

Former Regulations	Draft Regulations	2011 Regulations
<p><u>§303.14 IFSP.</u> As used in this part, <i>IFSP</i> means the individualized family service plan, as that term is defined in § 303.340(b).</p>	<p><u>§303.20 Individualized family service plan.</u> Individualized family service plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant’s or toddler’s family that--</p> <p>(a) Is based on the evaluation and assessment described in §303.320;</p> <p>(b) Includes the content specified in §303.344;</p> <p>(c) Is implemented as soon as possible once parental consent to early intervention services on the IFSP is obtained (consistent with §303.420); and</p> <p>(d) Is developed in accordance with the IFSP procedures in §§303.342, 303.343, and 303.345.</p>	<p><u>§303.20 Individualized family service plan.</u> Individualized family service plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant’s or toddler’s family that—</p> <p>(a) Is based on the evaluation and assessment described in §303.321;</p> <p>(b) Includes the content specified in §303.344;</p> <p>(c) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with §303.420); and</p> <p>(d) Is developed in accordance with the IFSP procedures in §§303.342, 303.343, and 303.345.</p>
<p><u>Individualized family service plan (§303.20)</u> <u>Comment:</u> One commenter supported the provision in the definition of <u>individualized family service plan</u> that provides that the plan must be implemented as soon as possible after obtaining parental consent for early intervention services.</p> <p>One commenter recommended adding a requirement that services begin as soon as possible, but no later than 10 days after receiving parental consent for early intervention services.</p> <p><u>Discussion:</u> We address these comments in our discussion of the comments on §303.342.</p> <p><u>Changes:</u> None.</p>		
<p><u>§303.18 Natural environments.</u> As used in this part, <i>natural environments</i> means settings that are natural or normal for the child’s age peers who have no disabilities.</p>	<p><u>§303.26 Natural environments.</u> Natural environments means settings that are natural or normal for an infant or toddler without a disability, may include the home, and must be consistent with the provisions of §303.126.</p>	<p><u>§303.26 Natural environments.</u> Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of §303.126.</p>

Natural environments (§303.26)

Comment: Many commenters suggested changes to the proposed definition of natural environments in §303.26. A few commenters recommended adding the phrase “community settings where children without disabilities participate” to make the definition consistent with section 632(4)(G) of the Act. Other commenters recommended retaining the reference to the “child’s age peers” in current §303.18. Some commenters recommended replacing the word “normal” with “typical” because the term “normal” is value-laden, vague, and open to interpretation.

One commenter recommended providing a list of natural environments in which an infant or toddler with a disability may receive services. Several commenters, some in response to §303.26 and others in response to §303.126, recommended adding specific examples of settings to §303.26, including Early Head Start or child care programs, day care, play groups, churches, grocery stores, parks, public libraries, community settings, and settings where parents with infants and toddlers with similar disabilities gather.

Two other commenters recommended the definition indicate that a clinical setting could be the natural environment, particularly when the service requires the use of specialized equipment that cannot be transported to the child’s home. One commenter expressed concern that mandating services to be provided in settings where non-disabled children are present may suggest that the alternative is less than acceptable. Another commenter recommended that the definition of natural environments require that services be provided within family routines and activities and opposed identifying specific settings.

Discussion: Three sections of these regulations describe natural environments requirements that apply to States receiving funds under Part C of the Act: §§303.26, 303.126, and 303.344(d)(1). We address comments that relate to §303.26, regarding the definition of natural environments, in this discussion section. We address comments that relate to §303.126, regarding the requirements related to natural environments in State applications, in the Analysis of Comments and Changes for subpart B. Finally, we address comments that relate to §303.344(d)(1), regarding the requirements related to natural environments for IFSPs and IFSP Team decision-making processes concerning appropriate service settings, in the Analysis of Comments and Changes for subpart D.

The definition of natural environments in §303.26 remains substantively unchanged from current §303.18 and is consistent with the language in section 632(4)(G) of the Act, as well as the following statutory sections:

Section 635(a)(16) of the Act, which is reflected in §303.126 and requires that the Part C statewide system include policies and procedures to ensure that, consistent with section 636(d)(5) of the Act, to the maximum extent appropriate, early intervention services are provided in natural environments and the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than the natural environment that is most appropriate, as determined by the parent and IFSP Team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in the natural environment.

Section 636(d)(5) of the Act, which is reflected in §303.344(d)(1)(ii) and which requires that an IFSP contain a statement of the natural environments in which early intervention services will be provided appropriately, including a justification of the extent, if any, to which the services will not be provided in the natural environment. Section 632(4)(G) of the Act provides that natural environments may include home and community settings. However, the reference to community settings was not included in the proposed regulations. We have added a reference to “community settings” in §303.26 to ensure greater conformity with the statutory language, to address commenters’ concerns, and to clarify that the term natural environments includes not only the home but community settings in which one finds same-aged children who do not have disabilities (diagnosed conditions, developmental delays, or, at the State’s option, at-risk children).

The term “normal” was introduced into the regulations implementing the Individuals with Disabilities Education Act Amendments of

1991 and at that time, “normal” was commonly used and accepted. However, we agree with commenters that “normal” is less commonly used today and have replaced the word “normal” with the word “typical” in the definition of natural environments in §303.26.

Concerning commenters’ requests to add a list of settings or examples of community settings, it would not be appropriate or practicable to include a list of every setting that may be the natural environment for a particular child or those settings that may not be natural environments in these regulations.¹ In some circumstances, a setting that is natural for one eligible child based on that child’s outcomes, family routines, or the nature of the service may not be natural for another child. As further discussed in §303.344(d)(1) of the Analysis of Comments and Changes for subpart D, the decision about whether an environment is the natural environment is an individualized decision made by an infant’s or toddler’s IFSP Team, which includes the parent. Additionally, a variety of community settings exist that may be natural environments, and we do not wish to limit the types of service settings that the IFSP Team may consider appropriate. Thus, we have not added a list of settings or specific community-based settings as requested by commenters.

We appreciate the commenters’ requests for clarification as to whether clinics, hospitals, or a service provider’s office may be considered the natural environment in cases when specialized instrumentation or equipment that cannot be transported to the home is needed. Natural environments mean settings that are natural or typical for an infant or toddler without a disability. Section 635(a)(16) of the Act and §303.126 require services be provided, to the maximum extent appropriate, to infants and toddlers with disabilities in natural environments (including the home and community settings). We do not believe that a clinic, hospital or service provider’s office is a natural environment for an infant or toddler without a disability; therefore, such a setting would not be natural for an infant or toddler with a disability. However, §303.344(d)(1) requires that the identification of the early intervention service needed, as well as the appropriate setting for providing each service to an infant or toddler with a disability, be individualized decisions made by the IFSP Team based on that child’s unique needs, family routines, and developmental outcomes. If a determination is made by the IFSP Team that, based on a review of all relevant information regarding the unique needs of the child, the child cannot satisfactorily achieve the identified early intervention outcomes in natural environments, then services could be provided in another environment (e.g. clinic, hospital, service provider’s office). In such cases, a justification must be included in the IFSP, pursuant to §303.344(d)(1)(ii)(A).

Concerning the comment to add a reference to family routines and activities to the definition of natural environments, §303.26 allows for and supports providing services within family routines and activities.

Changes: We have added in the definition of natural environments in §303.26 the phrase “or community settings” after “home” and the phrase “same-aged” before the phrase “infant or toddler without a disability.” We also have replaced the reference to “normal” with “typical.”

<p>§303.167 Individualized family service plans. Each application must include— (a) An assurance that a current IFSP is in effect and implemented for each eligible child and the child’s family;</p>	<p>§303.114 Individualized family service plans (IFSPs). Each system must include, for each infant or toddler with a disability in the State, an IFSP that meets the requirements of §§303.340 through 303.345, including service</p>	<p>§303.114 Individualized family service plan (IFSP). Each system must ensure, for each infant or toddler with a disability and his or her family in the State, that an IFSP, as defined in §303.20, is developed and implemented that</p>
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¹Lead agencies currently provide data on service settings under Information Collection 1820-0578. Examples of community settings identified in response to this information collection include: child care centers (including family day care), preschools, regular nursery schools, early childhood centers, libraries, grocery stores, parks, restaurants, and community centers (e.g., YMCA, Boys and Girls Clubs).

<p>(b) Information demonstrating that— (1) The State’s procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and (2) The content of IFSPs used in the State is consistent with the requirements in § 303.344; and (c) Policies and procedures to ensure that— (1) To the maximum extent appropriate, early intervention services are provided in natural environments; and (2) The provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.</p>	<p>coordination services in accordance with the IFSP.</p>	<p>meets the requirements of §§303.340 through 303.345, and that includes service coordination services, as defined in §303.34.</p>
<p>Individualized family service plans (IFSPs) (§303.114) <u>Comment:</u> One commenter recommended adding the words “and his/her family” after the term “disability” in this section. <u>Discussion:</u> We agree that the IFSP is designed to address the needs of both the infant and toddler with a disability and the child’s family. Accordingly, we have revised §303.114 to make clear that the State’s system must provide an IFSP for each infant or toddler with a disability and the child’s family in the State. Additionally, we have reworded §303.114, without changing the substantive meaning. <u>Changes:</u> We have (a) added the words “and his or her family” following the phrase “each infant or toddler with a disability” in §303.114, (b) replaced the word “include” with the word “ensure,” and (c) clarified that the IFSP developed and implemented for a child must meet the requirements in §§303.340 through 303.346 and include service coordination services.</p>		
	<p><u>§303.126 Early intervention services in natural environments.</u> Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided--</p>	<p><u>§303.126 Early intervention services in natural environments.</u> Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided--</p>

	<p>(a) To the maximum extent appropriate, in natural environments; and</p> <p>(b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be provided satisfactorily in a natural environment.</p>	<p>(a) To the maximum extent appropriate, in natural environments; and</p> <p>(b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team, only when early intervention services cannot be achieved satisfactorily in a natural environment.</p>
<p><u>Early intervention services in natural environments (§303.126)</u></p> <p><u>Comment:</u> A few commenters requested that §303.126, regarding the provision of early intervention services in the natural environment, include the phrase “necessary to meet the unique needs of the infant or toddler with a disability and the family” when referring to early intervention services.</p> <p><u>Discussion:</u> Section 303.126 cross-references §303.344(d)(1), which requires the child’s IFSP to include a statement of the specific early intervention services that are necessary to meet the unique needs of the child and the family to achieve the measurable results or outcomes identified in the IFSP. Section 303.344(d)(1) requires that early intervention services be individualized according to the child’s needs. Therefore, it is not necessary to repeat this requirement in §303.126 in connection with a statewide system that includes policies and procedures to ensure that early intervention service settings, to the maximum extent appropriate, are provided in natural environments.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> Many commenters stated that the language in §303.126(b) should incorporate the language in section 635(a)(16) of the Act and requested that the phrase “provided satisfactorily” be replaced with the statutory phrase “achieved satisfactorily.”</p> <p><u>Discussion:</u> Our use of the phrase “provided satisfactorily” in proposed §303.126(b) was not intended to be a substantive change from section 635(a)(16) of the Act or current practice. We agree that the language in this section should incorporate the language in section 635(a)(16) of the Act.</p> <p><u>Changes:</u> We have replaced the word “provided” in §303.126(b) with the word “achieved.”</p> <p><u>Comment:</u> Several commenters requested that §303.126(b) be reworded to clarify that parents are members of the IFSP Team.</p> <p><u>Discussion:</u> It is certainly true that, under section 636(a)(3) of the Act and §303.343(a)(1)(i) of these regulations, parents are required members of a child’s IFSP Team. However, we decline to make the requested change because §303.126(b), which is taken directly from section 635(a)(16)(b) of the Act, underscores the important role parents have in deciding, together with the rest of the members of the IFSP Team, whether early intervention services will be provided in settings other than the child’s natural environment. Given that other provisions in the regulations and the Act make clear that the child’s parents are required members of a child’s IFSP Team, we do not believe it is necessary to revise §303.126(b) as requested by the commenters.</p> <p><u>Changes:</u> None.</p>		
<p><u>§303.148 Transition to preschool programs.</u></p> <p>Each application must include a description of the policies and procedures to be used to</p>	<p><u>§303.209 Transition to preschool and other programs.</u></p> <p>(a) <u>Application requirements.</u> Each State</p>	<p><u>§303.209 Transition to preschool and other programs.</u></p> <p>(a) <u>Application requirements.</u> Each State</p>

<p>ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including—</p> <p>(a) A description of how the families will be included in the transition plans;</p> <p>(b) A description of how the lead agency under this part will—</p> <p>(1) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law;</p> <p>(2)(i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or</p> <p>(ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;</p> <p>(3) Review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and</p> <p>(4) Establish a transition plan; and</p>	<p>must include the following in its application:</p> <p>(1) A description of the policies and procedures it will use to ensure a smooth transition for toddlers with disabilities and their families--</p> <p>(i) From receiving early intervention services under this part (including toddlers receiving services under §303.211) to preschool, school, or other appropriate services; or</p> <p>(ii) To exit the program.</p> <p>(2) A description of how the State will meet each of the requirements in paragraphs (b) through (d) of this section.</p> <p>(3)(i)(A) If the lead agency is not the SEA, an interagency agreement between the lead agency and the SEA; or</p> <p>(B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act.</p> <p>(ii) To ensure a seamless transition between services under this part and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must include provisions for how the lead agency and the SEA will meet the requirements of §303.209(b) through (d) and §303.344(h), and 34 CFR 300.124, 300.321(f) and 300.323(b).</p> <p>(4) Any policy the lead agency has adopted under §303.401(e).</p>	<p>must include the following in its application:</p> <p>(1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this part to--</p> <p>(i) Preschool or other appropriate services (for toddlers with disabilities); or</p> <p>(ii) Exiting the program for infants and toddlers with disabilities.</p> <p>(2) A description of how the State will meet each of the requirements in paragraphs (b) through (f) of this section.</p> <p>(3)(i)(A) If the lead agency is not the SEA, an interagency agreement between the lead agency and the SEA; or</p> <p>(B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act.</p> <p>(ii) To ensure a seamless transition between services under this part and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under §303.401(d) and (e)), §303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f), and 300.323(b).</p> <p>(4) Any policy the lead agency has adopted under §303.401(d) and (e).</p>
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<p>(c) If the State educational agency, which is responsible for administering preschool programs under part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.</p> <p>NOTE: Among the matters that should be considered in developing policies and procedures to ensure a smooth transition of children from one program to the other are the following:</p> <ul style="list-style-type: none"> • The financial responsibilities of all appropriate agencies. • The responsibility for performing evaluations of children. • The development and implementation of an individualized education program (“IEP”) or an individualized family service plan (“IFSP”) for each child, consistent with the requirements of law (see § 303.344(h) and sections 612(a)(9) of the Act). • The coordination of communication between agencies and the child’s family. • The mechanisms to ensure the uninterrupted provision of appropriate services to the child. 	<p>(b) <u>Family involvement and notification of the LEA.</u> The State lead agency must ensure that--</p> <p>(1) Each family of a toddler with a disability who is served under this part will be included in the transition plan required under this section and §303.344(h);</p> <p>(2)(i) Except as provided in paragraph (b)(3) of this section, at least nine months before the third birthday of the toddler with a disability, the lead agency will notify the LEA for the area in which the toddler resides--or, if appropriate, the SEA--that the toddler on his or her third birthday will reach the age of eligibility for preschool or school services under Part B of the Act, as determined in accordance with State law; or</p> <p>(ii) Except as provided in paragraph (b)(3) of this section, if the lead agency determines within the nine-month period before the third birthday of a toddler with a disability the initial eligibility of the toddler for early intervention services under Part C of the Act, the lead agency, as soon as possible after determining the child’s eligibility, will notify the LEA for the area in which the toddler with a disability resides—or, if appropriate, the SEA—that the toddler on his or her third birthday will reach the age of eligibility for preschool or school services under Part B of the Act, as determined in accordance with State law; and</p> <p>(3) If the State has adopted, under §303.401(e), a policy permitting a parent to object to disclosure of personally identifiable information, the notification requirement in paragraphs (b)(2)(i) and (ii) of this section must be consistent with this policy.</p>	<p>(b) <u>Notification to the SEA and appropriate LEA.</u> (1) The State lead agency must ensure that--</p> <p>(i) Subject to paragraph (b)(2) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law;</p> <p>(ii) Subject to paragraph (b)(2) of this section, if the lead agency determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler’s third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the lead agency, as soon as possible after determining the child’s eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or</p> <p>(iii) Subject to paragraph (b)(2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler’s third birthday and that toddler may be eligible for preschool services under Part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to</p>
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	<p>(c) <u>Conference to discuss services.</u> The State lead agency must ensure the following:</p> <p>(1) If a toddler with a disability may be eligible for preschool services or other services under Part B of the Act, the lead agency, with the approval of the family of the toddler, will convene a conference among the lead agency, the family, and the LEA not fewer than 90 days--and, at the discretion of all of the parties, not more than nine months--before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act.</p> <p>(2) If a toddler with a disability may not be eligible for preschool or other services under Part B of the Act, the lead agency, with the approval of the family of the toddler, will make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for this toddler to discuss appropriate services that the toddler may receive.</p> <p>(d) <u>Program options and transition plan.</u> The State lead agency must ensure that--</p> <p>(1) It will review the program options for the</p>	<p>conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.</p> <p>(2) The State must ensure that the notification required under paragraphs (b)(1)(i) and (b)(1)(ii) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.</p> <p>(c) <u>Conference to discuss services.</u> The State lead agency must ensure that--</p> <p>(1) If a toddler with a disability may be eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act; and.</p> <p>(2) If the lead agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.</p> <p>(d) <u>Transition plan.</u> The State lead agency must ensure that for all toddlers with disabilities--</p>
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	<p>toddler with a disability for the period from the toddler's third birthday through the remainder of the school year;</p> <p>(2) It will establish a transition plan not fewer than 90 days--and, at the discretion of all of the parties, not more than nine months--before the toddler's third birthday; and</p> <p>(3) The plan will include, consistent with §303.344(h), as appropriate--</p> <p>(i) Steps for the toddler with a disability and his or her family to exit from the program; and</p> <p>(ii) Any transition services needed by that toddler and his or her family.</p>	<p>(1)(i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and</p> <p>(ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and §303.344(h);</p> <p>(2) It establishes a transition plan in the IFSP not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the toddler's third birthday; and</p> <p>(3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate--</p> <p>(i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and</p> <p>(ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.</p> <p>(e) <u>Transition conference and meeting to develop transition plan.</u> Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).</p> <p>(f) <u>Applicability of transition requirements.</u></p> <p>(1) The transition requirements in paragraphs (b)(1)(i) and (b)(1)(ii), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler</p>
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		<p>with a disability under the age of three who is served by a State that offers services under §303.211.</p> <p>(2) In a State that offers services under §303.211, for toddlers with disabilities identified in §303.209(b)(1)(i), the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section:</p> <p>(i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler’s options to continue to receive early intervention services under this part or preschool services under section 619 of the Act.</p> <p>(ii) The initial annual notice referenced in §303.211(b)(1).</p> <p>(3) For children with disabilities age three and older who receive services pursuant to §303.211, the State must ensure that it satisfies the separate transition requirements in §303.211(b)(6)(ii).</p>
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Transition to preschool and other programs (§303.209)
Application requirements (§303.209(a))
Comment: None.
Discussion: Upon further review of §303.209, we determined that it would be helpful to clarify that the transition requirements in §303.209 apply to all toddlers with disabilities before those toddlers turn three years old, including those toddlers with disabilities served by States that elect to provide services pursuant to §303.211.

To distinguish the transition requirements in §303.211(b)(6), which apply to toddlers receiving services under the Part C extension option in §303.211, who by definition are age three or older, we have revised §303.209(a) to state that the transition policies and procedures it must describe relate to the transition of infants and toddlers with disabilities under the age of three and their families. As further discussed elsewhere in this Analysis of Comments and Changes section, we have made corresponding changes to §303.211 to clarify that the transition requirements in §303.209 apply to all infants and toddlers under the age of three who are transitioning from the Part C program (as described in §303.211(b)(6)(i)) and that the transition requirements described in §303.211(b)(6)(ii) apply to children age three and older who are transitioning from services provided pursuant to §303.211.

Changes: We have deleted in new §303.209(a)(1) (proposed §303.209(a)(1)(i)) the parenthetical “(including toddlers receiving services under

§303.211).” We also have revised §303.209(a)(1) to clarify that each State must describe in its application, the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services to (i) preschool or other appropriate services (for toddlers with disabilities) or (ii) exiting the program (for infants and toddlers with disabilities). We have addressed separately in new §303.211(b)(6)(ii) the substance of proposed §303.209(b)(2)(i) and (b)(2)(ii) regarding transition from services under §303.211.

Comment: Some commenters opposed §303.209(a)(3)(i)(B), which requires a State whose lead agency is the SEA to include in its application an intra-agency agreement between the program within the SEA that administers Part C of the Act and the program within the SEA that administers section 619 of the Act. These commenters stated that requiring two programs within one SEA to have an agreement with each other is unnecessary and would create an undue paperwork burden. A few other commenters expressed concern that the requirement would be particularly burdensome for States with seamless “Birth to Five” programs.

Discussion: Section 303.209(a)(3)(i) requires all States, including those in which the SEA is the lead agency, to establish an interagency or an intra-agency agreement between the early intervention program under Part C of the Act and the preschool program under section 619 of Part B of the Act. We included the requirement for intra-agency agreements because, through the Continuous Improvement Focused Monitoring System (CIFMS) process and State reporting under the SPP/APRs, the Department has identified noncompliance with transition requirements under both Part C of the Act (e.g., noncompliance with section 637(a)(9) of the Act, regarding notification of the LEA and conducting transition conferences, and, with sections 636(a)(3) and (d)(8) and 637(a)(9) of the Act, regarding the transition steps and services in the IFSP) and Part B of the Act (e.g., noncompliance with section 612(a)(9) of the Act, regarding development and implementation of an IEP by a child’s third birthday). Given this noncompliance and the need for States to have clearly defined transition coordination policies and procedures between the early intervention program under Part C of the Act and the preschool program under Part B of the Act, requiring an intra-agency agreement will be a useful tool to enhance coordination and communication between the Part C and Part B preschool programs.

Developing interagency or intra-agency agreements should not be a significant burden for States because approximately two-thirds of lead agencies already have interagency agreements and the remaining third, where the lead agency is also the SEA, currently are required to have transition policies and procedures that address the transition of toddlers from early intervention to preschool services under Parts B and C of the Act. For lead agencies that are also SEAs, the Department’s position is that the benefits associated with requiring intra-agency agreements pursuant to §303.209(a)(3)(i)(B) outweigh the minimal burden associated with this requirement. An intra-agency agreement serves the useful purpose of ensuring that there is an appropriate level of coordination and communication across the early intervention and preschool programs in a lead agency that is also an SEA. The burden of developing this agreement is minimal because the requirement does not involve the development of new transition policies and procedures--these policies and procedures are already required pursuant to §303.209(a). Moreover, the Council often serves to advise the lead agency when it develops these agreements; in fact, the Council is specifically required under section 641(e)(1)(C) of the Act to advise and assist the SEA (which in this case would be the lead agency) regarding the transition of toddlers with disabilities to preschool and other appropriate services.

There are only a few States that have adopted “Birth to Five” programs (i.e., programs in which the SEA and LEA provide both preschool services under Part B of the Act and early intervention services under Part C of the Act to children from ages birth to five). In these States, the same State and local agencies administer Part C of the Act and section 619 of the Act. Therefore, States with these programs must include one or more intra-agency agreements to satisfy the requirement in §303.209(a)(3)(i)(B). As stated in the preceding two paragraphs, the benefits associated with intra-agency agreements pursuant to §303.209(a)(3)(i)(B) outweigh the minimal burden associated with the requirement.

Changes: None.

Comment: None.

Discussion: Based on further review of §303.209(a)(3)(ii), we have determined that additional clarification is needed with regard to the required transition-related content of the interagency and intra-agency agreements under §303.209(a)(3)(i). To clarify that these agreements must address how the lead agency and the SEA will meet the confidentiality requirements in §303.401(d) and (e), we have added specific references to those provisions in §303.209(a)(3)(ii). Additionally, we have specified that the agreements required pursuant to §303.209(a)(3)(i) must address how the agency and the SEA will meet, for all children transitioning from Part C services to Part B services, the requirements in 34 CFR 300.101(b)--that is, how the lead agency and the SEA will ensure that FAPE is made available to each eligible child residing in the State no later than the child's third birthday.

Changes: We have added the words "including any policies adopted by the lead agency under §303.401(d) and (e)" as well as a reference to 34 CFR 300.101(b) to §303.209(a)(3)(ii).

Notification to the SEA and appropriate LEA (§303.209(b))

Comment: None.

Discussion: Upon further consideration of this section of the regulations, we have determined that the requirement in proposed §303.209(b)(1) that each family member of a toddler with a disability receiving Part C services be included in the development of the transition plan is better addressed under the transition plan requirements in §303.209(d) and not with the SEA and LEA notification requirements in §303.209(b). This change does not reflect a substantive change to the regulations.

Changes: We moved the text from proposed §303.209(b)(1) to new §303.209(d)(1)(ii).

Comment: Some commenters supported the requirement, reflected in new §303.209(b)(1)(i) (proposed §303.209(b)(2)), that the lead agency notify the LEA, at least nine months before the third birthday of a toddler who resides in the area served by the LEA, that the toddler will reach the age of eligibility for preschool services under Part B of the Act. Other commenters opposed this nine-month timeline stating that it would be an undue burden and inconsistent with the Act. Several of these commenters recommended alternative timelines (i.e., timelines ranging from 10 days to 3 or 6 months before a child's third birthday). One commenter recommended aligning the timeline requirement for LEA notification in new §303.209(b)(1)(i) (proposed §303.209(b)(2)(i)) with the 90-day timeline for transition plans in §303.209(d)(2).

Discussion: Establishing a timeline within which a lead agency must notify the appropriate LEA that a child is about to transition from Part C services and may be eligible for services under Part B of the Act is challenging. The timeline must allow sufficient time for both the lead agency to fulfill its transition responsibilities under sections 636(a)(3) and (d)(8) and 637(a)(9) of the Act and the SEA and LEA to meet their respective child find and early childhood transition responsibilities under sections 612(a)(3), 612(a)(9), 612(a)(10)(A)(ii), and 614(d)(2)(B) of the Act and 34 CFR 300.124.

For the reasons outlined in the following paragraphs, we agree with the commenter who recommended aligning the LEA notification requirement with the 90-day timeline for transition plans in §303.209(d)(2).

We have revised new §303.209(b)(1)(i) (proposed §303.209(b)(2)(i)) to require that LEA notification occur no fewer than 90 days prior to the toddler with a disability's third birthday. This "not fewer than 90 days" timeline for LEA notification aligns with the date by which: (1) a transition conference must be conducted for a toddler with a disability who may be eligible for services under Part B of the Act (as required in section 637(a)(9)(A)(ii)(II) of the Act and §303.209(c)(1)); and (2) a transition plan must be in place for all toddlers with disabilities (as required in §303.209(d)(2)).

We also are making this change in order to provide SEAs and LEAs with enough time to carry out their responsibilities in implementing Part B of the Act. These responsibilities include, under section 612(a)(9) of the Act and 34 CFR 300.124(c) of the Part B regulations, participation by a representative from the LEA where the toddler with a disability resides in the transition conference that the lead agency is required to conduct under section 637(a)(9)(A)(ii)(II) of the Act and §303.209(c)(1). In addition, when the LEA receives notice from the lead agency or an EIS provider that a specific toddler with a disability who has been receiving services under Part C of the Act is potentially eligible for services under Part B of the Act, the LEA must treat this as a referral and provide parents with the procedural safeguards notice under 34 CFR 300.504(a)(1) and determine if an evaluation for eligibility must be conducted under Part B of the Act.

Further, if the parent consents to the initial evaluation under Part B of the Act, the LEA must conduct the evaluation within 60 days of receiving parental consent or pursuant to a State-established timeline as required in section 614(a)(1)(C) of the Act and 34 CFR 300.301(c)(1) of the Part B regulations. If the child is determined eligible under Part B of the Act, the LEA must conduct, pursuant to 34 CFR 300.323(c)(1) of the Part B regulations, a meeting to develop an IEP for the child with a disability within 30 days of the eligibility determination. For toddlers with disabilities who are referred from the Part C program to the Part B program, this 60-day evaluation timeline (reflected in 34 CFR 300.301(c)(1) of the Part B regulations) and the 30-day IEP meeting timeline (reflected in 34 CFR 300.323(c)(1) of the Part B regulations) are subject to the requirement in section 612(a)(9) and 34 CFR 300.101(b) and 300.124(b) of the Part B regulations that the SEA and LEA ensure that, for a child who transitions from services under Part C of the Act to Part B of the Act, an IEP is developed and implemented for the child by the time the child reaches age three. Thus, the 90-day period prior to the toddler's third birthday is the minimal time period necessary for an LEA to meet its responsibilities to ensure that an IEP is developed and implemented by the child's third birthday.

We recognize that some States may have a State-established timeline for conducting an evaluation under Part B of the Act that is different than the 60-day timeline in 34 CFR 300.301(c)(1). Even if a State adopts a longer Part B evaluation timeline under 34 CFR 300.301(c)(1) of the Part B regulations, each SEA and LEA must ensure that an IEP is developed and implemented for a toddler with a disability transitioning from Part C to Part B of the Act by the time the toddler reaches age three. This requirement is reflected in section 612(a)(9) of the Act and 34 CFR 300.101(b) and 300.124(b) of the Part B regulations. Thus, it is the Department's position that the 90-day notification timeline provides the minimum amount of time necessary for an SEA and LEA to meet their respective early childhood transition responsibilities under Part B of the Act.

Finally, in reviewing §303.209, we have determined that it is not appropriate to refer to "other services" under Part B of the Act because this section addresses only the transition that must occur before an infant or toddler with a disability turns three years old. References to other services, such as elementary school, are now more appropriately addressed in §303.211(b)(6) regarding the transition requirements of children who are three and older and receiving services under §303.211.

Changes: We have revised new §303.209(b)(1)(i) (proposed §303.209(b)(2)(i)) to require the lead agency to notify the SEA and the LEA for the area in which the toddler resides "not fewer than 90 days" before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act.

Comment: A few commenters recommended that we clarify that the lead agency must notify the LEA under §303.209(b) only for those children who are potentially eligible for services under Part B of the Act.

Discussion: We agree and have revised §303.209(b) to clarify that the LEA notification requirement applies only to toddlers with disabilities who may be eligible for preschool services under Part B of the Act and not to all toddlers with disabilities.

The Part C lead agency establishes the State's policy regarding which children may be eligible for preschool services under Part B of the

Act. In establishing this policy, the lead agency should review carefully, ideally in collaboration with the SEA, the eligibility definitions under Parts B and C of the Act, including the State's definitions of developmental delay under both Parts B and C of the Act.

The determination of whether a toddler with a disability is "potentially eligible" for services under Part B of the Act is critical under both Parts C and B of the Act. It is the first step in ensuring a smooth transition for that toddler and family to services under Part B of the Act. When the LEA receives notice from the lead agency or an EIS provider that a specific toddler with a disability who has been receiving services under Part C of the Act may be eligible for services under Part B of the act, the LEA must treat this as a referral and provide parents with the procedural safeguards notice under 34 CFR 300.504(a)(1) and determine if an evaluation for eligibility must be conducted under Part B of the Act.

There are several reasons for limiting LEA notification to children who may be eligible for preschool services under Part B of the Act. First, the limitation is consistent with section 637(a)(9)(A)(ii)(II) of the Act, which requires that, with the approval of the family of the child, the lead agency convene a transition conference among the lead agency, the family, and the LEA representative only for those children potentially eligible for preschool services under Part B of the Act.

Second, limiting LEA notification to cover only toddlers potentially eligible for preschool services under Part B of the Act is critical to ensuring that the SEA and LEA where the toddler resides have adequate time to meet their respective child find and early childhood transition responsibilities under sections 612(a)(3), 612(a)(9), 612(a)(10)(A)(ii), and 614(d)(2)(B) of Part B of the Act, and in particular to develop and implement an IEP by the child's third birthday as required by section 612(a)(9) of the Act and 34 CFR 300.124(b). These provisions require that children who participate in the early intervention programs under Part C of the Act and children who will participate in the preschool services under Part B of the Act experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act.

Third, LEA notification should not be required for toddlers with disabilities who are not potentially eligible for Part B services under the Act given that the lead agency has other responsibilities for these children, which we believe are sufficient to meet their transition needs. For these children, the lead agency must: (1) ensure that a transition plan is developed pursuant to section 637(a)(9)(C) of the Act and §303.209(d); and (2) make reasonable efforts, pursuant to section 637(a)(9)(A)(ii)(III) of the Act and §303.209(c)(2)), to convene a transition conference with the family of the toddler and providers of other appropriate services. The transition plan for toddlers with disabilities who are not potentially eligible for Part B services under the Act must identify the appropriate steps for the toddler with disabilities and his or her family to exit from the Part C program, include services, such as Head Start, that the IFSP team identifies as needed by that toddler and his or her family.

Finally, we are clarifying that the LEA notification requirement in §303.209(b)(1)(i) only applies to toddlers who may be eligible for Part B services because, if the requirement applied to all toddlers who are nearing age three, it would result in the unnecessary disclosure of personally identifiable information and place an undue burden on lead agencies, without any significant benefit. Ordinarily, to meet the LEA notification requirement, the lead agency must inform the LEA where the child resides and provide the LEA with the information referenced in §303.401(d)(1) (i.e., the child's name, date of birth, and parent contact information, including the parents' names, addresses, and telephone numbers), unless the State has adopted an opt-out policy under §303.401(e). Requiring the lead agency to disclose this personally identifiable information for limited child find purposes to the LEA or even the SEA for children who are not potentially eligible for Part B would be unnecessary and burdensome. **Changes:** We have revised new §303.209(b) (proposed §303.209(b)(2)(i) and (b)(2)(ii)) to clarify that a lead agency must notify the LEA under §303.209(b) only for those children who may be eligible for services under Part B of the Act.

Comment: Some commenters recommended that the LEA notification requirement in new §303.209(b)(1)(i) (proposed §303.209(b)(2)) apply to both the SEA and the LEA where the child resides.

Discussion: We have revised the LEA notification requirement in §303.209(b)(1)(i) to require that the lead agency notify the SEA in addition to the LEA where the child resides. This change is intended to help lead agencies and SEAs coordinate to ensure a smooth and effective early childhood transition pursuant to sections 612(a)(9) and 637(a)(9)(A) of the Act. Moreover, this change will assist SEAs in carrying out their responsibilities under Part B of the Act. For example, under section 612(a)(9) of the Act and 34 CFR 300.101(b) and 300.124(b) of the Part B regulations, an SEA must ensure that FAPE is made available to an eligible child with a disability no later than that child's third birthday for all toddlers with disabilities who were referred for Part B services by the lead agency and are eligible for services under Part B of the Act. Also, an SEA must report annually in its SPP/APR on the percent of children referred by the Part C program prior to the age of three who are found eligible for Part B services and have an IEP developed and implemented by the third birthday. Requiring lead agencies to notify SEAs when a child may be eligible for Part C services will help SEAs fulfill this obligation. Providing this information to SEAs will add very little burden to lead agencies because they are already required to provide the information to LEAs.

Changes: We have revised new §303.209(b)(1)(i) through (b)(1)(iii) (proposed §303.209(b)(1) and (b)(2)) to specify that the lead agency must notify the SEA and the LEA where the child resides in the case of a toddler who may be eligible for preschool services under Part B of the Act.

Comment: A few commenters requested clarification in §303.209 of the lead agency's transition responsibilities when a child is referred "late" to the Part C program (i.e., less than 45 or 90 days prior to the child's third birthday). A few commenters expressed concern that the reference to a child's "third birthday" in the LEA notification provision in proposed §303.209(b)(2)(i) may interfere with State-established transition policies and may disrupt many existing options that have been carefully crafted by States and local communities to ensure seamless transitions from the Part C program to the Part B program.

Discussion: We agree that it is important to clarify the transition requirements that apply when a child is referred to or determined eligible for the Part C program fewer than 90 days before the child's third birthday. Given the 45-day timeline requirement in new §303.310, we have added paragraphs (b)(1)(i) and (b)(1)(ii) to new §303.209 to address the commenters' concerns.

Specifically, new §303.209(b)(1)(ii) clarifies that if a child is referred and determined eligible for services under Part C of the Act between 90 and 45 days before the child's third birthday, LEA notification must occur as soon as possible after the child is determined eligible for early intervention services under Part C of the Act. For these children, although the lead agency is not able to conduct a transition conference and develop a transition plan within the timelines in §303.209(b)(1)(i) and (d)(2), we encourage States to discuss transition at the child's initial IFSP meeting.

New §303.209(b)(1)(iii) clarifies that if a child is referred to the lead agency fewer than 45 days before that child's third birthday, the lead agency is not required to conduct an evaluation, assessment or an initial IFSP meeting. We believe that the referral of a child fewer than 45 days before a child's third birthday would not allow a lead agency sufficient time to conduct the evaluation, assessment and initial IFSP meeting. Additionally, a lead agency would not have sufficient time to conduct a transition conference to discuss steps and services. Thus, we have clarified in new §303.209(b)(1)(iii) that, for a child who is referred to the lead agency fewer than 45 days before the child's third birthday, if the lead agency has received information in its referral that the child may be eligible for preschool services or other services under Part B of the Act, the lead agency, with the parental consent required under §303.414, must refer the toddler to the SEA and the LEA for the area in which the toddler resides.

Concerning commenters' requests not to use the child's "third birthday" in calculating timelines for LEA notification, the third birthday is significant under Part C of the Act because eligibility for services for the toddler with a disability ends once that toddler turns three, with two exceptions. A lead agency may provide services to a child who has turned three years old if a State elects either to (a) offer services under the

option to make Part C services available beyond age three pursuant to §303.211 and the parent consents to services under that section, or (b) provide services to a child who is eligible under Part B of the Act from that child's third birthday to the beginning of the following school year under section 638(3) of the Act and §303.501(c)(1), provided that those services constitute FAPE for that child. In both circumstances, the child, upon turning age three, must be eligible as a child with a disability under section 619 of the Act. With the exception of these two circumstances, Part C services end at the child's third birthday; therefore, the Department's position is that the use of the phrase "third birthday" with regard to the LEA notification provision is appropriate.

Changes: We have added new §303.209(b)(1)(ii) to clarify that if the lead agency determines, between 90 and 45 days prior to a child's third birthday that the child is eligible for early intervention services under Part C of the Act, the lead agency must notify the SEA and the LEA for the area in which the toddler resides as soon as possible after the eligibility determination, that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law. Additionally, we have added paragraph (b)(3) to §303.209 to provide that if a toddler is referred to the lead agency fewer than 45 days before that toddler's third birthday, the lead agency is not required to conduct an evaluation, assessment or an initial IFSP meeting, and if that toddler may be eligible for preschool services or other services under Part B of the Act, the lead agency, with parental consent required under §303.414, must refer the toddler to the SEA and the LEA for the area in which the toddler resides.

Conference to discuss services (§303.209(c))

Comment: A few commenters recommended clarifying the required attendees, timelines, and procedures for the transition conference required in §303.209(c). One commenter asked why a child's service coordinator is not included in the list of required attendees for the transition conference. Other commenters requested that the regulations specifically require an LEA or SEA representative to participate in the transition conference; these commenters argued that this requirement would make the Part C regulations consistent with 34 CFR 300.124(c) of the Part B regulations.

Discussion: We agree that it would be helpful to clarify the required attendees for a transition conference. For this reason, we have added a new paragraph (e) to §303.209, which references §303.343(a) and the required members of the IFSP Team, to ensure that the attendees required for periodic IFSP review meetings under §303.343(b), including the service coordinator, also are required to attend the transition conference required under §303.209(c) and the meeting to develop the transition plan pursuant to §303.209(d).

It is the Department's position that requiring participation by an LEA representative under this part is not appropriate but we note that, as part of its responsibilities under section 637(a)(9)(A)(ii)(II) of the Act and §303.209(c)(1) of these regulations, the lead agency must invite the LEA representative to the transition conference. Under 34 CFR 300.124(c) of the Part B regulations, each LEA must participate in the transition conference arranged by the lead agency under section 637(a)(9)(A)(ii)(II) of the Act and §303.209(c). Thus, the requirements under Parts B and C of the Act provide adequately for the participation of the LEA in the transition conference.

Changes: We have added a new §303.209(e) to require that the transition conference conducted under paragraph (c) of this section or the meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the IFSP meeting and participant requirements in §§303.342(d) and (e) and 303.343(a).

Program options and transition plan (§303.209(d))

Comment: One commenter recommended that the regulations clarify that a child transitioning from Part C services to Part B services must not have a gap in services during the summer months.

Discussion: Once a toddler with a disability who received services under Part C of the Act turns three and is eligible for Part B preschool services under section 619 of the Act, that toddler may receive services that are provided as either: (1) Part C services by the lead agency under §303.211

(if the State has elected to offer early intervention services to children after age three, and the toddler's parent consents to receipt of services under this option), or (2) services that constitute FAPE either under section 619 of the Act (if the IEP Team determines such services are needed) or under section 638(3) of the Act (if the lead agency elects to offer such services). A State may provide services under sections 619, 635(c) or 638(3) of the Act regardless of whether the child turns age three during the summer months. However, if the child with a disability receives services under section 619 of the Act, any summer services (i.e., extended school year (ESY) services pursuant to 34 CFR 300.106 of the Part B regulations) must be provided, through an appropriate IEP, if the child's IEP Team determines that those ESY services are necessary for FAPE to be provided to that child.

Changes: None.

Comment: One commenter expressed concern that limiting transition planning to no more than nine months prior to the child's third birthday does not offer enough time to ensure a seamless transition for all children. The commenter recommended that the standard "not fewer than 90 days" be adopted if a timeline must be established at all.

Discussion: Section 303.209(d) requires that a transition plan be established in a child's IFSP not fewer than 90 days (and at the discretion of all parties, not more than 9 months) before a toddler's third birthday. The "not fewer than 90 days" component of this requirement aligns the timeline for transition planning with the timeline for the SEA and LEA notification requirements in §303.209(b) and with the timeline for the transition conference for toddlers with disabilities potentially eligible for Part B services in §303.209(c), pursuant to section 637(a)(9)(A)(ii)(II) of the Act.

The outer limit of this timeline (i.e., "not more than 9 months" before the toddler's third birthday) is intended to protect toddlers, whose needs change frequently at this age. The Department's position is that if transition planning occurs more than nine months prior to a toddler's third birthday, this planning may not accurately reflect the needs of the child at the time of transition. For this reason, the regulations only allow the parties to establish a transition plan for a child not earlier than nine months prior to the child's third birthday.

Changes: None.

Comment: One commenter recommended deleting "as appropriate" from §303.209(d)(3), which requires, consistent with §303.344(h), that the transition plan in the IFSP include, as appropriate, steps for the toddler with a disability and his or her family to exit from the program. The commenter stated that IFSP Teams should not have the discretion to determine which elements of a transition plan are appropriate.

Discussion: The phrase "as appropriate" is included in section 637(a)(9)(C) of the Act, the statutory authority for §303.209(d)(3). Section 303.209(d)(3)(i) requires the transition plan to include certain steps for the toddler with a disability and his or her family to exit from the Part C program. Section 636(a)(3) of the Act, regarding IFSP content requirements, was modified in 2004 to require that the IFSP identify the appropriate transition services for an infant or toddler. Section 303.209(d)(3) clarifies that the requirements in that section must be read in conjunction with §303.344(h), which requires the IFSP to include steps to support the transition to one of the following: preschool services under Part B of the Act; elementary school or preschool services for children participating under a State's option in §303.211 to provide early intervention services to children ages three and older; early education, Head Start, and Early Head Start or child care programs; or other appropriate services. The transition steps appropriate for a toddler with a disability will differ depending upon which program listed in §303.344(h) the IFSP Team selects. The transition plan is part of the IFSP and must meet the content requirements in §303.344. The IFSP Team must identify in the IFSP appropriate steps for the toddler and his or her family to exit the program and any transition services. Therefore, the phrase "as appropriate" gives the IFSP Team the flexibility to make an individualized determination as to what (not whether) transition steps and services are appropriate for each toddler with a disability.

Changes: None.

Comment: None.

Discussion: Based on further review of §303.209(d)(2), we have determined that it is appropriate to clarify that a transition plan referred to in this section is actually a part of an IFSP and not a separate document. Consistent with section 636(a) of the Act, the IFSP must include a description of the appropriate transition services for the infant or toddler.

Changes: We have added the phrase “in the IFSP” following the words “transition plan” in §303.209(d)(2). We also have added section 636(a)(3) of the Act (20 U.S.C. 1436(a)(3)) to the authority citation for this section.

Comment: A few commenters requested that the term “transition services,” as used in §303.209(d)(3)(ii), be defined in the regulations.

Discussion: Transition services are those services that assist a toddler with a disability and his or her family to experience a smooth and effective transition from an early intervention program under Part C of the Act to the child’s next program or other appropriate services, including services that may be identified for a child who is no longer eligible to receive Part C or Part B services. The IFSP Team, which includes the parent, determines the appropriate transition services for each toddler exiting the Part C program. Given that transition services are based on the unique needs of the child and the family, States require flexibility to provide appropriate and individualized transition services for each child. Therefore, it is the Department’s position that to further define the term transition services is not appropriate.

Changes: None.

Comment: Some commenters requested that a rule of construction be added to §303.209 to indicate that Part C programs would not be held responsible for ensuring that required transition timelines are met if referral for Part C services occurs less than 45 days prior to the date that the transition conference must occur.

Discussion: It is the Department’s position that adding a rule of construction to the regulations is not necessary because a State can use its inter or intra-agency agreements, or other methods, to clarify transition procedures and develop a process for unique circumstances, such as the referral of a child less than 45 days prior to the date that the transition conference must occur. The lead agency may not be able to meet the transition conference and transition plan timelines in §303.209(c)(1) and (d) if the lead agency receives a referral for that child less than 45 days prior to the date that the transition conference must occur (i.e., more than 90 days but less than 135 days (that is, 45 days plus 90 days) prior to the child’s third birthday). However, we encourage States in these instances to discuss transition at the initial IFSP meeting for a toddler with a disability who is referred within 135 days of that toddler’s third birthday.

Additionally, the lead agency remains responsible under §303.310 for meeting the 45-day timeline for conducting the initial evaluation, assessments and IFSP meeting and, under §§303.342(e) and 303.344(f)(1), for implementing the IFSP services that are consented to by the parent as soon as possible. While we recognize that the lead agency may not be able to meet the transition conference and transition plan timelines in §303.209(c) and (d) for children referred 135 days prior to their third birthday, pursuant to §303.209(b)(1)(ii), the lead agency must still refer the toddler with a disability, as soon as possible, to the SEA and the LEA where the toddler resides if that toddler is potentially eligible for preschool services under Part B of the Act.

Changes: None.

Comment: One commenter requested clarification as to whether the IFSP meeting requirements, including accessibility of meetings, apply to transition conferences in §303.209.

Discussion: In response to this comment, we have added new §303.209(e) to clarify that transition conferences conducted under §303.209(c) must meet the accessibility and parental consent requirements in §303.342(d) and (e) and the meeting participant requirements in §303.343(a).

Additionally, because the meeting to develop the transition plan under §303.209(d) can, but may not, occur at the time of the annual or periodic

IFSP review, we also have clarified that the meeting to develop the transition plan under §303.209(d) must meet the accessibility and parental consent requirements in §303.342(d) and (e) and the meeting participant requirements in §303.343(a).

States may choose, but are not required, to combine the transition conference with the meeting to develop the transition plan. It may make sense in many States to combine the transition conference and IFSP transition plan meeting, particularly for children potentially eligible for services under Part B of the Act, given that: (1) the LEA representative must attend the transition conference (under section 612(a)(9) of the Act and 34 CFR 300.124(c) of the Part B regulations); and (2) the SEA and LEA must ensure that an IEP is developed and implemented by age three for children with disabilities transitioning from Part C to Part B of the Act (under section 612(a)(9) of the Act and 34 CFR 300.101(b) and 300.124(b) of the Part B regulations). We do not require that the transition conference and meeting to develop the transition plan be combined because transition practices vary both between States and within States and it may not be appropriate for children not potentially eligible for services under Part B of the Act.

Changes: We have added new §303.209(e) to clarify that any conference conducted under paragraph (c) of this section or the meeting to develop the transition plan under paragraph (d) of this section must meet the requirements in §§303.342(d) and (e) and 303.343(a). We also have included a parenthetical in this new section confirming that this conference and meeting may be combined into one meeting.

Comment: A few commenters sought guidance on how the transition requirements in §303.209 apply, including how to implement the transition timeline requirements in §§303.209(c)(1) and 303.209(d)(2) for children served under §303.211.

Discussion: We have added new §303.209(f) to clarify that the transition requirements under §303.209 apply to all toddlers with disabilities before they turn three years old and to identify the separate, additional transition requirements that apply to toddlers with disabilities in a State that offers services under §303.211. Thus, new §303.209(f)(1) sets forth the requirement that the lead agency must ensure the transition requirements in §303.209 apply to all toddlers with disabilities (including toddlers with disabilities in a State that offers services under §303.211) before they turn three years old.

For toddlers with disabilities in a State that offers services under §303.211, we also have clarified in new §303.209(f)(2) the additional requirements that apply at the transition conference. Under new §303.209(f)(2), at the transition conference, the parents of a toddler with a disability must receive: (1) an explanation, consistent with §303.211(b)(1)(ii), of the toddler's options to continue to receive early intervention services under this part or preschool services under section 619 of the Act; and (2) the initial annual notice referenced in §303.211(b)(1). We have added these requirements in §303.209(f)(2) to ensure that the initial annual notice required in §303.211(b)(1) is provided at the transition conference when the IFSP Team, which includes the parent of a toddler with a disability, is required to consider transition options, steps and services. The annual notice requirement in §303.209(f)(2) is not new as it is required under §303.211(b)(1). Requiring the initial annual notice to be provided at the transition conference is critical because the annual notice must contain an explanation of the differences between services provided under §303.211 and preschool services under section 619 of the Act.

In new §303.209(f)(3), we clarify that the transition requirements in new §303.211(b)(6)(ii), which relate to transition from services under §303.211 to preschool, kindergarten or elementary school, apply to children age three and older when those children are receiving services under §303.211. We also discuss these transition requirements further in the discussion relating to new §303.211(b)(6) later in this [Analysis of Comments and Changes](#) section of the preamble.

Changes: We removed from new §303.209(a)(1) (proposed §303.209(a)(1)(i)) references to children receiving services under §303.211. We have added new paragraphs (f)(1), (f)(2), and (f)(3) to §303.209 to clarify the applicability of transition requirements under §303.209. New §303.209(f)(1) provides that the transition requirements in paragraphs (b)(1) and (b)(2), (c)(1), and (d) of this section apply to all toddlers with

disabilities receiving services under this part before those toddlers turn age three. New §303.209(f)(2) states that “In a State that offers services under §303.211, for toddlers with disabilities identified in paragraph (b)(1) of this section, the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section: (i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler’s options to continue to receive early intervention services under this part or preschool services under section 619 of the Act and (ii) The initial annual notice referenced in §303.211(b)(1).” Finally, in new §303.209(f)(3), we clarify that the transition requirements for children with disabilities age three and older receiving services under §303.211 are set forth in §303.211(b)(6)(ii).

<p>§ 303.340 General.</p> <p>(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.</p> <p>(b) As used in this part, <i>individualized family service plan</i> and <i>IFSP</i> mean a written plan for providing early intervention services to a child eligible under this part and the child’s family. The plan must—</p> <p>(1) Be developed in accordance with §§ 303.342 and 303.343;</p> <p>(2) Be based on the evaluation and assessment described in § 303.322; and</p> <p>(3) Include the matters specified in § 303.344.</p> <p>(c) <i>Lead agency responsibility.</i> The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute or assign responsibility.</p> <p>NOTE: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single</p>	<p><u>§303.340 Individualized family service plans--general.</u></p> <p>Each lead agency must ensure, for each infant or toddler with a disability, the development, review, and implementation of an individualized family service plan or IFSP that--</p> <p>(a) Is consistent with the definition of that term in §303.20; and</p> <p>(b) Meets the requirements in §§303.342 through 303.345 of this subpart.</p>	<p><u>§303.340 Individualized family service plan--general.</u></p> <p>For each infant or toddler with a disability, the lead agency must ensure the development, review, and implementation of an individualized family service plan or IFSP developed by a multidisciplinary team, which includes the parent, that--</p> <p>(a) Is consistent with the definition of that term in §303.20; and</p> <p>(b) Meets the requirements in §§303.342 through 303.346 of this subpart.</p>
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<p>consolidated document, provided that it (1) contains all of the required information in § 303.344, and (2) is developed in accordance with the requirements of this part.</p>		
<p>Individualized family service plans--general (§303.340) Comment: Many commenters expressed concern about the definition of <u>multidisciplinary</u> in proposed §303.24 because they believed this definition, used in the context of multidisciplinary IFSP Teams, could result in an IFSP Team being comprised of only one member other than the parent. These commenters argued that such a result is neither consistent with best practices nor the requirements in section 636(a)(3) of the Act regarding a multidisciplinary team developing the IFSP. Discussion: As noted in the <u>Analysis of Comments and Changes</u> section for §303.24, we agree with commenters regarding the definition of multidisciplinary as it applies to IFSP Teams and have added in §303.340, concerning the development, review, and implementation of an IFSP, a reference to the “multidisciplinary team, which includes the parents” to reflect the requirements in section 636(a)(3) of the Act. The IFSP participant requirements in §303.343, together with §§303.24(b) and 303.340, clarify that the multidisciplinary IFSP Team requires the involvement of the parent and two or more individuals from separate disciplines or professions, one of whom must be the service coordinator. Changes: We have added after the reference to “IFSP” in §303.340 the following phrase “developed by a multidisciplinary team, which includes the parents” from section 636(a)(3) of the Act.</p>		
<p><u>§303.342 Procedures for IFSP development, review, and evaluation.</u> (a) <u>Meeting to develop initial IFSP—timelines.</u> For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in § 303.321(e). (b) <u>Periodic review.</u> (1) A review of the IFSP for a child and the child’s family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine— (i) The degree to which progress toward achieving the outcomes is being made; and (ii) Whether modification or revision</p>	<p><u>§303.342 Procedures for IFSP development, review, and evaluation.</u> (a) <u>Meeting to develop initial IFSP-timelines.</u> For a child who has been evaluated for the first time and determined to be eligible under this part, a meeting to develop the initial IFSP must be conducted within the 45-day time period in §303.320(e). (b) <u>Periodic review.</u> (1) A review of the IFSP for a child and the child’s family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine-- (i) The degree to which progress toward achieving the outcomes is being made; and (ii) Whether modification or revision of the outcomes or services is necessary.</p>	<p><u>§303.342 Procedures for IFSP development, review, and evaluation.</u> (a) <u>Meeting to develop initial IFSP--timelines.</u> For a child referred to the Part C program and determined to be eligible under this part as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in §303.310. (b) <u>Periodic review.</u> (1) A review of the IFSP for a child and the child’s family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine-- (i) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and (ii) Whether modification or revision of the</p>

<p>of the outcomes or services is necessary. (2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. (c) <i>Annual meeting to evaluate the IFSP.</i> A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child’s family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided. (d) <i>Accessibility and convenience of meetings.</i> (1) IFSP meetings must be conducted— (i) In settings and at times that are convenient to families; and (ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. (2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend. (e) <i>Parental consent.</i> The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention</p>	<p>(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. (c) <u>Annual meeting to evaluate the IFSP.</u> A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under §303.320, and other information available from the assessment of service needs must be used in determining what services are needed and will be provided. (d) <u>Accessibility and convenience of meetings.</u> (1) IFSP meetings must be conducted-- (i) In settings and at times that are convenient to families; and (ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. (2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend. (e) <u>Parental consent.</u> The contents of the IFSP must be fully explained to the parents and informed consent must be obtained prior to the provision of early intervention services described in the IFSP. The early intervention</p>	<p>results, outcomes, or early intervention services identified in the IFSP is necessary. (2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. (c) <u>Annual meeting to evaluate the IFSP.</u> A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under §303.321 must be used in determining the early intervention services that are needed and will be provided. (d) <u>Accessibility and convenience of meetings.</u> (1) IFSP meetings must be conducted-- (i) In settings and at times that are convenient for the family; and (ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. (2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend. (e) <u>Parental consent.</u> The contents of the IFSP must be fully explained to the parents and informed written consent, as described in §303.7, must be obtained, as required in §303.420(a)(3), prior to the provision of early</p>
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<p>services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided. (Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1436)</p> <p>NOTE: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise. Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.</p>	<p>services for which parental consent is obtained must be provided.</p>	<p>intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in §303.344(f)(1).</p>
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Procedures for IFSP development, review, and evaluation (§303.342)

Comment: None.

Discussion: Based upon further review of §303.342(a), we have determined that it is not entirely accurate to refer to children who have “been evaluated for the first time and determined to be eligible under this part” in the lead-in to this section because, as stated in new §303.321(a)(3)(i) (proposed §303.320(a)(2)(iii)), a child’s Part C eligibility can be established through a review of his or her medical or other records, without the child being evaluated.

Changes: We have deleted the phrase “for a child who has been evaluated for the first time and determined to be eligible under this part” from §303.342(a) and have inserted, in its place, “for a child referred to the Part C program and determined to be eligible under this part as an infant or toddler with a disability.”

Comment: Some commenters recommended that §303.342 be revised to require IFSP Teams, in developing the IFSP of an infant or toddler with a disability, to consider the same special factors that IEP Teams must consider under 34 CFR 300.324(a)(2) of the Part B regulations. These

commenters suggested requiring every IFSP Team to consider strategies to address the following: (1) specific behaviors of an infant or toddler with a disability whose behavior impedes his or her development or the development of other infants or toddlers with disabilities; (2) the language needs of an infant or toddler with a disability who has limited English proficiency; (3) the need for instruction in braille for an infant or toddler who is blind or visually impaired; (4) the communication needs of an infant or toddler who is deaf or hard of hearing, including instruction in his or her language and communication mode; and (5) whether the infant or toddler with a disability needs assistive technology devices and services to ensure that infants and toddlers with disabilities in these groups receive appropriate services to meet their language, literacy, and other needs.

Discussion: The commenters referenced the special factors in 34 CFR 300.324(a)(2) of the Part B regulations, which are from 614(d)(3)(B) of the Act. Part C of the Act does not contain similar specific language regarding special factors that must be considered by the IFSP Team. However, it is the Department's position that the regulations, as written, adequately address the commenters' concerns. Section 303.344(d)(1) requires that each IFSP include a statement of the specific early intervention services that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in the IFSP. Therefore, each IFSP Team must explore any factor (including, as applicable and appropriate, the factors included in 34 CFR 300.342(a)(2)) that are relevant to an infant or toddler with a disability achieving the results or outcomes identified in his or her IFSP.

Changes: None.

Comment: None.

Discussion: For clarification, we have added the words "results or" before "outcomes" and added "identified in the IFSP" after the reference to "outcomes" and "services" in §303.342(b)(1)(i) and (b)(1)(ii).

Changes: We have added the words "identified in the IFSP" after the word "outcomes" and the word "services," in §303.342(b)(1)(i) and (b)(1)(ii), respectively.

Comment: One commenter recommended that the regulations retain Note 2 following current §303.344. This note recognizes the importance of the variety of roles that family members play in enhancing a child's development throughout the IFSP process, the importance of addressing the needs of the family in the IFSP process in a collaborative manner, and the parents' retention of the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Discussion: Including Note 2 from current §303.344 is not necessary because part of the note (regarding a parent's right to accept or decline services) is reflected in §303.342(e) and the remainder of the note does not reflect regulatory requirements but, instead, is explanatory. As reflected in §303.342(e), parents make the ultimate decision as to whether they, their child, or other family members will accept or decline services under this part.

Removal of the note does not in any way change the policy of the Department. We continue to believe that best practice dictates that throughout the process of developing and implementing IFSPs for an infant or toddler with a disability, the lead agency, service coordinators, and EIS providers need to recognize the variety of roles that family members play in enhancing a child's development. Additionally, addressing the needs of the family in the IFSP process is crucial and should be determined in a collaborative manner with the full agreement and participation of the parent of the infant or toddler.

Changes: None.

Comment: Several commenters expressed opposition to replacing the term "ongoing assessment of child and family" in current §303.342(c) with the term "assessment of service needs" in proposed §303.342(c) and requested clarification of the meaning of the term "service needs" in this section.

Discussion: The term “service needs” was included in the proposed regulations to be consistent with the use of that term in new §303.321 (proposed §303.320). However, as discussed earlier in this preamble in the Analysis of Comments and Changes section in response to comments on the use of the term “service needs” in proposed §303.320, we no longer use the term in new §303.321 (proposed §303.320) or any other section of these regulations. We, therefore, have removed the phrase from §303.342(c) and replaced it with the phrase “the child and family” to be consistent with new §303.321 (proposed §303.320).

Changes: The phrase “service needs” has been removed from §303.342(c) and replaced with the words “the child and family.”

Comment: One commenter recommended amending §303.342(d)(1)(ii) to require a lead agency to exhaust all possible options for conducting IFSP meetings in the native language of the family because Part C of the Act makes clear that involvement of the family in the IFSP process is critical. The commenter was concerned that the current regulatory language allows too much room for a lead agency to claim that it is “not feasible” to conduct the IFSP meeting in a family’s native language. The commenter stated that, given the availability of resources such as bilingual staff, interpreters, and telephonic interpreter service, it should be feasible to ensure that IFSP meetings are conducted in the family’s native language.

Discussion: Section 303.342(d)(1)(ii) requires that IFSP meetings be conducted in the native language of the family or other mode of communication used by the family unless it is clearly not feasible to do so. Thus, lead agencies should consider the availability of native language resources, such as those listed by the commenter, when determining whether it is feasible to conduct the IFSP meeting in the native language of the family. However, given that the U.S. Census Bureau recognizes over 300 languages used in the United States (not including dialects), it may not be feasible, in every instance, to provide interpreter services with respect to a particular native language because an interpreter of that language may not be available.

Changes: None.

Comment: One commenter suggested that the lead agency should be allowed to provide notice to the child’s family and other participants of the IFSP Team meeting under §303.342(d)(2) by electronic mail (e-mail) or documentation of a phone call arranging the meeting, and not only by providing written notice. The commenter further stated that parents should be given the option to waive receiving written notification of the meeting in favor of another method of notification.

Discussion: The IFSP written notice requirement in §303.342(d)(2) is substantively unchanged from current §303.342(d)(2). Nothing in the regulations prohibits States from providing additional notice of the IFSP meeting by, for example, electronic mail or phone call, but, at a minimum, it must provide written notice to the family and other participants to ensure that they can attend the IFSP meetings.

Changes: None.

Comment: Two commenters suggested that the requirements in §303.342(e), regarding informed parental consent for services, are similar to those in §303.420(d), regarding parental consent and the ability to decline services, and stated that the two sections should be merged or cross-referenced. Another commenter requested that the term “parental consent” as used in §303.342(e) should be further defined. Specifically, the commenter expressed concern that §303.342(e) requires the lead agency only to obtain informed consent prior to the provision of early intervention services, and not informed written consent as required by the Act.

Discussion: Section 303.342(e) is consistent with §303.420(a)(3) and (d) regarding parental consent. The term “parental consent” in §303.342(e) is consistent with the statutory language in section 636(e) of the Act (which refers both to “parental consent” and “informed written consent from the parents”) and the definition of consent in §303.7. The term parental consent, as used in §303.342(e), must meet the definition of consent in §303.7. (In this case, the word “parental” modifies the term “consent,” which has a specific definition in these regulations under §303.7.) To

further clarify, we have added cross-references to §303.7, which requires that the parent understand and agree in writing when giving consent, and §303.420(a)(3), which requires the lead agency to ensure that parental consent is obtained prior to providing early intervention services to a child. Also, in the interest of clarity and tracking statutory language, we have added the word “written” to the phrase “informed consent.”

Changes: We have added in §303.342(e) cross-references to §§303.7 and 303.420(a)(3) and revised the phrase “informed consent” to include the word “written.”

Comment: In response to the 45-day timeline in new §303.310 (proposed §303.320(e)) and the language in §303.344(f)(1), regarding the timeline by which services identified in a child’s IFSP must be initiated, a few commenters requested that the regulations identify a timeline for the provision of services.

Discussion: We have clarified in §§303.342(e) and 303.344(f)(1) that early intervention services must be provided as soon as possible after obtaining parental consent. We believe that it is important for the timeline to run from the date of parental consent and not from the initiation date identified at the IFSP meeting, as is provided for in current §303.344(f)(1). A State may only provide a service identified in the IFSP if a parent provides consent under §303.420. In some instances, even if the IFSP is developed with a service initiation date, a parent may not have provided consent to the service and, therefore, the service may not be provided. Thus, we have revised the time period to commence from the date of parental consent.

Currently, most States have adopted a 30-day timeline that commences from the date of parental consent to the date the services in the IFSP are provided with some States adopting a shorter timeline and only a few States adopting a slightly longer timeline (e.g., 45 days), which timeline also commences from the date of parental consent to the date the services in the IFSP are provided.

We do not believe it is appropriate to adopt a time period more specific than “as soon as possible” for the provision of all early intervention services identified in an IFSP. While each State must ensure that services in an IFSP are provided as soon as possible after receiving parental consent, we believe that “as soon as possible” may vary depending on a number of factors, such as the availability of qualified personnel in a State, the number of children to be served, and the location of those children. While we give States some flexibility in implementing this provision, we also monitor, through the SPP/APR, data on when each State initiates services for each child. Thus, we decline to adopt in §§303.342(e) and 303.344(f)(1) a timeline more specific than “as soon as possible.”

Changes: We have clarified in §§303.342(e) and 303.344(f)(1) that early intervention services must be provided as soon as possible after parental consent is obtained.

<p>§303.343 Participants in IFSP meetings and periodic reviews.</p> <p>(a) <i>Initial and annual IFSP meetings.</i></p> <p>(1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:</p> <p>(i) The parent or parents of the child.</p> <p>(ii) Other family members, as requested by the parent, if feasible to do so;</p> <p>(iii) An advocate or person outside of the family, if the parent requests that the person</p>	<p>§303.343 IFSP team meetings and periodic reviews.</p> <p>(a) <u>Initial and annual IFSP team meetings.</u> (1) Each initial meeting and each annual IFSP team meeting to evaluate the IFSP must include the following participants:</p> <p>(i) The parent or parents of the child.</p> <p>(ii) Other family members, as requested by the parent, if feasible to do so.</p> <p>(iii) An advocate or person outside of the family, if the parent requests that the person</p>	<p>§303.343 IFSP Team meeting and periodic review.</p> <p>(a) <u>Initial and annual IFSP Team meeting.</u> (1) Each initial meeting and each annual IFSP Team meeting to evaluate the IFSP must include the following participants:</p> <p>(i) The parent or parents of the child.</p> <p>(ii) Other family members, as requested by the parent, if feasible to do so.</p> <p>(iii) An advocate or person outside of the family, if the parent requests that the person</p>
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<p>participate. (iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP. (v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322. (vi) As appropriate, persons who will be providing services to the child or family. (2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including— (i) Participating in a telephone conference call; (ii) Having a knowledgeable authorized representative attend the meeting; or (iii) Making pertinent records available at the meeting.</p> <p>(b) <i>Periodic review.</i> Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.</p>	<p>participate. (iv) The service coordinator designated by the public agency to be responsible for implementation of the IFSP. (v) A person or persons directly involved in conducting the evaluations and assessments in §303.320. (vi) As appropriate, persons who will be providing services under this part to the child or family. (2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following: (i) Participating in a telephone conference call. (ii) Having a knowledgeable authorized representative attend the meeting. (iii) Making pertinent records available at the meeting.</p> <p>(b) <u>Periodic review.</u> Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.</p>	<p>participate. (iv) The service coordinator designated by the public agency to be responsible for implementing the IFSP. (v) A person or persons directly involved in conducting the evaluations and assessments in §303.321. (vi) As appropriate, persons who will be providing early intervention services under this part to the child or family. (2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following: (i) Participating in a telephone conference call. (ii) Having a knowledgeable authorized representative attend the meeting. (iii) Making pertinent records available at the meeting.</p> <p>(b) <u>Periodic review.</u> Each periodic review under §303.342(b) must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.</p>
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IFSP Team meetings and periodic reviews (§303.343)
Comment: A few commenters recommended amending §303.343(a)(1)(v) to require that the individual or individuals directly involved in conducting the evaluations and assessments in new §303.321 (proposed §303.320) must have knowledge and training related to the infant's or toddler's disability.
Discussion: The requested change is not necessary because, as we explained in the Analysis of Comments and Changes in response to comments received on new §303.321(a), the individuals responsible for conducting evaluations and assessments under new §303.321(a)(2)(i) and (a)(2)(ii) (proposed §303.320(a)(3)) must be qualified personnel. Qualified personnel, under §303.31, are individuals who meet State-approved or State-

recognized certification, licensing, registration, or other comparable requirements that apply to the developmental area in which the individuals are conducting an evaluation or assessments or providing early intervention services. Given the definition of qualified personnel in §303.31, it is unnecessary to amend §303.343(a)(1)(v) as requested by the commenter.

Changes: None.

Comment: Some commenters expressed concern that the required participants for the periodic review of the IFSP in §303.343(b) do not include the individuals (such as the individuals who conducted the evaluations and assessments, unless conditions warrant) who are required to participate in the initial and annual IFSP review under §303.343(a). Specifically, the commenters stated that the regulations limit the ability of parents under §303.343(a)(1)(i) and (ii) to include participants of their choosing in the periodic review of the IFSP.

Discussion: Section 303.343(b) makes clear that individuals: (1) who are directly involved in conducting evaluations and assessments or (2) who provide early intervention services are not required to be invited or attend the IFSP periodic review meeting unless “conditions warrant.” An example of a condition under §303.342(b) that may warrant the attendance of the qualified personnel who conducted an evaluation at the IFSP periodic review meeting is if that individual conducted a reevaluation of an infant or toddler with a disability and the results of that evaluation will be discussed at the periodic review.

Additionally, reviewing the child’s progress in a particular developmental area may require the participation of the EIS provider(s) in those areas. In such instances, the lead agency must ensure the participation of those individuals.

However, while the issues at an IFSP periodic review meeting vary, the periodic reviews are usually limited to reviewing the child’s progress towards the measurable results or outcomes. The periodic review is less formal than the initial or annual IFSP meeting and may be done through a teleconference, a face-to-face meeting or other means acceptable to the parents and other participants. Requiring the attendance of individuals referenced in §303.343(a)(1)(v) and (a)(1)(vi) at every IFSP periodic review meeting would be burdensome and unnecessary and thus we refrain from making the change requested by the commenter.

The commenter correctly notes that a parent may invite advocates or individuals outside of the family to periodic reviews under §303.343(a)(1)(ii). However, that provision may not be used to override the lead agency’s determination of when conditions warrant the attendance of individuals directly involved in conducting evaluations and assessments or who are EIS providers.

Changes: None.

<p>§303.344 Content of an IFSP. (a) <i>Information about the child’s status.</i> (1) The IFSP must include a statement of the child’s present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development. (2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.</p>	<p>§303.344 Content of an IFSP. (a) <u>Information about the child’s status.</u> The IFSP must include a statement of the child’s present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from the child’s evaluation and assessments conducted under §303.320.</p>	<p>§303.344 Content of an IFSP. (a) Information about the child’s status. The IFSP must include a statement of the infant or toddler with a disability’s present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child’s evaluation and assessments conducted under §303.321.</p>
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<p>(b) <i>Family information.</i> With the concurrence of the family, the IFSP must include a statement of the family’s resources, priorities, and concerns related to enhancing the development of the child.</p> <p>(c) <i>Outcomes.</i> The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timeliness used to determine—</p> <p>(1) The degree to which progress toward achieving the outcomes is being made; and</p> <p>(2) Whether modifications or revisions of the outcomes or services are necessary.</p> <p>(d) <i>Early intervention services.</i> (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including—</p> <p>(i) The frequency, intensity, and method of delivering the services;</p> <p>(ii) The natural environments, as described in § 303.12(b), and § 303.18 in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment;</p> <p>(iii) The location of the services; and</p> <p>(iv) The payment arrangements, if any.</p> <p>(2) As used in paragraph (d)(1)(i) of this section—</p> <p>(i) <i>Frequency</i> and <i>intensity</i> mean the number of days or sessions that a service will be</p>	<p>(b) <u>Family information.</u> With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under §303.320(c).</p> <p>(c) <u>Results or outcomes.</u> The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timeliness used to determine--</p> <p>(1) The degree to which progress toward achieving the results or outcomes is being made; and</p> <p>(2) Whether modifications or revisions of the results, outcomes or services are necessary.</p> <p>(d) <u>Early intervention services.</u> (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including--</p> <p>(i) The length, duration, frequency, intensity, and method of delivering the services;</p> <p>(ii)(A) The natural environment setting in which early intervention services will be</p>	<p>(b) <u>Family information.</u> With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under §303.321(c)(2).</p> <p>(c) <u>Results or outcomes.</u> The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine--</p> <p>(1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and</p> <p>(2) Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.</p> <p>(d) <u>Early intervention services.</u> (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including--</p> <p>(i) The length, duration, frequency, intensity, and method of delivering the early intervention services;</p> <p>(ii)(A) A statement that each early</p>
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<p>provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and</p> <p>(ii) <i>Method</i> means how a service is provided.</p> <p>(3) As used in paragraph (d)(1)(iii) of this section, <i>location</i> means the actual place or places where a service will be provided.</p> <p>(e) <i>Other services.</i> (1) To the extent appropriate, the IFSP must include—</p> <p>(i) Medical and other services that the child needs, but that are not required under this part; and</p> <p>(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.</p> <p>(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and “well-baby” care), unless a child needs those services and the services are not otherwise available or being provided.</p> <p>(f) <i>Dates; duration of services.</i> The IFSP must include—</p> <p>(1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in § 303.342; and</p> <p>(2) The anticipated duration of those services.</p> <p>(g) <i>Service coordinator.</i> (1) The IFSP must include the name of the service coordinator from the profession most immediately relevant</p>	<p>provided (subject to paragraph (d)(1)(ii)(B) of this section), including, if applicable, a justification of the extent, if any, to which an early intervention service will not be provided in a natural environment.</p> <p>(B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that child and service, must be—</p> <p>(1) Made by the IFSP team (which includes the parent and other team members);</p> <p>(2) Consistent with the provisions in §§303.13(a)(8), 303.25, and 303.126; and</p> <p>(3) Based on the child’s outcomes that are identified by the IFSP team in paragraph (c).</p> <p>(iii) The location of the services; and</p> <p>(iv) The payment arrangements, if any.</p> <p>(2) As used in paragraph (d)(1)(i) of this section--</p> <p>(i) <u>Frequency and intensity</u> mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis;</p> <p>(ii) <u>Method</u> means how a service is provided;</p> <p>(iii) <u>Length</u> means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and</p> <p>(iv) <u>Duration</u> means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).</p> <p>(3) As used in paragraph (d)(1)(iii) of this</p>	<p>intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.</p> <p>(B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be--</p> <p>(1) Made by the IFSP Team (which includes the parent and other team members);</p> <p>(2) Consistent with the provisions in §§303.13(a)(8), 303.26, and 303.126; and</p> <p>(3) Based on the child’s outcomes that are identified by the IFSP Team in paragraph (c) of this section;</p> <p>(iii) The location of the early intervention services; and</p> <p>(iv) The payment arrangements, if any.</p> <p>(2) As used in paragraph (d)(1)(i) of this section--</p> <p>(i) <u>Frequency and intensity</u> mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis;</p> <p>(ii) <u>Method</u> means how a service is provided;</p> <p>(iii) <u>Length</u> means the length of time the service is provided during each session of that service (such as an hour or other specified time</p>
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<p>to the child’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.</p> <p>(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—</p> <p>(i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child’s and family’s IFSP; or</p> <p>(ii) Appoint a new service coordinator.</p> <p>(3) As used in paragraph (g)(1) of this section, the term <i>profession</i> includes “service coordination.”</p> <p>(h) <i>Transition from Part C services.</i> (1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with § 303.148, to—</p> <p>(i) Preschool services under Part B of the Act, to the extent that those services are appropriate; or</p> <p>(ii) Other services that may be available, if appropriate.</p> <p>(2) The steps required in paragraph (h)(1) of this section include—</p> <p>(i) Discussions with, and training of, parents regarding future placements and other matters related to the child’s transition;</p> <p>(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and</p>	<p>section, <u>location</u> means the actual place or places where a service will be provided.</p> <p>(4) For children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.</p> <p>(e) <u>Other services.</u> To the extent appropriate, the IFSP also must--</p> <p>(1) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part; and</p> <p>(2) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.</p> <p>(f) <u>Dates and duration of services.</u> The IFSP must include--</p> <p>(1) The projected date for the initiation of each service in paragraph (d)(1) of this section, which date must be as soon as possible after the IFSP meetings described in §303.342; and</p> <p>(2) The anticipated duration of each service.</p> <p>(g) <u>Service coordinator.</u> (1) The IFSP must include the name of the service coordinator</p>	<p>period); and</p> <p>(iv) <u>Duration</u> means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).</p> <p>(3) As used in paragraph (d)(1)(iii) of this section, <u>location</u> means the actual place or places where a service will be provided.</p> <p>(4) For children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.</p> <p>(e) <u>Other services.</u> To the extent appropriate, the IFSP also must--</p> <p>(1) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part; and</p> <p>(2) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.</p> <p>(f) <u>Dates and duration of services.</u> The IFSP must include--</p> <p>(1) The projected date for the initiation of each early intervention service in paragraph (d)(1) of this section, which date must be as soon as possible after the parent consents to the service, as required in §§303.342(e) and 303.420(a)(3); and</p> <p>(2) The anticipated duration of each service.</p>
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<p>(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.</p> <p>NOTE 1: With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.</p> <p>NOTE 2: Throughout the process of developing and implementing IFSPs for an eligible child and the child’s family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child’s development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or</p>	<p>from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the early intervention services identified in a child’s IFSP, including transition services, and coordination with other agencies and persons. (2) In meeting the requirements in paragraph (g)(1) of this section, the term "profession" includes "service coordination."</p> <p>(h) <u>Transition from Part C services.</u> (1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with §303.209, to--</p> <ul style="list-style-type: none"> (i) Preschool services under Part B of the Act, to the extent that those services are appropriate; (ii) Elementary school or preschool services (for children participating under §303.211); (iii) Early education, Head Start and Early Head Start or child care programs; or (iv) Other appropriate services. <p>(2) The steps required in paragraph (h)(1) of this section must include--</p> <ul style="list-style-type: none"> (i) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child’s transition; (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; 	<p>(g) <u>Service coordinator.</u> (1) The IFSP must include the name of the service coordinator from the profession most relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for implementing the early intervention services identified in a child’s IFSP, including transition services, and coordination with other agencies and persons. (2) In meeting the requirements in paragraph (g)(1) of this section, the term "profession" includes "service coordination."</p> <p>(h) <u>Transition from Part C services.</u> (1) The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with §§303.209 and 303.211(b)(6), from Part C services to--</p> <ul style="list-style-type: none"> (i) Preschool services under Part B of the Act, to the extent that those services are appropriate; (ii) Part C services under §303.211; or (iii) Other appropriate services. <p>(2) The steps required in paragraph (h)(1) of this section must include--</p> <ul style="list-style-type: none"> (i) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child’s transition; (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; (iii) Confirmation that child find information about the child has been transmitted to the
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<p>decline services under this part.</p> <p>NOTE 3: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12. The “other services” in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child’s family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child’s total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical health services). Thus, to the extent appropriate, it is important for a State’s procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where,</p>	<p>(iii) The transmission of child find information about the child to the LEA or other relevant agency, in accordance with §303.209(b) and, with parental consent, transmission of additional information to the LEA to ensure continuity of services, including evaluation and assessment information required in §303.320 and copies of IFSPs that have been developed and implemented in accordance with §§303.340 through 303.345; and</p> <p>(iv) Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.</p>	<p>LEA or other relevant agency, in accordance with §303.209(b) (and any policy adopted by the State under §303.401(e)) and, with parental consent if required under §303.414, transmission of additional information needed by the LEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with §§303.340 through 303.345; and</p> <p>(iv) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.</p>
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<p>and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).</p> <p>NOTE 4: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the service coordinator in initiating those services, and (c) what actions will be taken by the parents.</p>		
<p><u>Content of an IFSP (§303.344)</u></p> <p><u>Results or outcomes (§303.344(c))</u></p> <p><u>Comment:</u> A few commenters requested that the parenthetical phrase referencing the inclusion of pre-literacy and language skills as developmentally appropriate for the child be deleted from §303.344(c). One commenter stated that adding this parenthetical phrase to this section, which requires that a child’s IFSP include a statement of the measurable results or measurable outcomes expected to be achieved by the child, creates confusion between Part C and Part B responsibilities. The commenter recommended replacing the proposed language in the parenthetical with “communication or social and emotional developmental goals.”</p> <p><u>Discussion:</u> Under §303.344(c), the IFSP must include, among other things, a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family. The phrase “including pre-literacy and language skills as developmentally appropriate for the child” is from section 636(d)(3) of the Act. Thus, it would not be appropriate to delete this language and replace it with other language. Concerning the confusion between Part C and Part B responsibility, pre-literacy and language skills emerge during infancy and, therefore, should be a measurable result or measurable outcome that is developmentally appropriate for a child served under the Part C program.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A few commenters requested that we provide definitions for the terms “measurable results” and “measurable outcomes,” as those terms are used in §303.344(c). These commenters also questioned whether it was necessary for this section to include both terms.</p> <p><u>Discussion:</u> Section 303.344(c) incorporates language from section 636(d)(3) of the Act, which requires that the IFSP contain a statement of the</p>		

“measurable results or outcomes expected to be achieved for the infant or toddler and the family.” The Department interprets the word “measurable” in this section of the Act to modify both the words “results” and “outcomes.” For this reason, it is appropriate to clarify, in §303.344(c), that the IFSP must contain measurable results or measurable outcomes. Further clarification is not necessary given that there is little material difference, for IFSP content purposes, between the meaning of the terms “results” and “outcomes” and we use these terms in the regulation because they are both referenced in the section 636 of the Act.

Changes: None.

Comment: Two commenters recommended that the word “functional” be inserted before every use of the word “outcomes” in these regulations. Two other commenters requested that, for clarity, the word “expected” be inserted before the words “results, outcomes, or early intervention services” in §303.344(c)(2).

Discussion: We agree with the commenters who recommended we add the term “expected” before the words “results, outcomes, or early intervention services are necessary” in §303.344(c)(2). Therefore, we have made the requested change.

We decline to add the adjective “functional” every time the word “outcomes” is used in these regulations because not all outcomes are functional; for example, for children receiving services under §303.211, outcomes may be educational.

Changes: We have added the term “expected” before the words “results, outcomes, or early intervention services are necessary” in §303.344(c)(2).

Early intervention services (§303.344(d))

Comment: Some commenters requested that the term “peer-reviewed research” in §303.344(d)(1) be defined or removed. Most of the commenters recommended that we use a definition that is consistent with the National Research Council’s use of the term. Two commenters were concerned about a potential conflict between the use of the term “peer-reviewed research” in this section and the use of “scientifically based research” in §303.112, regarding the availability of early intervention services. Another commenter stated that the term “peer-reviewed” is not used in the Act, and argued that because the term “scientifically based research” is used in the Act it should be used in this section, rather than the term “peer-reviewed.”

Discussion: In the Analysis of Comments and Changes section for §303.112, we discuss the definition of the term “peer-reviewed research.” We also address in that section the differences in meaning between the term “scientifically based research,” as used in section 635(a)(2) of the Act and §303.112 of these regulations, and “peer reviewed research,” as used in section 636(d)(4) of the Act and §303.344(d) of these regulations. We disagree with the commenter who stated that the term “peer-reviewed research” is not used in the Act; as noted elsewhere in this discussion, section 636(d)(4) of the Act, which is the statutory basis for §303.344(d), refers to peer-reviewed research, not scientifically based research.

Changes: None.

Comment: One commenter requested that the regulations define the phrase “to the extent practicable” as used in §303.344(d)(1).

Discussion: As noted in §303.112 of the Analysis of Comments and Change, defining the phrase “to the extent practicable” is not needed. In the context of these regulations, the term has its plain meaning (i.e., feasible or possible). As it is used to modify the extent to which early intervention services in a child’s IFSP are based on peer-reviewed research in §303.344(d)(1), we note that this phrase is from section 636(d)(4) of the Act. As used in this context, the phrase generally means that specific early intervention services should be based on peer-reviewed research to the extent that it is feasible or possible, given the availability of peer-reviewed research on the early intervention services determined to be most appropriate to respond to the child’s needs and strengths identified pursuant to information from the child’s evaluations and assessments under §303.321.

Changes: None.

Comment: A few commenters requested that §303.344(d)(1) be amended to require IFSP Teams to consider the same special factors that IEP Teams must consider under 34 CFR 300.324(a)(2) of the Part B regulations.

Discussion: These comments are addressed in the Analysis of Comments and Changes for subpart D in response to the comments on §303.342.

Changes: None.

Comment: Some commenters expressed concern that the terms “frequency,” “intensity,” “method,” “length,” and “duration” in §303.344(d)(1)(i) do not reflect the language in the Act and would require significant revisions to forms and training for staff. The commenters requested that the terms and their definitions be removed from the regulations.

Discussion: All of the terms mentioned by the commenters are taken directly from the Act. Section 636(d)(4) of the Act requires the IFSP to include a statement of the specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering those services. Additionally, section 636(d)(6) of the Act requires the IFSP to include the anticipated length, duration, and frequency of the early intervention services identified in the IFSP.

Changes: None.

Comment: One commenter recommended expanding the requirements in §303.344(d)(1)(ii)(B) to require that, in the case of an infant or toddler who is deaf or hard of hearing, the IFSP Team must: (a) consider home, community, and program settings that provide full support for language and communication development for the child and family; (b) base recommendations for the appropriate setting for providing services on a comprehensive assessment of the child and the family’s priorities, resources, and concerns; (c) provide families with comprehensive information about all programs and providers; (d) encourage families to visit all programs providing services to young children; (e) support families in selecting the programs, providers, settings, and services that best meet the needs of the child and family; and (f) recommend programs and services that employ qualified providers who are fluent users of the language(s) and modes of communication of the child.

Discussion: An IFSP Team may conclude that it is appropriate to address the factors presented by the commenter, as well as any other factors that the IFSP Team, which includes the child’s parent, considers relevant to a determination concerning the appropriate setting for the provision of an early intervention service that meets the child’s unique strengths and needs, including those of infants or toddlers who are deaf or hard of hearing. Thus, it would be impracticable to identify all potential factors concerning service settings because such factors are guided by the measurable outcomes or measurable results expected to be achieved for the infant or toddler with a disability.

Changes: None.

Comment: Some commenters requested clarification of the phrase “if applicable” in §303.344(d)(1)(ii)(A) regarding the justification needed if a service is not provided in the natural environment. The commenters expressed concern that some individuals may interpret the language to mean that a justification is not always required for services that are not provided in the natural environment and may prompt lead agencies and EIS programs to provide services in settings other than the natural environment even though that setting may not necessarily be appropriate.

Discussion: Pursuant to section 636(d)(5) of the Act, justification is required when the IFSP Team (not the lead agency or EIS program) determines that early intervention services will be provided in a setting other than the natural environment. We did not intend for the phrase “if applicable” to modify this requirement. Thus, we have removed the phrase “if applicable” to alleviate potential confusion.

Additionally, we have revised §303.344(d)(1)(ii)(A) to require that the IFSP include a statement that each early intervention service is provided in the natural environment to the maximum extent appropriate or, a justification as to why an early intervention service will not be

provided in the natural environment. We believe that these changes make clear that a justification is always required when early intervention services are not provided in the natural environment for the child or service.

Changes: We have removed the phrase “if applicable” from §303.344(d)(1)(ii)(A). Additionally, we have revised §303.344(d)(1)(ii)(A) to require the IFSP to include (i) a statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to §303.344(d)(1)(ii)(B), and (ii) a justification as to why an early intervention service will not be provided in the natural environment.

Comment: Many commenters requested clarification on when early intervention services may be provided in the natural environment and when it is appropriate to provide a service in a setting that is not considered the natural environment. A few commenters recommended that §303.126 be amended to allow parents to unilaterally decide where their infant or toddler with a disability will receive early intervention services. Another commenter recommended that §303.126 allow other family members to be involved in determining the natural environments in which early intervention services will be provided. Two commenters recommended clarifying that an infant or toddler with a disability may receive services in a setting that is not the natural environment when the IFSP Team, which includes the parent, agrees that services should not be delivered in the natural environment. One commenter requested that the Department emphasize that selection of the natural environment for a particular infant or toddler with a disability must be an individualized decision and that the State must monitor EIS providers to ensure that all natural environment decisions are individualized for each child by the child’s IFSP Team.

Discussion: Section 303.344(d)(1)(ii), when read together with §303.126, regarding early intervention services in natural environments, clarifies that the selection of the early intervention service setting for an infant or toddler with a disability is an individualized decision. Additionally, §303.700(a)(1), regarding State monitoring and enforcement, clarifies that the lead agency must monitor the implementation of this part. Early intervention in the natural environment has been the subject of the Department’s focused monitoring. We do not believe that any additional emphasis is necessary.

Nevertheless, we recognize that it may not always be practicable or appropriate for an infant or toddler with a disability to receive an early intervention service in the natural environment based either on the nature of the service or the child’s specific outcomes. For example, the IFSP Team may determine that an eligible child needs to receive speech services in a clinical setting that serves only children with disabilities in order to meet a specific IFSP outcome. When the natural environment is not chosen with regard to an early intervention service, the IFSP Team must provide, in the IFSP, an appropriate justification for that decision.

Consistent with section 635(a)(16)(B) of the Act and under §303.344(d)(ii)(B), the setting for the provision of early intervention services under Part C of the Act is made by the IFSP Team. It is the responsibility of the IFSP Team (which includes the parent and may include other family members who are invited by the parent under §303.343) to determine the most appropriate setting where each early intervention service will be provided for an infant or toddler with a disability based on the child’s unique needs and outcomes.

Under §303.343(a), family members may attend an IFSP meeting if requested by the parent, and if feasible to do so. Thus, we decline to revise §303.126 to include family members, as suggested by one of the commenters, because a parent--not the lead agency--determines whether to invite additional family members to IFSP meetings.

Concerning the commenter who suggested that early intervention services could not be provided in a setting other than the natural environment and the commenters who conversely requested that the regulations clarify that early intervention services may be provided in a setting other than the natural environment, sections 635(a)(16)(B) and 636(d)(5) of the Act recognize that there may be situations in which an early intervention service cannot be provided in the natural environment. Section 303.344(d)(1)(ii), consistent with section 636(d)(5) of the Act,

requires that the IFSP include a justification of the extent, if any, that an early intervention service will not be provided in the natural environment. In these instances, the IFSP Team (which includes the child's parents and other family members, at the parent's request) must identify whether the service can be provided in the natural environment and if it cannot, then the IFSP Team must document in the IFSP the justification for why that service is not provided in the natural environment (i.e., why the alternative service setting is needed for the child to meet the developmental outcomes identified for the child in his or her IFSP).

Changes: None.

Comment: One commenter requested that the word "functional" be included to define outcomes as used in §303.344(d)(1)(ii)(B)(3).

Discussion: We address this comment in the Analysis of Comments and Changes section on §303.344(c).

Changes: None.

Comment: Some commenters recommended that natural environment settings be determined based on a child's needs rather than on outcomes, as required by §303.344(d)(1)(ii)(B)(3).

Discussion: We believe that the commenters' concerns are addressed because when developing outcomes for the IFSP, the IFSP Team must consider the needs of the child based on the results of the evaluation and assessments of the child and the family pursuant to §303.344(a) and (b). Once the outcomes are developed, the IFSP Team, including the parent, determines which early intervention services are necessary to achieve the expected outcomes and the setting(s) in which those services will be provided.

Changes: None.

Comment: Two commenters expressed concern that §303.344(d)(2)(iv) would require an IFSP Team to project when a given service will no longer be provided. The commenters stated that some infants and toddlers with disabilities may require a particular early intervention service for the duration of their participation in the Part C program and it would be inappropriate for an IFSP Team to project that far into the future.

Discussion: The purpose of the language in §303.344(d)(2)(iv) is to help ensure accountability by requiring IFSP Teams to consider and periodically review the duration of a given service during the period in which a child is eligible to receive early intervention services and to anticipate when the child is expected to achieve certain results or outcomes associated with the receipt of the service. The duration of a service must be discussed and, if necessary, amended annually at the IFSP meeting.

We appreciate that the IFSP Team will not always know how long a particular service will be needed to achieve the measurable outcomes or results in the child's IFSP. What is critical is that the IFSP Team evaluates and re-evaluates whether the expected outcomes are being achieved at the appropriate pace. If the IFSP Team miscalculates how long a particular service will be provided, it can amend the IFSP during a periodic review. Due to the rapidly changing needs of infants and toddlers and the need for accountability in making sure the appropriate services are provided, it is important for families to participate in periodic and annual reviews in order to help make decisions about modifications to the IFSP based on the child's present level of development.

Changes: None.

Comment: A few commenters expressed concern about the requirement in §303.344(d)(4) that the IFSP include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children who are at least three years of age. The commenters stated that this requirement seemed to apply to any preschooler that has an IFSP and stated that the requirement was inconsistent with several provisions in the Part B regulations in 34 CFR Part 300. Specifically, the commenters stated that §303.344(d)(4) was inconsistent with 34 CFR 300.323(b), regarding when an IFSP may serve as the IEP for children with disabilities aged three through five. Additionally, the commenters stated that §300.320 does not explicitly require that the IEPs of children with disabilities in preschool include these IFSP content

components. Another commenter stated that requiring an educational component in every IFSP of a child aged three through five is inappropriate because IFSP Teams must determine the individual needs of a child with a disability. One commenter requested that the Department clarify that the requirements in §303.344(d)(4) only apply to States that elect to serve children past age three.

Discussion: The requirement in §303.344(d)(4) that IFSPs include, for children who are at least three years of age, an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills is directly from section 632(5)(B)(ii) of the Act. Section 303.344(d)(4) is consistent with 34 CFR 300.323(b) of the Part B regulations. It is not necessary under Part B of the Act to require an educational component for children with disabilities who receive preschool services under IEPs because the definition of an IEP in 34 CFR 300.112 of the Part B regulations identifies by cross-reference the many educational components of the IEP.

Section 303.344(d)(4) and 34 CFR 300.323(b) of the Part B regulations both require all IFSPs for children age three and older to include an educational component that promotes school readiness, and to incorporate pre-literacy, language, and numeracy skills. Children age three and older who have IFSPs under Part C of the Act would be those children receiving services in States that have elected to serve children under the option in §§303.211 and 303.501(d) or under the option to provide services to children beyond age three until the beginning of the school year in §303.501(c)(1). Both the Act and these regulations are clear and need no further clarification.

Changes: None.

Other services (§303.344(e))

Comment: Some commenters requested that this paragraph be amended to explicitly include childcare as an “other service.”

Discussion: Section 303.344(e) states that the IFSP must, to the extent appropriate, identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part. While childcare is not specifically included in paragraph (e) of this section, an IFSP Team may decide, when appropriate, to identify childcare as an “other service” that is not required under Part C of the Act. We decline to revise the regulations as requested by the commenter because listing every service that may be considered as an “other service” would be impractical.

Changes: None.

Comment: Some commenters agreed with removing the requirement in current §303.344(e)(1)(ii) that the IFSP identify funding sources for the medical and other services not required by Part C of the Act, stating that the requirement was both beyond the scope of Part C services and an additional burden on lead agencies. However, other commenters disagreed, arguing that, absent such information in the IFSP, children might not receive the additional services that they need, which would defeat the purposes of the Act to ensure that early intervention services are provided in order to reduce the need for services as the child matures.

Discussion: Section 303.344(e)(2) requires that, if a child or family needs medical and other services and these services are not currently being provided, the IFSP must include a description of the steps the service coordinator or family may take to assist the child and family in securing those services. The regulations no longer require the IFSP Team to identify, and service coordinators to coordinate, funding sources for these services (those not required under Part C). We believe that §303.344(e)(2), with this change, will help families receive additional services, without unduly burdening IFSP Teams and service coordinators who may have limited knowledge about funding for services provided by other programs.

Changes: None.

Dates and duration of service (§303.344(f))

Comment: None.

Discussion: We have made technical edits to §303.344(f)(1) to cross-reference the consent provisions applicable to this section--that is, paragraph (e) of §303.342 (parental consent) and §303.420(a)(3) (consent for early intervention services). For clarity and consistency with these regulations, we also have inserted the words “early intervention” before the word “service.” As noted in the Analysis of Comments and Changes section discussing §303.342(e), we have revised, in §303.344(f)(1), the timeline that services begin “as soon as possible” after parental consent (instead of “as soon as possible” after the initiation date identified in the IFSP in current §303.344(f)(1)).

Changes: We have replaced, in §303.344(f)(1), after the words “as soon as possible” the phrase “after the IFSP meetings described in §303.342” with the words “after the parent consents to the service, as required.” We also have added references to §303.342(e) and §303.420(a)(3). Additionally, we have inserted the words “early intervention” before the word “service.”

Service coordinator (§303.344(g))

Comment: One commenter requested that the regulations require service coordinators to be responsible for facilitating the full implementation of the IFSP. The commenter also requested that the regulations stipulate that the service coordinator for a particular infant or toddler with a disability may not be an EIS provider providing early intervention services to that particular infant or toddler with a disability.

Discussion: Section 303.344(g), when read together with §303.33, the definition of service coordination services (case management), clarifies that the service coordinator is responsible for implementing the early intervention services identified in a child’s IFSP. We do not agree with the commenter that the service coordinator for a particular infant or toddler with a disability cannot be an EIS provider for that particular infant or toddler with a disability, because the model of service coordination can vary from one State to another as well as among local communities because of such distinguishing factors as population size and economic, social, or cultural differences. Regardless of the model chosen by a State, we expect service coordination services to remain family centered.

Changes: None.

Transition from Part C services (§303.344(h))

Comment: None.

Discussion: For consistency with section 636(a)(3) of the Act and §303.344(h)(2)(iv), we have clarified that the IFSP must include not only transition steps but transition services needed to support the smooth transition of a child who is exiting the Part C program.

Changes: We have added the phrase “and services” after the word “steps” to §303.344(h)(1).

Comment: One commenter supported the requirement in §303.344(h)(2)(iii) to obtain parental consent before transmitting additional information about a child to the LEA and requested clarification of the basic information that must be provided to the LEA representative at the transition conference or IFSP meeting to develop the transition plan. Another commenter noted that careful documentation will be needed to ensure that parental consent is obtained.

Discussion: To clarify the relationship between §§303.344(h) and 303.209 regarding transition, we have added the words “smooth” and “from Part C services” in §303.344(h)(1). We also have revised §303.344(h)(2)(iii) to clarify that the transition steps and services in the IFSP must include confirmation that child find information was transmitted to the LEA or other relevant agency.

With regard to the comments regarding parental consent in §303.344(h)(2)(iii), we have clarified that parental consent must be obtained if personally identifiable information is disclosed as required under §303.414. Given that personally identifiable information is discussed at the IFSP meeting to develop a transition plan, if the LEA representative is from an LEA that is not a participating agency under §303.403(c) or if attendance is required of other individuals who are not employees or representatives of participating agencies, parental consent is required under §303.414 for the lead agency to be able to disclose personally identifiable information to these individuals at the meeting.

We also have clarified that the additional information to be provided to the LEA to ensure continuity of services includes a copy of the most recent evaluation and assessments of the child and family and the most recent IFSP.

Changes: We have added the words “smooth” and “from Part C services” in §303.344(h)(1). We also have added the words “confirmation that” to precede the words “child find information” and “if required under §303.414” to follow the phrase “parental consent” in §303.344(h)(2)(iii). We also have clarified that the additional information in §303.344(h)(2)(iii) includes a copy of the most recent evaluation and assessments of the child and family and the most recent IFSP.

Comment: One commenter stated that the requirement in proposed §303.344(h)(1)(iii) that an IFSP include the steps that must be taken to support the transition of the child to early education, Head Start and Early Head Start, or child care programs is inappropriate because it is not required in the Act. This commenter requested that the requirement be removed from the regulations.

Discussion: We agree with the commenter that requiring transition to specific educational or child care programs may not be appropriate for every child and the phrase “other appropriate services” covers such programs. The programs identified in proposed §303.344(h)(1)(iii) were intended to be examples of programs into which children may transition from Part C services. However, early education, Head Start, Early Head Start, or child care programs are covered through the reference to other appropriate services in proposed §303.344(h)(1)(iv), which stated that the IFSP must include the steps to be taken to support the transition of the child, in accordance with §303.209, from Part C services to other appropriate services. Therefore, to eliminate duplication, we have removed proposed §303.344(h)(1)(iii). We also note that the reference in §303.344(h)(1)(i) to elementary school or preschool was incorrect and are revising §303.344(h)(1)(ii) to refer to “Part C services under §303.211.”

Changes: We have removed proposed §303.344(h)(1)(iii) and redesignated proposed §303.344(h)(1)(iv) as §303.344(h)(1)(iii). We have revised §303.344(h)(1)(ii) to refer to “Part C services under §303.211.”

<p><u>§303.345 Provision of services before evaluation and assessment are completed.</u> Early intervention services for an eligible child and the child’s family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met: (a) Parental consent is obtained. (b) An interim IFSP is developed that includes— (1) The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and (2) The early intervention services that have been determined to be needed immediately by</p>	<p><u>§303.345 Provision of services before evaluations and assessments are completed.</u> Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation (including the assessment of the child and family) and assessment of service needs in §303.320, if the following conditions are met: (a) Parental consent is obtained. (b) An interim IFSP is developed that includes-- (1) The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and (2) The early intervention services that have</p>	<p><u>§303.345 Interim IFSPs--provision of services before evaluations and assessments are completed.</u> Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in §303.321, if the following conditions are met: (a) Parental consent is obtained. (b) An interim IFSP is developed that includes-- (1) The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementing the interim IFSP and coordinating with other agencies and persons; and (2) The early intervention services that have</p>
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<p>the child and the child’s family.</p> <p>(c) The evaluation and assessment are completed within the time period required in § 303.322(e).</p> <p>NOTE: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.</p>	<p>been determined to be needed immediately by the child and the child's family.</p> <p>(c) Evaluations and assessments are completed within the 45-day timeline in §303.320(e).</p>	<p>been determined to be needed immediately by the child and the child's family.</p> <p>(c) Evaluations and assessments are completed within the 45-day timeline in §303.310.</p>
<p><u>Interim IFSPs--provision of services before evaluations and assessments are completed (§303.345)</u></p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> To improve clarity, we have added “interim IFSPs” to the title of this section.</p> <p><u>Changes:</u> We have added “Interim IFSPs” to the title of §303.345.</p>		
<p><u>§303.346 Responsibility and accountability.</u></p> <p>Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child’s IFSP. However, part C of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child’s IFSP.</p>	<p><u>§303.346 Responsibility and accountability.</u></p> <p>Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.</p>	<p><u>§303.346 Responsibility and accountability.</u></p> <p>Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.</p>
<p><u>Responsibility and accountability (§303.346)</u></p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> For consistency throughout the regulations, we have clarified that the agency referenced in §303.346 is the public agency (defined in §303.30) and the person referenced in this section is an EIS provider (defined in §303.12).</p> <p><u>Changes:</u> We have revised §303.346 so that it refers to a public agency and an EIS provider, rather than an agency and person.</p>		