

Changes: Section 200.40(d)(3) is changed accordingly.

Comment: None.

Discussion: The second sentence of the definition of a "migratory fisher" in § 200.40(e) notes that the definition also includes a person who resides in a school district of more than 15,000 square miles, and moves a distance of 20 miles or more to a temporary residence to engage in a fishing activity. As purely an editorial clarification, the Secretary has revised this sentence to read, "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 to engage in a fishing activity as a principal means of livelihood."

Changes: Section 200.40(e) is changed accordingly.

Section 200.41 Use of Program Funds for Unique Program Function Costs

Comment: Two commenters addressed this section of the proposed regulations. Both commenters agreed that it was appropriate to use program funds to address those administrative functions that are unique to the MEP; however, one commenter questioned why the proposed regulation also mentioned the use of program funds for "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." This commenter suggested deleting the language or providing examples of what these activities might include.

Discussion: The MEP is a State-operated as well as a State-administered program. In cases where it directly operates aspects of the program, rather than having local operating agencies do so, an SEA has to perform the same kind of administrative activities that an LEA carries out when it administers a project under subpart A. While these activities could be described as unique to the nature of the MEP, the Secretary believes deleting the term, which has been in the prior regulations, would create unnecessary confusion about the scope of permissible uses of funds under § 200.41 of the regulations. Instead, the Secretary has decided to make minor modifications to clarify that those "administrative activities * * * that are unique to the MEP" include "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." The list of permissible activities has also been expanded to include an example of this type of administrative activity.

Changes: Section 200.41 is changed accordingly.

Section 200.42 Responsibilities of SEAs and Operating Agencies for Assessing the Effectiveness of the MEP

Comment: Two commenters addressed this section of the proposed regulations. One commenter agreed with the proposed language. The other commenter noted that the schoolwide program requirements in § 200.8 of the regulations do not require the identification of particular children as eligible to participate, and questioned how an operating agency can meet its responsibility under § 200.42 of the regulations to evaluate the effectiveness of how a school within the agency which combines MEP funds in a schoolwide program serves migratory children.

Discussion: The commenter misconstrues the applicable provisions of § 200.8, regarding schoolwide programs. While § 200.8(f)(1) does not require a schoolwide program to identify particular children as eligible to participate (emphasis added), a schoolwide program will have to identify a given child in terms of needs. This is necessary in order for the school to meet other schoolwide program requirements to (1) employ instructional strategies which address the needs of children who are members of the target population of any program whose funds are included in the schoolwide program [§ 200.8(d)(2)(iv)(A)]; and 2) address the identified needs of migratory children specifically, and document how these needs have been met in the schoolwide program [§ 200.8(c)(3)(ii)(B)(1)]. A schoolwide program is also required, under § 200.8(e)(1)(iv)(A)(2), to disaggregate assessment data according to specific categories, including migrant status. In this way, a schoolwide program which includes MEP funds will be able to meet the requirements of § 200.42 to determine the effectiveness of the program for migratory students.

Changes: None.

Section 200.44 Use of MEP Funds in Schoolwide Programs

Comment: Nine comments were received regarding the inclusion of MEP funds in schoolwide programs. Seven of the commenters expressed support for the continued inclusion of the proposed language in § 200.8(c)(3)(ii)(B)(1) of the regulations. As developed through the negotiated rulemaking process, this subsection requires schoolwide programs to (1) first address, in consultation with parents and other representatives, or both, of migratory children, the identified needs of those children that result from the effects of their migratory lifestyle or are needed to

permit them to function effectively in school; and (2) document that services to address those needs have been provided. One commenter expressed concern that the special needs of migratory children will not be addressed in a schoolwide program without a requirement to "identify and document the services that supplemented the regular academic program." Another commenter suggested that the language of § 200.8(c)(3)(ii)(B) of the regulations was too vague and flexible, and would "allow school districts to evade the intentions of Congress."

Discussion: The Secretary continues to believe that the language in § 200.8(c)(3)(ii)(B)(1) of the regulations, as drafted in negotiated rulemaking, provides an adequate safeguard that the special needs of migratory children will be addressed in schoolwide programs. In particular, subsection (1)(B) requires that schoolwide programs document that services have been provided to address the identified needs of migratory children. The Secretary continues to believe that it is neither necessary nor desirable—and, in fact, is contrary to the purpose of schoolwide programs—for schoolwide programs to have a requirement to demonstrate that services provided using Federal funds, e.g. MEP funds, combined under the schoolwide program authority supplement the services regularly provided in that school.

Changes: None.

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

Comment: One commenter indicated that the regulations do not adequately address many of the statutory changes, particularly as they relate to prevention and intervention. The commenter suggests organizing the regulations into State agency and locally operated program categories.

Discussion: In developing regulations for programs authorized by Title I, the Department sought to regulate only where absolutely necessary, and when regulating, to promote flexible approaches to meeting the requirements of the law. The Secretary believes that the statute provides sufficient direction to State agencies (SAs) and local educational agencies (LEAs) operating Part D subpart 1 and 2 programs for children and youth who are neglected, delinquent, or at-risk of dropping out and does not require regulations. The Department, however, is developing more detailed guidance to help SAs and LEAs design programs that meet the