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<p>§ 303.165 Comprehensive child find system. Each application must include— (a) The policies and procedures required in § 303.321(b); (b) Information demonstrating that the requirements on coordination in § 303.321(c) are met; (c) The referral procedures required in § 303.321(d), and either— (1) A description of how the referral sources are informed about the procedures; or (2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and (d) The timelines in § 303.321(e).</p>	<p>§303.115 Comprehensive child find system. <i>Each system must include a comprehensive child find system that meets the requirements in §§303.301 through 303.303.</i></p>	<p>§303.115 Comprehensive child find system. Each system must include a comprehensive child find system that meets the requirements in §§303.302 and 303.303.</p>
<p><u>Comprehensive child find system (§303.115)</u> <u>Comment:</u> One commenter recommended that language be included in this section to explicitly require States to seek out and serve all infants and toddlers under the age of three, regardless of when they were referred to the lead agency for early intervention services. The commenter expressed the belief that many children referred to the Part C program after age two are not served. <u>Discussion:</u> We do not believe that the requested change is appropriate or necessary because §303.115 provides that the State’s comprehensive child find system must meet the requirements in §§303.301 through 303.303. Section 303.302(b)(1) expressly requires a lead agency to ensure that all infants and toddlers with disabilities in the State who are eligible for services under Part C of the Act are identified, located, and evaluated. Additionally, the definition of an <u>infant or toddler with a disability</u> in §303.21 expressly includes any eligible child until that child reaches the age of three. Thus, even if a child is referred to the Part C program after the age of two, the lead agency, with parental consent, must conduct an evaluation under §303.321 or provide the parent with notice (under §303.421(b)) explaining why an evaluation is not being conducted (i.e., the child is not suspected of having a disability). Additionally, if the parent consents to an evaluation, new §303.310(b) requires that the initial evaluation and the initial assessment of the child and the initial IFSP meeting must be conducted within 45 days of the child’s referral to the Part C program. (However, as provided under §303.209(b)(1)(iii), if a child is referred less than 45 days prior to his or her third birthday, the lead agency is not required to evaluate the child; instead, if the child may be eligible for services under Part B of the Act, the lead agency, with parental consent, is required to refer the child to the Part B program.) Section 303.342(e) requires that when a child is determined eligible for Part C services and the parent consents to the provision of Part C services</p>		

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<p>identified on the child’s IFSP, the lead agency must ensure that those early intervention services are available and provided to the child. <u>Changes:</u> None.</p>		
<p><u>§ 303.164 Public awareness program.</u> Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.</p>	<p><u>§303.116 Public awareness program.</u> <i>Each system must include a public awareness program that--</i> (a) <i>Focuses on early identification of infants and toddlers with disabilities; and</i> (b) <i>Provides information to parents of infants and toddlers through primary referral sources in accordance with §303.300.</i></p>	<p><u>§303.116 Public awareness program.</u> Each system must include a public awareness program that-- (a) Focuses on the early identification of infants and toddlers with disabilities; and (b) Provides information to parents of infants and toddlers through primary referral sources in accordance with §303.301.</p>
		<p><u>§303.300 General.</u> The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in §303.100 must include the following components: (a) Pre-referral policies and procedures that include-- (1) A public awareness program as described in §303.301; and (2) A comprehensive child find system as described in §303.302. (b) Referral policies and procedures as described in §303.303. (c) Post-referral policies and procedures that ensure compliance with the timeline requirements in §303.310 and include-- (1) Screening, if applicable, as described in §303.320; (2) Evaluations and assessments as described in §§303.321 and 303.322; and</p>

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		(3) Development, review, and implementation of IFSPs as described in §§303.340 through 303.346.
<p><u>General (new §303.300)</u></p> <p><u>Comment:</u> We received a number of comments concerning subpart D of these regulations; many of these comments suggested that there is some confusion in the field about the implementation of the child find, screening, evaluation, assessment, and IFSP provisions in the proposed regulations.</p> <p><u>Discussion:</u> Given the number of comments we received on this subpart, we have provided an overview of how subpart D is organized and how the components described in this subpart relate to one another. We have added a new §303.300 to identify and distinguish the following required components of the Part C statewide early intervention system: (a) pre-referral (public awareness and child find) policies and procedures, (b) referral policies and procedures, and (c) post-referral policies and procedures. Accordingly, we have renumbered the public awareness program provisions as new §303.301 and the child find provisions as new §303.302.</p> <p>In order for the Part C statewide system to identify, locate, evaluate, and serve all infants and toddlers with disabilities effectively, the system must be both comprehensive and coordinated. As clarified in this subpart, this means establishing policies and procedures for (a) pre-referral activities (i.e., to make the public aware of the availability of early intervention services and to coordinate with other programs to identify and locate infants and toddlers with disabilities), (b) the referral of children under the age of three to the Part C program, and (c) post-referral activities (i.e., the screening, if applicable, of children under the age of three who have been referred to the Part C program under new §303.320 (proposed §303.303); the evaluation and assessment of the child and the child’s family under new §303.321 (proposed §303.320); and the development, review, and implementation of the IFSP, under §§303.342 through 303.346).</p> <p>Subpart D follows the general chronological order of the pre-referral, referral, and post-referral components of the Part C statewide system. Specifically, this subpart begins by describing the required public awareness program (part of the pre-referral process) and ends with a requirement that public agencies and EIS providers that are directly responsible for providing early intervention services to a child make good faith efforts to assist that child in achieving the outcomes in the child’s IFSP (part of the post-referral process). In this way, we intend subpart D of these regulations to provide the framework for effectively identifying, locating, and providing early intervention services to all eligible infants and toddlers with disabilities.</p> <p><u>Changes:</u> We have added new §303.300 to identify and distinguish between the pre-referral, referral, and post-referral components of a statewide early intervention system. Section 303.300 states that the statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families required in §303.1 must include the following components: (a) Pre-referral policies and procedures that include a public awareness program as described in new §303.301 (proposed §303.300) and a comprehensive child find system as described in new §303.302 (proposed §303.301); (b) Referral policies and procedures as described in new §303.303 (proposed §303.302); and (c) Post-referral policies and procedures to ensure compliance with the timeline requirements in new §303.310 and that include screening, if applicable, as described in new §303.320 (proposed §303.303); evaluations and assessments as described in new §303.321 (proposed §303.320); and development, review, and implementation of IFSPs as described in §§303.342 through 303.346.</p>		

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<p><u>§ 303.320 Public awareness program.</u> Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part and includes the preparation and dissemination by the lead agency to all primary referral sources, especially hospitals and physicians, of materials for parents on the availability of early intervention services. The public awareness program must provide for informing the public about—</p> <p>(a) The State’s early intervention program;</p> <p>(b) The child find system, including—</p> <p>(1) The purpose and scope of the system;</p> <p>(2) How to make referrals; and</p> <p>(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and</p> <p>(c) The central directory.</p> <p>NOTE 1: An effective public awareness program is one that does the following:</p> <p>1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;</p> <p>2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;</p> <p>3. Has coverage broad enough to reach the general public, including those who have</p>	<p><u>§303.300 Public awareness program information for parents.</u></p> <p>(a) <i>Preparation and dissemination.</i> In accordance with §303.116, each system must include a public awareness program that provides for—</p> <p>(1)(i) The lead agency’s preparation of information on the availability of early intervention services under this part, and other services, as described in paragraph (b) of this section; and</p> <p>(ii) Dissemination to all primary referral sources(especially hospitals and physicians) of the information to be given to parents of infants and toddlers, including especially parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications; and</p> <p>(2) Procedures for assisting the primary referral sources described in §303.302(c) in disseminating the information to parents of infants and toddlers with disabilities.</p> <p>(b) <i>Information to be provided.</i> The information required in paragraph (a) of this section must include—</p> <p>(1) A description of the availability of early intervention services under this part;</p> <p>(2) A description of the child find system and how to refer a child for an evaluation or early intervention services;</p> <p>(3) The central directory; and</p> <p>(4) For parents with toddlers with disabilities who are nearing transition age (e.g. starting at least nine months prior to the child’s third</p>	<p><u>§303.301 Public awareness program-- information for parents.</u></p> <p>(a) Preparation and dissemination. In accordance with §303.116, each system must include a public awareness program that requires the lead agency to--</p> <p>(1)(i) Prepare information on the availability of early intervention services under this part, and other services, as described in paragraph (b) of this section; and</p> <p>(ii) Disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and</p> <p>(2) Adopt procedures for assisting the primary referral sources described in §303.303(c) in disseminating the information described in paragraph (b) of this section to parents of infants and toddlers with disabilities.</p> <p>(b) <u>Information to be provided.</u> The information required to be prepared and disseminated under paragraph (a) of this section must include--</p> <p>(1) A description of the availability of early intervention services under this part;</p> <p>(2) A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and</p> <p>(3) A central directory, as described in §303.117.</p>

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<p>disabilities; and 4. Includes a variety of methods for informing the public about the provisions of this part. NOTE 2: Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctors' offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.</p>	<p>birthday), a description of the availability of services under section 619 of the Act.</p>	<p>(c) <u>Information specific to toddlers with disabilities</u>. Each public awareness program also must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of services under section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.</p>
<p><u>Public awareness program--information for parents (new §303.301) (proposed §303.300)</u> <u>Comment:</u> A few commenters supported proposed §303.300(a)(1)(ii), which specifically included parents with premature infants or infants with other physical risk factors associated with learning or developmental complications among those parents to whom information about early intervention services must be disseminated. These commenters requested that we add a requirement that child find activities be conducted in collaboration with parent advocacy groups or other community agencies that are available to answer questions and provide support to these families as they access services. <u>Discussion:</u> The regulations track the language in section 635(a)(6) of the Act, which describes the required public awareness program. Although collaboration with parent advocacy groups or other community agencies regarding public awareness is not specifically mentioned in the Act or these regulations, there is nothing in the Act or these regulations that prevents a State from collaborating with other community resources to disseminate public awareness materials beyond primary referral sources. We do not mandate that public awareness materials be distributed to all parent advocacy groups or community agencies in these regulations because each State needs the flexibility to tailor its public awareness programs to the population of infants and toddlers with disabilities who may be eligible in that State (e.g., a State that serves at-risk infants and toddlers may target specific agencies). This approach will allow States to create and implement a public awareness program that includes the appropriate and necessary components to effectively meet State-specific needs. <u>Changes:</u> None. <u>Comment:</u> Some commenters recommended including the notes from current §303.320, regarding a system's public awareness program, in new §303.301 (proposed §303.300) because these notes provided clarity to lead agencies. <u>Discussion:</u> New §303.301 (proposed §303.300) is consistent with section 635(a)(6) of the Act, which describes the requirements of a public awareness program. Notes 1 and 2 following current §303.320 describe the components of an effective public awareness program and provide examples of methods for informing the general public about the provisions of this part. We do not wish to make the substance of these notes regulatory requirements because we do not want to limit State flexibility to create a public awareness program that meets State-specific needs. While we have not incorporated the notes as requirements in the regulations, we continue to believe that an effective public awareness system is</p>		

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<p>one that involves an ongoing effort that is in effect throughout a State, including rural areas; provides for the involvement of, and communication with, major organizations throughout a State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations; has coverage broad enough to reach the general public, including those who have disabilities; and includes a variety of methods for informing the public about the provisions of this part. Methods for informing the public continue to include the use of printed materials, television, radio, and the Internet, but may also include other appropriate methods in a particular State. For these reasons, we decline to revise new §303.301 (proposed §303.300) as requested by the commenter.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> One commenter recommended adding a reference to other family members after each mention of parents in this section.</p> <p><u>Discussion:</u> New §303.301 (proposed §303.300) tracks the language in section 635(a)(6) of the Act, regarding disseminating information about available early intervention services to parents of infants and toddlers with disabilities. While family members--other than parents--may voluntarily participate in a family assessment, may be invited by a parent to participate in IFSP meetings, and may be included when early intervention services are provided, the parent of an infant or toddler is ultimately responsible for making decisions under these regulations. The term <u>parent</u> is broad enough to encompass not just the biological or adoptive parent but other individuals who meet the definition in §303.27. Additionally, nothing in these regulations prevents the lead agency from disseminating its public awareness materials through primary referral sources to other family members. Therefore, it is the Department’s position that not extending this requirement to other family members of infants and toddlers with disabilities is appropriate.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> Two commenters requested clarification of new §303.301(c) (proposed §303.300(b)(4)), which required the lead agency to provide parents of toddlers who are nearing transition age with a description of the availability of services under section 619 of the Act. These commenters questioned when this description must be provided and whether providing it when a toddler is two years and four months of age would meet the requirement to provide information at least nine months prior to a child’s third birthday in new §303.301(c) (proposed §303.300(b)(4)).</p> <p>One commenter stated that the public awareness requirement in new §303.301(c) (proposed §303.300(b)(4)) should be the responsibility of public agencies responsible for implementing Part B of the Act and should be a collaborative effort between the State Part B and C agencies and local Part B programs to ensure that all parents and families are fully informed of the availability of services under section 619 of the Act.</p> <p><u>Discussion:</u> We agree that, as written, proposed §303.300(b)(4) did not provide sufficient clarification regarding when, and to whom, a description of the availability of services under section 619 of the Act must be provided. Accordingly, we have revised new §303.301(c) (proposed §303.300(b)(4)) to specify that each public awareness program must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of preschool services under section 619 of the Act not fewer than 90 days prior to the child’s third birthday. We have removed the reference to “toddlers with disabilities nearing transition age” and instead clarified the timeline by which the information must be provided. We have revised this timeline so that it is consistent with the timelines for LEA notification and other transition requirements in §303.209.</p> <p>In response to the specific comment asking whether providing public awareness under new §303.301(c) (proposed §303.300(b)(4)) to parents</p>		

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<p>when their toddler reaches two years and four months of age would be in compliance with this requirement, it would be in compliance under the revised requirement because each lead agency must ensure that information about preschool services under section 619 of the Act is provided to parents of toddlers with disabilities not fewer than 90 days prior to the toddler’s third birthday.</p>		
<p>Concerning the comment that the public awareness requirement should be the responsibility of the Part B State or local public agencies, section 635(a)(6) of the Act was revised in 2004 to require that the lead agency prepare and disseminate information about preschool services under section 619 of the Act. SEAs and LEAs have child find responsibilities as defined in sections 612 and 619 under Part B of the Act. The requirement in new §303.301(c) (proposed §303.300(b)(4)) reflects the lead agency’s responsibilities under sections 635(a)(6) and 637(a)(9) of the Act to ensure that information about Part B preschool services is available to parents of all toddlers with disabilities exiting the Part C program, not just those toddlers who have been determined by the lead agency to be potentially eligible under Part B of the Act.</p>		
<p>Concerning the commenter’s request to require collaboration between the State and local Part B and Part C agencies, adding this requirement is unnecessary because, under new §303.302(c) (proposed §303.301(c)), the lead agency, with the assistance of the Council, must ensure that its child find system under Part C of the Act is coordinated with the State’s child find efforts under Part B of the Act.</p>		
<p>Changes: We have revised new §303.301(c) (proposed §303.300(b)(4)) to specify that each public awareness program must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of preschool services under section 619 of the Act not fewer than 90 days prior to the child’s third birthday. Additionally, because we have clarified that parents must be provided with this information not fewer than 90 days prior to their toddler’s third birthday, we have deleted the parenthetical “starting at least nine months prior to the child’s third birthday.”</p>		
<p><u>§303.321 Comprehensive child find system.</u> (a) <i>General.</i> (1) Each system must include a comprehensive child find system that is consistent with part B of the Act (see 34 CFR 300.128), and meets the requirements of paragraphs (b)through (e) of this section. (2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system. (b) <i>Procedures.</i> The child find system must include the policies and procedures that the State will follow to ensure that—</p>	<p><u>§303.301 Comprehensive child find system.</u> (a) <i>General.</i> Each system must include a comprehensive child find system that-- (1) Is consistent with Part B of the Act (see 34 CFR §300.115); (2) Includes a system for making referrals to public agencies under this part that-- (i) Includes timelines; and (ii) Provides for participation by the primary referral sources described in §303.302(c); (3) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services; and (4) Meets the requirements in paragraphs (b)</p>	<p><u>§303.302 Comprehensive child find system.</u> (a) <i>General.</i> Each system must include a comprehensive child find system that— (1) Is consistent with Part B of the Act (see 34 CFR 300.111); (2) Includes a system for making referrals to lead agencies or EIS providers under this part that-- (i) Includes timelines; and (ii) Provides for participation by the primary referral sources described in §303.303(c); (3) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this part that will reduce the need for future services; and</p>

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<p>(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and</p> <p>(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services.</p> <p>(c) <i>Coordination.</i> (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the—</p> <p>(i) Program authorized under part B of the Act;</p> <p>(ii) Maternal and Child Health program under title V of the Social Security Act;</p> <p>(iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under title XIX of the Social Security Act;</p> <p>(iv) Developmental Disabilities Assistance and Bill of Rights Act;</p> <p>(v) Head Start Act; and</p> <p>(vi) Supplemental Security Income program under title XVI of the Social Security Act.</p> <p>(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—</p>	<p><i>and (c) of this section and §§303.302 and 303.303.</i></p> <p><i>(b) <u>Scope of child find.</u> The lead agency, as part of the child find system, must ensure that--</i></p> <p><i>(1) All infants and toddlers with disabilities in the State who are eligible for services under this part are identified, located, and evaluated, including--</i></p> <p><i>(i) Indian infants and toddlers with disabilities residing on a reservation geographically located in the State (including coordination, as necessary, with tribes, tribal organization, and consortia to identify the information provided by them to the lead agency under §303.731(e)(1)); and</i></p> <p><i>(ii) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the State; and</i></p> <p><i>(2) An effective method is developed and implemented to determine which children are in need of early intervention services, and which children are not in need of those services.</i></p> <p><i>(c) <u>Coordination.</u> (1) The lead agency, with the assistance of the Council, as defined in §303.8, must ensure that the child find system under this part--</i></p> <p><i>(i) Is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this</i></p>	<p>(4) Meets the requirements in paragraphs (b) and (c) of this section and §§303.303, 303.310, 303.320, and 303.321.</p> <p>(b) <u>Scope of child find.</u> The lead agency, as part of the child find system, must ensure that--</p> <p>(1) All infants and toddlers with disabilities in the State who are eligible for early intervention services under this part are identified, located, and evaluated, including--</p> <p>(i) Indian infants and toddlers with disabilities residing on a reservation geographically located in the State (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the State based, in part, on the information provided by them to the lead agency under §303.731(e)(1)); and</p> <p>(ii) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the State; and</p> <p>(iii) Infants and toddlers with disabilities that are referenced in §303.303(b); and</p> <p>(2) An effective method is developed and implemented to identify children who are in need of early intervention services.</p> <p>(c) <u>Coordination.</u> (1) The lead agency, with the assistance of the Council, as defined in §303.8, must ensure that the child find system under this part--</p> <p>(i) Is coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service</p>

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<p>(i) There will not be unnecessary duplication of effort by the various agencies involved in the State’s child find system under this part; and</p> <p>(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.</p> <p>(d) <i>Referral procedures.</i> (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—</p> <p>(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or</p> <p>(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.</p> <p>(2) The procedures required in paragraph (b)(1) of this section must—</p> <p>(i) Provide for an effective method of making referrals by primary referral sources;</p> <p>(ii) Ensure that referrals are made no more than two working days after a child has been identified; and</p> <p>(iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in § 303.320, prepared by the lead agency on the availability of early intervention services to parents of infants and toddlers with disabilities.</p> <p>(3) As used in paragraph (d)(1) of this section, <i>primary referral sources</i> includes—</p> <p>(i) Hospitals, including prenatal and postnatal</p>	<p><i>part, including Indian tribes that receive payments under this part, and other Indian tribes, as appropriate; and</i></p> <p><i>(ii) Is coordinated with the efforts of the--(A) Program authorized under Part B of the Act; (B) Maternal and Child Health program under Title V of the Social Security Act (42 U.S.C. 701(a)); (C) Early Periodic Screening, Diagnosis and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B)); (D) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.); (E) Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.); (F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381); (G) Child protection programs, including programs administered by, and services provided through, the foster care agency and the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a)); (H) Child care programs in the State; and (I) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) (for States electing to make available services under this part to children with disabilities after the age of three in accordance with section 635(c)(2)(G) of the Act and §303.211.</i></p>	<p>programs relevant to this part, including Indian tribes that receive payments under this part, and other Indian tribes, as appropriate; and</p> <p>(ii) Is coordinated with the efforts of the—</p> <p>(A) Program authorized under Part B of the Act;</p> <p>(B) Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a));</p> <p>(C) Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));</p> <p>(D) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);</p> <p>(E) Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);</p> <p>(F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);</p> <p>(G) Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));</p> <p>(H) Child care programs in the State;</p> <p>(I) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);</p>

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<p>care facilities; (ii) Physicians; (iii) Parents; (iv) Day care programs; (v) Local educational agencies; (vi) Public health facilities; (vii) Other social service agencies; and (viii) Other health care providers.</p> <p>(e) <i>Timelines for public agencies to act on referrals.</i> (1) Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible. (2) Within 45 days after it receives a referral, the public agency shall— (i) Complete the evaluation and assessment activities in § 303.322; and (ii) Hold an IFSP meeting, in accordance with § 303.342.</p> <p>NOTE: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.</p>	<p>(2) <i>The lead agency, with the advice and assistance of the Council, must take steps to ensure that--</i> (i) <i>There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and</i> (ii) <i>The State will make use of the resources available through each early intervention service provider in the State to implement the child find system in an effective manner.</i></p>	<p>(J) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and (K) Children’s Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa <u>et seq.</u>). (2) The lead agency, with the advice and assistance of the Council, must take steps to ensure that-- (i) There will not be unnecessary duplication of effort by the programs identified in paragraph (c)(1)(ii) of this section; and (ii) The State will make use of the resources available through each public agency and EIS provider in the State to implement the child find system in an effective manner.</p>
<p><u>Comprehensive child find system (new §303.302) (proposed §303.301)</u> <u>Comment:</u> None. <u>Discussion:</u> To reflect the varied administrative structures of different Part C child find systems and the revised definitions of <u>public agency</u> and <u>EIS provider</u> in §§303.30 and 303.12, respectively, we have replaced the reference to “public agencies” with “lead agencies or EIS providers” in new §303.302(a)(2) (proposed §303.301(a)(2)), regarding the child find system including a system for making referrals to lead agencies and EIS providers. <u>Changes:</u> We have replaced the reference to “public agencies,” in new §303.302(a)(2) (proposed §303.301(a)(2)), with a reference to “lead agencies or EIS providers”. <u>Comment:</u> A few commenters requested that the Department define the term “rigorous,” as that term is used to modify “standards for appropriately identifying infants and toddlers with disabilities under this part that will reduce the need for future services” in new §303.302(a)(3)</p>		

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<p>(proposed §303.301(a)(3)). These commenters asked the Department to provide specific guidance on how to define this term to avoid arbitrary and conflicting applications of the standards.</p> <p><u>Discussion:</u> New §303.302(a)(3) (proposed §303.301(a)(3)), consistent with section 635(a)(5) of the Act, requires that each State’s Part C child find system include rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services that reduce the need for future services. We interpret the term “rigorous” in this section to mean that the State has obtained public (including stakeholder) input on its child find system policies and procedures that are required in §§303.101(a)(2), 303.115, and 303.116. Requiring public input ensures that stakeholders who have an interest in the development of a State’s child find system, including parents of infants and toddlers with disabilities, EIS providers, Council members, and other stakeholders, have adequate opportunity to comment on, and inform, the decision-making process regarding a State’s child find policies and procedures.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A few commenters recommended removing the phrase “that will reduce the need for future services” from new §303.302(a)(3) (proposed §303.301(a)(3)), which requires each State’s child find system to include rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services that will reduce the need for future services. These commenters stated that eligible infants and toddlers should have access to necessary early intervention services regardless of whether the lead agency or EIS provider expects the early intervention services to reduce a child’s need for future services.</p> <p><u>Discussion:</u> New §303.302(a)(3) (proposed §303.301(a)(3)) incorporates statutory language from section 635(a)(5) of the Act and reflects the finding in section 631(a)(2) that there is an urgent and substantial need to reduce the educational costs to our society, including our nation’s schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age. Thus, new §303.302(a)(3) (proposed §303.301(a)(3)) does not require a determination as to whether a specific infant or toddler with a disability will or will not require future services, but rather reflects one of the critical findings underlying Part C of the Act.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> We have made a minor change to new §303.302(b)(1)(i) (proposed §303.301(b)(1)(i)) to clarify that the coordination with tribes, tribal organizations, and consortia is for the purpose of identifying infants and toddlers with disabilities in the State based, in part, on the information provided by these entities to the lead agency under §303.731(e)(1).</p> <p><u>Changes:</u> We have revised the parenthetical in new §303.302(b)(1)(i) (proposed §303.301(b)(1)(i)) by adding the words “to identify infants and toddlers with disabilities in the State based, in part, on” before the words “the information provided.”</p> <p><u>Comment:</u> Many commenters supported retaining the requirement from current §303.321(b)(2), which requires that an effective method be developed and implemented to determine which children are receiving needed early intervention services. However, these commenters strongly opposed the requirement in proposed §303.301(b)(2) to have an effective method to determine which children are not in need of early intervention services. The commenters argued that this is not a statutory requirement and would add significant burden to lead agencies.</p> <p><u>Discussion:</u> We agree with the commenters that child find efforts under Part C of the Act should focus on identifying infants and toddlers with disabilities who are potentially eligible for, or in need of, early intervention services and not those who are not potentially eligible for such services. Therefore, we have removed the requirement that lead agencies must determine which children are not in need of services in new §303.302(b)(2) (proposed §303.301(b)(2)).</p>		

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<p><u>Changes:</u> We removed the phrase “and which children are not in need of those services” in new §303.302(b)(2) (proposed §303.301(b)(2)).</p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> Proposed §303.301(c)(1)(ii)(G) identified “child protection programs, including programs administered by, and services provided through, the foster care agency...” as one of the programs that the lead agency must ensure that it coordinates with when implementing its child find responsibilities. However, child welfare programs, such as the foster care system, and child protection programs are two different programs and in some States are not in the same system. Therefore, we have clarified in new §303.302(c)(1)(ii)(G) (proposed §303.301(c)(1)(ii)(G)) that lead agencies must coordinate child find activities with both child protection and child welfare programs.</p> <p><u>Changes:</u> We have added the words “and child welfare” after the words “child protection” in new §303.302(c)(1)(ii)(G) (proposed §303.301(c)(1)(ii)(G)).</p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> As previously stated in the <u>Analysis of Comments and Changes</u> section for subpart C of these regulations, upon further review, the Department has determined that it is not appropriate to limit either coordination with, or referrals from, the programs that provide services under the Family Violence Prevention and Services Act in new §303.302(c)(1)(ii)(A) (proposed §303.301(c)(1)(ii)(I)) and §303.303(c)(11) (proposed §303.302(c)(11)). Therefore, we have removed the following language “(for States electing to make available services under this part to children with disabilities after the age of three in accordance with section 635(c)(2)(G) of the Act and §303.211.)” from new §303.302(c)(1)(ii)(A) (proposed §303.301(c)(1)(ii)(I)) and §303.303(c)(11) (proposed §303.302(c)(11)).</p> <p><u>Changes:</u> We have removed the parenthetical referencing section 635(c)(2)(G) of the Act and §303.211 from new §303.302(c)(1)(ii)(A) and §303.303(c)(11).</p> <p><u>Comment:</u> Several commenters recommended adding the Children’s Health Insurance Program (CHIP) to the list of programs with which the lead agency must coordinate its child find activities in new §303.302(c)(1)(ii) (proposed §303.301(c)(1)(ii)) because many children with disabilities participate in CHIP. A few commenters requested adding State Early Hearing Detection and Intervention (EHDI) systems to this list as well.</p> <p><u>Discussion:</u> We agree with commenters that coordinating with the CHIP programs and State Early Hearing Detection Intervention (EHDI) systems can assist the lead agency in its child find responsibilities to identify infants and toddlers with disabilities. The addition of these two programs in the child find coordination provision in new §303.302(c)(1)(ii) does not mean that these entities are “participating agencies” under §303.403 if they function as primary referral sources or funding sources, but do not otherwise meet the definition of participating agency in §303.403.</p> <p>CHIP is authorized under Title XXI of the Social Security Act and each State determines the level of income eligibility and available health benefits for children. In many States, CHIP benefits are combined with benefits under Medicaid (Title XIX of the Social Security Act). Requiring the lead agency to coordinate its child find efforts with the CHIP program ensures nonduplication of Federal and State funds and efforts to provide needed health services to eligible children.</p> <p>Each State has a State EHDI program, which is responsible for creating a system of newborn hearing screening, follow-up, audiological diagnosis (for those who do not pass screening), and intervention (for those who are identified with hearing loss). Recent data indicate that 55 percent of State EHDI programs never or rarely notify the Part C statewide system about infants who have failed their final hearing screening. (National</p>		

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		<p>Center for Hearing Assessment and Management, <u>The Impact of Privacy Regulations</u>, May 2008, available at www.infanthearing.org) By adding the State EHDI program in §303.302(c)(1)(ii), we acknowledge that coordination between the State EHDI program and the statewide child find system can play a critical role in the referral of children from the EHDI program to the Part C program to identify children potentially eligible for Part C early intervention services, including infants and toddlers who are deaf or hard of hearing. Therefore, we have added CHIP and EHDI to the programs listed in new §303.302(c)(1)(ii) (proposed §303.301(c)(1)(ii)).</p> <p>Nothing precludes the State lead agency from coordinating with additional appropriate entities in the State, such as Grant-Supported Federally Qualified Health Centers (“FQHCs”), which include Community Health Centers and Healthcare for the Homeless Programs, <u>see</u> 42 U.S.C. §§254b(a), 1396a(a)(10)(A), 1396d(a)(2)(C); the Temporary Assistance for Needy Families (TANF) Program, <u>see</u> 42 U.S.C. §§601 et seq.; the supplemental nutrition program for Women, Infants and Children (WIC), <u>see</u> 42 U.S.C. §§1786 et seq.; and the Supplemental Nutrition Assistance Program (“SNAP”) (formerly the Federal Food Stamp program), <u>see</u> 7 U.S.C. §§2011 et seq. Some of these programs may serve as primary referral sources. We note that some States have adopted a centralized intake center for families for many State health, social welfare, public assistance, and other programs that target the health and welfare of children and families and that the Part C early intervention program may be included in such an intake center.</p> <p><u>Changes:</u> We have added new paragraphs (J) and (K) to new §303.302(c)(1)(ii) to include EHDI and CHIP among the programs with which the lead agency must coordinate its child find activities.</p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> To provide consistency between the lead agency’s responsibilities to ensure non-duplication of child find efforts in new §303.302(c)(2)(i) (proposed §303.301(c)(2)(i)) and child find coordination in new §303.302(c)(1)(ii) (proposed §303.301(c)(1)(ii)), we have replaced, in new §303.302(c)(2)(i) (proposed §303.301(c)(2)(i)), the broad reference to various agencies with a reference to the specific programs identified in new §303.302(c)(1)(ii) (proposed §303.301(c)(1)(ii)), with which the lead agency must coordinate its child find efforts.</p> <p><u>Changes:</u> We have replaced in new §303.302(c)(1)(ii) (proposed §303.301(c)(2)(i)) the phrase “various agencies involved in the State’s child find system under this part” with “programs identified in paragraph (c)(1)(ii) of this section.”</p> <p><u>Comment:</u> One commenter requested clarification on why the reference to public agency was deleted from new §303.302(c)(1)(ii) (proposed §303.301(c)(2)(ii)), concerning the requirement that the State make use of each EIS provider in implementing child find in an effective manner. Another commenter disagreed with the language in proposed §303.301(c)(2)(ii) because public agencies that provide services to young children are critical to the child find system and these public agencies should be expressly referenced and continue to be an active part of the child find system. Both commenters recommended that current §303.321(c)(2)(ii) be retained.</p> <p><u>Discussion:</u> Current §303.321(c)(2)(ii), regarding coordination efforts, provides that the lead agency make use of the resources available through each public agency in the State to implement child find in an effective manner. We added in new §303.302(c)(2)(ii) (proposed §303.301(c)(2)(ii)) a reference to EIS providers because of the revised definitions of <u>EIS providers</u> and <u>public agencies</u>. We agree with the commenters that the reference to public agencies should be reinstated and also have added that reference.</p> <p><u>Changes:</u> We have added the words “each public agency” to the reference to “EIS provider in the State” to new §303.302(c)(2)(ii) (proposed §303.301(c)(2)(ii)).</p>

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	<p><u>§303.302 Referral procedures.</u> <i>(a) General. (1) The child find system described in §303.301 must include procedures for use by primary referral sources for referring a child to the Part C system for--</i> <i>(i) Evaluation and assessment, in accordance with §303.320; and</i> <i>(ii) As appropriate, the provision of early intervention services, in accordance with §§303.342 through 303.345.</i> <i>(2) The procedures required in paragraph (a)(1) of this section must--</i> <i>(i) Provide for referring a child as soon as possible after the child has been identified; and</i> <i>(ii) Include procedures that meet the requirements in paragraphs (b) and (c) of this section.</i></p> <p><i>(b) Referral of specific at-risk children. The procedures required in paragraph (a) of this section must provide for requiring the referral of a child under the age of three who--</i> <i>(1) Is involved in a substantiated case of abuse or neglect; or</i> <i>(2) Is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.</i></p> <p><i>(c) Primary referral sources. As used in this subpart, primary referral sources include--</i> <i>(1) Hospitals, including prenatal and postnatal care facilities;</i></p>	<p><u>§303.303 Referral procedures.</u> <i>(a) General. (1) The lead agency’s child find system described in §303.302 must include the State’s procedures for use by primary referral sources for referring a child under the age of three to the Part C program.</i> <i>(2) The procedures required in paragraph (a)(1) of this section must--</i> <i>(i) Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and</i> <i>(ii) Meet the requirements in paragraphs (b) and (c) of this section.</i></p> <p><i>(b) Referral of specific at-risk infants and toddlers. The procedures required in paragraph (a) of this section must provide for requiring the referral of a child under the age of three who--</i> <i>(1) Is the subject of a substantiated case of child abuse or neglect; or</i> <i>(2) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.</i></p> <p><i>(c) Primary referral sources. As used in this subpart, primary referral sources include--</i> <i>(1) Hospitals, including prenatal and postnatal care facilities;</i> <i>(2) Physicians;</i> <i>(3) Parents, including parents of infants and toddlers;</i> <i>(4) Child care programs and early learning programs;</i> <i>(5) LEAs and schools;</i></p>

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		(6) Public health facilities; (7) Other public health or social service agencies; (8) Other clinics and health care providers; (9) Public agencies and staff in the child welfare system, including child protective service and foster care; (10) Homeless family shelters; and (11) Domestic violence shelters and agencies.
<p>Referral procedures (new §303.303) (proposed §303.302)</p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> We have made a technical edit to new §303.303(a)(1) (proposed §303.302(a)(1)) to clarify that the referral procedures that lead agencies must provide to primary referral sources are the State’s procedures for referring a child under the age of three to the Part C program.</p> <p><u>Changes:</u> We have added the word “State’s” before the word “procedures” in §303.303(a)(1) (proposed §303.302(a)(1)).</p> <p><u>Comment:</u> Many commenters supported removing current §303.321(d)(2)(ii), which required primary referral sources to refer a child to the Part C program within two working days of the child’s identification. The commenters stated that because the two-day timeline was not enforceable by lead agencies, they supported the language in proposed §303.302(a)(2)(i) that requires referrals be made as soon as possible. These commenters stated that requiring primary referral sources to refer identified children as soon as possible would provide States with the flexibility to establish or maintain more stringent reporting requirements on primary referral sources, while acknowledging the difficulties associated with monitoring the adherence of thousands of primary referral sources to a Federal standard.</p> <p>A significant number of commenters, however, opposed the language in proposed §303.302(a)(2)(i) and recommended retaining the two-day timeline for referrals in current §303.321(d)(2)(ii). These commenters expressed concern that the proposed timeline, i.e., as soon as possible, threatens to introduce long delays into Part C referral, evaluation, and program implementation processes. Other commenters proposed that the regulations retain the phrase “as soon as possible,” but qualify it with a maximum timeline. Commenters proposed a variety of maximum timelines, ranging from three business days to ten business days.</p> <p><u>Discussion:</u> We agree with the commenters who expressed concern that requiring primary referral sources to refer an identified child to the Part C program “as soon as possible” could introduce undue delays into the Part C referral process. Although enforcement of the timeline in current §303.321(d)(2)(ii), which requires primary referral sources to refer a child to the Part C system within two working days of the child’s identification, has been a challenge for lead agencies, requiring referrals to be made “as soon as possible” may be more difficult to enforce than the two-day timeline. We believe it is appropriate to retain the phrase “as soon as possible” because it conveys a sense of urgency that referrals be made to the Part C program in a timely manner. Therefore, we have retained the “as soon as possible” language and added a maximum timeline to new §303.303(a)(2)(i) (proposed §303.302(a)(2)(i)) to require that a child be referred as soon as possible, but in no case more than seven days, after the child has been identified. We realize that in some cases an earlier referral may be reasonable, but establishing a maximum timeline of</p>		

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<p>seven days provides more flexibility to primary referral sources for making referrals than the timeline under current §303.321(d)(2)(ii). Moreover, the new timeline requires primary referral sources to refer children as soon as possible.</p> <p><u>Changes:</u> We have revised new §303.303(a)(2)(i) (proposed §303.302(a)(2)(i)) to require primary referral sources to refer a child to the Part C program as soon as possible, but in no case more than seven calendar days after the child has been identified.</p> <p><u>Comment:</u> One commenter opposed the requirement in proposed §303.302(b) that the lead agency adopt procedures requiring the referral of specific at-risk children. The commenter stated that this provision does not reflect congressional intent to ensure that these children are screened, either by a designated primary referral source or EIS provider, to determine whether a referral for an evaluation for early intervention services under Part C of the Act is warranted.</p> <p><u>Discussion:</u> The language in new §303.303(b) (proposed §303.302(b)) is based on the statutory language in section 637(a)(6) of the Act, regarding the referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect; or is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.</p> <p>As noted by the commenter, lead agencies may use a variety of methods to ensure the identification of specific at-risk infants and toddlers who may be infants and toddlers with disabilities eligible for services under Part C of the Act. Under new §303.320 (proposed §303.303), the lead agency may establish screening procedures for children under the age of three, including at-risk infants and toddlers, who have been referred to the Part C program. Primary referral sources also may choose to conduct screenings of at-risk infants and toddlers prior to referring a child to the Part C program under new §303.303 (proposed §303.302). If a primary referral source conducts a screening under the supervision of the lead agency in order to determine if a child is suspected of having a disability, such screening procedures must meet the requirements in new §303.320 (proposed §303.303).</p> <p>The lead agency may use interagency agreements or other methods to coordinate with primary referral sources, such as the State agency that administers the Child Abuse Prevention and Treatment Act (CAPTA), to conduct child find and ensure identification of at-risk infants and toddlers who may be eligible for services under Part C of the Act. The screening procedures in new §303.320 (proposed §303.303) are consistent with section 637(a)(6) of the Act and the policy, reflected in the legislative history cited by the commenter, that not every child referred to the Part C program must be evaluated. Therefore, we decline to revise the regulations as requested by the commenter.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> One commenter requested clarification of the scope of the phrase “affected by illegal substance abuse” in new §303.303(b) (proposed §303.302(b)). Specifically, the commenter asked who must be referred for early intervention services under this provision.</p> <p><u>Discussion:</u> The language “affected by illegal substance abuse” in new §303.303(b) (proposed §303.302(b)) is from section 637(a)(6)(B) of the Act, which requires children who are “affected by illegal substance abuse” to be referred to the Part C program. The policy for requiring the referral of children under the age of three who have been directly affected by illegal substance abuse is that there is a likelihood that these children may experience developmental delays and thus be eligible for early intervention services under Part C of the Act. We have clarified the phrase “affected by illegal substance abuse” by adding the term “directly” because we agree that the statutory language is vague. This change is consistent with our addition of the term “directly” in §303.211(b)(7) regarding referral of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence.</p>		

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<p>Changes: We have added the term “directly” before the words “affected by illegal substance abuse” in new §303.303(b)(2) (proposed §303.302(b)(2)).</p> <p>Comment: Some commenters requested that the Department mandate that child find systems provide for the referrals of children under the age of three who have been abandoned; affected by alcohol abuse, including prenatal alcohol exposure; or exposed to family violence or dangerous levels of lead paint. At a minimum, these commenters recommended that these regulations include these children as examples of children who should be referred to the Part C program.</p> <p>Discussion: Section 637(a) of the Act only requires the referral for early intervention services of a child under the age of three who is involved in a substantiated case of child abuse or neglect or is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure. While not required under the Act, a State may choose to require the referral for evaluation of the children identified by the commenter (i.e., those who have been abandoned, affected by alcohol abuse, including prenatal alcohol exposure; or exposed to family violence or dangerous levels of lead paint). However, we do not wish to limit a State’s flexibility to assess the unique needs in the State, and identify accordingly, other subgroups that may be determined to be at-risk and require a referral for evaluation. Thus, we decline to revise the regulations as requested by the commenter.</p> <p>Changes: None.</p> <p>Comment: A few commenters opposed new §303.303(b)(1) (proposed §303.302(b)(1)), which requires the referral of a child under the age of three who is involved in a substantiated case of child abuse or neglect. One commenter stated that this requirement is vague and inconsistent with the explanation provided in the preamble to the NPRM that, under this section and consistent with CAPTA requirements, a referral to the Part C program would only be for the child who is the subject of the substantiated proceeding. The commenters requested that new §303.303(b)(1) (proposed §303.302(b)(1)) clarify that the referral requirements in that section would not apply, for example, to a sibling (under the age of three) of a child who had been the subject of a substantiated case of child abuse or neglect unless that sibling also had been the subject of a substantiated case of child abuse or neglect. Another commenter expressed concern that Federal funding is insufficient to address the potential increase in referrals of children under CAPTA.</p> <p>Discussion: We agree with the commenters that the language “involved in a substantiated case of child abuse or neglect” in section 637(a)(6)(A) and new §303.303(b) (proposed §303.302(b)(1)) is vague. This provision is consistent with 42 U.S.C. 5106a of CAPTA, which was amended in June 2003 to require States receiving CAPTA funds to have policies regarding the referral to the Part C program of children under the age of three who were the subject of a substantiated case of child abuse or neglect. The Department consulted with the U.S. Department of Health and Human Services (HHS), which administers CAPTA, and determined that our interpretation of this provision in section 637(a)(6)(A) of the Act is consistent with HHS’s view that neither Part C of the Act nor CAPTA requires the referral of a child other than a child who is the subject of a proceeding resulting in a substantiated case of child abuse or neglect. For this reason, we have revised the regulatory language in new §303.303(b)(1) (proposed §303.302(b)(1)) to refer to a child under the age of three who “is the subject” of a substantiated case of child abuse or neglect. Additionally, we do not interpret the statutory language or new §303.303(b)(1) (proposed §303.302(b)(1)) to require a sibling (under the age of three) to be referred or screened unless that sibling is a child under the age of three who also has been the subject of a substantiated case of child abuse or neglect. Given that we have narrowed the scope of children to be referred to the Part C program under new §303.303(b)(1) (proposed §303.302(b)), the potential burden is decreased to States, which may currently receive referrals of all children (such as a sibling or step-sibling) who are involved in a substantiated case of child abuse or neglect.</p>		

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<p>Changes: The phrase “involved in” in new §303.303(b)(1) (proposed §303.302(b)(1)) has been changed to “the subject of.”</p> <p>Comment: One commenter noted, with respect to new §303.303(b)(2) (proposed §303.302(b)(2)), that section 106(b)(2)(A)(xxii) of CAPTA does not require referral to Part C services of children under the age of three who are affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. This commenter requested that the Department clarify this fact in the preamble to these regulations.</p> <p>Discussion: Section 303.303(b)(2) reflects the requirement in section 637(a)(6)(B) of the Act that each State’s Part C application include policies and procedures requiring the referral for early intervention services of a child under the age of three who is identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. Section 106(b)(2)(A)(xxii) of CAPTA, however, requires that each State that receives CAPTA funds assure that it has policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. Thus, while the language of CAPTA differs from the language of section 637(a)(6)(B) of the Act, §303.303(b)(2) reflects the appropriate requirement under the Act.</p> <p>Changes: None.</p> <p>Comment: One commenter recommended clarifying that the list of primary referral sources in new §303.303(c) (proposed §303.302(c)) is not an inclusive list and that a lead agency may include other primary referral sources in its child find system. Additionally, two commenters recommended adding McKinney-Vento “local educational agency liaisons,” as defined in 42 U.S.C. 11432(g)(6), as primary referral sources along with LEAs and schools in new §303.303(c)(5) (proposed §303.302(c)(5)).</p> <p>Discussion: We agree with the commenter that new §303.303(c) (proposed §303.302(c)) is intended to be a non-exhaustive list of primary referral sources and that a lead agency may include other primary referral sources in its child find system. The term <u>include</u>, as defined in §303.18 and used in the introductory text in new §303.303(c) (proposed §303.302(c)), means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.</p> <p>We decline to add McKinney-Vento local educational agency liaisons, as defined in 42 U.S.C. 11432(g)(6), to new §303.303(c)(5) (proposed §303.302(c)(5)), as requested, because these liaisons work with LEAs and school-age children--not children under the age of three--and, therefore, coordination with these liaisons is not required for programs under Part C of the Act. Nothing in the Act or these regulations would preclude a lead agency from coordinating with the McKinney-Vento local educational agency liaisons, as defined in 42 U.S.C. 11432(g)(6), if it determines such coordination is appropriate.</p> <p>Changes: None.</p> <p>Comment: One commenter recommended changing the reference to day care programs in new §303.303(c)(4) (proposed §303.302(c)(4)) to child care and early learning programs.</p> <p>Discussion: We agree that day care should be changed to child care because this term reflects the current terminology of the field. We also agree that early learning programs should be included in the list of primary referral sources. While the list in new §303.303(c) (proposed §303.302(c)) includes schools, some early learning programs, such as Early Head Start, may not always be included in this category. To ensure all early learning programs are included as referral sources we have added early learning programs to new §303.303(c) (proposed §303.302(c)).</p> <p>Changes: We have changed the term “day care programs” to “child care programs” and added “early learning programs” in new §303.303(c)(4) (proposed §303.302(c)(4)).</p>		

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<p><u>Comment:</u> None.</p> <p><u>Discussion:</u> To clarify that primary referral sources may include not only public health facilities and other social service agencies, but also public health agencies that are neither public health facilities nor social service agencies, we have added a reference to public health agencies in new §303.303(c)(7) (proposed §303.302(c)(7)). For example, other public health or social service agencies may include the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, or the Early Hearing Detection and Intervention (EHDI) systems administered by the Centers for Disease Control.</p> <p><u>Changes:</u> We have added the phrase “public health or” before the words “social service agencies” in new §303.303(c)(7) (proposed §303.302(c)(7)).</p>		
		<p><u>§303.310 Post-referral timeline (45 days).</u></p> <p>(a) Except as provided in paragraph (b) of this section, any screening under §303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child); the initial evaluation and the initial assessments of the child and family under §303.321; and the initial IFSP meeting under §303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child.</p> <p>(b) Subject to paragraph (c) of this section, the 45-day timeline described in paragraph (a) of this section does not apply for any period when--</p> <p>(1) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child’s early intervention records; or</p> <p>(2) The parent has not provided consent for</p>

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		<p>the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.</p> <p>(c) The lead agency must develop procedures to ensure that in the event the circumstances described in (b)(1) or (b)(2) of this section exist, the lead agency or EIS provider must--</p> <p>(1) Document in the child’s early intervention records the exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent;</p> <p>(2) Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph (b)(1) of this section no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and</p> <p>(3) Develop and implement an interim IFSP, to the extent appropriate and consistent with §303.345.</p> <p>(d) The initial family assessment must be conducted within the 45-day timeline in paragraph (a) of this section if the parent concurs and even if other family members are unavailable.</p>

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<p><u>Forty-five day timelines (new §303.310)(proposed §303.320(e))</u></p> <p><u>Comment:</u> We received a large number of comments, questions, and recommendations regarding the 45-day timeline requirement in proposed §303.320(e) that lead agencies complete the initial evaluation, the initial assessments, and the initial IFSP meeting within 45 days from parental consent for the initial evaluation.</p> <p>Many commenters supported proposed §303.320(e), which stated that the evaluation, assessment, and initial IFSP meeting must be completed within 45 days from the date the lead agency obtains parental consent for the child’s evaluation. These commenters preferred this timeline to the 45-day timeline in current §303.322(e), which commences not on the date the lead agency obtains parental consent, but rather on the date it receives the referral of the child. These commenters argued that, given the complexity of the post-referral process, adding more time to the period between referral and the initial IFSP meeting was appropriate.</p> <p>A few commenters recommended that, if the Department adopted proposed §303.320(e), the Department should add a separate timeline for the time period between referral and when the lead agency must obtain parental consent and suggested timelines for this period ranging from 2 to 30 days or "as soon as possible."</p> <p>Many other commenters opposed the 45-day timeline in proposed §303.320(e). These commenters expressed concern that having the 45-day timeline triggered by the date the lead agency obtains parental consent, rather than the date the lead agency receives the child’s referral, could result in significant delays in getting infants and toddlers with disabilities the early intervention services they need. These commenters argued that proposed §303.320(e)(ii), which stated that lead agencies must obtain parental consent as soon as possible once a child is referred to a lead agency, would be an inadequate protection if adopted because it would allow an undetermined and unregulated period of time between the child’s referral and parental consent, and could delay the completion of initial evaluations, initial assessments, and initial IFSP meetings. These commenters expressed concern that proposed §303.320(e) would result in less accountability for lead agencies because, under that provision, the lead agencies could control--to a large extent--when they obtained parental consent for evaluation and thus when the 45-day timeline would commence.</p> <p>These commenters further argued that the Department should not adopt the timeline in proposed §303.320(e) and that it should instead retain the timeline reflected in current §303.322(e), which requires the public agency to complete the evaluation and assessment activities and hold an IFSP meeting within 45 days from the date the public agency receives the child’s referral. For these commenters, beginning the 45-day timeline from the date the public agency receives the child’s referral is preferable because it promotes accountability for lead agencies; the triggering event for the timeline is something outside of a lead agency’s control. Moreover, commenters argued that beginning the 45-day timeline from the date of referral will help ensure that children receive services within a shorter timeframe. Some of the commenters that supported triggering the required timeline from the date of referral recommended that the length of the timeline be changed; they suggested alternative timelines, ranging from 30 days from referral to 75 days from referral.</p> <p>Finally, a few commenters recommended that these regulations not include any timeline. These commenters argued that each State should have the flexibility to establish its own timeline to complete the post-referral activities through the initial IFSP meeting; they argued that this flexibility</p>		

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<p>would be similar to the flexibility offered in the evaluation timeline under 34 CFR 300.301(c)(1)(ii) to conduct an evaluation to determine eligibility for the Part B program.</p> <p><u>Discussion:</u> After much review and careful consideration of the many and divergent opinions on the 45-day timeline, we have determined that it is appropriate to retain in new §303.310(a) the 45-day timeline from the date of the child’s referral as reflected in current §303.321(e), but to provide for limited exceptions when the 45-day timeline will not apply. Data from Federal fiscal year (FFY) 2006 State Part C SPP/APRs indicate that many States have made significant progress toward meeting the current 45-day timeline requirement. The Department’s position is that maintaining this standard in new §303.310(a)--combined with the flexibility offered by the two exceptions incorporated in new §303.310(b)--will help States continue to ensure timely initial evaluations, initial assessments, and initial IFSP meetings when children are referred to the Part C program without unduly burdening lead agencies and EIS providers.</p> <p>We believe that having the 45-day timeline in new §303.310(a) commence on the date of referral, rather than on the date the lead agency or EIS provider obtains parental consent for the initial evaluation, ensures accountability, consistency, and predictability, and it is easier for States and parents to implement and track. More importantly, we are persuaded that this timeline will result in fewer delays in infants and toddlers with disabilities receiving early intervention services as quickly as possible after being referred. For these reasons, we have incorporated the 45-day timeline, commencing from referral, in new §303.310. For clarity, we have revised the language in this section to ensure that the timeline applies to both lead agencies and EIS providers because EIS providers as well as lead agencies implement these requirements and conduct initial evaluations, initial assessments, and initial IFSP meetings.</p> <p>As we noted in the NPRM, however, we fully appreciate that a lead agency or EIS provider may not be able to comply with the 45-day timeline because of exceptional family circumstances that are beyond its control. For example, as we noted in the NPRM, a lead agency or EIS provider cannot meet the 45-day timeline from the date of referral without parental consent for initial evaluations and initial assessments. Moreover, delays in obtaining parental consent may drastically reduce the time available for the lead agency or EIS provider to perform the initial evaluation and initial assessments and prepare for the initial IFSP meeting. Rather than attempting to address these concerns by commencing the 45-day timeline from the date the lead agency or EIS provider obtains parental consent, it is more appropriate to address these concerns by providing for limited exceptions in new §303.310(b) to clarify when the 45-day timeline in new §303.310(a) would not apply. We have described in new §303.310(b) two specific circumstances when the 45-day timeline would not apply. First, as noted in new §303.310(b)(1), there may be periods of time when the child or parent is unavailable to complete the screening, if applicable; the initial evaluation; the initial assessment of the child; the initial assessment of the family; or the initial IFSP meeting due to exceptional family circumstances that are documented in the child’s early intervention records. To clarify that it is only the unavailability of the child or parent (and not other family members) that determines the availability of this exception, we have added new §303.310(d) to ensure that the family assessment is completed within the 45-day timeline, if the parent concurs, as long as the parent is available.</p> <p>The second exception to the 45-day timeline is set forth in new §303.310(b)(2), which provides that if the parent has not provided consent for the screening (if the State has adopted a policy to conduct screenings and elects to conduct a screening of that child), initial evaluation, or initial assessment of the child despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent, then the 45-day</p>		

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<p>timeline would not apply. We have not included the family assessment or the initial IFSP meeting in this second exception because, while the family assessment is voluntary on the part of any family member who participates in it and the initial IFSP meeting must be scheduled at a time convenient to the family, there are no express written consent requirements for conducting the family assessment and initial IFSP meeting.</p> <p>To ensure that these exceptions are not absolute, we have added a new requirement in §303.310(c) to clarify that the lead agency or EIS provider must complete the screening, if applicable; initial evaluation; initial assessments; and initial IFSP meeting as soon as possible after the circumstances described in new §303.310(b) no longer exist or parental consent is obtained. We believe that the availability of the two limited exceptions to the 45-day timeline in new §303.310(b) creates flexibility and reduces burdens for lead agencies and EIS providers. Coupling these exceptions with a 45-day timeline commencing on the date of the child’s referral to the Part C program in new §303.310(a) creates a clear and enforceable timeline that ensures accountability for timely identification, evaluations, assessments, and IFSP meetings for infants and toddlers with disabilities.</p> <p>Additionally, to further protect children affected by circumstances described in new §303.310(b)(1) and (b)(2), we have added new §303.310(c)(3) to clarify that the lead agency must have procedures to ensure that the lead agency or EIS provider develop and implement an interim IFSP to the extent appropriate and consistent with §303.345 in the event of the circumstances described in §303.310(b).</p> <p>With regard to the comments recommending that we lengthen or remove the 45-day timeline in new §303.310(a) (proposed §303.320(e)), we decline to do so because lengthening or removing the timeline would not create the same level of accountability for ensuring timely evaluations and assessments and IFSP development for infants and toddlers with disabilities. Given the rapid developmental changes in this age group of children, it is essential that lead agencies and EIS providers evaluate, assess, and provide early intervention services to those in need as soon as possible. We also decline to shorten the 45-day timeline, as requested by some commenters, because we are not convinced that a shortened timeline would be feasible for lead agencies and EIS providers to carry out their obligations under subpart D of these regulations.</p> <p>Finally, regarding the request to incorporate in these regulations a timeline within which a lead agency or EIS provider must obtain parental consent following a child’s referral to the Part C program, establishing this separate timeline is unnecessary because the Department has adopted a 45-day timeline that runs from the date of referral, not the date parental consent is obtained.</p> <p><u>Changes:</u> We have redesignated proposed §303.320(e) as new §303.310(a) and revised it to require that, within 45 days after the lead agency or EIS provider receives a referral, the screening (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child), initial evaluation, initial assessments, and initial IFSP meeting must be conducted. We have deleted the language from proposed §303.320(e)(1)(ii) regarding the lead agency obtaining parental consent as soon as possible after receiving the child’s referral.</p> <p>We have clarified in §303.310(a) that the 45-day timeline applies to the screening conducted under new §303.320, if applicable; initial evaluation (described in new §303.321(a)(2)(i) as the child’s evaluation to determine his or her initial eligibility under this part), initial assessments of the child and family under §303.321(a)(2)(ii); and initial IFSP meeting under §303.342.</p>		

Former Regulations	Draft Regulations	2011 Regulations
		<p>We also have added new §303.310(b) to identify two limited exceptions to the 45-day timeline. These exceptions cover periods of time when (i) the child or parent is unavailable to complete the screening, if applicable; the initial evaluation; the initial assessments of the child and family; or the initial IFSP meeting due to exceptional family circumstances that are documented in the child’s early intervention records; or (ii) the parent has not provided consent for the screening, if applicable, the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.</p> <p>We have added new §303.310(c) to clarify that the lead agency must have procedures to ensure that the lead agency or EIS provider: (1) documents the exceptional circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent, (2) completes the screening, if applicable, the initial evaluation, the initial assessments of the child and family, and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances no longer exist or parental consent is obtained for the screening, if applicable, initial evaluation, and initial assessment of the child, and (3) develop and implement an interim IFSP to the extent appropriate and consistent with §303.345.</p> <p>Finally, we have added new §303.310(d) to ensure that the family assessment is completed within the 45-day timeline, if the parent concurs, as long as the parent is available.</p> <p><u>Comment:</u> Two commenters recommended that, rather than changing the triggering event for the 45-day timeline from referral to parental consent, the Department should use its authority under section 618 of the Act to collect information related to the reasons for, and the scope of problems related to, a lead agency’s failure to meet the 45-day timeline requirement. A few commenters recommended that new §303.310 (proposed §303.320(e)) require States to report on the timelines in new §303.310 (proposed §303.320(e)) as part of the State’s application.</p> <p><u>Discussion:</u> As previously discussed, we have retained the current 45-day timeline from the date of a child’s referral to the Part C program for lead agencies and EIS providers to complete the child’s initial evaluation, initial assessment, and initial IFSP meeting. Concerning commenters’ requests that this timeline be reported in each State’s application, States already report to the Department data on implementing the 45-day timeline and reasons for any delay in meeting this timeline. One of the indicators that each State is required to report on in its SPP/APR is compliance with this 45-day timeline. Each State reports these data annually to the Department. Pursuant to sections 616(d) and 642 of the Act, the Department uses these and other data to determine whether the State is meeting the requirements of Part C of the Act and these regulations. Given that the Department already collects these data, it is not necessary to incorporate an additional data collection requirement in the application or elsewhere in these regulations.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> Some commenters recommended that a specific provision be added to new §303.310(b) (proposed §303.320(e)) to permit a lead agency to waive the 45-day timeline requirement if the lead agency or EIS provider made good faith efforts to conduct the initial evaluation, initial assessments, and initial IFSP meeting but the child or family member was unavailable (e.g., due to child or parent illness, work or family vacation scheduling conflicts, or other parent-requested considerations) or the lead agency or EIS provider made good faith efforts to obtain parental consent for the initial evaluation and initial assessment but was unable to do so within the 45-day timeline.</p> <p><u>Discussion:</u> As discussed earlier in this preamble, we agree that exceptional family circumstances may make it difficult or impossible for the lead agency or EIS provider to meet the 45-day timeline in new §303.310 (proposed §303.320(e)). However, we do not believe an absolute waiver of the timeline is appropriate. Instead, to provide flexibility and ensure accountability, we have adopted, in new §303.310(b), two limited exceptions</p>

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<p>to the 45-day timeline, one of which directly addresses the commenters’ concern about exceptional family circumstances. Specifically, new §303.310(b) states that the 45-day timeline does not apply when: (1) the child or parent is unavailable to complete the screening, if applicable; the initial evaluation; the initial assessments of the child and family; or the initial IFSP meeting due to exceptional family circumstances that are documented in the child’s early intervention records; or (2) the parent has not provided consent for the screening, if the State has adopted a policy to conduct screenings and elects to conduct a screening of that child; initial evaluation; or initial assessment of the child despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.</p> <p>To ensure that these exceptions are used appropriately, new §303.310(c) requires the lead agency to develop procedures to ensure that exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent are documented in the child’s early intervention records.</p> <p>Moreover, to ensure that these exceptions do not result in absolute waivers of the 45-day timeline, new §303.310(c)(2) and (c)(3) require that the lead agency or EIS provider complete the activities as soon as possible after the basis for the exceptions cease to exist, and develop and implement an interim IFSP to the extent appropriate and consistent with §303.345.</p> <p>These two limited exceptions provide States needed flexibility while ensuring that, once parental consent is provided for the screening, if applicable; initial evaluation; and initial assessment of the child; or the exceptional family circumstances no longer exist, the lead agency or EIS provider conduct the screening, if applicable; initial evaluation; initial assessments; and initial IFSP meeting as soon as possible to ensure the timely identification and evaluation of infants and toddlers with disabilities.</p> <p><u>Changes:</u> As noted earlier in this preamble, we have added new §303.310(b) to identify two exceptions to the 45-day timeline and added §303.310(c) to clarify that the lead agency must have procedures to ensure that the lead agency or EIS provider: (i) documents exceptional circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent, (ii) completes the screening, if applicable; the initial evaluation; initial assessments; and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances no longer exist or parental consent is obtained, and (iii) develop and implement an interim IFSP if appropriate, consistent with §303.345.</p>		
	<p><u>§303.303 Screening procedures.</u> <i>(a) General. (1) The child find system described in §303.301 may include procedures for the screening of children who have been referred to Part C, when appropriate, to determine whether they are suspected of having a disability under this part. If the State lead agency elects to adopt screening procedures to determine if a child is suspected of having a disability, those procedures must</i></p>	<p><u>§303.320 Screening procedures (optional).</u> <i>(a) General. (1) The lead agency may adopt procedures, consistent with the requirements of this section, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this part. If the lead agency or EIS provider proposes to screen a child, it must--</i> (i) Provide the parent notice under §303.421</p>

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	<p><i>meet the requirements of this section.</i></p> <p><i>(2) If the screening carried out under paragraph (a) of this section or other available information indicates that the child is suspected of having a disability, the child must be evaluated under §303.320.</i></p> <p><i>(3) If the lead agency believes, based on screening and other available information, that the child is not suspected of having a disability, the lead agency must ensure that notice is provided to the parent under §303.421.</i></p> <p><i>(4) If, under paragraph (a)(3) of this section, the lead agency determines that the child is not suspected of having a disability, but the parent of the child requests an evaluation, the child must be evaluated under §303.320.</i></p> <p><i>(b) <u>Definition of screening procedures.</u></i> <u>Screening procedures--</u> <i>(1) Means activities under paragraph (a)(1) of</i></p>	<p>of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent’s right to request an evaluation under §303.321 at any time during the screening process; and</p> <p>(ii) Obtain parental consent as required in §303.420(a)(1) before conducting the screening procedures.</p> <p>(2) If the parent consents to the screening and the screening or other available information indicates that the child is--</p> <p>(i) Suspected of having a disability, after notice is provided under §303.421 and once parental consent is obtained as required in §303.420, an evaluation and assessment of the child must be conducted under §303.321; or</p> <p>(ii) Not suspected of having a disability, the lead agency or EIS provider must ensure that notice of that determination is provided to the parent under §303.421, and that the notice describes the parent’s right to request an evaluation.</p> <p>(3) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under §303.321, even if the lead agency or EIS provider has determined under paragraph (a)(2)(ii) of this section that the child is not suspected of having a disability.</p> <p>(b) <u>Definition of screening procedures.</u> <u>Screening procedures--</u> (1) Means activities under paragraphs (a)(1)</p>

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	<p><i>this section that are carried out by a public agency, early intervention service provider, or designated primary referral source (except for parents) to identify infants and toddlers suspected of having a disability and in need of early intervention services at the earliest possible age; and</i></p> <p><i>(2) Includes the administration of appropriate instruments by qualified personnel that can assist in making the identification described in paragraph (a)(1) of this section.</i></p> <p><i>(c) <u>Condition for evaluation or services.</u> For every child who is referred to the Part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to--</i></p> <p><i>(1) Provide an evaluation and assessment of the child under §303.320 unless the child is suspected of having a disability or the parent requests an evaluation under paragraph (a)(4) of this section; or</i></p> <p><i>(2) Provide early intervention services under this part unless a determination is made, after the evaluation and assessment conducted under §303.320, that the child meets the definition of <u>infant or toddler with a disability</u> under §303.21.</i></p>	<p>and (a)(2) of this section that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and</p> <p>(2) Includes the administration of appropriate instruments by personnel trained to administer those instruments.</p> <p>(b) Definition of screening procedures. Screening procedures--</p> <p>(1) Means activities under paragraphs (a)(1) and (a)(2) of this section that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and</p> <p>(2) Includes the administration of appropriate instruments by personnel trained to administer those instruments.</p> <p>(c) <u>Condition for evaluation or early intervention services.</u> For every child under the age of three who is referred to the Part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to--</p> <p>(1) Provide an evaluation of the child under §303.321 unless the child is suspected of having a disability or the parent requests an evaluation under paragraph (a)(3) of this section; or</p> <p>(2) Make early intervention services available</p>

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		under this part to the child unless a determination is made that the child meets the definition of <u>infant or toddler with a disability</u> under §303.21.
<p><u>Screening procedures (optional) new §303.320 (proposed §303.303)</u></p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> Based on further review of §303.320(a)(1) (proposed §303.303(a)(1)), regarding screening procedures, we have determined that the words “when appropriate” are unnecessary and potentially confusing. Lead agencies always can adopt policies for screening. If a State elects to adopt screening policies and procedures, those policies and procedures must specify when screening of a particular child is appropriate.</p> <p><u>Changes:</u> We have removed the words “when appropriate” from §303.320(a)(1) (proposed §303.303(a)(1)).</p> <p><u>Comment:</u> A significant number of commenters requested additional clarification regarding the screening procedures in proposed §303.303. Some commenters opposed including screening in these regulations stating that they were concerned that children for whom Part C eligibility is not readily or easily apparent may be denied an evaluation and services if screening is conducted.</p> <p>Other commenters recommended that proposed §303.303(a)(3) be amended to require that if the lead agency determines, based on screening and other available information, that the child is not suspected of having a disability, the lead agency must ensure that notice is provided to the parent under §303.421, including notice of the right to request and receive an evaluation at any time. Additionally, the commenters requested that this notice include a description of the difference between a “screening,” conducted pursuant to proposed §303.303, and an “evaluation,” as required in proposed §303.320.</p> <p>Other commenters suggested that if the lead agency decides the child is not suspected of having a disability, the lead agency should be required to present this decision and the reasons for the decision to a parent in writing, but should not be required to provide this information through prior written notice under §303.421. These commenters further recommended that the lead agency be required to offer an evaluation only after that decision is conveyed to the parent, and the parent disagrees with that determination and requests an evaluation.</p> <p>One commenter stated that if a parent disagrees with a decision regarding a referral for evaluation, the parent should be entitled to appeal that decision using the due process procedures in subpart E of these regulations, but the lead agency should not be required to evaluate the child.</p> <p>A few commenters requested that parents be informed verbally and in writing, in their native language or preferred method of communication, of their right to request a full evaluation of their child, including their right to bypass screening and go straight to an evaluation.</p> <p><u>Discussion:</u> New §303.320 (proposed §303.303) has been restructured, and a few provisions have been added, to address the commenters’ concerns regarding screenings and a parent’s right to request an evaluation. We have added new §303.320(a)(1)(i) and (a)(1)(ii), stating that if the lead agency or EIS provider proposes to screen a child, it must provide the parent notice under §303.421 of its intent to screen the child to determine whether the child is suspected of having a disability and obtain parental consent as required in §303.420(a)(1) before administering the screening. That notice must explain the parent’s right to request an evaluation under new §303.321 (proposed §303.320) at any time during the</p>		

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<p>screening process.</p> <p>We also have revised new §303.320(a)(2)(ii) (proposed §303.303(a)(3)) to specify that when the lead agency provides notice to a parent under §303.421 that, based on the screening or other available information, a child is not suspected of having a disability, the notice must describe the parent’s right to request an evaluation.</p> <p>Additionally, in new §303.320(a)(3), we have retained the provision in proposed §303.303(a)(4) to allow parents to request and consent to an evaluation when the lead agency or EIS provider determines that the child is not suspected of having a disability. We have revised this section to specify that parents may request, and consent to, an evaluation at any time during the screening process. This ensures that an evaluation may still be requested by the parent of a child for whom Part C eligibility is not readily or easily apparent.</p> <p>With regard to the comment that the notice provided to parents when the child is not suspected of having a disability should include an explanation of the differences between screening and evaluation, it is not necessary to add that language to new §303.320(a)(2)(ii) (proposed §303.303(a)(3)) because this section requires that prior written notice pursuant to §303.421 be provided to a parent when a child is not suspected of having a disability, and §303.421(b) mandates that prior written notice be in sufficient detail to inform the parents about the action that is being proposed or refused. Therefore, we expect that the procedures involved in screening and evaluation will be explained to the parents through the prior written notice.</p> <p>It is the Department’s position that presenting a parent with a written decision that the child is not suspected of having a disability and the reasons for the decision in a manner that meets the prior written notice requirements in §303.421(b) would ensure that parents are fully informed of their rights. We believe fully informing parents of their rights is a critical aspect of enhancing the capacity of families to meet the special needs of their infants and toddlers with disabilities, pursuant to section 631 of the Act and, thus, we have required lead agencies to ensure that parents are provided with prior written notice of any determination that their child is not suspected of having a disability.</p> <p>A parent has the right to request an evaluation if the screening or other available information indicates that the child is not suspected of having a disability, instead of having to utilize the due process procedures in subpart E of these regulations to appeal that decision. The Department’s experience indicates that parents often can identify or suspect developmental delays in their children that may not be identified through a screening. For this reason, parents should be able to request and receive an evaluation without the potential delay and expense of a due process hearing. We believe this approach facilitates a comprehensive child find system tasked with identifying all infants and toddlers with disabilities. Additionally, because a child is only eligible for Part C services for a short period of time and providing services earlier rather than later can enhance the development of infants and toddlers with disabilities, time is of the essence with regard to identifying a child as an infant or toddler with a disability. Thus, it is important that parents retain the right to request an evaluation at any time during the screening process.</p> <p>With regard to the comment that notice of the right to request an evaluation should be provided to the parent verbally and in writing, in the parent’s native language or preferred method of communication, parental notice of the right to request an evaluation must meet all of the</p>		

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		<p>requirements in §303.421, including the native language requirement. The requirements in §303.421 are discussed further in the <u>Analysis of Comments and Changes</u> section for subpart E of these regulations. We believe that the requirements in §303.421 are comprehensive and sufficient to provide parents with an understanding of their rights, specifically with regard to their right to request an evaluation.</p> <p><u>Changes:</u> We have restructured this section and added language to new §303.320(a) (proposed §303.303(a)) to clarify that parents have an ongoing right to request an evaluation before, during, or after their child is screened. Specifically, we have added a new §303.320(a)(1)(i) and (a)(1)(ii), stating that if the lead agency or EIS provider proposes to screen a child, it must (i) provide the parent notice under §303.421 of its intent to screen the child to identify whether the child is suspected of having a disability (and include in the notice a description of the parent’s right to request an evaluation under §303.321 at any time during the screening process) and (ii) obtain parental consent as required in §303.420(a)(1) before administering the screening. We also have revised new §303.320(a)(2)(ii) (proposed §303.303(a)(3)) to specify that when the lead agency provides notice to a parent under §303.421 that, based on the screening or other available information, a child is not suspected of having a disability, the notice must describe the parent’s right to request an evaluation.</p> <p>We have added to new §303.320(a)(3) (proposed §303.303(a)(4)) a provision clarifying that parents may request an evaluation at any time during the screening process.</p> <p><u>Comment:</u> A few commenters expressed concern that the amount of time used for screening could increase the time between referral and the initiation of services. The commenters requested that a timeline be imposed so that eligibility determinations would not be delayed. Some commenters requested clarifying that the 45-day timeline in new §303.310 (proposed §303.320(e)) starts prior to the screening, not after. Additional commenters expressed concern that while comprehensive statewide screening efforts could enhance the early identification of eligible children, the regulations do not adequately emphasize that screening efforts should not be used to deny or delay an eligibility determination from the lead agency.</p> <p><u>Discussion:</u> The timeline outlined in new §303.310(a) (proposed §303.320(e)) requires that any screening under §303.320, if applicable, be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child. Because screening by the lead agency is optional and is included in the 45-day timeline, the use of screening is not expected to cause a delay in determining a child’s eligibility for services under Part C of the Act, but rather to assist the lead agency and parent in determining whether a child is suspected of having a disability. With regard to the commenters’ concern that the regulations in this part do not adequately emphasize that screening efforts should not be used to deny an eligibility determination, a parent has the right, under new §303.320(a)(3) (proposed §303.303), to request and receive an evaluation at any time during the screening process and must be notified of this right, under new §303.320(a)(1)(i), at the beginning of the screening process. Therefore, the regulations protect parents with regard to eligibility determinations and sufficiently address the commenters’ concern.</p> <p><u>Changes:</u> As previously discussed in response to comments on new §303.310 (proposed §303.320(e)), we have added a reference to screening as an activity that is subject to the 45-day timeline in §303.310 (proposed §303.320(e)).</p> <p><u>Comment:</u> A few commenters expressed concern that, under new §303.320 (proposed §303.303), lead agencies may use the results of screening procedures to determine eligibility for early intervention services and requested that these regulations explicitly require a full evaluation be conducted in order to determine eligibility for services under Part C of the Act.</p> <p><u>Discussion:</u> New §303.320 makes clear that the purpose of screening is to determine if a child is suspected of having a disability. If eligibility is to be determined, new §303.321 requires that an evaluation (not screening) be used to determine eligibility. We believe these regulations are clear</p>

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<p>in their scope and purpose and decline to make the change requested by the commenters.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A significant number of commenters requested additional clarification regarding the procedures that should be used to screen infants and toddlers. These commenters recommended that States should be required to ensure that professionals conducting the screening meet the requirements that apply to EIS providers. Some commenters requested that the regulations set a standard for personnel conducting the screening. Other commenters requested that States be required to use one standardized screening tool across the State in order to eliminate differences in screening procedures across jurisdictions.</p> <p><u>Discussion:</u> Proposed §303.303(b)(2) provided that screening procedures include the administration of appropriate instruments by qualified personnel, who can assist in making the identification outlined in new §303.320(a). We have revised that language, in new §303.320(b)(2), to indicate that personnel who conduct screening of a child must be trained to administer appropriate screening instruments. We made this revision to ensure that personnel, such as paraprofessionals or other individuals who are trained to administer a specific screening instrument, may conduct screenings.</p> <p>Concerning the request that we require a State to use one standardized screening tool across the State, it is the Department’s position that requiring or recommending the use of specific measurement tools, including requiring that a State use only one measurement tool throughout the State, is not appropriate because individual child differences should be taken into account when selecting appropriate instruments.</p> <p><u>Changes:</u> We have deleted the reference to “qualified personnel” in new §303.320(b)(2) (proposed §303.303(b)(2)), and added a reference to “personnel trained to administer those instruments.”</p> <p><u>Comment:</u> A few commenters requested that language be included in proposed §303.303 to stipulate that screening is not required for infants and toddlers with established physical or mental conditions.</p> <p><u>Discussion:</u> Screening is intended to be a tool to assist the lead agency and EIS providers determine whether an infant or toddler is suspected of having a disability and is in need of an evaluation. If a child has a diagnosed physical or mental condition, an evaluation or screening may not be needed to determine eligibility. We specifically provide in new §303.321(a)(3)(i) that a child’s medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child is an infant or toddler with a disability in §303.21, which includes children with diagnosed conditions, developmental delays, and, at the State’s option, at-risk children. For children with established diagnosed conditions, screening is not needed because records establish that the child is not only suspected of having a disability, but in fact has a disability.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A few commenters requested that proposed §303.303(a)(2) be amended to provide that parents be offered the option of an evaluation in cases where the results of their child’s screening indicate that the child is suspected of having a disability as opposed to requiring the lead agency to evaluate the child.</p> <p><u>Discussion:</u> We understand the commenters’ concerns and did not intend this provision to require evaluations in all cases where the results of a screening indicate that a child may have a disability. To clarify our intent, we have added language to new §303.320(a)(2) (proposed §303.303(a)(2)) stating that if a parent consents to screening and the screening or other available information indicates that the child is suspected of having a disability, after notice is provided under §303.421 and once parental consent is obtained as required in §303.420, an evaluation and</p>		

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<p>assessment of the child must be conducted under new §303.321 (proposed §303.320).</p> <p><u>Changes:</u> New §303.320(a)(2) (proposed §303.303(a)(2)) has been restructured to clarify that, after screening, notice under §303.421 and parental consent are required before an infant or toddler can be evaluated.</p> <p><u>Comment:</u> A few commenters recommended adding language to new §303.320(a)(2)(ii) (proposed §303.303(a)(3)) to require notification by the lead agency to the caregivers of infants and toddlers and the agencies assigned to care for them when the lead agency knows that the infant or toddler is in foster care or is a ward of the State. The commenters noted that, in these situations, it is to the child's advantage to have relevant information given to the caregiver and the agency responsible for the child.</p> <p><u>Discussion:</u> The definition of <u>parent</u> in §303.27 includes a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.</p> <p>For a child in foster care who has a foster parent that meets the definition of a <u>parent</u> in §303.27, the child's foster parent must be notified, pursuant to §303.421 and new §303.320(a)(2)(ii) (proposed §303.303(a)(3)), if the child is screened and not suspected of having a disability.</p> <p>For a child who is a ward of the State (which includes a foster child who does not have a foster parent that meets the definition of a <u>parent</u> in §303.27), protections under §303.422, regarding surrogate parents, apply. Specifically, each lead agency must ensure that the rights of a child are protected when the child is a ward of the State. The lead agency must determine whether a child needs a surrogate parent and if so, assign a surrogate parent to the child. If a ward of the State has a surrogate parent, this parent must be notified, pursuant to §303.421 and new §303.320(a)(2)(ii) (proposed §303.303(a)(3)), if the child is screened and not suspected of having a disability. Therefore, it is the Department's position that further clarification is unnecessary because the commenters' concerns about notification for infants and toddlers who are in foster care or wards of the State are adequately provided for under this part.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A few commenters stated that the requirements in new §303.320(a)(3) (proposed §303.303(a)(4)), which allow a parent to request an evaluation even after the lead agency determines, using its screening procedures, that the child is not suspected of having a disability, would diminish the cost effectiveness of screening.</p> <p><u>Discussion:</u> Screening under new §303.320 (proposed §303.303) is not required under the Act; rather, it is an option that a State may choose to include as a part of its comprehensive child find system. An evaluation under new §303.321 (proposed §303.320) entails more extensive requirements than the screening under §303.320 (proposed §303.303) and, thus, could yield more information about whether a child is an infant or toddler with a disability than a screening may. In light of this and the fact that section 635(a)(5) of the Act requires that each State's child find system ensures rigorous standards for appropriately identifying infants and toddlers with disabilities, it is important that parents have the right to request an evaluation if screening does not result in their child being suspected of having a disability.</p> <p><u>Changes:</u> None.</p>		

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<p><u>Comment:</u> Several commenters recommended that the regulations require re-screening every six months until the age of three if, through the screening process under new §303.320 (proposed §303.303), a child is not suspected of having a disability. The commenters noted that children grow and change dramatically in their first three years of life and that developmental delays are often difficult to recognize at a specific point in time.</p> <p><u>Discussion:</u> New §303.302 (proposed §303.301) provides that each State must have a comprehensive child find system that ensures that all infants and toddlers with disabilities in the State who are eligible for early intervention services under this part (including children who have been screened in the past and those who have never been screened) are identified, located, and evaluated. This section includes specific requirements to facilitate identification, location, and evaluation of all of these children.</p> <p>For children who are screened and not suspected of having a disability, all of the general child find requirements in new §303.302 (proposed §303.301) apply and, in addition, the lead agency or EIS provider must ensure that the parent is provided notice under §303.421, and that, pursuant to new §303.320(a)(2)(ii) (proposed §303.303(a)(3)), the notice describes the parent’s right to request an evaluation. These provisions provide sufficient protection for children who are screened and not suspected of having a disability.</p> <p>Further, a lead agency may adopt specific screening procedures, consistent with the requirements in new §303.320 (proposed §303.303). As part of these procedures, a State could mandate re-screening or other protections for children who have been screened but are not suspected of having a disability. It is important for a lead agency to have some flexibility in determining how best to implement screening in its State and, therefore, it is the Department’s position that mandating re-screening is not appropriate.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> Two commenters requested clarification as to why the phrase “except for parents” was included in new §303.320(b)(1) (proposed §303.303(b)(1)), given that parents are a vital source of information in identifying whether a child is suspected of having a disability.</p> <p><u>Discussion:</u> We agree that parents are a valuable source of information in determining whether a child is suspected of having a disability. Therefore, we have removed the parenthetical in new §303.320(b)(1) (proposed §303.303(b)(1)).</p> <p><u>Changes:</u> The phrase “except for parents” has been removed from new §303.320(b)(1) (proposed §303.303(b)(1)).</p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> To clarify that screening may be conducted by the lead agency or EIS provider, we have decided to use the terms “lead agency” or “EIS provider” in lieu of the reference to “public agency, early intervention service provider, and designated primary source” in new §303.320(b)(1) (proposed §303.303(b)(1)).</p> <p><u>Changes:</u> We have removed the words “public agency, early intervention service provider, or designated primary source” from new §303.320(b)(1) (proposed §303.303(b)(1)) and replaced them with the words “lead agency or EIS provider.”</p> <p><u>Comment:</u> A commenter recommended strengthening the language under new §303.320(b)(2) (proposed §303.303(b)(2)) to clarify the meaning of “appropriate instruments.” The commenter recommended that the screening instruments administered must have established validity and reliability to use with children under the age of three. A few commenters requested that new §303.320(b) (proposed §303.303(b)) require screening instruments to be peer-reviewed and research-based. One commenter recommended including reliable and valid parent-report instruments as examples of screening instruments in new §303.320(b)(2) (proposed §303.303(b)(2)).</p>		

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<p><u>Discussion:</u> New §303.320(b)(2) (proposed §303.303(b)(2)) requires the administration of appropriate instruments by personnel trained to administer those instruments. Given that screening instruments vary by State--and often even within a State--and the selection of screening instruments is based on a variety of factors, it is the Department's position that it is inappropriate for these regulations to further specify the screening instruments to be used. States need the flexibility to identify which screening instruments are used. Screening instruments for children under the age of three rely heavily on parent reports. Thus, we do not believe that it is necessary to clarify, or appropriate to limit, the types of screening instruments a lead agency may use.</p> <p><u>Changes:</u> None.</p>		