CHILD ELIGIBILITY

Q. A dog treat processing facility hires temporary workers to perform the following activities: "eviscerating; splitting carcasses; hanging; cutting; trimming; deboning; and enclosing the raw product in a container." The dog treats are produced solely for pet consumption. More specifically, the workers debone and cut beef that has already been cut and boxed elsewhere. The plant produces products that include, but are not limited to, "a natural steer muscle that is formed into a spiral shape", "natural pig ears and pork slices that are roasted"; and "white, cut femur bones stuffed with a wholesome meaty mixture."
Could this be considered "agricultural work" for purposes of the Migrant Education Program (MEP)?

A: Based on this information and follow-up information collected, the Office of Migrant Education (OME) has concluded that the activities outlined could be considered qualifying activities as they relate to "initial processing." Chapter II, Section 0 (020, 021, and 024) of the *Non-Regulatory Guidance* (NRO) states that:

The Department considers "initial processing" to be work that (1) is beyond the production stage of agricultural work and (2) precedes the transformation of the raw product into something more refined. It means working with a raw agricultural or fishing product... examples of "initial processing" work in the poultry and livestock industries include, but are not limited to: stunning; slaughtering; skinning; eviscerating; splitting carcasses; hanging; cutting; trimming; deboning; and enclosing the raw product in a container.... The Department considers a product no longer to be in the stage of "initial processing" once the transformation of the raw product into something more refined begins. The Department believes that work up to, but not including, the start of the transformation process is agricultural or fishing work for purposes of the MEP.

Some of the activities described precede the transformation into another product (eviscerating; splitting carcasses; hanging, etc.); therefore, OME believes they are considered to be agricultural work for purposes of the MEP based on the initial processing definition above.

However, temporary workers whose tasks are limited to some of the other activities necessitated by production (e.g., shaping muscle into spirals, roasting pig ears, or stuffing femur bones) would likely *not* qualify for purposes of the MEP (see NRG Chapter II, 025, 027).

Q. Is bee-tending considered qualifying work for purposes of the MEP? The work includes: keeping the bees alive, pollinating the bees, and splitting the bees into additional colonies.

A: "Agricultural work", as defined by the MEP, is the "production or initial processing of crops, dairy products, poultry, or livestock; as well as the cultivation or harvesting of trees. It consists

of work performed for wages or personal subsistence." [See 34 CFR 200.81(a).] Activities such as keeping the bees alive, pollinating the bees, and splitting the bees into additional colonies are all integral to producing crops such as honey and beeswax, and pollinating fruit and vegetable crops. Therefore, these activities would be considered agricultural work.

In order to make a final determination about whether these bee-tending activities are considered "qualifying" work, the State must determine the following:

1. Is the work performed in order to produce a crop or is it performed for recreational purposes? Work that is performed for recreational purposes is not considered "qualifying work."

2. How long do the workers intend to remain employed? If the workers are employed temporarily or seasonally, then the work would be considered "qualifying work" (assuming that the work is not performed for recreational purposes). But, if the workers are employed permanently, then the work would not be considered "qualifying work".

Of course, all other eligibility criteria must also be met in order for the workers or their children to qualify (children must be under age 22, they must be eligible for a free public education, etc.).

Q. Is work on horse farms considered qualifying work for purposes of the MEP? Does the Department not consider this work to be qualifying because "we do not grow or eat horses as we do cows or other agricultural products"?

A. Eligibility for the MEP is determined by several factors, and whether a worker produces a product for human consumption is <u>not</u> one of these determining factors. In fact, some workers on horse farms *do* qualify for the MEP provided they meet the eligibility criteria, which includes temporary or seasonal employment in agricultural work.

The regulatory definition of agricultural work is "the product on or initial processing of crops, dairy products, poultry, or livestock..." [See 34 CFR 200.81(a)]. The MEP considers work on horse farms to meet this definition if the horses are <u>produced or kept primarily for breeding or slaughter purposes</u>. For example, work with horses intended for slaughter would be considered the production of livestock. Similarly, if the horses are used to care for livestock such as cattle (e.g., herding cattle), we would consider this to be agricultural work, as the horses are integral to the production of cattle.

What makes *some* horse farm employees and their children ineligible for the MEP is that they are working with animals that are raised primarily for purposes of recreation, sport, research, or as pets (e.g., horses that are raised primarily for such purposes as competitive riding, hunting, or racing). These horses would not be considered livestock for purposes of the MEP, nor would they be integral to the production of other livestock such as cattle (see Non-Regulatory Guidance (NRG) Chapter II, Q. 06- 08]. Consequently, this would not meet the definition of agricultural work, and these workers would not meet MEP eligibility criteria.

Q: A child travelled between two school districts in State A, to accompany her father in search of qualifying work. She travelled approximately 67 miles from her home base in District A to District B, with her grandparents and father. Her father subsequently found qualifying (temporary, agricultural) work in District B. After the family's arrival in District B however, the girl's father remained there to work, while she returned to District A with her grandparents the following day. Is this considered a qualifying move for purposes of the Migrant Education Program (MEP)?

A: We believe this child does not qualify for the MEP, based on the fact that she does not meet the full definition of a migratory child. While she does appear to have accompanied a parent who is a migratory agricultural worker, she did not move from one school district to another [see Section 1309(2) of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001 and 34 CFR 200.81(e)(2)]. The child's travel between school districts is not a "move" that meets the statutory and regulatory definition. As defined by the MEP, a move must be a change from one residence to another residence that occurs due to economic necessity [see 34 CFR 200.81(g)]. The child's return to District A the following day suggests that she *visited* District B, but her residence remained in District A [see Non-Regulatory Guidance (NRG) Chapter II, Q. D3 and D4 for further explanation of the term "residence"].

PROVISION OF SERVICES

Q. Can a child who is being served by the Migrant Education Program (MEP) under the Continuation of Services (COS) provision of the statute, also qualify for Priority for Services (PFS)?

A. OME interprets the statutory definitions of PFS and COS to be incompatible. The definition of PFS indicates its application to migratory children, while the COS provision applies when a child ceases to be migratory/is no longer a migratory child. Under these definitions, it is impossible for a child to be simultaneously a "migratory child" and "no longer a migratory child" [see Sections 1304(d) and (e) of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act (NCLB) of 2001].

Q. How can a State determine whether a service should be counted as a "referred service" for purposes of reporting MEP data?

A. In an effort to provide additional guidance to all states, the MEP CSPR glossary will be updated to include the following definition of "referred services" for the coming performance period, beginning September 1, 2012:

> *Referred services cannot be MEP-funded and they cannot be school or district based services that the child is already entitled to receive (e.g., Title I Part A services, Title III services). Referred services are educational or educationally-related (supportive) services that migrant children would not have received without the efforts of MEP-funded personnel. The child must actually receive the service in order for it to be counted as a referral. An eligible migrant child must be the direct recipient of the referred service. Examples of referred services that a child might receive as a result of MEP efforts include: GED or pre-GED classes, Adult basic education classes, parenting classes (for eligible youth), computer literacy classes, job training programs, early childhood classes, nutrition and health education workshops, health and dental screenings, and food and clothing assistance.*

While the definition is largely the same, we believe the examples will help States determine if a particular service can count as a referred service. In deciding whether to include a referred service for program reporting purposes, SEAs may find it helpful to consider the following three questions:

1. *Is the service MEP-funded?* If the service was delivered using MEP funds, it cannot be counted as a referred service.

2. *Is the child entitled to receive the service from the school or district?* If the child would have been entitled to the service, regardless of MEP-personnel efforts, it cannot be counted as a referred service.

3. *Is the service educational or educationally-related?* If the service, whether instructional or support, cannot reasonably be expected to positively impact a child's education, it cannot be counted as a referred service.

Q. Can a State consider children age 3-5 (not Kindergarten) and/or Out-of-School Youth for Priority for Services (PFS), even though these children are not enrolled in school?

A. The most recent guidance on PFS is found in Chapter V, Section B of the Migrant Education Program (MEP) Non-Regulatory Guidance (NRG). To be identified as PFS, a child must have had his/her education interrupted during the regular school year, <u>and</u> he/she must be failing or at risk of failing state academic achievement and content standards (for the complete definition, see Section 1304(d) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Let Behind Act of 2001 (NCLB)].

Although the NRG focuses on children enrolled in school, OME believes that States may identify OSY and preschool age children (age 3-5) as PFS if the State's Comprehensive Needs Assessment concludes that preschool children and OSY have some of the greatest needs statewide. A State might determine that OSY experience an interruption of education and are unlikely to meet State standards because they do not attend school and have not graduated from

high school. A preschool child might meet the criteria if they are removed from a structured preschool program because of the migrant lifestyle, and while participating in the program, were failing or at risk of failing the program's milestones.

The State should develop a process for determining under which circumstances an OSY or preschool child qualifies for PFS. For example, the State might feel that it is appropriate to only include OSY who have moved within past year or OSY who are interested in earning a GED. The State should clearly outline these conditions in its PFS determination process. In addition, the State should ensure that local MEPs implement this process consistently.