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34 CFR Part 200

Title I—Improving the Academic Achievement of the Disadvantaged;
Migrant Education Program; Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Part 200****RIN 1810-AA99****[Docket ID ED-2013-OESE-0119]****Title I—Improving the Academic Achievement of the Disadvantaged; Migrant Education Program****AGENCY:** Office of Elementary and Secondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Migrant Student Information Exchange (MSIX), a nationwide, electronic records exchange mechanism mandated under title I, part C, of the Elementary and Secondary Education Act of 1965, as amended (ESEA). As a condition of receiving a grant of funds under the Migrant Education Program (MEP), each State educational agency (SEA) would be required to collect, maintain, and submit minimum health and educational information to MSIX within established time frames. The proposed regulations would facilitate timely school enrollment, placement, and accrual of secondary course credits for migratory children and help the Department determine accurate migratory child counts and meet other MEP reporting requirements.

DATES: We must receive your comments on or before February 25, 2014.

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 email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Are you new to the site?”

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Lisa C. Gillette, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E313, Washington, DC 20202-6135.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at

www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Lisa C. Gillette, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E313, Washington, DC 20202-6135. Telephone: (202) 260-1426 or by email: lisa.gillette@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

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 specifically request public comment on issues raised in our discussion of records of secondary school-aged migratory children in proposed section 200.85(b)(3)(i)(B) and procedures for MSIX data correction in proposed section 200.85(e).

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

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, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment

for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The educational needs of children of migratory agricultural workers and migratory fishers present unique challenges for educators and our Nation's schools. Migratory workers travel from community to community in search of temporary and seasonal work. Given the nature of their employment, migratory workers and their families often settle in a single community for a short period of time. One consequence of this lifestyle and mobility is that the children of migratory workers frequently enroll in new schools and school districts without adequate, and in many cases any, documentation of their educational and health history.

In section 1308(b)(2) of the ESEA, Congress directed the Secretary, in consultation with the States, to “ensure the linkage of migrant student record systems for the purpose of electronically exchanging, among the States, health and educational information regarding all migratory students.” The statute specifies that the linkage of migrant student records shall occur in a cost-effective manner, utilizing those systems that States used before or developed after enactment of the latest reauthorization of the ESEA in the No Child Left Behind Act in January 2002. Congress further directed the Secretary, in section 1308(b)(2) of the ESEA, to seek public comment on (1) the “minimum data elements” (MDEs) that each State receiving MEP funds would be required to collect for purposes of the electronic transfer of migratory student information, and (2) the requirements that States must meet for immediate electronic access to this information.

In addition to these specific directives, section 1304(b)(3) of the ESEA requires each State that applies for a grant of MEP funds to include in its application a description of how it will use MEP funds to promote interstate and intrastate coordination of services for migratory children. The description must include how the State will provide for educational continuity through the timely transfer of pertinent school records when children move from one school to another either during or outside of the regular school year. All States that receive MEP funds do so on the basis of consolidated State applications authorized in section 9302 of the ESEA. However, the Department requires all SEAs to implement the statutory provisions governing program design and operation that otherwise

would be required of their individual program applications. See 67 FR 35967, 35970–71 (May 22, 2002).

In early 2000, the Department began consulting extensively with migrant education stakeholders to identify what information is essential to the continuity of services for migratory children. These consultations included State officials, migrant program administrators and educators, guidance counselors, registrars, and other school district officials, migrant health officials, and other users of student data.

On May 28, 2002, the Department published for public comment in the **Federal Register** (67 FR 36862–69) a notice of proposed requirements and minimum data elements for the electronic transfer of this information. Since then, we have spent considerable time and attention consulting with migrant education stakeholders and addressing their suggestions and concerns about the proposed MDEs and how MSIX would operate. (Summaries of the Department's consultative activities are contained in question and answer number 8 of the supporting statements for the 2007 and 2011 MDE Paperwork Reduction Act submissions.)

The Department has learned through this extensive consultative process that the lack of health and educational information for migratory children may cause delays in student enrollment, lead to inappropriate classroom and course placements, complicate or hinder the accrual of course credits needed for high school graduation, and result in duplicate services, such as multiple assessments and immunizations. As such, we determined that the primary purpose of MSIX should be to provide migrant education and other school personnel with the data essential to facilitate—

- (1) The timely enrollment of all school-aged migrant children;
- (2) The placement of migratory students in the appropriate grade level and courses of instruction; and
- (3) For secondary students, the accrual of course credits needed to graduate from high school.

Further background on the Department's early consultation with migrant education stakeholders may be found in the Office of Migrant Education's full report to Congress in 2003, *Education of Migratory Children: Maintenance and Transfer of Health and Educational Information for Migrant Students by the States*, which is available at www2.ed.gov/admins/lead/account/reporttocongress.pdf.

School staff at all levels need basic enrollment data, and typically need proof of immunizations, to place

students in the correct grade or course in a timely manner. Migrant educators have stressed, however, that students in secondary grades have the greatest need for the timely exchange of records because they have much less time to make up for mistakes made when school officials lack information needed for proper grade placement, course selection, and accrual of course credits required for high school graduation. As such, educators suggested that the migrant record-linking mechanism have a “special focus” on exchanging information needed for full and partial credit accrual for mobile secondary students.

We also learned through consultations that gaining access to student records in a timely manner generally is more of a concern for students who make interstate, rather than intrastate, moves. This is because the new school district in another State is much less likely than a new school district in the same State to have ready access to information in the former district's records, and thus the new district in another State is far less able to avoid critical delays in the transfer of necessary information. In many cases, however, the same problem exists when students make an intrastate move because district officials do not always have ready access to student-level data from another district within the State. In both cases, the problem is exacerbated for students who move during the summer, when many migrant education programs are conducted, because many of the schools that those students last attended, and from which student records would need to be gathered and transmitted, are closed.

Through our continued consultations with migrant education stakeholders, we have also identified MDEs that would facilitate enrollment, grade and course placement, and accrual of secondary school course credits for migratory students. We published a notice of proposed information collection requests relating to the MDEs in the **Federal Register** on May 30, 2007 (72 FR 29994), and the Office of Management and Budget (OMB) approved the collection of 66 MDEs on November 27, 2007, under OMB Approval Number 1810–0683.

On August 20, 2010, we published in the **Federal Register** (75 FR 51449) a second notice of proposed information collection requests to add five new data elements to the set of MDEs collected and exchanged through MSIX. On January 30, 2011, OMB approved the revision and extended the expiration date of this information collection to January 31, 2014. After additional public comments, on March 30, 2011,

OMB approved minor, non-substantive modifications to the collection, which now contains 71 MDEs. As discussed elsewhere in the Paperwork Reduction Act section of this notice, we are publishing a third notice of proposed information collection requests for MSIX with these proposed regulations.

MSIX is a system in which SEAs upload the required MDEs from their own State student record systems into a single data repository where information on each migrant student is maintained, organized, and compiled. MSIX uses a Web-based application that allows stakeholders with the appropriate security clearance to access the system via a Web browser. Using the required MDEs, MSIX generates a “Consolidated Migrant Student Record.” It is used to promote proper enrollment, grade and course placement, and accrual of secondary school course credits for any identified migratory child by SEAs, their local operating agencies—that is, local educational agencies (LEAs) and other public or nonprofit private agencies that receive a subgrant of MEP funds—and those LEAs, sometimes known as “non-project LEAs,” that do not receive subgrants of MEP funds.

The Department started collecting data from participating SEAs on September 28, 2007, and MSIX is now fully operational. At present, State use of MSIX is voluntary. As of April 2013, 46 of the 47 States participating in the MEP, as well as the contractor that operates the program through a bypass arrangement under section 1307 of the ESEA for eligible migratory children in the three States that do not participate in the MEP, have voluntarily executed both the MSIX Interconnection Agreement and MSIX Interconnection Security Agreement, which is a precondition for using MSIX under the Computer Security Act of 1987 (Pub. L. 100–235), the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), OMB Circular A–130 Appendix III, and National Institute of Standards and Technology Special Publication 800–47. These States are now using MSIX to electronically transfer and receive migrant student data that apply to 99 percent of the Nation's migrant children found eligible for the MEP.

Under these proposed regulations, and consistent with sections 1304(b)(3) and 1308(b)(2) of the ESEA, as a condition of receiving a grant of MEP funds, an SEA would be required to collect, maintain, and submit to MSIX the MDEs approved by the Secretary within the timeframes established in final regulations. In addition, each SEA

receiving MEP funds would be required to obtain the MDEs both from their MEP local operating agencies and from their non-project LEAs.

We note finally that, in addition to its role in exchanging information among States and creating Consolidated Migrant Student Records for enrollment, placement, and credit accrual purposes, MSIX may also be used to produce national data on the migrant population. For further information, see the description of MSIX objectives at www2.ed.gov/admins/lead/account/recordstransfer.html. In particular, the Department plans to use MSIX to provide stakeholders with census data and statistics on the national migrant population and to generate accurate child counts under section 1303(e)(1) of the ESEA. After all phases of MSIX data submission have been completed, we also plan to use statistical data from MSIX to help meet reporting requirements related to the national migrant child population.

Summary of Proposed Changes

These proposed regulations would help ensure that health and educational records of migratory children are available promptly for school enrollment, grade and course placement, and credit accrual purposes, and for producing national statistical data on the migrant population, by requiring each SEA that receives a grant of MEP funds to—

- Collect, maintain, and submit current and updated MDEs for eligible migratory children to MSIX within established timeframes;
- Ensure that all data submitted to MSIX are accurate and complete and that appropriate safeguards are in place to protect the integrity, security, and confidentiality of Consolidated Migrant Student Records in MSIX;
- Establish procedures for using, and requiring each of its subgrantees to use, Consolidated Migrant Student Records in MSIX; and
- Establish procedures for MSIX data correction by parents, guardians, and migratory children.

Significant Proposed Regulations

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

Section 200.81 Program definitions

Statute: The statute does not define “Consolidated Migrant Student Record,” “Migrant Student Information Exchange (MSIX),” “Minimum Data

Elements (MDEs),” “MSIX Interconnection Agreement,” or “MSIX Interconnection Security Agreement.”

Current Regulations: The current regulations do not define “Consolidated Migrant Student Record,” “Migrant Student Information Exchange (MSIX),” “Minimum Data Elements (MDEs),” “MSIX Interconnection Agreement,” or “MSIX Interconnection Security Agreement.”

Proposed Regulations: The proposed regulations would define “Consolidated Migrant Student Record” as the MDEs for a migratory child that have been submitted by one or more SEAs and consolidated into a single, uniquely identified record available through MSIX. The proposed regulations would define “Migrant Student Information Exchange (MSIX)” as the nationwide system for linking and exchanging specified health and educational information for all migratory children in accordance with section 1308(b)(2) of the ESEA. The proposed regulations would define “Minimum Data Elements (MDEs)” to mean the health and educational information for migratory children that the Secretary requires each SEA that receives an MEP grant to collect, maintain, submit to MSIX, and use. The proposed regulations would define “MSIX Interconnection Agreement” to mean the agreement between the Department and an SEA that governs the interconnection between the State student records system and MSIX. The proposed regulations would define “MSIX Interconnection Security Agreement” to mean the agreement between the Department and an SEA that specifies the technical and security requirements for establishing, maintaining, and operating the interconnection between the State student records system and MSIX.

Reasons: These definitions are needed to clarify the meanings of basic terms used in these proposed regulations for implementing the nationwide system for the linkage and exchange of migrant student records established under section 1308(b)(2) of the ESEA.

Section 200.84 Responsibilities for Evaluating the Effectiveness of the MEP and Using Evaluations To Improve Services to Migratory Children

Statute: Section 1304 of the ESEA requires each grantee to evaluate the effectiveness of MEP projects using measurable program goals and outcomes.

Current Regulations: Current § 200.84 specifies the responsibilities of SEAs for evaluating the effectiveness of the MEP. Current § 200.85 identifies the

responsibilities of SEAs and local operating agencies for improving services to migratory children.

Proposed Regulations: The proposed regulations would revise the heading for § 200.84 as set forth above and make technical changes to this proposed section. We would designate the current text of § 200.84 (concerning the responsibilities of SEAs for evaluating the effectiveness of the MEP) as § 200.84(a) and redesignate the current text of § 200.85 (concerning the responsibilities of SEAs and local operating agencies for improving services to migratory children) as new § 200.84(b). We would not make any substantive changes to the text of current § 200.84 and § 200.85; we would make technical changes to the text of current § 200.85 by deleting the introductory phrase and clarifying in proposed § 200.84(b) that the evaluation under paragraph (a) is carried out by the SEA. The redesignation of current §§ 200.84 and 200.85 is needed to create space for the proposed MSIX regulations in 34 CFR part 200, subpart C.

Section 200.85 Responsibilities of SEAs for the Electronic Exchange Through MSIX of Specified Health and Educational Information of Migratory Children

Statute: Section 1308(b)(2) of the ESEA requires the Secretary, in consultation with the States, to ensure the linkage of migrant student records systems for the purpose of States exchanging health and educational information about all migratory students and to determine the MDEs that each State receiving MEP funds shall collect and maintain for this purpose.

Current Regulations: Current § 200.85 clarifies the statutory responsibilities of an SEA receiving MEP funds to use evaluation results to improve services provided to migratory children.

Proposed Regulations: As described in our discussion of proposed § 200.84, we would move the text of current § 200.85 (“Responsibilities of SEAs and operating agencies for improving services to migratory children”) to new § 200.84(b). We would replace current § 200.85 with a new § 200.85, “Responsibilities of SEAs for the electronic exchange through MSIX of specified health and educational information of migratory children,” and the new regulations would address the following:

MSIX State record system and data exchange requirements. Proposed § 200.85(a) provides that as a condition of receiving a grant of MEP funds, an SEA would be required to collect, maintain, and submit to MSIX the

MDEs, and otherwise exchange and use information on, migratory children in accordance with all of the data submission and other requirements in proposed § 200.85. Failure of an SEA to do so would constitute a failure under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under the MEP.

Reasons: We recognize that at this time the various State student-information systems do not uniformly contain all the information that the Department has determined is needed to support the purposes and goals of MSIX. Likewise, although MSIX has been operational since 2007 and nearly all States currently participate, SEAs still do not uniformly submit and use MSIX data in a manner that would most benefit migratory children. Proposed § 200.85(a) would ensure that SEAs participate fully in MSIX so that it can fulfill its principal statutory purpose—to enable school personnel throughout the Nation to quickly access data needed to make proper educational decisions about any migratory child who enrolls in school. It would also clarify that the Secretary may take appropriate enforcement action if an SEA fails to comply with any of these proposed requirements.

We note that under the proposed regulations, a State would not be required to maintain a separate migrant student records system and could use any statewide or local system that contains the necessary information on migratory children. While the proposed regulations would require an SEA to collect, maintain, and submit to MSIX the MDEs required by the Secretary and use Consolidated Migrant Student Records, they would not otherwise require any change in an SEA's approach to student data systems.

MSIX data submission requirements. Proposed § 200.85(b) sets forth requirements for the content and timing of an SEA's start-up and subsequent data submissions to MSIX.

General. Under proposed § 200.85(b)(1), an SEA that receives a grant of MEP funds would be required to submit to MSIX, within the timelines for start-up and subsequent data submissions contained in proposed § 200.85(b)(2) and (b)(3), the MDEs applicable to a migratory child's age and grade level that the Secretary has determined are needed to implement MSIX. We note that these proposed data submission requirements would apply to any migratory child whom the SEA considered eligible for MEP services in accordance with § 200.89(c). This would

include not only pre-school and K–12 migratory children enrolled in public schools, but also those who are home-schooled or enrolled in non-public schools because, as they migrate, these home-schooled or non-public school children may move into and out of public schools, where their private school or home-school records would be needed for enrollment and placement purposes. The proposed data submission requirements would apply also to secondary school-aged children who are not enrolled in school at all, known as out-of-school youth or “OSY,” whom the SEA had determined to be eligible for MEP services. Applying these proposed requirements to all of these migratory children will ensure that demographic, educational, health, and other information will be available promptly upon initial or subsequent school enrollments.

Reasons: Proposed § 200.85(b)(1) would establish a requirement that SEAs must submit electronically to MSIX those MDEs that the Secretary designates. For the convenience of the reader, we have appended to this notice a list of the 71 MDEs currently collected by the Secretary under OMB Control Nos. 1875–0240, 1810–0662, and 1810–0683, as well as one new MDE identified in the Paperwork Reduction Act section of this notice. As discussed in the Background and Paperwork Reduction Act sections of this notice, we have consulted extensively with MEP stakeholders and believe that these MDEs reflect the minimal information needed to ensure the proper enrollment, grade and course placement, and accrual of secondary course credits (including credit for any courses taken for college credit) for migratory children. The Secretary would continue to consult with MEP stakeholders in connection with any future changes to the MDEs collected for submission to MSIX.

While the majority of MDEs, such as name, date of birth, qualifying arrival date, etc., apply to all migratory children, some of the required MDEs apply only after a child reaches a certain age or grade level. For example, depending on their grade level, primary and middle school children may not have certain assessments, nor will the course title and type of information that is required for secondary school students apply to them. Because State policies vary regarding the ages and grade levels at which these requirements come into play, we are not proposing to regulate precisely which MDEs an SEA must submit to MSIX for a migratory child. Rather, under the proposed regulations, SEAs would need

to determine which MDEs are applicable to the child's age and grade level in accordance with State policy and submit those MDEs to MSIX as required under this section. The Department would issue non-regulatory guidance on this issue as needed.

Start-up data submissions. Under proposed § 200.85(b)(2), no later than 90 calendar days after the effective date of the final regulations, an SEA would be required to collect and submit to MSIX each of the MDEs required by the Secretary, as described in paragraph (b)(1) of this section, applicable to the child's age and grade level. An SEA would do so for every migratory child whom the SEA considered eligible for the MEP under § 200.89(c) within one year preceding the effective date of the final regulations. An SEA would have to collect and submit MDEs for a migratory child whether or not the child has a current Certificate of Eligibility under § 200.89(c) at the time the SEA makes its start-up data submission.

Reasons: Proposed § 200.85(b)(2) would ensure that by a specified date MSIX is fully populated with MDEs for migratory children whom SEAs have already determined are eligible for the MEP. The section would specify the group of migratory children covered under an SEA's start-up data submission as well as the content and timeframe of those submissions. We believe that 90 days is a reasonable period of time for SEAs to locate and submit the required MDEs to MSIX given that the proposed requirement applies only to those children considered eligible for the MEP within the preceding year, and that many SEAs would have already submitted some or all of the required MDEs by the time the final regulations would take effect. With regard to the administrative effort required for this proposed requirement, we note that the SEA would not have to ascertain whether the child is still resident in the State or otherwise eligible for the program at the time of this data submission.

As noted in the Background section of this notice, MSIX has been operational since 2007 and, accordingly, many SEAs have already submitted most of the MDEs approved under the Department's information collection (OMB Approval Number 1810–0683) for their States' migratory children. For purposes of the start-up data submissions required under these proposed regulations, SEAs would not be required to resubmit to MSIX any MDEs they have already submitted. However, a small number of SEAs have not yet submitted any data to MSIX, and those that have done so may not have submitted all of the

required data, particularly the additional MDEs added in 2011. (Of course, none of the SEAs has submitted the new MDE identified in the Paperwork Reduction Act section and appendix of this notice.).

We note also that the Department initially collected MDEs in three phases, covering demographic data collected in Certificates of Eligibility, assessments, and course history for secondary students. However, MSIX has since eliminated the phased submission of MDEs, and there is no provision for phased submission of MDEs under the start-up or subsequent data submissions required under these proposed regulations.

This means, for example, that SEAs would be required to collect and submit to MSIX in their start-up submissions the assessment and course history data (applicable to the child's age and grade level) located in the State for children for whom the SEA may have previously submitted only demographic data. We propose to limit the start-up submission requirement to data for children considered eligible within the year preceding the effective date of the final regulations because of the added burden some SEAs would incur if they had to go back beyond one year in order to locate and collect assessment and course history data for these children from LEAs and non-migrant databases in the State.

Subsequent data submissions.

Newly documented migratory children. For every migratory child for whom an SEA documents eligibility for the MEP on or after the effective date of these regulations, proposed § 200.85(b)(3)(i)(A) would require the SEA to collect and submit to MSIX the MDEs required under paragraph (b)(1) within ten working days of documenting the child's eligibility for the MEP under § 200.89(c). This requirement would apply when an SEA determines that a migratory child has made a qualifying move and documents the child's eligibility on a Certificate of Eligibility; it would not apply when an SEA subsequently verifies that a previously identified migratory child is still a resident in the State. Unless a child is secondary school-aged, an SEA would not be required under proposed § 200.85(b)(3)(i)(A) to collect and submit MDEs in existence before the SEA's documentation of the child's eligibility for the MEP.

If the newly documented migratory child is secondary school-aged (whether or not the child is currently enrolled in school), proposed § 200.85(b)(3)(i)(B) would require an SEA to collect and submit to MSIX MDEs from the most

recent secondary school in that State attended previously by the child, if any, and also to notify MSIX within 30 calendar days if one of its local operating agencies obtains records from a secondary school attended previously by the student in another State.

End of term submissions. Proposed § 200.85(b)(3)(ii) provides that within 30 calendar days of the end of the fall, spring, summer, and intersession terms, an SEA must collect and submit to MSIX all updates to MDEs and all newly available MDEs for migratory children who were eligible for the MEP during the term and for whom the SEA previously submitted data to MSIX. (If the SEA has not previously submitted data to MSIX for a particular migratory child to be included in an end of term submission, then the submission would fall under the timeframes and other specific requirements of paragraph (b)(2)(start-up data submissions) or (b)(3)(i) (newly documented migratory children).) Note that this proposed end of term submission requirement would apply even if the migratory child is no longer enrolled in school at the end of the term so long as the child was eligible for the MEP sometime during the term.

In addition, when a migratory child's MEP eligibility expires before the end of a school year, the proposed regulations would require an SEA to submit to MSIX all MDE updates and newly available MDEs for the child through the end of the school year in which the child is enrolled. Likewise, an SEA would be required to submit all MDE updates and newly available MDEs for any child who continues to receive MEP-funded services under section 1304(e) of the ESEA (continuation of services) after expiration of the child's eligibility for the MEP.

Change of residence submissions. Proposed § 200.85(b)(3)(iii) would require that within four working days of the date that MSIX notifies an SEA that a migratory child has changed residence to a new school district within the State or is newly documented as a migratory child in another State, the SEA must submit to MSIX all MDE updates and all MDEs that have become newly available to the SEA or one of its local operating agencies since the SEA's last data submission to MSIX for the child. If the MDEs are not available to the SEA or local operating agency when the SEA receives a change of residence notice from MSIX, the SEA would need to submit the MDEs to MSIX within four working days of the date that the SEA or its local operating agency has the MDE.

Proposed § 200.85(b)(3) would require an SEA to comply with specified timelines for subsequent data submissions throughout the entire calendar year whether or not local operating agencies or LEAs in the State are closed for summer or intersession periods.

Reasons: Proposed § 200.85(b)(3) is needed to establish reasonable and definite timeframes within which SEAs must submit MDEs to MSIX after their start-up data submissions. MSIX will transmit a migratory child's Consolidated Migrant Student Record immediately upon request of a local operating agency or non-project LEA. However, MSIX can meet its intended purpose of facilitating proper enrollment, grade and course placement, and credit accrual for migratory children only if the information in MSIX is complete, accurate, and current. This means that SEAs must submit new, updated, and newly available MDEs, including certain prior secondary school records, for migratory children within these timeframes.

We note, however, that these proposed timeframes represent the maximum amount of time that an SEA may take to submit MDEs to MSIX, not an ideal practice. For example, most States that have large migrant populations currently upload data to MSIX nightly; others have organized their systems to update MSIX whenever the value for an MDE has changed. We encourage SEAs to follow these practices and submit available data as promptly as possible so that school officials will have access to the most up-to-date information for enrolling, placing, and accruing credits for migratory children.

Newly documented migratory children. Section 200.89(c)(1) of the current regulations requires an SEA and its local operating agencies to use the Certificate of Eligibility form established by the Secretary to document the State's determination of the eligibility of migratory children for the MEP. A consensus was reached during the Department's MSIX consultations with SEAs and other MEP stakeholders that an SEA could be expected to submit a migratory child's MDEs to MSIX within ten working days of the date that the SEA documents under § 200.89(c)(1) that the child is eligible for the program. We believe that this timeframe appropriately balances the need for local operating agencies and non-project LEAs to have access to data as quickly as possible for enrollment, grade and course placement, and credit accrual purposes with fiscal and administrative

constraints faced by SEAs and local operating agencies that would have to respond to requests for such data.

In particular, experience suggests that although migratory children could move at any time, newly documented migratory children are unlikely to move again within ten working days. We recognize that the ten working-day starting point will vary depending on an SEA's process for approving and accepting a child's Certificate of Eligibility. Regardless of the process an SEA uses to make this determination, however, we agree with MEP stakeholders that ten working days from the date that an SEA documents a child's eligibility for the MEP should allow sufficient time for the SEA to gather and submit the necessary MDEs to MSIX. We take this position because, except for secondary school-aged individuals, proposed § 200.85(b)(3)(i)(A) would require an SEA to collect and submit to MSIX only MDEs that exist at the time the SEA documents the child's eligibility for the MEP.

We agree with the MEP stakeholders who have advised us consistently over the years that it is secondary school-aged students who are most adversely affected when information about their prior coursework and assessments is not available promptly after they migrate to a new area. In order to address this problem, we propose to require an SEA to collect and submit to MSIX those MDEs that were gathered prior to documentation of MEP eligibility for migratory children who previously attended secondary school in the same State.

In these cases, proposed § 200.85(b)(3)(i)(B) would require an SEA to collect and submit MDEs from the most recent secondary school in that State attended previously by the newly documented migratory child, if any. We are proposing this requirement so that when the migratory child makes a qualifying move, the new State or school district will have more complete data on the student's high school record for enrollment, course placement, and credit accrual purposes than it would have if the SEA submitted only data that came into existence in the State after the date it documented the child as eligible for the MEP.

We specifically invite public comment on our expectation that MDEs from the student's most recent secondary school in the State would contain MDEs from any secondary school in the same State in which the student previously enrolled.

For a migratory child who was not previously documented as eligible for

the MEP in that State, the proposed regulations do not require an SEA to submit MDEs for the period prior to the new documentation. As such, a State that newly documents the eligibility of a child who previously attended secondary school in another State, but who was never identified as eligible for the MEP in that other State, would not be able to obtain the child's previous secondary school records from MSIX.

In these circumstances, we are proposing in § 200.85(b)(3)(i)(B)(2) to require an SEA (in State A) to notify MSIX within 30 calendar days if one of its local operating agencies obtains secondary school records from another State (State B) so that when the migratory child moves again, the new district can use MSIX to quickly locate the child's prior coursework and other secondary school records. We are not proposing to require the SEA of State B to transfer a student's previous secondary school records to State A because of the added administrative burden that would be associated with students who were never identified as migratory in State B, particularly as we understand that many of these transfers occur in summer or intercession months when school districts are closed. We also believe that, provided a student remains enrolled for an adequate period, the LEA in State A where a student transfers will eventually incorporate any prior secondary school course placements from State B into the student's records in State A, and that the SEA in State A will submit those MDEs to MSIX under the end of term submissions, described below.

We specifically ask for public comment as to whether these proposed regulations address adequately the problem of obtaining course placement records of secondary school-aged migratory children in a timely manner without overly burdening MEP participants.

End of term submissions. MEP stakeholders also generally agreed that, for children already identified in MSIX, 30 calendar days from the end of a school term (including summer and intersession terms) was a reasonable timeframe for an SEA to update a child's MSIX record and provide any newly available MDEs, such as State assessment data. Here again, we realize that a child could move at any time before or after the end of the term. However, the proposed regulations in § 200.85(b)(3)(iii) would call for a much faster, four-working day timeframe for submitting MDEs when MSIX notifies an SEA that a child has been identified in another location that seeks information from MSIX. As such, we

believe that the 30-day timeframe for end of term submissions in proposed § 200.85(b)(3)(ii) reflects an appropriate balance between the need for MSIX to be able to provide current and accurate records and the need for SEAs, local operating agencies, and non-project LEAs to manage their staff-time and workloads.

By proposing to require SEAs to update and provide newly available MDEs to MSIX at the end of each term even when a migratory child's MEP eligibility expires before the term or school year has ended, the proposed regulations would help ensure that MSIX has available the most complete and up-to-date information should the child again become eligible for the MEP based on a subsequent move to a new location. Without these requirements, there would be a gap in MSIX data for the period between expiration of the child's eligibility and the submission of updated data to MSIX if the child is documented as eligible again in a new location. We believe that this approach is more efficient than relying solely on the SEA's responsibility under proposed § 200.85(b)(3)(iii) to submit MDEs within four working days of learning from MSIX that the child has been identified as migratory in another location. For similar reasons, the proposed regulations would require an SEA to update MDEs during any period of time in which a migratory child whose eligibility has expired continues to receive MEP services under section 1304(e) of the ESEA.

Change of residence submissions. Once an SEA has documented the MEP eligibility of a migratory child and submitted the MDEs to MSIX, MSIX thereafter may notify the SEA when that child has been newly documented as eligible for the MEP in another State or has changed residence to a new local operating agency within the same State. In these circumstances, proposed § 200.85(b)(3)(iii)(A) would require the SEA to submit to MSIX, within four working days of receipt of a change of residence notification from MSIX, updated MDEs that have become available to the SEA or its local operating agencies since the SEA's last submission of MDEs for the child. While we recognize that this is a very short timeframe, MEP and school personnel in the new State or district need critical information on the most mobile migratory children as soon as possible to allow them to make appropriate decisions regarding enrollment, grade and course placement, and accrual of secondary course credits.

We note that an SEA would be required under proposed

§ 200.85(b)(3)(ii) to submit updated and newly available MDEs to MSIX within 30 days of the end of the most recent school term in which the child was enrolled. While this provision would help keep MSIX up to date for migratory children who have not yet moved again, it would not meet the needs of children who have already migrated to a new school district, where school officials and staff need records from the former school district as quickly as possible.

Proposed § 200.85(b)(3)(iii)(B) recognizes that an SEA or local operating agency may not be able to submit new or updated MDEs for a child at the time the SEA receives a change of residence notification from MSIX because the information is not yet available. For example, a State or local operating agency may not have a child's scores for State reading and mathematics assessments for some time after the child has already migrated to a new State or school district. In these cases, the proposed regulation would require an SEA to submit the new or updated MDEs to MSIX within four working days of the date that the SEA or one of its local operating agencies obtains the MDEs. By this we mean that the information has been processed by the local school district, other local operating agency, or other responsible party, such as a contractor for the SEA, and could be collected by the SEA. Without such a provision, SEAs would be under no obligation to submit to MSIX those MDEs that an SEA or one of its local operating agencies obtains after the standard, four-day submission period has lapsed.

Under proposed § 200.85(b)(3), the fact that a school district or other local operating agency is closed for the summer (or other vacation period) would not relieve an SEA of its obligation to collect and submit MDEs to MSIX that are available to one of its local operating agencies. Allowing an SEA to defer submission of MDEs until after the child's district or other local operating agency reopens after a vacation period would defeat the purpose of the proposed subsequent data submission requirements. We note that consistent with sections 1304(b)(3) and 1308(b)(2) of the ESEA, an SEA's costs of making arrangements with its local operating agencies and non-project districts to secure needed MDE information, including under the subsequent data submission requirements in proposed § 200.85(b)(3), would be allowable costs of the MEP.

Use of Consolidated Migrant Student Records. Proposed § 200.85(c)(1) would require SEAs to use, and to require each of their local operating agencies to use,

Consolidated Migrant Student Records to help ensure proper participation in the MEP, school enrollment, grade and course placement, and accrual of high school credits, for all migratory children who have changed residence to a new school district within the State or in another State. Under proposed § 200.85(c)(2), SEAs also would be required to encourage non-project LEAs to use Consolidated Migrant Student Records for these same purposes. Proposed § 200.85(c)(3) would require SEAs to establish procedures, develop and disseminate guidance, and provide training to SEA, local operating agency, and non-project LEA personnel who have been designated by the SEA as authorized MSIX users under proposed § 200.85(f)(2) to ensure that Consolidated Migrant Student Records are used for the purposes provided in proposed § 200.85(c)(1).

Reasons: Migratory children will benefit from the expedited availability of records in MSIX only if school registrars, counselors, MEP specialists, and other local and State officials and staff use the system for its intended purposes—ensuring that migratory students receive proper enrollment, grade and course placement, and accrual of high school credits. Because staff may be inclined to opt for the familiarity of existing systems and methods that do not include or provide for a nationwide data exchange, proposed § 200.85(c)(1) is needed to ensure that SEAs and local operating agencies actually use Consolidated Migrant Student Records from MSIX, and that MSIX therefore fulfills its intended purposes.

No similar requirement is proposed for non-project LEAs because they do not receive MEP funds. However, proposed § 200.85(c)(2) and (c)(3) would ensure that these LEAs are familiar with the added benefits for migratory children of using a student's Consolidated Migrant Student Record. Proposed § 200.85(c)(3) is needed also to ensure that SEAs properly train authorized users in the appropriate use of the MSIX online system as well as the information contained in the Consolidated Migrant Student Record.

MSIX data quality. Proposed § 200.85(d)(1) would require SEAs to use reasonable and appropriate methods to ensure that all data submitted to MSIX are accurate and complete, and to require each of their local operating agencies to do the same.

Proposed § 200.85(d)(2) would require SEAs to respond promptly, and ensure that each of their local operating agencies responds promptly, to any request by the Department for

information needed to meet the Department's responsibility for the accuracy and completeness of MSIX data under the Privacy Act of 1974, as amended (Privacy Act).

Reasons: The data in MSIX will help school officials make correct decisions about enrollment, grade and course placement, and accrual of high school credits for migratory children only if SEAs take reasonable steps to ensure that records of migratory children submitted to MSIX are accurate and complete. If the information that SEAs submit to MSIX is not accurate and complete, then Consolidated Migrant Student Records from MSIX cannot and will not be used as intended under section 1308(b)(2) of the ESEA. (Proposed regulations requiring SEAs also to respond to requests to correct data in MSIX are discussed later in this notice in connection with proposed § 200.85(e).)

In addition, MSIX is a "system of records" under the Privacy Act. See the system of records notice published in the **Federal Register** at 72 FR 68572, 68576 (Dec. 5, 2007). The MSIX is implemented through a Department contract, and therefore the Department and its contractor are responsible for complying with applicable Privacy Act requirements in the maintenance and operation of MSIX. In particular, 5 U.S.C. 552a(e)(6) requires the Department and its contractor to make reasonable efforts to assure that MSIX records are accurate, complete, timely, and relevant.

These proposed regulations are needed to help the Department meet its responsibility under this provision of the Privacy Act. The requirement that MSIX records be accurate and complete is addressed by proposed § 200.85(d) (along with proposed § 200.85(e), which addresses requests to correct the records); the timeliness requirement is addressed in proposed § 200.85(b); and the relevance requirement is addressed through the MDEs required by the Secretary. Proposed § 200.85(d) helps to ensure that migrant students have accurate and complete records; in particular, proposed § 200.85(d)(2) would ensure that SEAs and local operating agencies help the Department carry out its responsibility to engage in reasonable efforts to maintain accurate and complete records in MSIX, and to respond to any civil action that might be brought under the Privacy Act (5 U.S.C. 552a(g)(1)(C) or (D)) alleging failure to maintain accurate and complete records in MSIX.

Finally, as noted above in the Background section of this notice, the Department plans to use MSIX to

generate MEP child counts for State funding purposes and to meet reporting requirements related to the national migrant child population. Proposed § 200.85(d) is thus also needed to ensure that the Department has the most accurate, complete, and timely data that is reasonably possible for these purposes.

Procedures for MSIX data correction by parents, guardians, and migratory children. Proposed § 200.85(e) would require each SEA that receives a grant of MEP funds to establish and implement written procedures to allow a parent or guardian of a migratory child, or a migratory child, to ask an SEA to correct or determine the correctness of MSIX data.

These written procedures would need to meet the following minimum regulatory requirements. Under proposed § 200.85(e)(1)(i), within 30 calendar days of receipt of a data correction request from a parent, guardian, or migratory child an SEA would need to (A) send a written or electronic acknowledgement to the requester; (B) investigate the request; (C) decide whether to revise the data as requested; and (D) send the requester a written or electronic notice of the SEA's decision. This process would occur outside of MSIX.

Under proposed § 200.85(e)(1)(ii), an SEA would have to submit any revised data to MSIX within four working days of its decision to revise the data; an SEA would not need to notify MSIX if it decided not to revise data as requested. Under proposed § 200.85(e)(1)(iii), if a parent, guardian, or migratory child asks an SEA to correct or determine the correctness of data that was submitted to MSIX by another SEA, the SEA would be required to send the data correction request to the SEA that had submitted the data to MSIX within four working days of its receipt. This process also would occur outside of MSIX. An SEA that receives an MSIX data correction request from another SEA under this provision would need to respond as if it had received the request directly from the parent, guardian, or migratory child.

Under proposed § 200.85(e)(2), an SEA would need to respond, and ensure that its local operating agencies respond, within ten working days to a request by the SEA of another State for information needed by that SEA to respond to a data correction request by a parent, guardian, or migratory child under proposed § 200.85(e)(1). This process, too, would occur outside of MSIX. (Note that procedures for SEAs to respond to requests by MSIX itself to resolve data matching and other data

integrity issues internal to MSIX are discussed in connection with proposed § 200.85(f)(1).)

Proposed § 200.85(e)(3) would require an SEA to respond within ten working days to a request from the Department for information it needs to respond to an individual's request to correct or amend a Consolidated Migrant Student Record under the Privacy Act, 5 U.S.C. 552a(d)(2), and 34 CFR 5b.7. This process would occur outside of MSIX as well.

Reasons: MSIX is a system of records under the Privacy Act, 5 U.S.C. 552a. As such, subject individuals have a right under paragraph (d)(2) of the statute and Department regulations codified at 34 CFR § 5b.7(a) to ask the responsible Department official to correct or amend a Consolidated Migrant Student Record that the individual believes is not accurate, timely, complete, or relevant or necessary to accomplish a Department function. Our purpose for proposing § 200.85(e) is not to duplicate or supplant these rights under the Privacy Act but to provide a more limited and accessible procedure for individuals who want only to correct an inaccurate record and who would be more likely to do so if given an opportunity at the State or local level. These proposed regulations, and § 200.85(e)(3) in particular, are also needed because the Department cannot respond to a request to correct or amend an MSIX record under the Privacy Act without the intervention of SEAs because MSIX contains only records submitted by the SEAs.

Parents and guardians of migratory children and those children themselves often have the most accurate information about a migratory child and his or her family, such as whether a child attended a particular school or already completed a specific course, and they have a strong interest in ensuring that MSIX data are accurate. These proposed regulations advance that interest by requiring SEAs to develop and implement written procedures, within established timeframes, for (1) receiving and responding to requests by these individuals to correct or determine the correctness of records that have been or would be submitted to MSIX, and (2) sending any revised and corrected data to MSIX.

Moreover, the proposed regulations would facilitate MSIX data correction by allowing SEAs to establish their own procedures in the most efficient and effective possible manner (within specified timeframes). We anticipate, for example, that most SEAs would require parents, guardians, and migratory children to submit their MSIX data

correction requests to a local operating agency and would delegate to these agencies most of the SEA's responsibilities under these proposed regulations for investigating requests and communicating with requesters, other SEAs and local operating agencies, and the Department. The proposed requirement in § 200.85(e)(1)(iii) would also provide parents, guardians, and migratory children with a single, local point where they could request MSIX data correction, even when the questionable data had been submitted to MSIX by the SEA of another State.

We believe that the proposed timeframes for these MSIX data correction procedures will help to ensure that incorrect data are removed from MSIX as quickly as possible, while providing sufficient time for SEAs to seek further information and resolve any conflicts. We note that, while an SEA would have 30 calendar days overall to respond to an individual's request and four working days from the date of its decision to submit any revised data to MSIX, under § 200.85(e)(2) we propose that an SEA or local operating agency would have nearly one-half of that time (i.e., ten working days) to provide information that an SEA in another State needs to respond to a request it has received from a parent, guardian, or migratory child to correct MSIX information. Similarly, in § 200.85(e)(3) we propose that an SEA or local operating agency would have the same ten working-day time period in which to respond to a request from the Department for information the Department needs to respond to a request to correct or amend records under the Privacy Act.

We specifically seek public comment on whether these are reasonable timeframes for SEAs and local operating agencies to complete their work and respond to the requester.

MSIX data protection. Under proposed § 200.85(f)(1), each SEA that receives a grant of MEP funds would enter into and carry out its responsibilities under an MSIX Interconnection Agreement, an MSIX Interconnection Security Agreement, and other information technology (IT) agreements required by the Secretary in accordance with applicable Federal requirements.

SEAs would be required under proposed § 200.85(f)(2) to establish and implement written procedures to protect the integrity, security, and confidentiality of Consolidated Migrant Student Records, whether in electronic or print format, through appropriate administrative, technical, and physical safeguards established in accordance

with the MSIX Interconnection Agreement and MSIX Interconnection Security Agreement. An SEA's written procedures would have to include, at a minimum, reasonable methods to ensure that (i) the SEA permits access to MSIX only by authorized users at the SEA, its local operating agencies, and LEAs in the State that are not MEP local operating agencies but where a migratory child has enrolled; and (ii) the SEA's authorized users obtain access to and use MSIX records only for authorized purposes as described in proposed § 200.85(c)(1).

Under proposed § 200.85(f)(3), before providing authorized users with access to MSIX an SEA would require that they complete the User Application Form approved by the Secretary, which is available currently at <https://msix.ed.gov>. An SEA would also be permitted to develop its own documentation for approving user access to MSIX provided that it contains the same information as the User Application Form approved by the Secretary. Proposed § 200.85(f)(4) would require SEAs to retain the documentation required for approving user access to MSIX for three years after the SEA terminates the user's access.

Reasons: The proposed regulations are needed to ensure that, in connecting to MSIX and allowing individuals to obtain access to the electronic student records system, SEAs protect the integrity, security, and confidentiality of Consolidated Migrant Student Records through appropriate administrative, technical, and physical safeguards.

Currently, this is accomplished through specific provisions in the MSIX Interconnection Agreement and MSIX Interconnection Security Agreement that SEAs, in accordance with various Federal requirements, must enter into before they may participate in MSIX. In particular, OMB Circular A-130 Appendix III and National Institute of Standards and Technology Special Publication 800-47, which implement requirements of the Computer Security Act of 1987 and the Information Technology Management Reform Act of 1996, require Federal agencies to obtain written management authorization before connecting their IT systems to other systems based on an acceptable level of risk. Similarly, the MSIX Interconnection Agreement and MSIX Interconnection Security Agreement are part of the means by which the Department meets its responsibilities under the Privacy Act, 5 U.S.C. 552a(e)(10), for establishing appropriate safeguards to ensure the security and confidentiality of records, and to protect against any anticipated threats or

hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained in MSIX. As such, proposed § 200.85(f) is needed to help the Department meet its IT data security responsibilities under the Privacy Act.

The proposed regulations would help to ensure that SEAs comply with all Federal information security requirements applicable to MSIX by requiring that they execute and implement satisfactory IT agreements with the Department as a condition of receiving a grant of MEP funds and of connecting to and accessing the MSIX system. We note that the Department's MSIX IT agreements with participating States also include provisions related to various internal processing requirements applicable to SEAs that help ensure the integrity of Consolidated Migrant Student Records. For example, there are MSIX work rules that require SEAs to resolve data match and other data discrepancy issues within specified timeframes. An SEA's failure to comply with these internal MSIX work rules is a breach of its IT agreements and would constitute a violation of proposed § 200.85(f)(1).

Because Consolidated Migrant Student Records contain personally identifiable information (PII) on all migratory children, the proposed regulations are needed to ensure that SEAs limit access to authorized users and for authorized purposes. However, while the number of users in each SEA, local operating agency, or non-project LEA would likely be limited, we anticipate that, consistent with their MSIX data protection procedures, SEAs will promote the maximum use of Consolidated Migrant Student Records at State and local levels in order to meet the needs of migratory children who have moved to a new LEA or State.

In terms of the data protection procedures that SEAs would be required to implement under these proposed regulations, we note that the restrictions on redisclosure of PII from education records in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g(b)(3) and 34 CFR part 99.35(c)(2), do not apply to FERPA-protected PII that is disclosed to and by MSIX because Federal law (section 1308(b)(2) of the ESEA) specifically authorizes and requires the redisclosure of MDEs to the Department (i.e., FERPA-protected PII). However, FERPA's restrictions on redisclosure still apply to PII from education records that LEAs and SEAs obtain from MSIX and

subsequently maintain in their own data systems.

In order to ensure that MSIX users are aware of the Department's rules of behavior governing the use of MSIX and that the Department can effectively monitor use of MSIX, as well as promptly respond to any actual or potential security breaches, the proposed regulations in § 200.85(f)(3) and (f)(4) would require SEAs to collect and maintain minimum documentation identifying MSIX users and their authorizing supervisors. The OMB-approved User Application Form (OMB Approval No. 1810-0686) contains the minimum information that the Department needs for this purpose, including a certification signed by the proposed user to abide by the MSIX rules of behavior issued by the Department. Under proposed § 200.85(f)(3), an SEA may use either this OMB-approved form or another document that the SEA has developed that contains the information required by the OMB-approved form. By requiring SEAs to retain their records authorizing access to MSIX for a minimum of three years, the Department may gain access to these records when needed consistent with the general three-year record retention period in 34 CFR 80.42.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

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

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

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

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

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

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

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

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal

governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

The Secretary believes that the proposed regulations are necessary in order for the Department to implement effectively the requirement in section 1308(b) of the ESEA that the Secretary ensure the linkage of migrant student record systems and for the effective implementation of the MEP by States and local agencies serving migrant children. The Secretary also believes that the requirements contained in these proposed regulations represent a careful balance between placing burden on States and other agencies providing services to migrant children and meeting the need for collecting and maintaining updated, accurate information about this mobile population in order to ensure timely transfer of pertinent school records when migrant children move from one school to another.

The Secretary also believes that the proposed regulations are necessary because implementation of a statutorily required system for transferring migrant student records will not be completely successful if the system does not contain complete, updated, and accurate student records and if not all States use the system as the official mechanism for transferring migrant student records. Although MSIX has been operational since 2007 and most States now submit data on their migrant children to the system voluntarily, not all States submit data on all the migrant children they have documented as eligible or submit all the required data elements. These data elements (known as “minimum data elements,” or “MDEs”) encompass three types of information: Basic information on migrant children (including their eligibility for migrant services and school enrollment information, if any), also known as core data elements; information pertaining to State assessments; and information about high school credits and grades, which pertains only to secondary students.

As described in the following paragraphs, the Department estimates that the total cost to participating SEAs of implementing these proposed regulations is approximately

\$18,516,444 for the first year, and \$15,986,441 annually thereafter. The estimated burden per eligible child, amortized over three years, is approximately one hour and 10 minutes, at an approximate cost of \$38.54 per year. These estimates cover all proposed regulatory requirements, including the costs of information collection activities, which are discussed separately under the heading *Paperwork Reduction Act of 1995*. As of September 2012, 22 States have provided complete start-up submissions for all MDEs; an additional 27 States have provided partial start-up submissions; and only one State has not provided any data to MSIX. Thus, the first-year estimate excludes start-up costs that have already been incurred by participating SEAs since MSIX began operating in 2007, as well as costs for using records, data quality, data protection, and data correction (activities required under § 200.85(c)–(f) for those 22 States that have provided complete start-up submissions.

These costs will not all be borne by the States and their local operating agencies; the Department provides resources to States, both monetary and non-monetary, to assist them in implementing MSIX activities successfully. For example, in 2007 the Department paid for contractors to work with States to develop system interfaces that allow State data systems housing migrant student data to connect to MSIX directly, avoiding the need to enter information into MSIX manually if it already exists in a data system. In 2008 and 2010 the Department provided modest funding to States under the MSIX Data Quality program that could be used for developing these interfaces, improving the quality of migrant student data, and submitting data to MSIX, and the Department expects to provide such funding in the future. In addition, the Department has provided extensive technical assistance to States on issues of data quality and security not only through the MEP, but also through the State Longitudinal Data System program and as part of the implementation of the Education Data Exchange Network and other data collections that are part of the *EDFacts* system. Each of these activities will result in reduced costs of implementing these proposed regulations. Further, and most importantly, States may use MEP funds to cover the costs associated with implementing the proposed regulations (albeit with the result that less MEP funding is then available for direct services). A more detailed discussion of

the costs of each regulatory requirement follows.

In order to help calculate the time estimates associated with the various proposed data submission requirements, the Department surveyed State officials in nine States with varying numbers of migrant children regarding the time it takes them to collect and enter these data in their State data systems; the Department used for its estimates the median number of minutes that States provided in their responses. Estimates of the numbers of migrant children for whom States will submit information to MSIX were derived from Consolidated State Performance Reports (CSPRs) for the 2010–2011 program year and include the number of migrant children ages 0–21 that States reported as eligible for MEP services in program year 2010–2011 (418,643), the number of eligible K–12 children enrolled in school (298,159), the number of eligible secondary students (83,838), and the number of migrant students reported as having taken State assessments (125,293). The hourly cost used for these estimates was \$33.02, the mean hourly earnings for State and local government management, professional, and related occupations reported by the U.S. Bureau of Labor Statistics in its National Compensation Survey: Occupational Earnings in the United States, 2010.

The Secretary estimates that the one-time cost for providing start-up submissions to MSIX under proposed § 200.85(b)(2), excluding costs that were incurred by States before these proposed regulations, is approximately \$2,077,537.

That figure assumes that State and local officials take approximately 53 minutes per student to collect, enter into the State data system, and submit to MSIX general demographic and enrollment data elements that pertain to all migrant children who have been documented as eligible for the program; approximately 5 minutes per student for the data elements pertaining to students who participate in State assessments; and approximately 55 minutes per student for the course history data elements pertaining only to eligible secondary students.

The Secretary estimates that the annual costs for complying with proposed § 200.85(b)(3), which covers subsequent submissions to MSIX of data on newly documented migrant children, updates to MSIX at the end of every school term, and updates to MSIX if a receiving State or local agency notifies a sending State or local agency that a migrant child has moved, will be approximately \$15,338,820. Within that

estimate, the Department estimates the annual costs of implementing the requirements under proposed § 200.85(b)(3)(i), covering collection and submission of data to MSIX for newly documented migratory children, at \$5,681,377. The Department estimates the annual number of newly documented migrant children to be 121,602 based on the number of qualifying moves for migrant children that States reported to the Department in section 2.3.1.5 of the CSPR for program year 2010–2011. The number of newly documented migrant children for whom there will be data elements pertaining to assessment data (36,394) and secondary schooling (22,855) is based on the proportion of those students in the population of migrant students enrolled in grades K–12 during school year 2010–2011. The Department assumes the same time estimates used for calculating burden for collecting and submitting data for start-up submissions as are assumed for the calculations of other proposed data submission requirements under proposed § 200.85(b)(2). Based on responses to the Department's survey of States discussed above, the Department also estimates an additional effort of 1 hour and 10 minutes per student to collect data elements for a secondary student who previously attended another secondary school in the same State (proposed § 200.85(b)(3)(i)(B)(1)) and another 40 minutes to determine if, and notify MSIX when, a local agency has received secondary school records from out of State for a newly documented secondary student (proposed § 200.85(b)(3)(i)(B)(2)).

The cost estimate for implementing the requirements under proposed § 200.85(b)(3)(ii), end of term submissions, is \$9,618,004. The estimate assumes that States must provide updated data for every migrant child once over the course of each year for most, but not all, of the data elements pertaining to all children, and that that effort will take approximately 42 minutes per migrant child. The time burden, which the Department estimated based on the experience of Department staff who have worked on migrant programs at the State level, also assumes a smaller burden for this effort than that for start-up data submissions because some States have developed automated processes for collecting this information and providing these updates to MSIX.

MSIX is structured so that many of the data elements in a student's record must be updated every year; for example, when a student finishes a grade level the student must be marked

as “withdrawn” from that grade, and when the student enters the following grade the next school year the student is then marked as “enrolled” in the new grade. Thus, updates may happen throughout the school year, but will likely only occur once a year, for a subset of the data elements required for start-up submissions. There are a smaller number of data elements, such as birth city, that would not require an update. In addition, the estimate assumes that States will need five minutes per student for the data elements pertaining to those who participate in State assessments, the same effort as for start-up submissions, as those assessments are administered only once a year. The Department's estimate also assumes 55 minutes per student for the data elements pertaining only to secondary students, the same effort as for start-up submissions, as the Department's previously discussed survey asked States to report their estimated average burden for data elements for secondary students regardless of the number of courses in which secondary students were enrolled.

The estimate for the annual costs of implementing the requirements under proposed § 200.85(b)(3)(iii), change of residence submissions, is approximately \$39,438. This estimate is based on the 637 requests that receiving States or local agencies (i.e., States or local agencies where migrant students moved) made through MSIX in the 2010–2011 school year to request records from sending States or local agencies (i.e., a student's previous location of enrollment). This number is low because, apart from the proposed end of term data submission requirements, the proposed regulations require a sending State to update a student record only if it receives notification from a receiving State or local agency (through MSIX) that it has enrolled a student formerly enrolled in the sending State. However, the proposed regulations do not require receiving States (or their local agencies) to notify the student's former location that the student has changed residence. This allows a State or local agency enrolling a student the flexibility to determine if there are data missing from a student's MSIX record, and send a notification (through MSIX) to a student's former location requesting an updated student record only if needed.

In addition, the Department expects that, as implementation of these regulations takes effect, MSIX records will be updated regularly and data elements will not likely be missing, thus reducing the need for a State or local

agency to request data elements from another location upon a student's change of residence. Furthermore, proposed § 200.85(b)(3)(ii) requires SEAs to update MSIX records at the end of each term; therefore, States and local agencies are most likely to use MSIX to request records from a previous location under § 200.85(b)(3)(iii) only for students moving in the middle of the term. An analysis of MSIX data on the timing of student moves during school year 2010–2011 showed that approximately 52 percent of the moves occurred during the summer months, after the end of the school year; that proportion is 63 percent if the moves that occurred in January are included, all of which should further reduce the number of data submissions under the proposed change of residence provision in § 200.85(b)(3)(iii).

The estimate for the total costs of implementing the proposed requirements under § 200.85(c), using consolidated migrant student records contained in MSIX; § 200.85(d), establishing rules pertaining to the quality of data submitted to MSIX; and § 200.85(f), establishing rules pertaining to the protection of data submitted to MSIX, is approximately \$1,099,180. The Department estimates that the main costs for implementing these requirements are associated with the time that will be needed to establish policies and procedures to address the use of MSIX, data quality, and data protection; develop and disseminate the guidance and procedures to SEA and local personnel; and provide training to State and local personnel who have access to MSIX.

In order to minimize the burden on States of complying with these proposed requirements, the Department developed a template for a State manual to assist the States in developing policies and procedures for using MSIX, ensuring data quality, and protecting the data; the Department also developed a training kit for State officials to use in carrying out training within their States. Based on the experience of Department staff who have worked on migrant programs at the State level, the Department estimates that each State will spend approximately 120 hours developing policies and procedures with the aid of the template; using the same cost per hour used for the proposed data submission requirements, the one-time cost of establishing policies and procedures will be an estimated \$198,120. To calculate the costs of training State and local personnel in the use of MSIX and associated policies and procedures, the Department estimates 10 person-hours

per State for developing training sessions using the training kit and 2-hour training sessions for approximately 3,577 users of MSIX. (This estimate is based on 2,365 current active users, which is expected to increase by 25 percent during the first year these proposed regulations are implemented and 10 percent for each of the following two years.) Based on the same cost per hour used for the proposed data submission requirements, the total training cost is an estimated \$252,735.

In addition, State personnel will likely need the assistance of an information technology professional at the State level to run reports and monitor the data collected and submitted to MSIX, to review system security, and to work with other State or local personnel to remedy any concerns or problems with the data. The Department estimates that it will take 32 hours per month for one computer support specialist per State to accomplish this work, at a salary of \$23.60 an hour (the mean hourly earnings for computer support specialists in State and local government reported by the U.S. Bureau of Labor Statistics in its National Compensation Survey: Occupational Earnings in the United States, 2010), for a total of \$344,371. The estimate also includes an additional \$301,895 for complying with proposed § 200.85(c), using consolidated records in MSIX, to meet costs associated with development of electronic interfaces and communications between State data systems and MSIX. The Department provided resources for this work, as discussed earlier, and estimates that the burden associated with doing this work is approximately 241 hours per State using the same methodology as that used to estimate the time needed for start-up submissions. The estimate further includes an additional \$49,607 for complying with the requirement in proposed § 200.85(f) that MSIX users fill out user application forms, which the Department estimates at 5 minutes, and for a supervisor to review a user application form and other documentation in order to determine whether to grant access to MSIX to an applicant, which the Department estimates at 20 minutes, for a total of 25 minutes to grant access to a user. This cost is based on 3,577 users (as discussed previously) and the same labor cost as that used to calculate the proposed data submission requirements.

The estimate for implementing the proposed requirements under § 200.85(e), procedures for MSIX data correction by parents, guardians, and migratory children, is approximately

\$908. Based on responses to the Department's survey of States discussed above, the Department estimates the number of requests to States to correct data to be one per State per year and that each request will take approximately 38 minutes to acknowledge, review, make any necessary corrections to the data, and notify the requester of the resolution to the request. In addition, the Department, based on its experience in implementing MSIX to date, estimates receiving six requests per year nationally for data correction from parents, guardians, or migrant children, and anticipates that States will similarly require an average of 38 minutes to address any requests from the Department on this matter. The cost per hour used is the same as that used to estimate start-up data submissions.

While it is difficult to quantify the benefits of these proposed regulations, we believe that they will provide important benefits to migrant children and their families and to States and local agencies, particularly for the approximately 26 percent of migrant students who move across school district boundaries each year (based on data States reported for school year 2010–2011). Overall, one of the major benefits of these proposed regulations is that instantaneous access to records of children who have previously been identified as migrant will reduce the time it takes to enroll a student in a new school and the time needed for placing a student in appropriate classes. Prompt placement is necessary not only to ensure continuity of schooling and other services, but also to ensure that students receive the maximum benefits they are entitled to under MEP, as the program limits the amount of time that migrant children may receive services. Prompt access to records also reduces the likelihood of duplication of services and helps ensure that students are placed in the right classes, reducing the likelihood that a student will repeat classes or be placed in an inappropriate class, actions that adversely affect students academically and emotionally. For secondary school students, the benefits will also include having a record documenting credit accrual, thus increasing the likelihood that a student will graduate from high school on a timely basis.

As MSIX incorporates information about inoculation records, it also helps prevent duplication of vaccinations, an unnecessary additional expense for families and community health systems. Most States require students to be vaccinated, at a minimum, for polio, diphtheria, tetanus, pertussis, measles,

mumps, rubella, hepatitis B, and varicella. The combined cost per dose as of July 2012 for these vaccinations under the Center for Disease Control vaccine contracts (established for the purchase of vaccines by immunization programs that receive CDC immunization grant funds, such as State health departments) was approximately \$144, and the average cost of the same vaccine to the private sector was approximately \$210. Reducing duplicate vaccinations also preserves the vaccine supply for others in the community. In addition, MSIX incorporates a flag for students with acute or chronic medical conditions, thus instantly alerting school personnel enrolling a migrant student to the fact that the student may need additional support services and referrals to medical care.

We further note that these proposed regulations were informed by the Department's and the States' previous experience in implementing a migrant student record transfer service in the 1970s through the 1990s. The Migrant Student Record Transfer System (MSRTS) was a national, computer-based system for records collection and transfer established in response to a 1969 congressional mandate requiring the creation of a service for transmitting educational and health records for migrant students. MSRTS was terminated in 1995 due both to concerns about the accuracy and usefulness of the data in the system and to the lack of uniformity in the data reported to the system. In addition, many users considered MSRTS too slow and burdensome, as the computer technology used still relied largely on a paper-based system for collecting and reporting information that did not incorporate technological advancements efficiently, making it an inefficient mechanism for meeting its mission. These proposed regulations have been designed to ensure that MSIX users have ready access to complete, up-to-date records that they may trust, and to ensure that the transfer of those records through MSIX occurs efficiently.

The proposed requirement that agencies serving migrant children use MSIX and the Consolidated Migrant Student Records MSIX generates would ensure not only that information in MSIX is used, but also that the agencies acquire an interest in ensuring the quality and timeliness of the data they provide to and obtain from the system. Other benefits would include access to migrant records that are current, accurate, secure, and complete, and that contain data that may be currently maintained in different systems within States; for example, data from State

assessments may not be maintained in the same system where student health records are maintained. States' current voluntary participation in MSIX reflects the fact that this service is valuable to them and enables them to better serve one of their most vulnerable populations.

For these reasons, the Department believes that the benefits of these proposed regulations would significantly exceed the somewhat minor estimated costs, much of which would be met with Federal resources.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "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 numbered heading; for example, § 200.85.)
- 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.

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 primarily SEAs. SEAs are not defined as "small entities" in the Regulatory Flexibility Act. The only

small entities that could be affected by the proposed regulations would be small local operating agencies that receive MEP subgrants from an SEA or entities that contract with SEAs to provide various services in connection with MSIX activities. Local operating agencies would be required to submit data on migratory children to a State's data system under timeframes identified in the proposed regulations. However, the costs of doing so would likely be financed through the State's MEP award and would not impose a significant financial burden that small entities would have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Section 200.85 contains information collection requirements. Under the PRA the Department has submitted a copy of this section to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Minimum data elements (MDEs) consist of 72 data elements that reflect the minimal information needed to ensure proper enrollment, grade and course placement, and accrual of secondary course credits for migratory children. The MDEs, and the various information sources through which they are currently obtained, would not change as a result of the proposed regulations except for the collection of one new MDE related to the records of secondary school-aged children.

Thirty of the MDEs are collected and entered into State data systems through

the information collection requests (ICRs) for the Department's Education Data Exchange Network (EDEN) (OMB Control Number 1875–0240) and for the Migrant Education Program (MEP) Certificate of Eligibility (COE) and related regulations (OMB Control Number 1810–0662). There is no need to account here for the burden of collecting, maintaining, and submitting to MSIX these 30 MDEs because these MDEs are already collected and maintained for other purposes, and we have assumed that submission of these MDEs to MSIX would occur automatically once a State's electronic interface with MSIX has been established.

Forty-one of the remaining 42 MDEs are collected and entered into the State data systems under the existing MSIX ICR (OMB Control Number 1810–0683). In addition to creating a new MDE, the proposed regulations would change the parties to whom the collection applies as well as the content, timing, and circumstances of submissions of data under the existing ICR. As a result, we propose to amend and restate the MSIX ICR to reflect, among other things, a new burden analysis and supporting statement. In the final regulations we will display the existing MSIX ICR OMB control number 1810–0683 on all information collection requirements in these proposed regulations and adopted in the final regulations.

Section 200.85—Responsibilities of SEAs for the Electronic Exchange Through MSIX of Specified Health and Educational Information of Migratory Children

Proposed § 200.85 would require SEAs to collect, maintain, and submit to MSIX educational and health information on migrant children who move from one State or district to another. This information would enable SEAs to reduce educational disruptions for migrant children, make timely and accurate school placements, ensure academic credit for school work completed, streamline academic progression toward graduation requirements, and provide complete academic records as needed for postsecondary education and employment opportunities. The exchange of health information through MSIX would also help reduce unnecessary immunizations of migrant children because of a lack of timely, accurate health information.

Estimates of Annualized Burden to SEA Respondents

For the 42 MDEs not covered by other information collections, the total burden

for all SEA respondents in the first three years after the effective date of the proposed regulations is estimated at 465,866 hours per year. This amounts to an average of 9,317 hours per year for each of the 50 participating SEAs. Because eligibility for MEP services varies greatly among the States, we have also estimated the overall burden as 1,113 hours annually per 1,000 eligible children to enable individual SEAs to assess the burden of the information collection.

These estimates were developed by program and contract staff with experience in the State-level administration of the MEP based upon consultation with States, analysis of the information reported by each State in its 2010–2011 CSPR (OMB Number 1810–0614), and State data submitted previously to MSIX. Note, the estimated burden to collect the MDE information includes the effort to enter the data in the appropriate State information systems for electronic transmission to MSIX.

In calculating the burden of this information collection, we have not included the burden associated with start-up submissions previously made to MSIX in whole or in part. In calculating the burden associated with subsequent data submissions, our estimates quantify the total annualized burden to SEAs, and do not specify the incremental burden to those SEAs that have previously collected, maintained, and submitted to MSIX any or all the MDEs covered by the MSIX ICR relating to subsequent data submissions.

See the discussion below for a further explanation of the burden related to specific regulatory provisions. Additional information about the basis of the burden estimates in this document is available at www.reginfo.gov. Click on Information Collection Review. The proposed collection is identified as proposed collection [1810–0683 ED–2013–ICCD–0154].

Start-Up Data Submissions (§ 200.85(b)(2)(i))

As of September 2012, twenty-two States had already met the requirement to collect and submit to MSIX MDEs for every migrant child considered eligible in the State within the preceding year; an additional 27 States had provided partial start-up submissions; and only one State has not provided any data to MSIX. We used these figures for our start-up data submissions calculations. Start-up data is a one-time requirement for each SEA; submissions are required to be completed no later than 90 calendar days after the effective date of

the final regulations. Amortized over three years, the annualized burden of the requirement for the remaining 28 States is estimated to be 21,651 hours per year in total and 773 hours per year per SEA. All subsequent data submission requirements are covered by the other information collection activities described below.

Newly Documented Migratory Children (§ 200.85(b)(3)(i)(A))

The annualized burden of the requirement for 50 States to collect and submit the MSIX MDEs within 10 days of documenting the eligibility of each new migratory child is estimated at 109,435 hours per year in total and 2,189 hours per SEA. Documenting the eligibility of migratory children is an ongoing process, and we estimate the burden would remain at a constant level in each of the three years that this information collection covers.

Newly Documented Migratory Children With Prior Secondary School Records in the Same State (§ 200.85(b)(3)(i)(B)(1))

The annualized burden of the requirement for SEAs to collect and submit to MSIX MDEs from the most recent secondary school attended previously within the State is estimated at 26,664 hours per year in total and 533 hours per year for each SEA. Collecting and submitting secondary school information for newly documented migratory children is an ongoing process, and we estimate the burden would remain at a constant level in each of the three years that this information collection covers.

Newly Documented Migratory Children With Secondary School Records From Another State (§ 200.85(b)(3)(i)(B)(2))

The annualized burden of the requirement for SEAs to notify MSIX within 30 days of obtaining out-of-state secondary school records for a newly documented migratory child is estimated at 15,609 hours per year in total and 312 hours per year for each SEA. Our burden estimate includes a one-time effort for each State to modify its State data system and MSIX interface to collect and submit a new MDE to indicate whether or not out-of-state school records are present at an LEA for a migrant student (this one-year effort is amortized over the three years of the collection). Documenting migratory children is an ongoing process, and the burden remains at a constant level in each of the three years that this information collection covers.

End of Term Submissions (§ 200.85(b)(3)(ii))

The annualized burden of the requirement to collect and submit updated and newly available MDEs to MSIX within 30 days after the end of each educational term for all eligible MEP children is estimated at 291,278 hours per year in total and 5,826 hours per year per SEA. This is an ongoing process, and the burden remains at a constant level in each of the three years that this information collection covers.

Notice of Change of Residence Submissions (§ 200.85(b)(3)(iii))

The annualized burden of the requirement to collect and submit to MSIX all new and updated MDEs within

four working days of receiving notification from MSIX that a migratory child has changed residence is estimated at 1,194 hours per year in total and 24 hours per year per SEA. This is an ongoing process, and we estimate the burden would remain at a constant level in each of the three years that this information collection covers.

Parental Request to SEAs for MSIX Data Correction (§ 200.85(e)(1)(ii))

The annualized burden for SEAs to submit revised data to MSIX within four working days of the decision to correct previously submitted data following a request from a parent, guardian, or student is estimated at 31 hours per year in total and .06 hours per year per SEA. This is an ongoing process, and we

estimate the burden would remain at a constant level in each of the three years that this information collection covers.

Parental Request to the Department for MSIX Data Correction (§ 200.85(e)(3))

The annualized burden for SEAs to respond within 10 working days to a request from the Department for information needed by the Department to respond to an individual's request to correct or amend a Consolidated Migrant Student Record under the Federal Privacy Act is estimated at four hours per year in total and 0.1 hour per year per SEA. This is an ongoing process, and we estimate the burden would remain at a constant level in each of the three years that the information collection covers.

COLLECTION OF INFORMATION

Reporting activity	Description	Total burden
1. Start-up Data Submission § 200.85(b)(2)(i)	Collect and submit to MSIX MDEs (applicable to child's age and grade level) for every migrant child whom the SEA considered eligible for MEP services within one year preceding the effective date of the regulations.	21,651
2. Newly Documented Migratory Children § 200.85(b)(3)(i)(A) ..	Collect and submit to MSIX all MDEs (applicable to child's age and grade level) for newly documented migrant students.	109,435
3. Newly Documented Migratory Children with Secondary School Records in the Same State § 200.85(b)(3)(i)(B)(1).	Collect and submit all applicable MDEs from the most recent secondary school previously attended by the student within the same State.	26,664
4. Newly Documented Migratory Children with Secondary School Records from Another State § 200.85(b)(3)(i)(B)(2).	Notify MSIX if one of its local operating agencies obtains records from a secondary school previously attended by the migrant student in another State.	15,609
5. End of Term Submissions § 200.85(b)(3)(ii)	Collect and submit to MSIX all MDE updates and newly available MDEs for migratory children who were eligible for the MEP during the term and for whom the SEA previously submitted data.	291,278
6. Change of Residence Submissions § 200.85(b)(3)(iii)	Collect and submit to MSIX all newly available MDEs and MDE updates that have become available to the SEA or one of its local operating agencies.	1,194
7. Parental Request for MSIX Data Correction § 200.85(e)(1)(ii).	If an SEA determines that data previously submitted to MSIX should be corrected as the result of a request from a parent, guardian, or migrant student, the SEA must submit revised data.	31
8. Response to the Department § 200.85(e)(3)	Submit information requested by the Department needed to respond to an individual's request to amend a record under the Privacy Act.	4

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to OIRA_DOCKET@omb.eop.gov or by fax to (202) 395-6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble or submit them electronically through the Federal eRulemaking Portal at www.regulations.gov by selecting Docket ID number ED-2013-ICCD-0154.

We have prepared an ICR for this collection. In preparing your comments you may want to review the ICR, which is available at www.reginfo.gov. Click on Information Collection Review. This proposed collection is identified as proposed collection [1810-0683 ED-2013-ICCD-0154].

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is 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

collection, 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.

OMB is required to make a decision concerning the collection 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 your comments by January 27, 2014. 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.

Assessment of Educational Impact

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

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 § 200.85 may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document

Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children.)

List of Subjects in 34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs-education, Indians-education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

Dated: December 13, 2013.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education 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. Section 200.81 is amended by:

- A. Redesignating paragraphs (h) through (k) as paragraphs (m) through (p).
- B. Redesignating paragraph (g) as paragraph (j).
- C. Redesignating paragraphs (d) through (f) as paragraphs (f) through (h).
- D. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively.
- E. Adding new paragraphs (b), (e), (i), (k), and (l).

The additions read as follows:

§ 200.81 Program definitions

* * * * *

(b) *Consolidated Migrant Student Record* means the MDEs for a migratory child that have been submitted by one or more SEAs and consolidated into a single, uniquely identified record available through MSIX.

* * * * *

(e) *Migrant Student Information Exchange (MSIX)* means the nationwide system administered by the Department for linking and exchanging specified

health and educational information for all migratory children.

* * * * *

(i) *Minimum Data Elements (MDEs)* means the health and educational information for migratory children that the Secretary requires each SEA that receives a grant of MEP funds to collect, maintain, and submit to MSIX, and use under this part. MDEs may include—

(1) Immunization records and other health information;

(2) Academic history (including partial credit, credit accrual, and results from State assessments required under the Elementary and Secondary Education Act);

(3) Other academic information essential to ensuring that migratory children achieve to high academic standards; and

(4) Information regarding eligibility for services under the Individuals with Disabilities Education Act.

* * * * *

(k) *MSIX Interconnection Agreement* means the agreement between the Department and a State educational agency that governs the interconnection of the State student records system and MSIX, including the terms under which the agency will abide by the agreement based upon its review of all relevant technical, security, and administrative issues.

(l) *MSIX Interconnection Security Agreement* means the agreement between the Department and a State educational agency that specifies the technical and security requirements for establishing, maintaining, and operating the interconnection between the State student records system and MSIX. The MSIX Interconnection Security Agreement supports the MSIX Interconnection Agreement and documents the requirements for connecting the two information technology systems, describes the security controls to be used to protect the systems and data, and contains a topological drawing of the interconnection.

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■ 3. Section 200.84 is revised to read as follows:

§ 200.84 Responsibilities for evaluating the effectiveness of the MEP and using evaluations to improve services to migratory children.

(a) Each SEA must determine the effectiveness of its MEP through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in § 200.83(a)(1), particularly for those students who have

priority for service as defined in section 1304(d) of the ESEA.

(b) SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out by an SEA under paragraph (a) of this section to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

■ 4. Section 200.85 is revised to read as follows:

§ 200.85 Responsibilities of SEAs for the electronic exchange through MSIX of specified health and educational information of migratory children.

(a) *MSIX State record system and data exchange requirements.* In order to receive a grant of MEP funds, an SEA must collect, maintain, and submit to MSIX MDEs and otherwise exchange and use information on migratory children in accordance with the requirements of this section. Failure of an SEA to do so constitutes a failure under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under the MEP.

(b) *MSIX data submission requirements*—(1) *General.* In order to satisfy the requirements of paragraphs (b)(2) and (3) of this section, an SEA that receives a grant of MEP funds must submit electronically to MSIX the MDEs applicable to the child's age and grade level that the Secretary has determined are needed to implement section 1308(b)(2) of the ESEA.

(2) *Start-up data submissions.* (i) No later than 90 calendar days after [EFFECTIVE DATE OF FINAL RULE], an SEA must collect and submit to MSIX each of the MDEs described in paragraph (b)(1) of this section applicable to the child's age and grade level for every migratory child whom the SEA considered eligible for MEP services in accordance with § 200.89(c) within one year preceding the effective date of the final regulations.

(ii) An SEA must make start-up data submissions to MSIX for a migratory child whether or not the SEA has a current Certificate of Eligibility under § 200.89(c) for the child at the time the SEA submits the data to MSIX under this paragraph (b)(2).

(3) *Subsequent data submissions.* An SEA must comply with the following timelines for subsequent data submissions throughout the entire calendar year whether or not local operating agencies or LEAs in the State are closed for summer or intersession periods.

(i) *Newly documented migratory children.* For every migratory child for

whom an SEA documents eligibility for the MEP under § 200.89(c) on or after the effective date of these regulations—

(A) An SEA must collect and submit to MSIX the MDEs described in paragraph (b)(1) of this section within ten working days of documenting the child's eligibility. The SEA is not required to collect and submit MDEs in existence before its documentation of the child's eligibility for the MEP except as provided in paragraph (b)(3)(i)(B) of this section; and

(B) An SEA that documents the eligibility of a secondary school-aged migratory child must also—

(1) Collect and submit to MSIX MDEs from the most recent secondary school in that State attended previously by the newly documented migratory child; and

(2) Notify MSIX within 30 calendar days if one of its local operating agencies obtains records from a secondary school attended previously by the newly documented migratory child in another State.

(ii) *End of term submissions.* (A) Within 30 calendar days of the end of an LEA's or local operating agency's fall, spring, summer, or intersession terms, an SEA must collect and submit to MSIX all MDE updates and newly available MDEs for migratory children who were eligible for the MEP during the term and for whom the SEA submitted data previously under paragraph (b)(2) or (b)(3)(i) of this section.

(B) When a migratory child's MEP eligibility expires before the end of a school year, an SEA must submit all MDE updates and newly available MDEs for the child through the end of the school year in which the child is enrolled. This submission includes all MDE updates and newly available MDEs for any child who continues to receive MEP services under section 1304(e) of the ESEA after expiration of MEP eligibility.

(iii) *Change of residence submissions.* (A) Within four working days of receiving notification from MSIX that a migratory child in its State has changed residence to a new local operating agency within the State or has been newly documented as a migratory child in another State, an SEA must collect and submit to MSIX all new MDEs and MDE updates that have become available to the SEA or one of its local operating agencies since the SEA's last submission of MDEs to MSIX for the child.

(B) An SEA or local operating agency that does not have a new MDE or MDE update for a migratory child when it receives a change of residence notification from MSIX must submit the

MDE to MSIX within four working days of the date that the SEA or one of its local operating agencies obtains the MDE.

(c) *Use of Consolidated Migrant Student Records.* In order to help ensure proper participation in the MEP, school enrollment, grade and course placement, and accrual of all appropriate high school credits, each SEA that receives a grant of MEP funds must—

(1) Use, and require each of its local operating agencies to use, the Consolidated Migrant Student Record for all migratory children who have changed residence to a new school district within the State or in another State;

(2) Encourage LEAs that are not local operating agencies receiving MEP funds to use the Consolidated Migrant Student Record for all migratory children described in paragraph (c)(1) of this section; and

(3) Establish procedures, develop and disseminate guidance, and provide training in the use of Consolidated Migrant Student Records to SEA, local operating agency, and LEA personnel who have been designated by the SEA as authorized MSIX users under paragraph (f)(2) of this section.

(d) *MSIX data quality.* Each SEA that receives a grant of MEP funds must—

(1) Use, and require each of its local operating agencies to use, reasonable and appropriate methods to ensure that all data submitted to MSIX are accurate and complete; and

(2) Respond promptly, and ensure that each of its local operating agencies responds promptly, to any request by the Department for information needed to meet the Department's responsibility for the accuracy and completeness of data in MSIX in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(6) and (g)(1)(C) or (D).

(e) *Procedures for MSIX data correction by parents, guardians, and migratory children.* Each SEA that receives a grant of MEP funds must establish and implement written procedures that allow a parent or guardian of a migratory child, or a migratory child, to ask the SEA to correct or determine the correctness of MSIX data. An SEA's written procedures must meet the following minimum requirements:

(1) *Response to parents, guardians, and migratory children.* (i) Within 30 calendar days of receipt of a data correction request from a parent, guardian, or migratory child, an SEA must—

(A) Send a written or electronic acknowledgement to the requester;

(B) Investigate the request;
(C) Decide whether to revise the data as requested; and

(D) Send the requester a written or electronic notice of the SEA's decision.

(ii) If an SEA determines that data it submitted previously to MSIX should be corrected, the SEA must submit the revised data to MSIX within four working days of its decision to correct the data. An SEA is not required to notify MSIX if it decides not to revise the data as requested.

(iii)(A) If a parent, guardian, or migratory child asks an SEA to correct or determine the correctness of data that was submitted to MSIX by another SEA, within four working days of receipt of the request, the SEA must send the data correction request to the SEA that submitted the data to MSIX.

(B) An SEA that receives an MSIX data correction request from another SEA under this paragraph must respond as if it received the data correction request directly from the parent, guardian, or migratory child.

(2) *Response to SEAs.* An SEA or local operating agency that receives a request for information from an SEA that is responding to a parent's, guardian's, or migratory child's data correction request under paragraph (e)(1) of this section

must respond in writing within ten working days of receipt of the request.

(3) *Response to the Department.* An SEA must respond in writing within ten working days to a request from the Department for information needed by the Department to respond to an individual's request to correct or amend a Consolidated Migrant Student Record under the Privacy Act of 1974, as amended, 5 U.S.C. 552a(d)(2) and 34 CFR 5b.7.

(f) *MSIX data protection.* Each SEA that receives a grant of MEP funds must—

(1) Enter into and carry out its responsibilities in accordance with an MSIX Interconnection Agreement, an MSIX Interconnection Security Agreement, and other information technology agreements required by the Secretary in accordance with applicable Federal requirements;

(2) Establish and implement written procedures to protect the integrity, security, and confidentiality of Consolidated Migrant Student Records, whether in electronic or print format, through appropriate administrative, technical, and physical safeguards established in accordance with the MSIX Interconnection Agreement and MSIX Interconnection Security Agreement. An SEA's written

procedures must include, at a minimum, reasonable methods to ensure that—

(i) The SEA permits access to MSIX only by authorized users at the SEA, its local operating agencies, and LEAs in the State that are not local operating agencies but where a migratory child has enrolled; and

(ii) The SEA's authorized users obtain access to and use MSIX records solely for authorized purposes as described in paragraph (c) of this section;

(3) Require all authorized users to complete the User Application Form approved by the Secretary before providing them access to MSIX. An SEA may also develop its own documentation for approving user access to MSIX provided that it contains the same information as the User Application Form approved by the Secretary; and

(4) Retain the documentation required for approving user access to MSIX for three years after the date the SEA terminates the user's access.

(Approved by the Office of Management and Budget under control number 1810-0683)

(Authority: 20 U.S.C. 6398)

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