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<p><b><u>§303.176 Data collection.</u></b> Each application must include procedures that meet the requirements in § 303.540.</p>	<p><b><u>§303.124 Data collection.</u></b> (a) Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements of paragraph (b) of this section and §§303.700 through 303.702 and 303.720 through 303.724.  (b) The data system required in paragraph (a) of this section must include a description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this part, including a description of the State’s sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the Act and §§303.700 through 303.707 and 303.720 through 303.724.</p>	<p><b><u>§303.124 Data collection.</u></b> (a) Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in paragraph (b) of this section and §§303.700 through 303.702 and 303.720 through 303.724.  (b) The data system required in paragraph (a) of this section must include a description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this part, including a description of the State’s sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the Act and §§303.700 through 303.707 and 303.720 through 303.724.</p>
<p><b><u>Data collection (§303.124)</u></b> <u>Comment:</u> One commenter opposed the requirement in §303.124(b) that statewide data systems include a description of the State’s sampling methods, if sampling is used, for reporting certain data required by the Secretary. The commenter opposed this requirement stating that sampling is not supported by the Act. <u>Discussion:</u> We disagree with the commenter that sampling is not supported by the Act. Section 635(a)(14) of the Act provides that the Part C statewide system include a system for compiling data requested by the Secretary under section 618 of the Act that relates to Part C of the Act, and section 618(b)(2) of the Act specifically states that the Secretary may permit States and the Secretary of the Interior to obtain data through sampling. <u>Changes:</u> None.</p>		
<p><b><u>§303.460 Confidentiality of information.</u></b> (a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information</p>	<p><b><u>§303.402 Confidentiality.</u></b> The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained or used by the Secretary and by lead agencies and EIS providers pursuant to Part C of the Act, and</p>	<p><b><u>§303.402 Confidentiality.</u></b> The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to Part C of the Act, and</p>

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<p>among agencies consistent with Federal and State law.</p> <p>(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in § 303.5(b).</p>	<p>consistent with §§303.403 through 303.417.</p>	<p>consistent with §§303.401 through 303.417. The regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.</p>
	<p><b><u>§303.403 Definitions.</u></b> The following definitions apply to §§303.402 through 303.417:</p> <p>(a) <u>Destruction</u> means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.</p> <p>(b) <u>Education records</u> includes all early intervention records required to be collected, maintained, or used under Part C of the Act and the regulations in this part.</p> <p>(c) <u>Participating agency</u> means any individual, agency, or institution that collects, maintains, or uses personally identifiable information and includes the lead agency and EIS providers.</p>	<p><b><u>§303.403 Definitions.</u></b> The following definitions apply to §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:</p> <p>(a) <u>Destruction</u> means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.</p> <p>(b) <u>Early intervention records</u> mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.</p> <p>(c) <u>Participating agency</u> means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity</p>

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		that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.
<p><b>Definitions (§303.403)</b></p> <p><u>Comment:</u> Two commenters requested that the term <u>education records</u> be changed to the term <u>early intervention records</u> because use of the term “education” is not consistent with Part C of the Act and could be interpreted incorrectly by insurance companies and Medicaid concerning payment for services. One commenter also expressed concern that the term <u>education records</u> is used inconsistently throughout the regulations (see §§303.405(a) and (b), 303.406, 303.407, 303.408, 303.410, and 303.411).</p> <p><u>Discussion:</u> We agree that the term <u>early intervention records</u> should replace the term <u>education records</u> in §303.403 and have revised references to <u>education records</u> to read <u>early intervention records</u> in these regulations. <u>Changes:</u> We have revised §303.403(b) to define <u>early intervention records</u> instead of <u>education records</u> and clarified that the term includes all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.</p> <p><u>Comment:</u> One commenter expressed concerns that the definitions in §303.403, while applicable to programs under Part B of the Act, may not be appropriate for programs under Part C of the Act.</p> <p><u>Discussion:</u> We agree that the definitions of <u>education records</u> and <u>participating agency</u> in §303.403 could be amended to more appropriately apply to Part C of the Act. As noted previously, we have removed the term <u>education records</u> in §303.403(b) and replaced it with the term <u>early intervention records</u>.</p> <p>Additionally, we have amended the definition of <u>participating agency</u> in §303.403(c) to mean any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. <u>Participating agency</u> specifically includes the lead agency and EIS providers that provide any Part C services, including service coordination, evaluations and assessments, and other Part C services. We are adding this provision to distinguish between those primary referral sources that perform primarily a child find function and those entities that serve as funding sources only. We have clarified that this term does not include primary referral sources (unless they are also EIS providers), or public agencies (such as the State Medicaid or CHIP program), or private entities (such as private insurance companies) that act solely as funding sources for Part C services.</p> <p><u>Changes:</u> We have revised the definition of <u>participating agency</u> in §303.403(c) to provide that this term also includes an entity that collects, maintains, or uses personally identifiable information and that this information is collected, maintained, or used “to implement the requirements in Part C of the Act and the regulations in this part.” We have added a provision that an EIS provider includes a provider of Part C services, including service coordination, evaluations, and assessments, and other Part C services. Additionally, we have added a provision specifically stating that primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance</p>		

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	<p><b>§303.416 Destruction of information.</b>                      (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C, GEPA, 20 U.S.C. 1230 through 1234i, and EDGAR, 34 CFR parts 76 and 80.</p> <p>(b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a permanent record of a child’s name, date of birth, parent contact information (including address, and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.</p>	<p><b>§303.416 Destruction of information.</b>                      (a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.</p> <p>(b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a permanent record of a child’s name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.</p>
<p><b><u>Destruction of information (§303.416)</u></b>  <u>Comment:</u> None.  <u>Discussion:</u> For consistency within the confidentiality regulations that apply to participating agencies in §§303.402 through 303.417, we have replaced the reference to “public agency” in §303.416(a) with the term “participating agency.”  <u>Changes:</u> We have replaced the reference to “public agency” with “participating agency” in §303.416(a).  <u>Comment:</u> A few commenters expressed concern that we have included statutory references to GEPA in §303.416(a), but these references are not included in the corresponding Part B provisions in 34 CFR 300.624. The commenters requested that for consistency these citations be removed from §303.416(a) or be added to the regulations under Part B of the Act.  <u>Discussion:</u> SEAs are aware of the applicability of GEPA to the Part B program. Therefore, it is not necessary to add these references to the Part B regulations. However, there may be lead agencies that are unaware of the applicability of GEPA to the Part C program; accordingly, it is important that §303.416(a) identify the specific citations to those GEPA and EDGAR provisions concerning the maintenance, use, disclosure, and destruction of records. Thus, we have revised the citation to GEPA provisions to refer to 20 U.S.C. 1232f, which contains fiscal recordkeeping requirements. Lead agencies that are not SEAs may be similarly unfamiliar with the provisions in parts 76 and 80 of EDGAR that apply to the early intervention records, including, for example, the recordkeeping requirements in 34 CFR 80.42(b).  <u>Changes:</u> We have revised the citation to GEPA provisions in §303.416 to refer to 20 U.S.C. 1232f.</p>		

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<p><b><u>§303.540 Data collection.</u></b>            (a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—            (1) Include a process for—            (i) Collecting data from various agencies and service providers in the State;            (ii) Making use of appropriate sampling methods, if sampling is permitted; and            (iii) Describing the sampling methods used, if reporting to the Secretary; and            (2) Provide for reporting data required under section 618 of the Act that relates to this part.</p> <p>(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.</p>	<p><b><u>§303.701 State performance plans and data collection.</u></b>            (a) <u>General.</u> Each State must have in place the performance plan that meets the requirements described in section 616 of the Act, is approved by the Secretary, includes an evaluation of the State's efforts to implement the requirements and purposes of Part C of the Act and a description of how the State will improve implementation, and includes measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §303.700(d).</p> <p>(b) Each State must review its State performance plan at least once every six years and submit any amendments to the Secretary.</p> <p>(c) <u>Data collection.</u> (1) Each State must collect valid and reliable information as needed to report annually to the Secretary under §303.702(b)(2) on the indicators established by the Secretary for the State performance plans.            (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects data for a particular indicator through State monitoring or sampling, the State must collect and report data on those indicators for each EIS program at least once during the six-year period of the State performance plan.            (3) Nothing in Part C of the Act or these regulations may be construed to authorize the development of a nationwide database of</p>	<p><b><u>§303.701 State performance plans and data collection.</u></b>            (a) <u>General.</u> Each State must have in place a performance plan that meets the requirements described in section 616 of the Act; is approved by the Secretary; and includes an evaluation of the State's efforts to implement the requirements and purposes of Part C of the Act, a description of how the State will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §303.700(d).</p> <p>(b) <u>Review of State performance plan.</u> Each State must review its State performance plan at least once every six years and submit any amendments to the Secretary.</p> <p>(c) <u>Data collection.</u> (1) Each State must collect valid and reliable information as needed to report annually to the Secretary under §303.702(b)(2) on the indicators established by the Secretary for the State performance plans.            (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects data for a particular indicator through State monitoring or sampling, the State must collect and report data on those indicators for each EIS program at least once during the six-year period of a State performance plan.            (3) Nothing in Part C of the Act or these regulations may be construed to</p>

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	personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.	authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.
<p><b>State performance plans and data collection (§303.701)</b></p> <p><u>Comment:</u> One commenter supported the requirement in §303.701(a) that each State include in its SPP a description of how the State will improve its implementation of Part C requirements. Another commenter supported the requirement in §303.701(c) that each State collect valid and reliable information on all SPP indicators. This commenter requested that the regulations also require each State to document the process used to verify the validity and reliability of the data provided on the SPP indicators.</p> <p><u>Discussion:</u> As noted elsewhere in this preamble, the Secretary has established 14 indicators in the SPP for Part C of the Act. One of these indicators (Indicator 14) requires each State to demonstrate that it reports timely and accurate data under the reporting requirements in section 618 of the Act and in the SPP and APR. Further, to ensure valid and reliable data for each SPP/APR indicator, States must report data in their SPP/APR submissions according to required measurements and from specified data sources. In addition to the percentages required in the indicators, lead agencies are required to provide the actual numbers used in their calculations. The Department’s position is that these SPP/APR requirements address the commenter’s concern that States document how they verify the validity and reliability of the data they report under the indicators in their APRs.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> One commenter recommended that the Secretary not be permitted to impose additional data collection requirements on States unless existing data collection elements are eliminated.</p> <p><u>Discussion:</u> The majority of the information collected by the Secretary under Part C of the Act is required by sections 616 and 618 of the Act (as those sections are modified by section 642 of the Act). Restricting the Secretary’s ability to collect information, as requested by the commenter, is not appropriate because the Secretary needs the flexibility to collect information necessary to ensure the effective operation and implementation of the Part C program. This responsibility comes not only from the Act, but also from the Department’s inherent authority to ensure that the laws it is charged with implementing are carried out. Additionally, as discussed elsewhere in this preamble, the Department is required to solicit public comments through the OMB public review process whenever it intends to remove or add information collections.</p> <p><u>Changes:</u> None.</p>		
	<p><b>§303.702 State use of targets and reporting.</b></p> <p>(a) <u>General.</u> Each State must use the targets established in the State’s performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing Part C of the Act.</p> <p>(b) <u>Public reporting and privacy.</u></p>	<p><b>§303.702 State use of targets and reporting.</b></p> <p>(a) <u>General.</u> Each State must use the targets established in the State’s performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing Part C of the Act.</p> <p>(b) <u>Public reporting and privacy.</u></p>

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	<p>(1) <u>Public report.</u> (i) Subject to paragraph (b)(1)(ii) of this section, the State must--</p> <p>(A) Report annually to the public on the performance of each EIS program located in the State on the targets in the State's performance plan no later than 60 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and</p> <p>(B) Make the State's performance plan under §303.701(a), annual performance reports under paragraph (b)(2) of this section, and the State's annual reports on the performance of each EIS program under paragraph (b)(1)(i)(A) of this section available through public means, including by posting on the Web site of the lead agency, distribution to the media, and distribution to EIS programs.</p> <p>(ii) If the State, in meeting the requirements of paragraph (b)(1)(i)(A) of this section, collects data through State monitoring or sampling, the State must include in its public report on EIS programs under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each EIS program and the date the data were collected.</p> <p>(2) <u>State performance report.</u> The State must report annually to the Secretary on the performance of the State under the State's performance plan.</p> <p>(3) <u>Privacy.</u> The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data</p>	<p>(1) <u>Public report.</u> (i) Subject to paragraph (b)(1)(ii) of this section, the State must--</p> <p>(A) Report annually to the public on the performance of each EIS program located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and</p> <p>(B) Make the State's performance plan under §303.701(a), annual performance reports under paragraph (b)(2) of this section, and the State's annual reports on the performance of each EIS program under paragraph (b)(1)(i)(A) of this section available through public means, including by posting on the Web site of the lead agency, distribution to the media, and distribution to EIS programs.</p> <p>(ii) If the State, in meeting the requirements of paragraph (b)(1)(i)(A) of this section, collects data through State monitoring or sampling, the State must include in its public report on EIS programs under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each EIS program and the date the data were collected.</p> <p>(2) <u>State performance report.</u> The State must report annually to the Secretary on the performance of the State under the State's performance plan.</p> <p>(3) <u>Privacy.</u> The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about</p>

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	are insufficient to yield statistically reliable information.	individual children, or where the available data are insufficient to yield statistically reliable information.

**State use of targets and reporting (§303.702)**

**Comment:** One commenter recommended that §303.702(a), which requires each State to use the targets established in the SPP to analyze the performance of each EIS program in implementing Part C of the Act, be amended to require each lead agency to define geographically the local lead agency or EIS program.

**Discussion:** There is no local lead agency under Part C of the Act, but rather a State lead agency that is designated by the Governor in accordance with section 635(a)(10) of the Act to be responsible for implementing Part C of the Act in the State. The lead agency implements the requirements of a statewide system under Part C of the Act either by using its own personnel, through contracts with EIS providers or through other arrangements, such as interagency agreements, with State public agencies.

Section 303.12 defines EIS providers as entities or individuals that provide early intervention services under Part C of the Act. As clarified in section 642(2) of the Act, EIS providers often serve a comparable role under Part C of the Act that LEAs serve under Part B of the Act. The definition of an EIS program, in contrast, is an entity designated by the lead agency to be responsible for performance reporting to the Secretary and the public under §§303.700 through 303.702 (see the definition of EIS program in §303.11). Although we expect, in most cases, that the lead agency will designate its EIS programs on a geographic basis (e.g., counties, parishes, and health or school districts), it is not always feasible to do so. Therefore, it is the Department’s position that it is not necessary to require States to make EIS program designations by geographic areas. States currently administer their Part C programs through a variety of administrative structures. For example, multiple EIS providers may provide services in one or more overlapping geographic areas. Therefore, States cannot be expected to revise their existing administrative structures for the sole purpose of reporting performance data by geographic areas within a State.

**Changes:** None.

**Comment:** Section 303.702(b)(1)(i)(A) requires that the lead agency report annually to the public on the performance of each EIS program located in the State in relation to the targets in its SPP no later than 60 days following the State’s submission of its APR to the Secretary. One commenter supported this 60-day timeline. Another commenter disagreed, stating that the 60-day reporting timeline is not realistic. This commenter recommended that the lead agency be required to report to the public as soon as practicable, but not later than the end of the calendar year in which the State’s APR is due to the Secretary.

**Discussion:** We believe that it is important for the public to be informed in a timely manner regarding the performance of each EIS program in meeting the targets in the State’s SPP. States are generally required to submit their APRs to the Secretary by February 1<sup>st</sup> following the end of the Federal fiscal reporting period. For example, the FFY 2006 APR, which requires data to be reported for the period July 1, 2006 to June 30, 2007 for the FFY 2006 reporting year, was due February 1, 2008. Some data reported in the February 2008 APR submission were collected by States in the fall of 2006. To ensure the usefulness of these data, we agree with the commenter that States must make the data publicly available as soon as practicable.

We also agree with the commenter that additional time may be needed beyond the 60 days from the date the State submits its APR. We consider 120 days to be an appropriate timeframe for States to develop and make public the reports on the performance of EIS programs on the targets in the SPP and have made this change in the regulations. With this change, a State will have four months before the State reports its APR

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<p>data by EIS program to the public. Given that States will have reported to the public on this information at least two times prior to the effective date of these regulations, the Department’s position is that States will already have effective and efficient systems in place to report within the 120-day timeframe.</p> <p><u>Changes:</u> We have revised the timeline in §303.702(b) for the State to report annually to the public on the performance of each EIS program located in the State on the targets in the State’s performance plan to be “as soon as practicable but no later than 120 days” following the State’s APR submission.</p>		
	<p><b><u>§303.720 Data requirements--general.</u></b>            (a) The lead agency must annually report to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.</p> <p>(b) The lead agency must submit the report to the Secretary in the manner prescribed by the Secretary.</p>	<p><b><u>§303.720 Data requirements--general.</u></b>            (a) The lead agency must annually report to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.</p> <p>(b) The lead agency must submit the report to the Secretary in the manner prescribed by the Secretary.</p>
	<p><b><u>§303.721 Annual report of children served--report requirement.</u></b>            (a) For the purposes of the annual report required by section 618 of the Act and §303.720, the lead agency must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report must include--            (1) The number and percentage of infants and</p>	<p><b><u>§303.721 Annual report of children served--report requirement.</u></b>            (a) For the purposes of the annual report required by section 618 of the Act and §303.720, the lead agency must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report must include--            (1) The number and percentage of infants and</p>

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	<p>toddlers with disabilities in the State, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to it by tribes, tribal organization, and consortia under §303.731(e)(1));</p> <p>(2) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons; and</p> <p>(3) The number and percentage of at-risk infants and toddlers (as defined in section 632(1) of the Act) by race and ethnicity and who are receiving early intervention services under Part C of the Act.</p> <p>(b) If a State adopts the option under section 635(c) of the Act and §303.211 to make services under this part available to children ages three and older, the State must submit to the Secretary a report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for those children to continue to receive early intervention services.</p> <p>(c) The number of due process complaints filed under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.</p>	<p>toddlers with disabilities in the State, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to it by tribes, tribal organizations, and consortia under §303.731(e)(1));</p> <p>(2) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and</p> <p>(3) The number and percentage of at-risk infants and toddlers (as defined in section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.</p> <p>(b) If a State adopts the option under section 635(c) of the Act and §303.211 to make services under this part available to children ages three and older, the State must submit to the Secretary a report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for those children to continue to receive early intervention services.</p> <p>(c) The number of due process complaints filed under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.</p>

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<p><b><u>Annual report of children served--report requirement (§303.721)</u></b></p> <p><u>Comment:</u> One commenter asked the Department to clarify the child count reporting requirements in §303.721. Specifically, the commenter asked for clarification on whether States are required to pick one date between October 1st and December 1st and report the count for that date or report cumulatively on every child served between those two dates. Two other commenters stated that the data reported to Congress should not be based on point-in-time counts, but on cumulative counts of all infants and toddlers served during the entire program fiscal year.</p> <p>One commenter recommended that the Department establish a single due date for all reports that are required to be submitted annually under section 618 of the Act and §303.721. Another commenter supported the language in this section because it provides flexibility for States.</p> <p><u>Discussion:</u> Section 303.721 describes the annual report of children served under Part C of the Act that is required by section 618 of the Act (as modified by section 642 of the Act). Section 303.721 provides States with the flexibility to determine the specific date between October 1st and December 1st on which to collect the State’s child count and service settings data under Part C of the Act. States must choose a date between October 1st and December 1st of each year and collect point-in-time child count and settings data on that date. To ensure consistency, States are encouraged to use the same date from year to year. We believe it is appropriate to continue to require States to report point-in-time data on child count and settings because the Department has required point-in-time data under Part C of the Act since 1992. Revising this standard would impose burdens on States as they would need to redesign their data collection systems, and it also would affect the Department’s ability to compare data from multiple years and develop trend data. While States are not required to submit cumulative child count data, they may provide such additional information in the child count data information collection form (Table 1 -- Report of Children Receiving Early Intervention Services in Accordance with Part C).</p> <p>Concerning combining due dates for State submissions required under section 618 of the Act and §303.721, States currently have two submission dates, one for child count data and service setting data and a second for child exit and dispute resolution data. The child count and service setting data are point-in-time collections taken on a date between October 1 and December 1 and due the following February 1<sup>st</sup>. The child exit and dispute resolution data are collected throughout the year and due the November 1<sup>st</sup> following the end of the reporting year (July 1 through June 30). Combining the due dates for these collections is not appropriate since they are different types of collections. Regulating on the due dates of these data requirements is not necessary because these data collections are reviewed through the OMB data collection process. Nothing prevents a State from collecting child count and service setting data at the same point in time for a particular reporting period if that reduces the State’s burden in the data collection process.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> One commenter recommended that data elements for the annual report of children served be merged and condensed. One commenter requested that lead agencies be required to track: (1) premature infants who, at a later date, receive early intervention services but could have been served earlier if the State had presumptive eligibility criteria; and (2) families who decline services due to cost-sharing requirements.</p> <p><u>Discussion:</u> Following the amendments to the Act in 2004, the Department examined all of the then-existing Part C data collection requirements under section 618 of the Act. Based on that examination, the Department eliminated two collections (reporting on numbers of service personnel and types of early intervention services) for the section 618 data collection. It is not appropriate to condense or merge additional data elements at this time because the data currently collected are either (1) required by section 618 of the Act, or (2) expressly authorized under the Act and necessary for the Secretary to ensure proper implementation of the Part C program and to measure program performance under the Government Performance and Results Act of 1993.</p>		

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<p>We decline to add, as requested by the commenter, data collection requirements for the Part C program in these regulations at this time because we are sensitive to the concerns of States and local entities about increasing data collection burden. We believe that the data States must collect under the regulations will enable the Secretary to effectively monitor and measure the implementation of the Part C program. We are not convinced that the benefits associated with collecting additional data, including that data suggested by the commenter, would outweigh the burden on States and local entities required to collect the data.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> One commenter recommended that §303.721(b) be deleted because the tracking and reporting requirements in the section relate to children ages three and older who are eligible for services under section 619 of Part B of the Act and should be the responsibility of the Part B program.</p> <p><u>Discussion:</u> Section 303.721(b) provides that if a State adopts the option under section 635(c) of the Act and §303.211 to make early intervention services under Part C of the Act available to children ages three and older, the lead agency must report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for such children to continue to receive early intervention services. Therefore, because these children are being served under Part C of the Act, it is appropriate for the State Part C program, and not the State Part B program, to be responsible for reporting these data under section 618(a)(1)(B) and 635(c)(3) of the Act and §303.721(b).</p> <p><u>Changes:</u> None.</p>		
	<p><b><u>§303.722 Data reporting.</u></b></p> <p>(a) <u>Protection of identifiable data.</u> The data described in section 618(a) of the Act and in §303.721 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.</p> <p>(b) <u>Sampling.</u> The Secretary may permit States and outlying areas to obtain data in section 618(a) of the Act through sampling.</p>	<p><b><u>§303.722 Data reporting.</u></b></p> <p>(a) <u>Protection of identifiable data.</u> The data described in section 618(a) of the Act and in §303.721 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.</p> <p>(b) <u>Sampling.</u> The Secretary may permit States and outlying areas to obtain data in section 618(a) of the Act through sampling.</p>
	<p><b><u>§303.724 Annual report of children served--other responsibilities of the lead agency.</u></b></p> <p>In addition to meeting the requirements of §§303.721 through 303.723, the lead agency must--</p> <p>(a) Establish procedures to be used by EIS providers in counting the number of children</p>	<p><b><u>§303.724 Annual report of children served--other responsibilities of the lead agency.</u></b></p> <p>In addition to meeting the requirements of §§303.721 through 303.723, the lead agency must conduct its own child count or use EIS providers to complete its child count. If the lead agency uses EIS providers to complete its child count, then the lead agency must--</p>

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	<p>with disabilities receiving early intervention services;</p> <p>(b) Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);</p> <p>(c) Obtain certification from each EIS provider that an unduplicated and accurate count has been made;</p> <p>(d) Aggregate the data from the count obtained from each EIS provider, and prepare the reports required under §§303.721 through 303.723; and</p> <p>(e) Ensure that documentation is maintained to enable the State and the Secretary to audit the accuracy of the count.</p>	<p>(a) Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;</p> <p>(b) Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);</p> <p>(c) Obtain certification from each EIS provider that an unduplicated and accurate count has been made;</p> <p>(d) Aggregate the data from the count obtained from each EIS provider and prepare the report required under §§303.721 through 303.723; and</p> <p>(e) Ensure that documentation is maintained to enable the State and the Secretary to audit the accuracy of the count.</p>
<p><b><u>Annual report of children served--other responsibilities of the lead agency (§303.724)</u></b></p> <p><u>Comment:</u> One commenter expressed support for §303.724, citing the importance of having States establish procedures to verify the accuracy of the data they collect and report. One commenter recommended that this section be amended to be consistent with section 618(b)(2) of the Act, which provides that the Secretary may permit States to obtain the data required under section 618 of the Act through sampling, to avoid a duplication of effort in States that sample to obtain section 618 data. Several commenters suggested that complying with the requirements in §303.724 would place a significant burden on States and their data collection contractors. One commenter stated that some States use electronic systems to collect and track Part C data and that these systems do not necessarily rely on EIS providers to submit child counts to the lead agency, and thus, an EIS provider could not be expected to certify child count data. The commenter recommended that EIS provider certification only be required when applicable to a State’s procedures for reporting unduplicated and accurate child counts.</p> <p><u>Discussion:</u> Collection of accurate, unduplicated data begins at the EIS provider level. Therefore, requiring the lead agency to establish procedures that must be implemented by EIS providers, including certifications about the accuracy of the data and the dates by which EIS providers must report that data to the lead agency, is reasonable and necessary. The Department’s position is that §303.724 is consistent with the</p>		

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<p>requirement in section 618 of the Act that allows States to use sampling when collecting section 618 data because, pursuant to the OMB-approved information collection forms for section 618 State-reported data, States are required to ensure collection of accurate data when they use sampling and have a plan approved by the Department prior to collecting data through sampling.</p> <p>We agree with commenters that in some States with electronic systems for collecting and maintaining data, the State lead agency does not use EIS providers to collect State child count data. However, in those States where EIS providers still play a key role in collecting State child count data, it is appropriate for each EIS provider to certify that the data it reports to the lead agency are unduplicated and accurate. Therefore, we have revised §303.724 to only require that, as one of the commenters suggested, the EIS provider certify the accuracy and nonduplication of data that the EIS provider is required to collect and report to the lead agency.</p> <p><u>Changes:</u> We have added to the lead-in to §303.724 the following language “conduct its own child count or use EIS providers to complete its child count. If the lead agency uses EIS providers to complete its child count, then the lead agency must:”</p> <p><u>Allocation of Funds</u></p>		