonal employment in agricultural or fishing work. In addition, the current definition notes that a *migratory child* may move on his or her own as the migratory agricultural worker or migratory fisher (or with a spouse or guardian who is a migratory agricultural worker or migratory fisher), and provides special circumstances for moves within (1) a single-school-district-State and (2) school districts of more than 15,000 square miles.

Proposed Regulations: We propose to revise the organization and language of the definition of *migratory child* to make it clearer that a child may meet the definition if the child is a migratory agricultural worker or migratory fisher in his or her own right, or by accompanying or joining a parent, guardian, or spouse who is a migratory agricultural worker or migratory fisher.

Reasons: We propose revising the definition of *migratory child* because, as taken verbatim from the statute, it is convoluted and confusing. The revised definition seeks to clarify that a child may be a *migratory child* by moving either (1) as a migratory agricultural worker or migratory fisher in his or her own right or (2) as the child or spouse of such a worker. We also propose to revise the regulation to clarify what has been a longstanding policy in the program's non-regulatory guidance: that a *migratory child* includes both a child who accompanied the worker and a child who has joined a worker in a reasonable period of time.

Moved or Move

Statute: The statute does not provide a meaning for the terms *moved* or *move*.

Current Regulations: The current regulations also do not define the terms *moved* or *move*.

Proposed Regulations: We propose adding a definition for the terms *moved* or *move* to specify that either of these

terms means that a change in residence was made in order for the worker to obtain temporary or seasonal employment in agricultural or fishing work. We further propose that this definition not include travel or moves that occur either (1) during or after a vacation or holiday, or (2) for other personal reasons unrelated to seeking or obtaining temporary or seasonal employment in agricultural or fishing work even if this work is subsequently sought or obtained.

Reasons: While our non-regulatory guidance has for many years referred to the terms "moved" and "move" in a similar way, some States have determined as eligible under the MEP children who simply returned home from a trip to visit relatives or from a location where they briefly stayed for other personal reasons. We do not consider these types of relocations to constitute a move for purposes of determining eligibility under the MEP because they are not made for the purpose of obtaining temporary or seasonal employment. This new definition, therefore, is necessary to make clear that a move under the MEP would not include travel that occurs as a result of a vacation, holiday, or for other personal reasons unrelated to obtaining temporary or seasonal employment in agricultural or fishing work even if such work is subsequently sought or obtained.

Personal Subsistence

Statute: The ESEA does not define the term *personal subsistence* for purposes of the MEP.

Current Regulations: The current regulations also do not provide a definition of the term *personal subsistence* although the term is used in the current definitions of the terms *agricultural activity* and *fishing activity* and the proposed definitions of *agricultural work* and *fishing work*.

Proposed Regulations: We propose adding a definition to clarify that, in the context of the proposed definitions of *agricultural work* or *fishing work* (which would replace the terms *agricultural activity* and *fishing activity*), *personal subsistence* means that the worker and his or her family perform such work in order to consume the crops, dairy products, or livestock they produce or the fish they catch in order to survive. This proposed definition of *personal subsistence* would not include situations in which a family simply tends a backyard garden for personal consumption because the produce obtained from such gardening work, even though consumed by the family, is not necessary in order for the family to survive.

Reasons: This proposed definition is intended to establish a consistent standard for all States to use in determining whether agricultural work or fishing work is performed for personal subsistence.

Seasonal Employment

Statute: The statute does not define the term *seasonal employment*.

Current Regulations: The current regulations also do not define this term.

Proposed Regulations: We propose adding a definition of the term *seasonal employment* to mean employment that is dependent on the cycles of nature (e.g., employment in agricultural work that lasts for a particular period of time due to specific meteorological or climatic conditions associated with the cultivation or harvesting of crops).

Reasons: This additional definition is necessary to explain the meaning of the term seasonal employment as used in the statutory definition of *migratory child*. As such, it helps to distinguish between agricultural or fishing work that is seasonal employment (i.e., which lasts only for a particular season due to specific meteorological or climatic conditions) versus agricultural or fishing work that is temporary employment.

Temporary Employment

Statute: The ESEA does not define the term *temporary employment* for purposes of the MEP.

Current Regulations: The current regulations also do not provide a definition of *temporary employment*.

Proposed Regulations: We propose adding a definition of the term *temporary employment* to specify that this type of employment lasts for a limited period of time, usually a few months, and does not include employment that is constant and year-round. The definition includes examples of situations where employment in agriculture or fishing is temporary. The definition also clarifies that there are some circumstances (e.g., livestock processing plant facilities) in which an employer does not classify the work as temporary and workers may remain employed indefinitely but, in which, perhaps because of the nature of the work, the actual employment patterns of workers strongly indicate that employment in this agricultural or fishing work lasts only for a limited period of time. In these specific circumstances, we propose that an SEA may determine these types of employment to be temporary if it can document through annual surveys (by individual job site) of workers who move to obtain this work that virtually no workers remain employed more than 12 months.

Reasons: This proposed definition is intended to establish a consistent standard (1) applicable to employment in both production and initial processing activities, and (2) for all States to use in determining which types of employment in agricultural work and fishing work are temporary. This proposed definition is also intended to set a higher standard than we currently have in place in our non-regulatory guidance—where we have provided that SEAs can deem a job temporary if an employer certifies that the job has more than a 50 percent turnover rate in 12 months. We envision that the proposed annual survey of workers to establish whether or not particular types of work can be deemed temporary would be included as part of the annual process that SEAs already conduct to re-establish the continued residency of previously-identified children over the 3-year window of eligibility. We believe that the proposed terms "a few months" and "virtually no workers * * * will remain employed for more than 12 months" will allow the SEAS some flexibility to respond to different conditions in different States and different work sites and avoid setting precise criteria that may not take into account future changes in agricultural or fishing work (e.g., longer seasons due to improved farming or fishing technologies). We do not wish to set arbitrary limits, especially because it is unclear that one fixed rate would be appropriate in all situations. For example, there is likely to be more precision in determining these rates in sites with larger numbers of workers than in sites with small numbers of workers. This said, we wish to solicit public comment specifically on whether to retain the proposed terms "a few months" and "virtually no workers * * * will remain employed more than 12 months," whether those terms create opportunities for abuse, whether firm time limits and worker numbers or percentages should and might reasonably be established, and what those time limits or percentages might be. We also wish to solicit comments on whether there are additional regulatory requirements relating to the survey of workers to establish whether particular types of work are temporary that would: Improve the quality or consistency of the data; or provide for more efficient methods to collect this data.

Section 200.83 Responsibilities of SEAs To Implement Projects Through a Comprehensive Needs Assessment and a Comprehensive State Plan for Service Delivery

Statute: Under section 1306(a) of the ESEA, each SEA receiving MEP funds must ensure that it and its operating agencies identify and address the special educational needs of migratory children in accordance with a comprehensive needs assessment and service delivery plan that meets the requirements of that provision. Among other things, section 1306(a) states that the comprehensive State plan for service delivery must contain measurable program goals and outcomes.

Current Regulations: Section 200.83 clarifies the statutory responsibilities of an SEA receiving MEP funds regarding the development of a comprehensive needs assessment and service delivery plan. Section 200.83(a)(1) requires the plan to specify the performance targets "that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness," as well as "[a]ny other performance targets that the State has identified for migratory children." However, the regulation does not reference the need for the plan to specify measurable outcomes related to those performance targets.

Proposed Regulations: We propose to revise § 200.83 to clarify that the SEA's comprehensive needs assessment and plan for service delivery must also include the measurable outcomes that the State's MEP will produce for migratory children in relation to—

(1) The performance targets the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as, if any, for children participating in school readiness programs, and

(2) Any other performance targets it has adopted for migratory children.

Reasons: When the Department issued § 200.83, it failed to include one of the statutory requirements for a needs assessment and service delivery plan, i.e., measurable outcomes. Unfortunately, a number of States appear to have assumed that the requirements contained in § 200.83 were exhaustive. The proposed change, therefore, would simply clarify in the regulations what the statute already requires—that an SEA's comprehensive plan must include both the specific performance targets (i.e., goals) it has established in keeping with the statute and its measurable outcomes relative to those targets.

Section 200.89(a) Allocation of Funds Under the MEP for Fiscal Year (FY) 2006 and Subsequent Years

Statute: Section 1303(a)(2) and (b) of the ESEA establishes a formula for State MEP allocations for FY 2003 and subsequent years under which each State receives the "base amount" awarded to it for FY 2002 and a share of any additional funds that Congress appropriates for the MEP over the level of the MEP's FY 2002 appropriations. Both the base amount and the amount of additional funds each State is entitled to receive are derived in part from State-submitted counts of eligible migratory children. In addition, section 1303(c)(1) directs the Secretary to reduce ratably the amount of State awards to reflect the actual amount Congress appropriates for the MEP in any fiscal year. Section 1303(c)(2) permits the Secretary to further reduce a State's MEP allocation if the Secretary determines, based on available information on the numbers and needs of eligible migratory children in the State and the State's program to address those needs, that the amount that would be awarded exceeds the amount the State needs.

Section 1303(e)(1) also directs the Secretary to use such information as most accurately reflects the actual number of migratory children in a State in calculating the amount of State MEP allocations. Finally, section 1304(c)(7) requires each SEA to provide an assurance in its application for funds that it will assist the Secretary, through such procedures as the Secretary requires, in determining the eligible numbers of migratory children in the State for purposes of making State MEP allocations.

Current Regulations: The current regulations do not address State MEP allocations and the formula used to calculate those allocations.

Proposed Regulations: Proposed § 200.89(a) would establish a procedure for the Secretary to use State defect rates that the Secretary accepts as the basis for adjusting the 2000–2001 counts of eligible children, and thereby determine the base amount of a State's MEP award for FY 2006 and subsequent years. The proposed regulation would also require, as a condition to an SEA's receipt of its final FY 2006 and subsequent-year MEP awards, thorough re-documentation of the eligibility of all children (and the removal of all ineligible children) included in an SEA's 2006–2007 MEP child counts.

Reasons: We know, as a result of the voluntary re-interviewing initiative and OIG's findings, that many of the State migratory child counts that were submitted to the Department for 2003–2004 were inaccurate to some degree. As further discussed in this preamble, we believe that there is significant reason to believe that comparable inaccuracies affect the SEAs' 2000–2001 counts of migratory children as well. Hence, we also believe that to continue to base MEP allocations on those 2000–2001 counts would be contrary to the statutory requirement that the Secretary award funds on the basis of "such information as the Secretary finds most accurately reflects the actual number of migratory children" in each State.

Section 1303(a) of the ESEA provides that MEP allocations for FY 2003 and beyond are to be based in part on the States' counts for 2000–2001 of the following: (1) All migratory children residing in their States during that year, and (2) all migratory children who participated in MEP summer and intersession programs during that year. It is inconceivable however that, in enacting section 1303(a), Congress intended the Department to continue to use the FY 2002 MEP State allocations amounts to make subsequent years' awards if the underlying State counts of eligible migratory children that supported the FY 2002 allocation determinations were inaccurate. Congress also provided in section 1304(c)(7) of the ESEA that States would have continuing responsibility to "assist the Secretary in determining the number of migratory children [used in calculating State MEP allocations] through such procedures as the Secretary may require." The Department annually provides instructions to the SEAs regarding the submission of accurate counts of migratory children in the "Migrant Child Count Report for State Formula Grant Migrant Education Programs under the [ESEA]" (OMB No. 1810–0519), and, by receipt of MEP funding through consolidated State applications submitted under section 9302 of the ESEA, each SEA provides an assurance to "adopt and use proper methods of administering each such program, including the enforcement of any obligations imposed by law. * * *" Given these related requirements, the responsibility of SEAs under section 1304(c)(7) of the ESEA to assist the Secretary in determining the number of migratory children clearly includes a responsibility to correct any originally submitted child counts that were inaccurate.

Therefore, we believe that, to make the appropriate allocations for FY 2006 and subsequent years consistent with the statute, the Department must re-

determine each SEA's FY 2002 base allocation amount by applying the defect rate accepted by the Department to the SEA's 2000–2001 child counts, and then use the adjusted base allocation amounts to calculate the allocations for FY 2006 and subsequent years.

When the Department began the re-interviewing initiative, it acknowledged that, because of the passage of time, States could face significant challenges in locating all of the children within their random sample of children counted in 2000–2001 for the purposes of conducting the needed re-interviews. For this reason, the Department gave participating States the option of conducting re-interviews for a random sample of children identified either (a) in 2000–2001, or (2) in 2003–2004, in which case the Department would apply the defect rate for that year to the State's reported 2000–2001 child counts.

We have no reason to believe that the defect rates States have reported for 2003–2004 would have been significantly different had States been able to conduct eligibility re-interviews of children they had identified as eligible for the MEP in 2000–2001. Indeed, for defect rates of children identified as eligible in 2000–2001 to be lower than those reported for 2003–2004, one would have to assume that State procedures for identifying eligible migratory children deteriorated between 2000–2001 and the time States conducted their re-interviews of children in their 2003–2004 migratory child counts. Given the major emphasis the Department has placed in recent years on improved migratory child eligibility decisions, we believe that State procedures for identifying eligible migratory children should have improved since 2000–2001.

Proposed § 200.89(a) notes that the Department would use State defect rates "that the Secretary accepts" for adjusting the 2000–2001 counts of eligible children, and thereby determine the base amount of a State's MEP award for FY 2006 and subsequent years. To determine that the reported defect rates are acceptable, the Department will review how each State determined its defect rate. To the extent that a defect rate is determined from the review not to be acceptable, a State would be required under proposed § 200.89(b) to conduct further re-interviewing. We consider it necessary to conduct this review to determine the acceptability of reported defect rates, and perhaps require additional re-interviewing, because States did not use identical methodologies in determining their defect rates.

We acknowledge that the State defect rates the Secretary ultimately accepts will not perfectly correct for errors in the 2000–2001 migratory child counts that States previously reported. However, we firmly believe that their use will enable the Department to distribute MEP funds for FY 2006 and subsequent years in a way that much better reflects the ESEA statutory formula and congressional intent than would the continued use of the original and inaccurate 2000–2001 child counts.

Finally, proposed § 200.89(a)(2) requires re-documentation of the eligibility of all children (and the removal of all ineligible children) as a condition to SEA receipt of final FY 2006 and subsequent-year MEP awards. From a practical standpoint, we expect that this re-documentation effort can be completed as an SEA carries out its annual activities relative to examining whether children previously identified as eligible in a prior performance year (and who have eligibility under the statutory definition for 36 months) are still resident and can be counted and served as eligible under the program. We would expect SEAs to carefully examine the underlying eligibility of all previously-identified migratory children relative to the types of problems identified during the retrospective re-interviewing as causing defective eligibility determinations. We propose this re-documentation effort in order to ensure that only eligible migratory children receive MEP funded services and are included in an SEA's 2006–2007 MEP child counts.

Section 200.89(b) Responsibilities of SEAs for Re-Interviewing To Ensure the Eligibility of Children Under the MEP

Statute: Section 1309(2) of the ESEA provides the definition of a *migratory child* that States must use to determine eligibility for MEP services. Section 1304(c)(7) requires that SEAs assist the Secretary, through such procedures as the Secretary requires, in determining the eligible numbers of migratory children in the State.

Current Regulations: The current regulations do not require States to conduct re-interviewing to ensure eligibility of children under the MEP.

Proposed Regulations: Proposed § 200.89(b) would require SEAs to conduct retrospective and prospective re-interviewing of children to confirm their eligibility. Retrospective re-interviewing would be required for those SEAs that have either (1) not conducted a re-interviewing process on a statewide random sample of identified migratory children and submitted a defect rate to the Secretary, or (2) submitted a defect rate that the Secretary does not accept. The proposed regulations identify minimum requirements for retrospective re-interviewing as well as the minimum content of the report that these States would need to submit to the Secretary on the defect rate and re-interviewing process.

Prospective re-interviewing would be required of all SEAs annually in order to provide an improved quality-control check on the accuracy of their current eligibility determinations and to guide any needed corrective actions or improvements in a State's migratory child identification and recruitment practices.

Reasons: Nearly all SEAs voluntarily re-interviewed a random sample of their identified migratory children and submitted a defect rate to the Department. However, a few did not. As a matter of fairness, and to ensure that the procedures the Department would use to calculate the final amount of each State's MEP award for FY 2006 and subsequent years reflect defect rates that the Secretary accepts for all States, the Secretary proposes to require that those last few States conduct retrospective re-interviewing. The proposed regulations require the retrospective re-interviewing to be completed within six months of the effective date of these regulations by those SEAs that did not conduct a retrospective re-interviewing process on a voluntary basis. We believe requiring completion of retrospective re-interviewing within six months of the effective date of the regulations is appropriate based on our analysis of the amounts of time needed by SEAs who conducted the re-interviewing process voluntarily.

The minimum elements of both the retrospective re-interviewing process and the report to the Secretary are included in proposed § 200.89(b) in order to clarify the procedures the Secretary expects States will use to determine and report a defect rate, and that the Secretary will review in assessing whether the reported defect rate is acceptable in order to adjust the base amounts of the FY 2006 and subsequent year MEP allocations. As set forth in the regulations, the minimum elements of retrospective re-interviewing would include: use of a statewide random sample (at a 95 percent confidence level with a confidence interval of plus or minus 5 percent); use of independent re-interviewers; and calculation of a defect rate based on the number of sampled children determined ineligible as a percentage of those sampled children whose parent/guardian was actually re-

interviewed. The minimum elements for reporting on retrospective re-interviewing would include: An explanation of the sample and the re-interview procedures, and the findings and corrective actions, as well as an acknowledgement that the defect rate can be used to adjust the 2000–01 child counts previously submitted by the State and used to determine the FY 2002 base year allocations.

To date, the Department has addressed various elements of quality control in non-regulatory guidance. However, since the counts of migratory children the States have reported have been found to include children ineligible for the program, we believe that it is necessary to require through regulations some minimum requirements for a State's quality-control system. (In this regard see the further discussion regarding proposed § 200.89(d).) In particular, we now propose that all States be required to conduct a process of prospective re-interviewing to ensure that State migratory child counts are not again affected by improper eligibility determinations. As described in proposed § 200.89(b)(2), prospective re-interviewing would include, as part of a State's system of quality controls, the face-to-face re-interviewing of a sufficient sample of identified migratory children (selected randomly on a statewide basis or within relevant strata) so as to enable the State to annually assess the level of accuracy of its eligibility determinations, uncover eligibility problems, and improve the accuracy of their child count determinations.

It should be noted that while the regulation proposes that retrospective re-interviewing be based on a statewide random sample (at a 95 percent confidence level with a confidence interval of plus or minus 5 percent), the regulation also proposes that prospective re-interviewing be based on a sufficient sample of identified migratory children. This is the case since the defect rate to be calculated from the retrospective re-interviewing sample must be able to be generalized to the State's entire population of identified migratory children, while, for prospective re-interviewing, the sample to be re-interviewed must only be of sufficient size and scope to enable the prospective re-interviewing process to serve as an adequate early warning system of developing eligibility problems. The samples for prospective re-interviewing can be selected randomly on a statewide basis or within relevant strata; the Department plans to provide updated guidance concurrent with the issuance of the final rule providing instruction on how to appropriately conduct sampling to satisfy this requirement.

The regulation proposes prospective re-interviewing on an annual basis. As discussed in the Paperwork Reduction Act submission to OMB, we expect that SEAs will need to prospectively re-interview no more than 100 families (on average) and that the burden would amount to less than 8,700 person-hours annually. However, the Department remains interested in the additional burden that mandatory prospective re-interviewing would impose and, therefore, requests comments on whether prospective re-interviewing on a different interval (e.g., biannually) would continue to be effective and efficient, while still retaining the program integrity goals outlined here.

The proposed regulation would also require each SEA to implement needed corrective actions or improvements, including corrective actions required by the Secretary, in order to address any problems identified through prospective re-interviewing with child eligibility determinations.

Section 200.89(c) Responsibilities of SEAs To Document the Eligibility of Migratory Children

Statute: Section 1309(2) of the ESEA provides the definition of a *migratory child* that each SEA must use to determine eligibility of a migratory child. Except for the very limited exceptions specified in section 1304(e) of the ESEA that govern continuity of MEP services to children whose eligibility has terminated, sections 1302 and 1304(a) require SEAs to provide MEP services only to eligible migratory children.

Current Regulations: While § 76.731 of the Education Department General Administrative Regulations (EDGAR) [34 CFR 76.731] requires SEAs to keep records to show their compliance with program requirements, the current MEP regulations do not specify a standard procedure for SEAs to document a child's eligibility under the MEP.

Proposed Regulations: Proposed § 200.89(c) would require that all SEAs and local operating agencies use a standard, national Certificate of Eligibility (COE) developed and promulgated by the Department to record and certify the accuracy of basic information documenting the eligibility of a migratory child. One COE would be completed per family per qualifying move and include basic information on each eligible child (e.g., name, age, grade). Proposed § 200.89(c) also identifies the SEA (i.e., the MEP grantee) as the responsible entity for all eligibility determinations, and would require an SEA to collect additional documentation on the child beyond that contained on the COE, as may be necessary to confirm a child's MEP eligibility.

Reasons: The Secretary proposes to require use of a standard COE on which all SEAs would record the minimum information necessary to confirm migratory child eligibility because she believes that use of a more systematic national procedure is needed to help ensure that acceptable documentation exists for all children in the Nation who are found eligible for the MEP. Under section 9304(a)(1) of the ESEA, each SEA that receives MEP funds already must provide an assurance that it will administer all ESEA programs in accordance with applicable statutes and regulations, and section 1302 of the ESEA places responsibility on these SEAs to use their MEP funds, either directly or through local operating agencies, to establish or improve education programs "for migratory children in accordance with [Title I, Part C of the ESEA]." In addition, section 80.40 of EDGAR provides that each SEA is "responsible for managing the day-to-day operations of grant and subgrant supported activities," and for "monitor[ing] grant and subgrant supported activities to assure compliance with applicable Federal requirements." Despite these requirements, given that incorrect eligibility determinations have been a pervasive problem in many States, we believe further regulation is necessary to avoid any uncertainty about an SEA's responsibility for all MEP eligibility determinations in the State—whether made directly by the SEA, or by its local operating agencies, subgrantees, or contractors.

Section 200.89(d) Responsibilities of an SEA To Establish and Implement a System of Quality Controls for the Proper Identification of Eligible Migratory Children

Statute: Section 9304(a)(6) of the ESEA requires each SEA to provide an assurance that it will "maintain such records * * * as the Secretary may find necessary to carry out the Secretary's duties," which would include the duty to collect the most accurate unduplicated counts possible of migratory children that each State had identified. However, the ESEA does not address the need of each SEA to maintain a system of quality controls designed to ensure the accuracy of child eligibility determinations under the MEP.

Current Regulations: Current MEP regulations do not address a system of quality controls that all SEAs must have in place to ensure the accuracy of eligibility determinations.

Proposed Regulations: Proposed § 200.89(d) would establish minimum requirements for a system of quality controls that all SEAs would need to implement to ensure accurate child eligibility determinations.

Reasons: Section 76.731 of EDGAR requires each SEA and subgrantee to "keep records to show its compliance with program requirements." However, as with section 9403 of the ESEA, it does not identify the steps SEAs need to take to ensure that their records are accurate. Generally, further regulations of this kind are not necessary. The program statutes and regulations, the cost principles contained in Office of Management and Budget circulars, as well as generally accepted audit standards, usually provide sufficiently clear instructions. Indeed for many years, the Department has treated quality control as a matter simply to be addressed in successive revisions of non-regulatory guidance issued for the MEP.

However, the findings of pervasive problems with prior eligibility determinations underscore that more is needed with regard to documentation of the correctness of determinations on migratory child eligibility. While the proposed regulations on prospective re-interviewing in § 200.89(b), if finalized, would be an important step to help confirm, after the fact, whether eligibility determinations have been correctly made, it would not be a substitute for front-end, process-oriented quality controls to make sure those determinations are made correctly at the beginning of the process.

Consequently, the Secretary proposes the requirements in § 200.89(d) to establish a clear set of both front-end, process-oriented quality controls and after-the-fact, product-oriented quality controls that SEAs and their local operating agencies or contractors would be required to use to improve and ensure the accuracy of child eligibility determinations for the MEP. The Department has for years included many of these elements in successive versions of non-regulatory guidance it has issued for the MEP. However, it is possible that because the Department has treated this matter as deserving only of guidance, some SEAs may have de-emphasized the pivotal importance of sound quality control procedures. Establishing such procedures now as a regulatory requirement governing an SEA's receipt and expenditure of MEP funds will help to ensure that SEAs examine whether or not they are adequately addressing some of the factors—such as poor or infrequent recruiter training and supervision, and lack of substantive review of COEs—that the national re-interviewing initiative and OIG have identified as contributing to the prevalence of incorrect eligibility determinations.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is significant under section 3(f)(4) of the Executive order.

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

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

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

Summary of Potential Costs and Benefits

These proposed regulations require SEAs to establish specific procedures to standardize and improve the accuracy of program eligibility determinations and clarify requirements for development of comprehensive statewide needs assessments and service delivery plans. The primary impact of the regulations is on SEAs that receive MEP funds and the children who are eligible for services under the MEP. By requiring SEAs to establish procedures to improve the accuracy of their eligibility determinations, the regulations will ensure that program funds and the services they fund are directed only to children who are eligible to receive services and reduce the possibility that children who are not eligible for services receive program benefits. The regulations the Secretary proposes to issue through this notice would also add clarity where the statute is ambiguous or unclear.

The Department estimates that the additional annual cost to recipients to comply with these regulations will be approximately $4.5 million:

- Adding measurable program outcomes to the State comprehensive MEP service delivery plan [§ 200.83] will cost approximately $600 annually;
- Re-interviewing samples of students [§ 200.89(b)] will cost approximately $220,000 annually;
- Documenting the eligibility of migratory children, including the use of a standard COE [§ 200.89(c)] will cost approximately $2.8 million annually; and
- Institution of specific quality control procedures [§ 200.89(d)] will cost approximately $1.5 million annually.

This estimate is based on and further explained in the information collection package required under the Paperwork Reduction Act of 1995 and discussed in more detail elsewhere in this notice.

The proposed regulations will not add significantly to the costs of implementing the MEP since we estimate that the SEAs are currently expending approximately these amounts implementing various eligibility determination activities, but the proposed regulations will add significantly to the consistency of eligibility determinations by standardizing the eligibility determination process nationally. The Department believes the activities required by the proposed regulations will be financed through the

appropriation for Title I, Part C (MEP) and will not impose a financial burden that SEAs and local educational agencies will have to meet from non-Federal resources.

The proposed regulations will help maintain public confidence in the program and ensure its continued operational integrity. As discussed elsewhere in this notice, Department analyses have shown that, on average, close to 10 percent of the children identified by SEAs as eligible for services for school year 2003–04 did not meet the statutory eligibility criteria. The proposed regulations will provide a benefit by ensuring that program funds are directed only to eligible migratory children. Increased accuracy will also ensure that program funds are allocated in the proper amounts and to the locations where eligible children reside. If implementation of the regulations results in 10 percent of currently participating children being determined ineligible, then some $38 million annually (10 percent of the appropriation) would be redirected from services to statutorily ineligible children to serving children who meet the statutory criteria. Because the statute is intended to focus on eligible children who have a genuine need for services (as a result of having made a qualifying move), there is a clear societal benefit to ensuring that program funds are used only to serve eligible students.

More specifically, society as a whole benefits when migratory children receive educational services targeted to their specific needs. As noted in numerous studies since the nineteen sixties,[1] the migratory children who are eligible to receive program benefits constitute a particularly needy and vulnerable school population. Migrant families tend to live in poverty, speak limited English, and lack access to preventive medical care. Few children from migrant families attend preschool, and they are often enrolled in high-poverty schools. Migratory youth are at high risk for dropping out of school without attaining a high school diploma. Access to education can help mitigate the effect of these risk factors. Preschool education prepares small children for the demands of elementary education and encourages parents to become active learners along with their children. Children who receive educational services targeted to address their specific needs are more likely to be successful in school and to receive other marginal services, such as vaccinations and health screenings, that are associated with school attendance. Youth who complete high school generally earn more in their lifetime than those who don't earn a high school diploma. These regulations benefit society because they require safeguards to ensure that the neediest migrant children will be identified and receive the services that will help them succeed in school.

There is also a potential cost to migratory children if these regulations are not enacted. In the absence of regulations, recipients have diluted the quantity and quality of services available to children who are legitimately eligible for services under the program by serving significant numbers of children who are not eligible. Since MEP services are only available to eligible children for a short period of time, preventing truly eligible migratory children from receiving the services they are entitled to may have an adverse effect on their educational attainment.

2. Clarity of the Regulations

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

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

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 200.81 Program Definitions.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because these proposed regulations affect SEAs primarily. SEAs are not defined as "small entities" in the Regulatory Flexibility Act. The only small entities that could be subject to the proposed regulations would be small local educational agencies that receive MEP sub-grants from the SEA to act as "local operating agencies" under the MEP. In the case of these entities, as local operating agencies, they could be required to identify eligible migratory children; however, the costs of doing so would be financed through the State Title I, Part C MEP appropriation and would not impose a financial burden that a small entity would have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

The proposed regulations listed in the following chart contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to OMB for its review.

Regulatory section	Collection information	Collection
§ 200.83	Requires SEAs to add measurable program outcomes into the comprehensive MEP State plan for service delivery.	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.
§ 200.89(b)(1)	Requires States to conduct retrospective re-interviewing ..	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.
§ 200.89(b)(2)	Requires States to conduct retrospective re-interviewing ..	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.

[1] See, for example, *Invisible Children: A portrait of migrant education in the United States,* National Commission on Migrant Education, U.S. Govt. Printing Office, Sept. 23, 1992; and *The same high standards for migrant students: Holding Title I schools accountable,* United States Department of Education, Washington, DC, 2002.

Regulatory section	Collection information	Collection
§ 200.89(c)	Requires States to document the eligibility of migratory children.	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.
§ 200.89(d)	Requires SEAs to establish a system of quality controls	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.

Respondents to this collection consist of State or local educational agencies. The collection of information is necessary to accurately identify and serve eligible migratory children. The proposed frequency of response is no more than annually.

The estimated total annual reporting and recordkeeping burden that will result from the collection of information is 510,456 hours. The estimated average burden hours per response are approximately 1,580 hours per each of 15 State respondents and 0.5 hours per each of 4,500 migrant parent respondents to address (on a one-time basis) the requirements of § 200.89(b)(1) for retrospective re-interviewing. We estimate that it will require approximately 152 hours per each of 49 State respondents and 0.5 hours per each of 2,450 migrant parent respondents to address (annually) the requirements of § 200.89(b)(2) for prospective re-interviewing. We estimate that it will require approximately 17,347 hours per each of 49 States and 1.5 hours per each of 300,000 parents (overall) to address the requirements of § 200.89(c) for documenting the eligibility of migratory children. We estimate that it will require approximately 1,220 hours per each of 49 States to address (annually) the requirements of § 200.89(d) to establish and implement adequate quality controls. We also estimate that the data burden associated with the proposed change in § 200.83 to add measurable program outcomes into the comprehensive MEP State plan for service delivery will not total more than one hour.

If you want to comment on the information collection requirements, please address your comments to the Desk Officer for Education, Office of Information and Regulatory Affairs, OMB, and send via e-mail to *OIRA_DOCKET@omb.eop.gov* or via fax to (202) 395–6974. Commenters need only submit comments via one submission medium. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble. We consider your comments on these proposed collections of information in—

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

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

Intergovernmental Review

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

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

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in §§ 200.81 through 200.89 may have federalism implications, as defined in Executive Order 13132, in that they will have some effect on the States and the operation of their State MEPs. It should be noted that several major components of the proposed regulations—*i.e.*, the need for all SEAs to complete the retrospective re-interviewing and the need for more and clearer eligibility definitions—were proposed to the Department by various State and local MEP staff in numerous public meetings over the last several years. We encourage State and local elected officials to review and provide comments on these proposed regulations. To facilitate review and comment by appropriate State and local officials, the Department will, aside from publication in the **Federal Register**, post the NPRM to our MEP Web site and to the Office of Elementary and Secondary Education (OESE) Web site; make a specific email posting via a special listserv that is sent to each MEP State Director; and make a special posting to a more general MEP listserv that is accessed by State and local MEP staff other than State Directors.

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(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children.)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Allocation

of funds, Children, Coordination, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Local operating agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Quality control, Re-interviewing, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: May 1, 2007.

Kerri L. Briggs,

Acting Assistant Secretary, for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C 6301 through 6578, unless otherwise noted.

2. Revise § 200.81 to read as follows:

§ 200.81 Program definitions.

The following definitions apply to programs and projects operated under subpart C of this part:

(a) *Agricultural work* means the production or initial processing of crops, dairy products, poultry, or livestock, as well as the cultivation or harvesting of trees. It consists of work performed generally for wages or in rare cases personal subsistence.

(b) *Fishing work* means the catching or initial processing of fish or shellfish or the raising or harvesting of fish or shellfish at fish farms. It consists of work performed generally for wages or in rare cases personal subsistence.

(c) *In order to obtain,* when used to describe the purpose of a move, means that one of the purposes of the move is to seek or obtain temporary employment or seasonal employment in agricultural work or fishing work. A worker has not moved in order to obtain temporary employment or seasonal employment in agricultural work or fishing work if the worker would have changed residence even if temporary employment or seasonal employment in agricultural work or fishing work were unavailable.

(d) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in agricultural work where the temporary employment or seasonal employment is a principal means of livelihood.

(e) *Migratory child* means a child—

(1) Who is a migratory agricultural worker or a migratory fisher; or

(2) Who, in the preceding 36 months, in order to accompany or join a parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher—

(i) Has moved from one school district to another;

(ii) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(iii) As the child of a migratory fisher, 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.

(f) *Migratory fisher* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in fishing work where the temporary employment or seasonal employment is a principal means of livelihood. This 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 where the temporary employment or seasonal employment is a principal means of livelihood.

(g) *Moved* or *Move* means that a change from one residence to another residence was made in order to obtain temporary employment or seasonal employment in agricultural work or fishing work. This definition does not include travel or moves that occur during or after a vacation or holiday, or for other personal reasons unrelated to seeking or obtaining temporary employment or seasonal employment in agricultural work or fishing work even if this work is subsequently sought or obtained.

(h) *Personal subsistence* means that the worker and his or her family perform such work in order to consume the crops, dairy products, or livestock they produce or the fish they catch in order to survive.

(i) *Principal means of livelihood* means that temporary employment or seasonal employment in agricultural work or fishing work plays an important part in providing a living for the worker and his or her family.

(j) *Seasonal employment* means employment that is dependent on the cycles of nature due to the specific meteorological or climatic conditions.

(k) *Temporary employment* means employment that lasts for a limited period of time, usually a few months.

(1) For example, it includes employment where:

(i) The employer hires the worker for a limited time frame (e.g., for a three-month period). For example, a poultry processing plant hires extra workers during the months of September, October, and November to handle the increase in turkey production before Thanksgiving. In this example, an employer hires temporary workers during a period of peak demand.

(ii) The employer hires the worker to perform a task that has a clearly defined beginning and end (e.g., digging an irrigation ditch or building a fence) and is not one of a series of activities that is typical of permanent employment.

(iii) The worker does not intend to remain employed indefinitely (e.g., the worker states that he plans to leave the job after four months).

(2) It does not include employment that is constant and year-round, except that an SEA may deem specific types of employment to be temporary if it documents through an annual survey that, given the nature of the work, virtually no workers who perform this work remain employed more than 12 months (e.g., they usually remain employed for only a few months), even though the work may be available on a year-round basis. Such surveys must be conducted separately for each employer and job site (i.e., each farm or processing plant).

(Authority: 20 U.S.C. 6391–6399, 6571)

3. Amend § 200.83 as follows:

a. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, and add a new paragraph (a)(3).

b. Revise the introductory text of redesignated paragraph (a)(4).

The revision and addition read as follows:

§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.

(a) * * *

(3) *Measurable program outcomes.* The plan must include the measurable program outcomes (i.e., objectives) that a State's migrant education program will produce to meet the identified unique needs of migratory children and help migratory children achieve the State's performance targets identified in paragraph (a)(1) of this section.

(4) *Service delivery.* The plan must describe the strategies that the SEA will pursue on a statewide basis to achieve the measurable program outcomes in paragraph (a)(3) of this section by addressing—

* * * * *

4. Add § 200.89 to read as follows:

§ 200.89 MEP allocations; Re-interviewing; Eligibility documentation; and Quality control.

(a) *Allocation of funds under the MEP for fiscal year (FY) 2006 and subsequent years.* (1) For purposes of calculating the size of MEP awards for each SEA for FY 2006 and subsequent years, the Secretary determines each SEA's FY 2002 base allocation amount under section 1303(a)(2) and (b) of the Act by applying, to the counts of eligible migratory children that the SEA submitted for 2000–2001, the defect rate that the SEA reports to the Secretary and that the Secretary accepts based on a statewide re-interviewing process that the SEA has conducted.

(2) The Secretary conditions an SEA's receipt of final FY 2006 and subsequent-year MEP awards on the SEA's completion of a thorough re-documentation of the eligibility of all children (and the removal of all ineligible children) included in the State's 2006–2007 MEP child counts.

(b) *Responsibilities of SEAs for re-interviewing to ensure the eligibility of children under the MEP—(1) Retrospective re-interviewing.*

(i) As a condition for the continued receipt of MEP funds in FY 2006 and subsequent years, an SEA that received such funds in FY 2005 but did not implement a statewide re-interviewing process and submit a defect rate accepted by the Secretary under § 200.89(a) must, within six months of the effective date of these regulations, or as subsequently required by the Secretary under paragraph (b)(2)(vii) of this section—

(A) Conduct a statewide re-interviewing process consistent with paragraph (b)(1)(ii) of this section; and

(B) Consistent with paragraph (b)(1)(iii) of this section, report to the Secretary on the procedures it has employed, its findings, its defect rate, and corrective actions it has taken or will take to avoid a recurrence of any problems found.

(ii) At a minimum, the re-interviewing process must include—

(A) Selection of a sample of identified migratory children (from the child counts of a particular year as directed by the Secretary) randomly selected on a statewide basis to allow the State to estimate the statewide proportion of eligible migratory children at a 95 percent confidence level with a confidence interval of plus or minus 5 percent.

(B) Use of independent re-interviewers (i.e., interviewers who are neither SEA or local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested) trained to conduct personal interviews and to understand and apply program eligibility requirements; and

(C) Calculation of a defect rate based on the number of sampled children determined ineligible as a percentage of those sampled children whose parent/guardian was actually re-interviewed.

(iii) At a minimum, the report must include—

(A) An explanation of the sample and procedures used in the SEA's re-interviewing process;

(B) The findings of the re-interviewing process, including the determined defect rate;

(C) An acknowledgement that, consistent with § 200.89(a), the Secretary will adjust the child counts for 2000–2001 and subsequent years downward based on the defect rate that the Secretary accepts;

(D) A summary of the types of defective eligibility determinations that the SEA identified through the re-interviewing process;

(E) A summary of the reasons why each type of defective eligibility determination occurred; and

(F) A summary of the corrective actions the SEA will take to address the identified problems.

(2) *Prospective re-interviewing.* As part of the system of quality controls identified in § 200.89(d), an SEA that receives MEP funds must, on an annual basis, validate current-year child eligibility determinations through the re-interview of a randomly selected sample of children previously identified as migratory. In conducting these re-interviews, an SEA must—

(i) Use, at least once every three years, one or more independent interviewers (i.e., interviewers who are neither SEA or local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested) trained to conduct personal interviews and to understand and apply program eligibility requirements;

(ii) Select a random sample of identified migratory children so that a sufficient number of eligibility determinations in the current year are tested on a statewide basis or within strata associated with identified risk factors (e.g., experience of recruiters, size or growth in local migratory child population, effectiveness of local quality control procedures) in order to help identify possible problems with the State's child eligibility determinations;

(iii) Conduct re-interviews with the parents or guardians of the children in the sample. States must use a face-to-face approach to conduct these re-interviews unless extraordinary circumstances make face-to-face re-interviews impractical and necessitate the use of an alternative method of re-interviewing;

(iv) Determine and document in writing whether the child eligibility determination and the information on which the determination was based were true and correct;

(v) Stop serving any children found not to be eligible and remove them from the data base used to compile counts of eligible children;

(vi) Certify and report to the Department the results of re-interviewing in the SEA's annual report of the number of migratory children in the State required by the Secretary; and

(vii) Implement corrective actions or improvements to address the problems identified by the State (including the identification and removal of other ineligible children in the total population) and any corrective actions required by the Secretary, including retrospective re-interviewing.

(c) *Responsibilities of SEAs to document the eligibility of migratory children.* (1) An SEA and its operating agencies must use the Certificate of Eligibility (COE) form established by the Secretary to document the State's determination of the eligibility of migratory children.

(2) In addition to the form required under paragraph (a) of this section, the SEA and its operating agencies must develop and maintain such additional documentation as may be necessary to confirm that each child found eligible for this program meets all of the eligibility definitions in § 200.81.

(3) An SEA is responsible for the accuracy of all the determinations of the eligibility of migratory children identified in the State.

(d) *Responsibilities of an SEA to establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children.* An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children on a statewide basis. At a minimum, this system of quality controls must include the following components:

(1) Training to ensure that recruiters and all other staff involved in determining eligibility and in conducting quality control procedures know the requirements for accurately determining and documenting child eligibility under the MEP.

(2) Supervision and annual review and evaluation of the identification and recruitment practices of individual recruiters.

(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) An 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.

(5) A process for the SEA to validate that eligibility determinations were properly made, including conducting prospective re-interviewing as described in § 200.89(b)(2).

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

(7) A process for implementing corrective action if the SEA finds COEs that do not sufficiently document a child's eligibility for the MEP, or in response to internal audit findings and recommendations.

(Authority: 20 U.S.C. 6391–6399, 6571, 7844(d); 18 U.S.C. 1001)

[FR Doc. E7–8580 Filed 5–3–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0095; FRL–8309–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the Missouri State Implementation Plan (SIP). This action approves an amendment to the SIP-approved Doe Run Herculaneum Consent Judgment to remove language specifying the exact bag technology to be used in the baghouses. Related performance standard requirements will remain unchanged. This action is independent and does not affect the revision to the Missouri SIP due in April 2007, in response to the SIP Call issued April 14, 2006, to bring the area of Herculaneum into compliance with the lead National Ambient Air Quality Standard.

DATES: Comments on this proposed action must be received in writing by June 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0095 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: yoshimura.gwen@epa.gov.*

3. *Mail:* Gwen Yoshimura, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Gwen Yoshimura, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Gwen Yoshimura at (913) 551–7073, or by e-mail at *yoshimura.gwen@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. The revisions will not increase emissions and do not affect the stringency of the control requirement. Additionally, the revisions have gone through the Missouri approval process, including a public hearing and opportunity for public comment. EPA was the only party to provide comments during Missouri's comment period. Therefore, we do not anticipate any adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: April 26, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–8566 Filed 5–3–07; 8:45 am]

BILLING CODE 6560–50–P