



Current Regulations	NPRM Federal Register (Justification)	Proposed Regulation	Comments
<p>§303.12 Early Intervention Services, (cont.) (15) <i>Transportation and related costs</i> includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child’s family to receive early intervention services.</p>	<p>Proposed § 303.13(b)(13) (<i>Transportation and related costs</i>) would be substantively unchanged from current § 303.12(d)(15) except that we would remove taxi from among the examples because transportation via taxi is less common than transportation via the other examples such as common carriers.</p>	<p>§303.12 Early Intervention Services, (cont.) (15) <i>Transportation and related costs</i> includes the cost of travel (e.g., mileage, or travel by common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child’s family to receive early intervention services.</p>	<p>The proposed regulation removes the reference to taxi’s. For families who do not own cars or who have no access to reliable public (common carrier) transportation this is concerning. EIFA believes that families and EIS providers must have the ability to identify the transportation needed by a family based on their individual needs and that taxi’s be included within that list.</p>
<p>§ 303.12 Early intervention services. (cont.) (7) <i>Nutrition services</i> includes— (i) Conducting individual assessments in— (a) Nutritional history and dietary intake; (b) Anthropometric, biochemical, and clinical variables; (c) Feeding skills and feeding problems; and (d) Food habits and food preferences; (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and (iii) Making referrals to appropriate community resources to carry out nutrition goals.</p>	<p>Proposed § 303.13(b) regarding types Of early intervention services would substantively incorporate the provisions of current § 303.12(d) <u>but would not include the references from current § 303.12(d)(6) and (d)(7) to nursing services and nutrition services</u>, which are not specifically listed in section 632(4)(E) of the Act. Only those types of services identified in section 602(4)(E) of the Act would be retained. The list of services identified in this proposed section is not intended to comprise an exhaustive list of the types of services that may be provided to an infant or toddler with a disability as an early intervention service. Nursing services or nutrition services could be deemed early intervention services if they are provided by qualified personnel and otherwise meet the definition of early intervention services.</p>	<p>§ 303.13 Early intervention services. (cont.) Nutrition services have been removed as an early intervention service.</p>	<p>For some infants and toddlers with disabilities nutritional services, as provided by a registered dietician or nutritionist, can be essential early intervention services. EIFA is concerned that nutritional services have been removed from the regulations. We are further confused as to why the term registered dietician is included in 303.13(c) if nutrition services have been removed. EIFA would encourage the Department to retain nutritional services. In recent years there has been significant study in the importance of nutrition for brain development, we believe that this makes these services even more essential for those infants and toddlers with disabilities who require them.</p>

<p>§ 303.13 Health services. (a) As used in this part, <i>health services</i> means services necessary to enable a child to benefit from the other early intervention services under this part <u>during the time that the child is receiving the other early intervention services.</u> (b) The term includes— (1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and (2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.</p>	<p>Proposed § 303.13(b)(4) (<i>Health services</i>) would reference the definition of <i>health services</i> in proposed § 303.16, consistent with the reference to the definition of health services in current § 303.12(d)(4). EIFA note: Change of “period receiving” to “period eligible” is not addressed.</p>	<p>§303.16 Health services. (a) <i>Health services</i> means services necessary to enable a child to benefit from the other early intervention services under this part <u>during the time that the child is eligible to receive other early intervention services.</u> (b) The term includes— (1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and (2) Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.</p>	<p>EIFA requests clarification to the change in language in proposed 303.16. What was the intent of changing from “during the time the child is receiving other services” to “during the time the child is eligible to receive other services.” Is the intent to allow EI to fund health services when there is no other payor, as long as it is during the child’s eligibility for Part C? For example, can Part C now pay for in-home nursing care when there are no other fiscal sources?</p>
<p>§ 303.22 Qualified. As used in this part, <i>qualified</i> means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services. (Authority: 20 U.S.C. 1432(4))</p>	<p>Proposed § 303.31 (<i>Qualified personnel</i>) would remain substantively unchanged from the definition of <i>qualified</i> in current § 303.22. In addition, the note following current § 303.22 would be removed because the content of that note would be addressed in proposed § 303.13(c) regarding the types of qualified personnel who provide early intervention services and proposed § 303.119 regarding the requirement that statewide systems have policies and procedures in place relating to personnel standards. The note following current § 303.12 would be removed because the substance of the note would be reflected in proposed § 303.13(d). Proposed § 303.13(d) would clarify that the lists of early intervention services and personnel in proposed § 303.13(b) and (c) are not exhaustive. The list does not preclude the provision of other early intervention services for an infant or toddler with a disability and the child’s family to enhance the developmental needs of the child. Such Part C services can include, for example, respite care if the IFSP team identifies it as a service necessary to enable the parent of an infant or toddler with a disability to participate in or receive other early intervention services in order to meet the developmental outcomes identified on the child’s IFSP. <u>In addition, persons other than those identified in proposed § 303.13(c) could provide early intervention services provided that the services otherwise met the requirements of this part.</u></p>	<p>§303.31 Qualified personnel. <i>Qualified personnel</i> means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing early intervention services. (Authority: 20 U.S.C. 1432(4))</p>	<p>EIFA encourages the Department to retain the current regulation that refers to respite providers, parent-to-parent support personnel, paraprofessionals and family support personnel as qualified personnel. These services can provide essential support to families. Families often cite the importance of family support in their child and family’s success with the early intervention program. These types of providers are often not ones in which states have license or regulatory procedures for providing these services outside of the Part C program. EIFA suggests that a solution would be to specifically add “parents of a child with a disability” to 303.119, which would address that they be appropriately trained and supervised as EI providers.</p>

<p><u>§ 303.23 (a) Service coordination (case management).</u></p> <p>(a) <i>General.</i> (1) As used in this part, except in § 303.12(d)(11), <i>service coordination</i> means the activities carried out by a service coordinator to assist and enable a child eligible under this part and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State’s early intervention program. (2) Each child eligible under this part and the child’s family must be provided with one service coordinator who is responsible for—</p> <p>(i) Coordinating all services across agency lines; and</p> <p>(ii) Serving as the single point of contact in <u>helping parents to obtain the services</u> and assistance they need.</p> <p>(3) Service coordination is an active, ongoing process that involves—</p> <p>(i) Assisting parents of eligible children <u>in gaining access to the early intervention services</u> and other services identified in the individualized family service plan;</p> <p>(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;</p> <p>(iii) Facilitating the timely delivery of available services; and</p> <p>(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child’s eligibility.</p>	<p>Proposed § 303.33(a) would provide a definition of <i>service coordination services</i> and explain that these services include, consistent with current § 303.23(a), coordinating all services required under Part C of the Act across agency lines (<i>i.e.</i>, coordinating Part C services provided by agencies other than the lead agency). Proposed § 303.33(a)(2) would clarify that: service coordinators must assist parents of infants and toddlers with disabilities in gaining access to and coordinating the provision of early intervention services and coordinating other services not provided under Part C of the Act that are needed by the infant or toddler with a disability and that child’s family and that are identified on the IFSP in accordance with proposed § 303.344(e). Proposed § 303.33 would not require service coordinators to be responsible for identifying funding sources for those services not covered under Part C of the Act and identified as “other services” on the IFSP under proposed § 03.344(e). Proposed § 303.33(a)(3) and (b) would continue to reflect that service coordinators are responsible for serving as the single point of contact for carrying out the responsibilities under proposed § 303.33(b). Proposed § 303.33(b) would require service coordinators to be responsible for coordinating the performance of evaluations and assessments, facilitating and participating in the development of IFSPs, assisting families in identifying available Part C services, coordinating and monitoring the delivery of early intervention services required under Part C of the Act, informing families of their rights and procedural safeguards and related resources, coordinating the funding sources for early intervention services, and facilitating the development of a transition plan from the Part C program to other services.</p>	<p><u>§303.33 Service coordination services (case management).</u></p> <p>(a) <i>Service coordination services</i> means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under Part C of the Act, including—</p> <p>(1) Coordinating all services required under this part across agency lines;</p> <p>(2) Assisting parents of infants and toddlers with disabilities <u>in gaining access to and coordinating the provision of the early intervention services</u> and coordinating other services identified in the IFSP under §303.344(e) that are needed or are being provided to the infant or toddler with a disability and that child’s family; and</p> <p>(3) Serving as the single point of contact for carrying out the activities described in paragraph (b) of this section.</p>	<p>Service Coordination is an important component of the Early Intervention program for infants and toddlers with disabilities and their families. When families enter the Early Intervention program they are introduced to a new set of systems, it is important that they obtain all early intervention services and have assistance in gaining access to non-early intervention services that they may also need. The law and regulations have always recognized the need for a single contact point to coordinate services across agency lines and to ensure that families have access to and obtain those services identified in the IFSP in a timely manner. EIFA is concerned that the new regulation language simply states that the service coordinator assist families in gaining access to and coordinate provision of Early Intervention services. We believe that the original language which states that families be provided with one service coordinator who must help parents to obtain services and assistance they need and to facilitate the timely delivery of services is preferred language. Gaining access may be interpreted, for example, to mean that a family is on a waiting list or is given a list of providers to hunt out on their own. EIFA requests that the Department return the current regulation’s stronger language in order to ensure services are obtained and delivered.</p>
	<p>We are proposing to add new section § 303.105 to reflect the provisions in section 606 of the Act, which require the Secretary to ensure that each grant recipient under IDEA make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under IDEA.</p>	<p><u>§ 303.105 Positive efforts to employ and advance qualified individuals with disabilities.</u> Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under Part C of the Act. (Authority: 20 U.S.C. 1405)</p>	<p>EIFA recommends an addition to proposed 303.105, to read “...positive efforts to employ and advance in employment, qualified individuals with disabilities <u>and qualified parents of individuals with disabilities</u> in programs assisted under Part C of the Act.”</p>

<p>§ 303.301 Central directory. (a) Each system must include a central directory of information about-- (1) Public and private early intervention services, resources, and experts available in the State; (2) Research and demonstration projects being conducted in the State; and (3) Professional and other groups that provide assistance to children eligible under this part and their families. (b) The information required in paragraph (a) of this section must be in sufficient detail to-- (1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and (2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory. (c) The central directory must be-- (1) Updated at least annually; and (2) Accessible to the general public. (d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available-- (1) In each geographic region of the State, including rural areas; and (2) In places and a manner that ensure accessibility by persons with disabilities.</p>	<p>Proposed § 303.117, regarding the requirements for a central directory, would align with section 635(a)(7) of the Act and would combine the requirements of current §§ 303.162 and 303.301(a). The provisions in current § 303.301(c) requiring the central directory to be up-to-date and accessible to the general public generally would be included in the introductory text of proposed § 303.117. Proposed § 303.117, however, would also clarify that the lead agency must ensure that the central directory is accessible through the lead agency’s Web site and other appropriate means as the requirement in current § 303.301(d) that the lead agency arrange for copies of the directory to be available in each geographic region of the State is no longer necessary, as the vast majority of States maintain the directory on their Web sites. Current § 303.301(b), which includes the details of the content of the central directory and current § 303.301(d), which includes the locations and manners of accessibility, would be removed. Most States now maintain this information on their Web site and can easily update it more quickly than is required under current § 303.301</p>	<p>§ 303.117 Central directory. Each system must include a central directory that is accessible to the general public (i.e., through the lead agency’s Web site and other appropriate means) and includes accurate, up-to-date information about-- (a) Public and private early intervention services, resources, and experts available in the State; (b) Professional and other groups (including parent support and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and (c) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities. (Authority: 20 U.S.C. 1435(a)(7))</p>	<p>EIFA agrees that the use of an electronic central directory equates to more current and easily updated information. EIFA recommends that a printed Central Directory be available from the lead agency if requested. Having such a resources only available electronically dismisses the utilization of it by many families and individuals.</p>
<p>§ 303.360 Comprehensive system of personnel development. (b) The personnel development system under this part must— (1) Be consistent with the comprehensive system of personnel development required under part B of the Act (34 CFR 300.380 through 300.387); (2) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate; (3) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators; and <u>(4) Ensure that the training provided relates specifically to—</u> (i) Understanding the basic components of early intervention services available in the State; (ii) Meeting the interrelated social or emotional, health, developmental, and educational needs of eligible children under this part; and <u>(iii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.</u></p>	<p>Proposed § 303.118, regarding the comprehensive system of personnel development (CSPD), would replace current §§ 303.168 and 303.360 to parallel the requirements and order of section 635(a)(8) of the Act. The introductory paragraph of proposed § 303.118 would combine the provisions in current § 303.360(b)(3) and (4), and would require each statewide system to include a CSPD that addresses the training of paraprofessionals and primary referral sources with respect to the basic components of early intervention services in the State.</p> <p><u>EIFA Note:</u> NPRM does not address the change from “ensure” to “may include”.</p>	<p>§ 303.118 Comprehensive system of personnel development (CSPD). Each system must include a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, that— (a) Must include-- (1) Implementing innovative strategies and activities for the recruitment and retention of EIS providers; (2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and (3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention services program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act or another appropriate program; and <u>(b) May Include –</u> (1) Training personnel to work in rural and inner city areas; (2) Training personnel in the social and emotional development of young children.; and <u>(3) Training personnel to support families in participating fully in the development and implementation of the IFSP.</u></p>	<p>Current regulations, Section 303.360 (b) (4) (iii) creates assurance that training shall relate specifically to “assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSP’s”. Proposed 303.118 (b)(3) language is weakened as the regulation now states “may include” and drops the language “in enhancing the development of their children”. EIFA strongly recommends maintaining the original language in 303.360 (b). Families are an integral part of the IFSP team, however families often need training to understand their rights under the law. It is important that all members of the IFSP team have access to training to ensure that they understand how to identify functional outcomes and develop an IFSP which enhances the development of an infant or toddler with a disability.</p>

<p>§ 303.147 Services to all geographic areas. Each application must include a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State.</p>	<p>Proposed § 303.207, which would align with section 637(a)(7) of the Act, would require that each application include a description of the procedure used to ensure that resources are available for all geographic areas within the State and would be substantively the same as current § 303.147.</p>	<p>§ 303.207 Availability of resources. Each application must include a description of the procedure used by the State to ensure that resources are made available under this part for all geographic areas within the State.</p>	<p>EIFA recognizes that 303.207 is substantively unchanged but recommends that “resources” be changed to “services” as the term resources is not defined.</p>
<p>§ 303.128 Traditionally underserved groups. The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure— (a) That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part; and (b) That these families have access to culturally competent services within their local geographical areas.</p>	<p>Proposed § 303.227, which requires policies and practices to ensure that traditionally underserved groups are meaningfully involved in the planning and implementation of the requirements under Part C of the Act, would include the language in current § 303.128, except that children with disabilities who are wards of the State would be added to the list of traditionally underserved groups, consistent with section 637(b)(7) of the Act.</p>	<p>§ 303.227 Traditionally underserved groups. The State must ensure that policies and practices have been adopted to ensure-- (a) That traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of this part; and (b) That these families have access to culturally competent services within their local geographical areas.</p>	<p>EIFA supports the outreach intended by proposed 303.227 and recommends that children with low-incidence disabilities also be included as a traditionally underserved group. EIFA respectfully states that while outreach to underserved groups is a key element of early intervention, all families deserve access to culturally competent services.</p>
<p>§303.302 Referral procedures. (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— (i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or (ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345. (2) The procedures required in paragraph (b)(1) of this section must— (i) Provide for an effective method of making referrals by primary referral sources; <i>(ii) Ensure that referrals are made no more than two working days after a child has been identified;</i> and (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>Proposed § 303.302, regarding referral procedures, would require that the referral of a child under proposed § 303.302(a)(2)(i) be as soon as possible after the child has been identified. This is a change from the requirement in current § 303.321(d)(2)(ii), which requires the referral to occur within two working days. The 2004 Amendments require lead agencies to conduct child find for additional subpopulations, which has substantially increased the number of referrals, making the two-day period impractical. A change in referral timeline is needed because we have found that the two-day referral is often not practical when some primary referral sources of these additional subpopulations are working with the lead agency and reviewing all information available about the child in order to determine whether the child may be suspected of having a disability and may need referral for evaluation under Part C of the Act. In addition, the Department has limited ability to enforce such a timeline given that primary referral sources include private physicians and other individuals and entities that are not EIS providers. Recognizing the importance of referring and identifying children potentially eligible for early intervention services as soon as possible, we are seeking comment on the proposed change in proposed § 303.302(a)(2)(i), specifically, regarding whether a different timeframe or approach is more appropriate.</p>	<p>§303.302 Referral procedures. (a) <i>General.</i> (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) Evaluation and assessment, in accordance with §303.320; and (ii) As appropriate, the provision of early intervention services, in accordance with §§303.342 through 303.345. (2) The procedures required in paragraph (a)(1) of this section must— <i>(i) Provide for referring a child as soon as possible after the child has been identified; and</i> (ii) Include procedures that meet the requirements in paragraphs (b) and (c) of this section.</p>	<p>The proposed regulations remove the requirement that referrals be made no more than two working days after a child has been identified. The NPRM states that the 2004 Amendments require lead agencies to conduct child find for additional subpopulations, which has substantially increased the number of referrals. In addition, the Department has cited their inability to enforce the requirement given that primary referral sources include individuals and entities that are not EIS providers. While we appreciate the difficulties that agencies have with enforcement of this requirement it is important that primary referral sources have clear and consistent guidelines for referral procedures. EIFA is concerned that this language, combined with moving the starting point for the 45-day timeline, will result in significant delays in determining eligibility. EIFA recommends keeping “2 working days” as the preferred practice required of lead agencies when establishing relationships with primary referral sources and when developing protocols.</p>

<p><u>There is currently no regulation regarding screening.</u></p>	<p>Proposed § 303.303(a)(2) would clarify that, if the screening indicates that the child is suspected of having a disability, the lead agency must conduct an evaluation under proposed § 303.320 to determine the eligibility of the child. If the lead agency believes, based on the screening and other available information, that a child is not suspected of having a disability, then proposed § 303.303(a)(3), consistent with current § 303.403, would require the lead agency to provide the parent with notice under proposed § 303.421 that it is declining to conduct an evaluation. The notice requirement in proposed § 303.303(a)(3) would be added because it is the Department’s experience that many States were not aware of the need to provide notice under these circumstances. Proposed § 303.303(a)(4) would require the lead agency to conduct an evaluation if a parent requests an evaluation after the lead agency determines a child is not suspected of having a disability after completing a screening. These proposed regulations provide this clarification because most States that have adopted screening procedures after the June 2003 CAPTA amendments and the IDEA 2004 amendments have found that permitting the parent to request an evaluation is necessary to ensure appropriate identification of eligible children. In addition, 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. Further, research in the early childhood community demonstrates that parents are often in the best position to observe and know their infant’s or toddler’s developmental status. In addition, children already determined to be eligible (such as a child with a diagnosed condition who has medical records that the lead agency can use to establish eligibility) would not need to be screened, because the purpose of screening is to determine whether a child is suspected of having a disability.</p>	<p><u>§ 303.303 Screening procedures.</u></p> <p>(a) <i>General.</i> (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 meet the requirements of this section.</p> <p>(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.</p> <p><u>(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.</u></p> <p><u>(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.</u></p>	<p>EIFA supports the use of screening and applauds the recognition that parents often identify suspected delays that are not found through screening. EIFA recommends that language surrounding parents entitlement to a full assessment is an essential part of the required notification stated in (303.303(a)(3) to parents stated in proposed 303.421. EIFA recommends that the NPRM language which stipulates that screenings are not necessary for established conditions be contained in the regulation language as well.</p>
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§303.302 Referral procedures.

(e) *Timelines for public agencies to act on referrals.*

(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.

§ 303.322 Evaluation and assessment.

(e) *Timelines.*

(1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—

- (i) Document those circumstances; and
- (ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345 (b)(1) and (b)(2).

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(3); 1436 (a)(1), (a)(2), (d)(1), and (d)(2))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18295, Apr. 14, 1998

Current §§ 303.321(a) and 303.321(e)(1) and (2), require that a child’s evaluation, assessment, and initial IFSP meeting occur within 45 days from the date the public agency receives the referral. The Department believes this imposes an unnecessary burden on Part C agencies. Because the public agency cannot initiate these actions without parental consent, a refusal or late consent may drastically reduce the time available for the agency to perform evaluations and prepare for the IFSP meeting. Proposed § 303.320(e)(1) would retain the 45-day timeline requirement, but the timeline would start with the date the public agency obtained parental consent for the evaluation, not the date the public agency receives the referral. This change in how the 45-day timeline is calculated may result in some delays in the evaluation process, since the public agency may be less motivated to obtain timely consent. However, there are situations in which the lead agency is unable to obtain the requisite consent in a timely manner because the parents do not respond. In those cases, the delays in obtaining parental consent affect the State’s ability to conduct evaluations, assessments, and the initial IFSP meetings within the 45-day period; potentially increase costs due to the need to pay overtime to staff; and make the State vulnerable to due process complaints based on its not complying with the 45-day timeline requirement. The Department believes the change in starting date for the 45 days to when parental consent is obtained would provide a more realistic start time for conducting evaluations, assessments and the initial IFSP meeting and improve the ability of States to manage the development of IFSPs. This proposed change also would eliminate the possibility that States will be penalized for a lack of timeliness in due process complaints in which parents were responsible for delays because they did not provide timely consent or did not respond. The timeline change reflected in proposed § 303.320(e) is consistent with section 636(c) of the Act, which requires that the IFSP be developed within a reasonable time after the assessment is completed. The Department is seeking comment on whether the proposed change to the starting date for evaluation, assessment, and initial IFSP in proposed § 303.320(e) is reasonable and necessary. Another option to consider is for the starting date to remain the same with an increase in the length of time to complete evaluations, assessments, and holding the initial IFSP meeting

§ 303.320 Evaluation and assessment of the child and family and assessment of service needs.

(e) *Timelines.* (1)(i) Except as provided in paragraph (e)(2) of this section, the evaluation of the child (including any assessments of the child and family) and assessment of service needs, as well as the initial IFSP meeting, must be completed within **45 days from the date the lead agency obtains parental consent** to conduct an evaluation of the child.

(ii) Lead agencies must ensure that parental consent to conduct an evaluation under §303.420(a) is obtained as soon as possible once a child is referred for evaluation under this part.

(2) The lead agency must develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation (including any assessments of the child and family) and assessment of service needs within 45 days (e.g., if a child is ill) from receiving parental consent, public agencies will—

- (i) Document those circumstances; and
 - (ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with §303.345.
- (Authority: 20 U.S.C. 1435(a)(3), 1435(a)(5), 1436(a)(1)-(2), 1436(c), 1436(d)(1)-(2))

States have made significant progress in meeting the 45-day timeline for evaluation and assessment of infants and toddlers. The NPRM refers to difficulty in obtaining consent to evaluate as the reason for changing when the 45-day clock begins. We must note that the Department has only required states to capture data on the reasons for not meeting the 45-day timeline (family reason, records, team capacity, CPS/CAPTA) since 2005. We would urge the Department keep the current starting point for the timeline. We are aware that the Part B timeline begins at the point of consent, however we believe there are inherent differences between Part B and Part C. With regard to Part B, students and their families have regular contact with their school and often have prior relationships with school personnel responsible for making the referral or obtaining consent for evaluation. With regard to infants and toddlers, when families begin to notice that their child may have delays it may take some time for them to identify the correct avenue to access early intervention services. It is therefore important that Part C agencies feel the urgency to begin the process by obtaining consent to evaluate. The purpose of the 45-day timeline is to get services to infants and toddlers as soon as possible. We are concerned that adding an undefined period of time in front of the timeline will delay services and decrease accountability.

<p>§ 303.322 Evaluation and assessment. (d) <i>Family assessment.</i> (1) Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the child. (2) Any assessment that is conducted must be voluntary on the part of the family. (3) If an assessment of the family is carried out, the assessment must— (i) Be conducted by personnel trained to utilize appropriate methods and procedures; (ii) Be based on information provided by the family through a personal interview; and (iii) Incorporate the family’s description of its resources, priorities, and concerns related to enhancing the child’s development.</p>	<p>303.320(b)(2) as previously discussed .With respect to the procedures for the assessment of a family, proposed § 303.320(c) would combine the requirements of section 636(a)(2) of the Act and current §§ 303.322(b)(2)(ii) and 303.322(d), and would require that family information be assessed not just through the use of an assessment tool, but through a voluntary personal interview with the family. In addition to the parent, the family assessment can include other family members for the purposes of identifying the child’s needs. This proposed language would permit States to avoid unnecessary, time-consuming, and costly evaluations,</p>	<p>§ 303.320 Evaluation and assessment of the child and family and assessment of service needs. (c) <i>Procedures for assessment of the family.</i> <i>Assessment of the family</i> means identification of the family’s resources, priorities, and concerns, and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability, as determined not just through the use of an assessment tool, but through a voluntary personal interview with the family. § 303.113 Evaluation, assessment, and nondiscriminatory procedures. (cont.) (2) A <i>family-directed</i> identification of the needs of the family of the infant or toddler, to assist appropriately in the development of the infant or toddler. (b) The evaluation and <i>family-directed</i> identification required in paragraph (a) of this section must meet the requirements of § 303.320. (Authority: 20 U.S.C. 1435(a)(3))</p>	<p>EIFA recognizes the importance of a family-directed assessment. This voluntary assessment which assists families in identifying and addressing their resources, priorities and concerns can result in improved and functional outcomes. EIFA would encourage the Department to use the term “family-directed assessment” consistent in §303.320, as it is used in §303.113. The family-directed assessment should be something done with a family not to a family. We are concerned that the regulation language in §303.320 may lead some EIS providers to erroneously believe that this is an assessment of the family’s functioning and/or needs that are not directly related to their child’s disability. We would encourage the Department to include the reference to include members of the extended family, as invited by the parent(s) in the regulation. EIFA supports the inclusion of the language “as determined not just through the use of an assessment tool, but through a voluntary personal interview with the family” as a positive aspect of the family-directed assessment portion of the draft regulations.</p>
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<p>§ 303.12 Early intervention services. (b) <i>Natural environments.</i> To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.</p> <p>§ 303.344 Content of an IFSP. (d) <i>Early intervention services.</i> (ii) The natural environments, as described in § 303.12(b), and § 303.18 in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment; (iii) The location of the services; and (iv) The payment arrangements, if any. (2) As used in paragraph (d)(1)(i) of this section— (i) <i>Frequency</i> and <i>intensity</i> mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and (ii) <i>Method</i> means how a service is provided. (3) As used in paragraph (d)(1)(iii) of this section, <i>location</i> means the actual place or places where a service will be provided.</p>	<p>Proposed § 303.126, regarding the provision of early intervention services in natural environments to the maximum extent appropriate, would align with section 635(a)(16) of the Act and would generally remain substantively unchanged from current §§ 303.12(b) and 303.344(d)(1)(ii). Proposed § 303.126(b) would add language from section 635(a)(16) of the Act requiring that, when early intervention cannot be achieved satisfactorily in a natural environment, it must be provided in a setting that is most appropriate, as determined by the parent and the IFSP team. Proposed § 303.126 would not change the longstanding requirements regarding the provision of early intervention services in an infant’s or toddler’s natural environment and would be read in conjunction with proposed § 303.344(d)(1)(ii)(B), which would clarify that any justification for providing an early intervention service in a setting other than the infant’s or toddler’s natural environment must be based on the child’s outcomes identified by the IFSP team in the infant’s or toddler’s IFSP.</p>	<p>§ 303.344 Content of an IFSP. (cont.) (B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that child and service must be (1) Made by the IFSP team (which includes the parent and other team members); (2) Consistent with the provisions in §§303.13(a)(8), 303.25, and 303.126; and (3) <i>Based on the child’s outcomes</i> that are identified by the IFSP team in paragraph (c)) (iii) The location of the services; and (iv) The payment arrangements, if any. (2) As used in paragraph (d)(1)(i) of this section— (i) <i>Frequency and intensity</i> mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis; (ii) <i>Method</i> means how a service is provided; (iii) <i>Length</i> means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and (iv) <i>Duration</i> means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP). (3) As used in paragraph (d)(1)(iii) of this section, <i>location</i> means the actual place or places where a service will be provided.</p>	<p>For many families raising infants and toddlers with disabilities natural environments is a simple and common sense term. We are intimately aware that natural environments are more than a place. It is essential that the field understand this term and assist families in understanding the impact of certain decisions about where, when and how services are provided to our children. EIFA recommends keeping the original definition of Natural Environments in the new regulations. The basic intent of the language appears to be equivalent. Given this, and given the challenges that ensued for programs in initially implementing the Natural Environments requirement, we feel this may present an unnecessary interpretive hurdle for programs as they implement the new regulations.</p> <p>EIFA recommends that 303.344(B)(3) be changed to read “Based on the child’s <u>needs</u>,” rather than “outcomes”. Setting should be determined based on the child’s circumstances, not the outcome. ‘Outcomes’ could be manipulated such that they could only be addressed in a non-natural setting.</p>
<p>§ 303.344 Content of an IFSP. (cont.) NOTE 2: Throughout the process of developing and implementing IFSPs for an eligible child and the child’s family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child’s development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.</p>	<p>The notes following current 303.344 (h) would be removed as they do not reflect regulatory requirement, but are explanatory or provide examples and are therefore not necessary.</p>		<p>EIFA recommends adding the language in NOTE 2 of 303.344 into Proposed 303.344. While viewed as “explanatory”, this note provides guidance on the manner in which an IFSP is developed. While the draft regulations provide guidance on obtaining parent consent, there is no other section that provides a working description of the role of parents in the development and implementation of their IFSP.</p>

<p>§ 303.404 Parent consent. (a) Written parental consent must be obtained before— (1) Conducting the initial evaluation and assessment of a child under § 303.322; and (2) Initiating the provision of early intervention services (see § 303.342(e)). (b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent— (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given. (Authority: 20 U.S.C. 1439)</p>	<p>Proposed § 303.420(c) would be added to include the language of Note 2 following current § 303.404 to clarify that a lead agency may, but is not required to, use the due process hearing procedures to challenge the parent’s refusal to consent to an evaluation and assessment of the child. The term “initial” in Note 2 would not be incorporated into proposed § 303.420(c) because the lead agency may, but is not required to, use due process hearing procedures to override parental refusal to provide consent for any evaluation, not just the initial evaluation. The substance of Note 1, regarding parental consent, following current § 303.404 would be included where applicable in proposed § 303.420; and the substance of Note 1, regarding personally identifiable information, would be included in proposed § 303.401(c). Proposed § 303.420(d) would incorporate the requirements in section 639(a)(3) of the Act and current § 303.405, and clarify the parent’s right to accept or decline any early intervention service at any time.</p>	<p>§ 303.420 Parental consent and ability to decline service. (b) If the parent does not give consent, the lead agency must make reasonable efforts to ensure that the parent-- (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given. <u>(c)(1) Subject to paragraph (c)(2) of this section, the lead agency may, but is not required to, use the due process hearing procedures under this part to challenge the parent’s refusal to consent to an evaluation and assessment of the child for early intervention services.</u> (2) The lead agency may not use the procedures described in this paragraph (c)(1) of this section to challenge the parent’s refusal to consent to the provision of an early intervention service or the use of insurance.</p>	<p>While this language appears to be an attempt to align with Part B, there are inherent differences between Part C and Part B. Each state mandates the age at which a child must attend compulsory schooling, with regard to infants and toddlers there are no similar requirements. If this is an attempt to address issues of neglect other avenues exist. EIFA recommends (c)(1) be deleted from the new regulations. Part C is a voluntary program by definition; this process does not have application in Part C procedures. The language in (c)(1) is incompatible with preceding language as well as the voluntary nature of Part C programs.</p>
<p><u>There is currently no corresponding regulation.</u></p>	<p>Proposed § 303.434, regarding filing a complaint, would remain substantively unchanged from current § 303.511 except proposed § 303.434(b)(3) and (4) would require a parent filing a State complaint to provide the lead agency, public agency, or EIS provider with information about the child who is the subject of the complaint, which may allow the lead agency, public agency, or EIS provider to attempt to resolve the complaint at the earliest opportunity. In addition, proposed § 303.434(c) would amend the language in current § 303.511(b) to require that the complaint must allege that a violation occurred not more than one year prior to the date the complaint is received, and would remove references to longer periods for continuing violations to ensure expedited resolution for public agencies and children. This provision would ensure that the public agency or EIS provider involved has knowledge of the issues, and an opportunity to resolve them directly with the complaining party.</p>	<p><u>303.434 Filing a Complaint</u> (d) the party filing the complaint must <u>forward a copy of the complaint to the public agency or EIS provider</u> serving the child at the same time the party files the complaint with the lead agency.</p>	<p>EIFA recommends the deletion of proposed 303.434 (d) as this provision would be a deterrent for families to file complaints to the lead agency due to the very personal nature of EIS provider relationships. It is EIFA’s experience that families pursue unofficial avenues, without resolution, prior to filing complaints. Requiring a more formal process would be an additional burden for the family and there is concern that immediate services may be compromised. We are also concerned with the removal of the references to longer periods for continuing violations. While we are in favor of expedited resolutions, we are worried that disallowing the extended period of time for continuing violations will have a negative effect. Additionally, proposed 303.434 does not include guidance on what shall occur if the family does not notify the public agency or EIS provider, yet sends a complaint to the lead agency.</p>

<p><u>There is currently no corresponding regulation.</u></p>	<p>Proposed 303.442 would substantively include language from 34 CFR 300.510 of the Part B regulations (71 FR 46794) regarding the resolution process.</p> <p><u>EIFA note:</u> 303.442(b)(4) is not directly addressed in NPRM</p>	<p><u>§ 303.442 Resolution process. (cont.)</u> (b) Resolution period. (4) If the lead agency is unable to obtain the participation of the parent in the resolution meeting <i>after reasonable efforts have been made</i>, including documenting its efforts, the lead agency, may at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.</p>	<p>It is the sentiment of EIFA that further guidance should be provided in regards to “reasonable effort”. Clarification is needed Section 303.442 (b) (4) which references obtaining parent participation in the resolution process. Examples of clarifying “reasonable effort” include adding a numerical factor, describing different types of contact or activities, or setting a specified amount of time.</p>
<p><u>§ 303.520 Policies related to payment for services.</u> (a) <i>General.</i> Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State’s early intervention program. The policies must— (1) Meet the requirements in paragraph (b) of this section; and (2) Be reflected in the interagency agreements required in § 303.523. (b) <i>Specific funding policies.</i> A State’s policies must— (1) Specify which functions and services will be provided at no cost to all parents; (2) Specify which functions or services, if any, will be subject to a system of payments, and include— (i) Information about the payment system and schedule of sliding fees that will be used; and (ii) The basis and amount of payments; and (3) Include an assurance that— (i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and (ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child’s family; and (4) Set out any fees that will be charged for early intervention services and the basis for those fees. <u>No other directly corresponding regulation.</u></p>	<p>Proposed 303.520 regarding policies related to use of insurance for payment of services and proposed 303.521, regarding a system of payments and fees, would incorporate certain requirements in current 303.520 and 303.521.</p> <p>Proposed § 303.520(a)(3) would clarify that when obtaining parental consent under proposed § 303.520(a), the lead agency must provide parents with a copy of the State’s system of payments policies that identify potential costs that the parent may incur while enrolled in a <u>public insurance or benefits program</u> and to ensure that the consent is informed. Proposed § 303.520(a)(3) is being added to ensure that parents would be informed of those costs as part of consenting to the use of public insurance or benefits to pay for early intervention services.</p> <p>Proposed § 303.520(b)(1)(ii) would require that any types of costs (including co-payments, premiums or deductibles) that may be charged to the parent as a result of using the parent’s private insurance be identified in the State’s system of payments policies under proposed § 303.521. Proposed § 303.520(b)(1)(iii) would require that a copy of this policy be provided to parents when obtaining consent.</p>	<p><u>§ 303.520 Policies related to use of insurance or public benefits for payment for services. (cont.)</u> (b) Private insurance. (1)(i) Except as provided in paragraph (b)(2) of this section, the State may use the private insurance of a parent to pay for services under this part only if the parent provides consent to do so in accordance with Sec. Sec. 303.7, 303.414, and 303.420(a)(3). (ii) If the State requires a parent to pay any types of costs that the parent may incur as a result of the State's use of private insurance to pay for early intervention services, those types of costs (such as deductibles or co-payments) must be identified in the State's system of payments policies under § 303.521; otherwise, the State will not be allowed to charge those costs to the parent. (iii) <i><u>In obtaining parental consent required under this section, the lead agency must provide a copy of the State’s system of payments policies that identify the potential types of costs that the parent may incur while enrolled in a private insurance program (such as co-payments, premiums or deductibles).</u></i> (iv) If a parent or family is determined unable to pay under the State's definition of inability to pay under § 303.521(a)(3) and does not provide consent under paragraph (b)(1)(i) of this section, the lack of consent may not be used to delay or deny any services under this part to a child or the family.</p>	<p>EIFA is encouraged by the proposed regulations with regard to policies related to use of insurance or public benefits. We agree with the Department that families need to be informed of any and all costs as part of consenting to the use of private or public insurance or benefits. Families of infants and toddlers with disabilities often incur costs related to their child’s disabilities which are outside of the early intervention program. It is important that families have a clear understanding of all the potential costs prior to consenting to utilization of their private or public benefits. Furthermore, EIFA believes that requiring consent prior to utilizing public insurance or benefits is consistent with FERPA. EIFA would encourage the Department to work with families, states and providers to develop a framework to assist states in developing guidance to identify all potential costs to families.</p>

<p><u>§ 303.601 Composition.</u> (a) The Council must be composed as follows: (1)(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. (ii) At least one member must be a parent of an infant or toddler with a disability or a child with a disability aged six or younger.</p>	<p>Proposed § 303.601(a)(1)(i) and (ii) would retain the requirements in current § 303.601(a)(1)(i) and (ii) regarding parent membership on the Council. Proposed § 303.601(a)(1)(iii) would incorporate the first paragraph in the note following current § 303.600 to require that, to avoid a potential conflict of interest, a parent member may not be an employee of a public or private agency involved in providing early intervention services.</p>	<p><u>§303.601 Composition.</u> (a) The Council must be composed as follows: (1)(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. (ii) At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger <u>(iii) A parent member may not be an employee of a public or private agency involved in providing early intervention services.</u></p>	<p>EIFA recommends that the language in proposed 303.601(a)(1)(iii) should be removed. It is counterproductive to put families against families and imply that some parents are more valuable than others. Many parents choose to utilize the knowledge and skills they gain as a result of being involved in early intervention. Why should some be penalized, or told that their expertise as a parent is unwanted, because they also have the credentials to work for early intervention programs? An alternative could be to require that parents with diverse perspectives be appointed to an SICC, including some parents who do not work for early intervention providers or PTI's or other agencies that interact with families enrolled in EI.</p>
<p><u>§ 303.602 Use of funds by the Council.</u> (a) <i>General.</i> Subject to the approval of the Governor, the Council may use funds under this part— (1) To conduct hearings and forums; (2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives); (3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business; (4) To hire staff; and (5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.</p>	<p>Proposed § 303.603, regarding how the Council may use Part C funds, would incorporate the provisions of current § 303.602 and the provisions in section 641(d) of the Act. Proposed § 303.603(a) and (b) would retain the provisions in current § 303.602(a)(1) through (5) regarding the use of funds and in current § 303.602(b) regarding the requirement that Council members must serve without compensation from funds available under Part C of the Act, except as provided in proposed § 303.603(a).</p>	<p><u>§303.603 Use of funds by the Council.</u> (a) Subject to the approval by the Governor, the Council may use funds under this part— (1) To conduct hearings and forums; (2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives); <u>(3) To pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official Council business;</u> (4) To hire staff; and (5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under Part C of the Act.</p>	<p>EIFA recommends that an exception be made to section 303.603 (a) (3) to allow parent members of the Council to receive compensation regardless of their employment status.</p>