result in the excessive distribution of paper.

Discussion: Neither § 300.602(b)(1)(i)(B) nor section 616(b)(2)(C)(ii)(I) of the Act requires the distribution of paper copies of the SPP and APRs to the media and public agencies. Therefore, we do not agree that implementing this requirement would result in an excessive distribution of paper copies of these reports.

Changes: None.

Notifying the Public of Enforcement Actions (§ 300.606)

Comment: One commenter requested that the Department require SEAs to report to the public any enforcement actions taken against their LEAs pursuant to § 300.604 because doing so would be consistent with publication of enforcement actions against the State by the Secretary of Education.

Discussion: Neither the Act nor these regulations require SEAs to publicly report on enforcement actions taken against LEAs in the State. The decision to report to the public on enforcement actions imposed on an LEA is best left to each State to decide because individual LEA circumstances vary across each State and no one set of requirements is appropriate in every situation. For example, publicly reporting enforcement actions taken against an LEA with limited numbers of children with disabilities would not be appropriate if that public reporting would in any way reveal personally identifiable information of children with disabilities in that LEA. However, in the interest of transparency and public accountability, the Department encourages States, where appropriate, to report to the public on any enforcement actions taken against LEAs under § 300.604.

Changes: None.

Comment: One commenter stated that increasing public accountability is important and requested that the regulations require States and districts to publicly post and make available to the public the Department's SPP/APR determination letters as well as Federal- or State-required corrective actions and enforcement actions.

Discussion: We encourage States to post all information, including corrective actions and enforcement actions related to their SPP/APR, on their Web sites. However, regulating on this issue, as the commenter requested, is not necessary because this information is posted on the Department's Web site when the Department responds to States' SPP/APR submission. These response letters are typically issued in June of each year following the States' submission of their SPP/APR and posted on the Department's Web site at: *http://www.ed.gov/fund/data/report/idea/partbspap/index.html.*

Changes: None.

Comment: One commenter requested that the phrase ''proposing to take'' in proposed § 300.606 be clarified or eliminated. The commenter recommended using the language from page 27694 of the NPRM stating that a State must provide public notice when the Secretary ''takes'' an enforcement action as a result of annual determinations under § 300.604.

Discussion: The language in § 300.606 is accurate and we decline to make the requested change for the following reasons. Section 300.606 implements section 616(e)(7) of the Act, and requires a State that has received notice, under section 616(d)(2) of the Act, of a pending enforcement action against the State under section 616(e) of the Act to provide public notice of the pendency of that action. Pursuant to section 616(d)(2)(B) of the Act, a State that has been determined to ''need intervention'' for three consecutive years or ''need substantial intervention'' in implementing the requirements of Part B of the Act, faces enforcement actions and is entitled to reasonable notice and an opportunity for a hearing on such a determination. If a State requests a hearing on a determination, the Department's final determination would not be made until after that hearing. In this situation, the enforcement action also would depend on the outcome of the hearing and final determination. Therefore, in a case such as this, the public must be notified that the Secretary is proposing to take, but has not yet taken, an enforcement action pursuant to § 300.604.

Changes: None.

Comment: One commenter stated that the changes in proposed § 300.606 are unnecessary because current § 300.606 already requires the public to be notified of an action ''taken pursuant to § 300.604.'' The commenter stated that specifying in these regulations that ''public notice'' consists of posting information on a Web site and distributing information to the media and public agencies is unnecessary to ensure compliance with IDEA.

Discussion: We disagree with the commenter. We have received numerous inquiries regarding current § 300.606 and whether this provision requires public notification of each determination of ''needs assistance'', ''needs intervention'' and ''needs substantial intervention'' or whether it merely requires States to notify the public of enforcement actions taken by the Secretary. We intend for § 300.606, as proposed in the NPRM, to clarify the public reporting requirements by indicating that a State must provide public notice of any enforcement action taken by the Secretary pursuant to § 300.604 by posting the notice on the SEA's Web site and distributing the notice to the media and through public agencies. This clarification is further designed to minimize a State's reporting burden while providing the public with appropriate notice of the actions taken by the Secretary as a result of the determinations required by section 616(d) of the Act and § 300.603. For these reasons, we decline to make any regulatory changes based on this comment.

Changes: None.

Subgrants to LEAs (§ 300.705(a))

Comment: A few commenters supported the proposed changes to § 300.705(a) clarifying that States are required to make a subgrant under section 611(f) of the Act to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities, because all LEAs have a responsibility to identify and provide services to children with disabilities. The commenters stated that the Department should ensure that a newly created LEA not serving any children with disabilities in the first year would still be eligible for some IDEA funds (e.g., based on enrollment and the number of students in poverty) to allow the new LEA to conduct child find activities and serve any students who are identified as eligible for special education services later in the year.

Some commenters opposed this provision and recommended that given the current level of IDEA Federal funding, funds should be used for direct services for students who are currently eligible for special education and related services. Additionally, one of these commenters expressed concern that § 300.705(a) would require revising current State and local funding processes, which would place accounting and administrative burdens on both State and local systems. A few commenters stated that the proposed change to § 300.705(a) is unnecessary because States have been successful in ensuring that small school districts receive allocations when they enroll a student with a disability. Lastly, one commenter suggested that the proposed changes could be handled through administrative guidance, rather than regulations.

Discussion: Section 300.705(a), consistent with section 611(f)(1) of the Act, requires each State to provide subgrants to LEAs, including public charter schools that operate as LEAs in the State, that have established their eligibility under section 613 of the Act. Section 613(a) of the Act states that an LEA is eligible for assistance under Part B of the Act for a fiscal year if the LEA submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in section 613(a) of the Act. There is no requirement in section 613(a) of the Act that an LEA must be serving children with disabilities for an LEA to be eligible for a subgrant. Requiring States to make a subgrant to all eligible LEAs, including public charter schools that operate as LEAs, will ensure that LEAs have Part B funds available if they are needed to conduct child find activities or to serve children with disabilities who subsequently enroll or are identified during the year. Regardless of the level of funding made available for the Part B program under the Act, neither the Act nor the implementing regulations require that Part B funds be spent only for direct services for students who are currently eligible for special education and related services. As in the past, LEAs may use Part B funds for direct services to children with disabilities or for other permissible activities, such as child find, professional development, and more recently, for coordinated early intervening services in accordance with § 300.226.

The Grants to States and Preschool Grants for Children with Disabilities Programs are forward-funded programs and LEAs generally receive a subgrant at the beginning of the school year to cover the costs of providing special education and related services to children with disabilities during the school year. Ensuring that all LEAs, including those that have no children with disabilities enrolled at the beginning of the school year, have section 611 and section 619 funds available will enable LEAs to meet their responsibilities under the Act during the school year if a child with a disability subsequently enrolls or a child is subsequently identified as having a disability.

We understand the commenter's concern that this change in the regulations may require States to revise their procedures for distributing Part B funds, and that there may be some administrative burden associated with these changes. However, the importance of ensuring consistency across States concerning the distribution of section 611 and section 619 funds outweighs the potential administrative burden. As previously stated in this preamble, making these funds available to LEAs is critical to ensure that each LEA is able to fulfill its responsibilities under the Act. We agree with commenters that some States have been successful in ensuring small LEAs receive allocations when they enroll students with disabilities after the school year has begun. However, given that the Act and the implementing regulations are silent on whether an SEA must make a subgrant to an LEA that is not serving any children with disabilities, clarification is necessary in §§ 300.705(a) and 300.815 to remove any ambiguity in this regard. Revising the regulations, rather than remaining silent on the issue or issuing guidance, will ensure that all States treat LEAs in the same manner, including those LEAs that are not serving any children with disabilities, when allocating Part B funds.

Changes: None.

Comment: A few commenters recommended that the proposed regulations be modified to give States the option of making subgrants to eligible LEAs, including public charter schools that operate as LEAs, when an LEA is not currently serving any students with disabilities. The commenters stated that States have different needs and some have policies in place to help new charter schools meet their child find obligations.

Discussion: We recognize that States are in a unique position to assist new LEAs, including charter schools that operate as LEAs. However, requiring States to make a subgrant under section 611(f) and section 619(g) of the Act to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities, ensures consistency across States and an equitable distribution of Part B funds. We also recognize that some States may not assign child find responsibility to public charter schools that operate as LEAs. However, all LEAs, including public charter schools that operate as LEAs, have other responsibilities under the IDEA that may need to be carried out during the school year, such as serving a child with a disability who is identified during the school year. It is the Department's position that it is necessary to require States to make (rather than give them the option of making) subgrants to eligible LEAs not currently serving any students with disabilities, to ensure that all States treat LEAs in the same manner, including those LEAs that are not serving any children with disabilities, when allocating Part B funds.

Changes: None.

Comment: One commenter recommended that the Department withdraw the proposed changes and add, if necessary, a new paragraph in §§ 300.705 and 300.815 that would allow a new or expanded charter school to receive an allocation under §§ 300.705 and 300.815, respectively, if the school demonstrates to the SEA that the school is serving children with disabilities in accordance with the requirements of Part B of the Act within the time frame established by the SEA under 34 CFR 76.788(b)(2)(i), which provides that once a charter school LEA has opened or significantly expanded its enrollment, the charter school LEA must provide actual enrollment and eligibility data to the SEA at a time the SEA may reasonably require.

Discussion: We do not agree that the change suggested by the commenter is necessary. An eligible public charter school LEA has the responsibility to meet the requirements of the Act during the school year regardless of whether the LEA is serving children with disabilities at the time the subgrant is calculated based on actual enrollment and eligibility data. In recognition of these responsibilities, requiring an SEA to make an initial subgrant to a new or expanded public charter school LEA is appropriate, even if it is not serving any children with disabilities at the time actual enrollment and eligibility data are provided to the SEA.

Changes: None.

Reallocation of LEA Funds (§ 300.705(c))

Comment: One commenter supported proposed § 300.705(c). Another commenter requested clarification as to the types of activities that could be supported with the Part B funds that an LEA does not need to provide FAPE, if a State chooses to retain the funds, instead of reallocating the funds to other LEAs in the State. One commenter recommended that the State be authorized to reallocate the funds intended to be allocated to an LEA or retain them for State-level activities only after consulting with the LEA to assess the LEA's needs and after determining that the LEA does not need the funds.

Discussion: A State, under § 300.705(c), may use funds from an LEA that does not need the funds for any allowable activities permitted under § 300.704, to the extent that the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.704(a) and (b). To the extent the State has not reserved the maximum

amount for administration, the State may use those funds for administrative costs consistent with § 300.704(a). To the extent the State has not reserved the maximum amount of funds available for other State-level activities, the State may use those funds for any allowable activities permitted under § 300.704(b)(3) and (4) including, but not limited to, technical assistance, personnel preparation, and assisting LEAs in providing positive behavioral interventions and supports. Additionally, if the State has opted to finance a high-cost fund under § 300.704(c) and has not reserved the maximum amount available for the fund, the State may use those funds for the LEA high-cost fund consistent with § 300.704(c).

In response to the commenter that recommended that the State be permitted to reallocate funds only after consulting with the LEA to assess the LEA's needs, nothing in these regulations prohibits a State from working with an LEA to assess the needs of the LEA before determining that the LEA will not be able to use the funds prior to the end of the carryover period. However, we believe it would be burdensome and unnecessary to require that an SEA consult with an LEA to assess the LEA's needs prior to a reallocation of the LEA's remaining unobligated funds. The LEA would have already had sufficient time and incentive during the carryover period of availability to assess its own needs and make appropriate obligations for needed expenditures.

Changes: None.

Subgrants to LEAs (§ 300.815)

Comment: One commenter supported the changes proposed to § 300.815. Another commenter opposed this provision, which would require States to allocate funds under section 619 of the Act to an LEA even if the LEA is not serving children with disabilities; this commenter stated that the funds should be directed toward serving preschool children with disabilities.

Discussion: Section 300.815, consistent with section 619(g) of the Act, requires that each State provide subgrants to LEAs, including public charter schools that operate as LEAs in the State, that are responsible for providing education to children aged three through five years and have established their eligibility under section 613 of the Act. Section 613(a) of the Act states that an LEA is eligible for assistance under Part B of the Act for a fiscal year if the LEA submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in section 613(a) of the Act. There is no requirement in section 613(a) of the Act that an LEA must be serving preschool children with disabilities for an LEA to be eligible for a subgrant. Requiring States to make a subgrant to all eligible LEAs responsible for providing education to preschool children, including public charter schools that operate as LEAs, will help ensure that LEAs have Part B funds available if they are needed to conduct child find activities or to serve preschool children with disabilities who subsequently enroll or are identified during the school year. As in the past, LEAs may use section 619 funds for direct services to preschool children with disabilities or for other permissible activities, such as child find and professional development.

Changes: None.

Reallocation of LEA Funds (§ 300.817)

Comment: One commenter supported the changes reflected in proposed § 300.817. Another commenter opposed the changes, stating that the time and effort needed for States to monitor LEAs as provided in § 300.817 could be better used elsewhere.

Discussion: We understand the commenter's concern that this provision will require States to revise their procedures for monitoring the obligation of funds. However, requiring an SEA, after it distributes Part B funds to an LEA that is not serving any children with disabilities, to determine, within a reasonable period of time prior to the end of the carryover period in § 300.709, whether the LEA has obligated those funds will prevent the funds from lapsing and enable the State to use those funds for other purposes. Therefore, the benefit of this provision outweighs the potential administrative burden.

Changes: None.

Executive Order 12866

Costs and Benefits

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Secretary has determined that this regulatory action is significant under section 3(f)(4) of the Executive Order.

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action as required by Executive Order 12866.

Summary of Public Comments

The Department received one comment on the analysis of costs and benefits included in the NPRM. These commenters suggested that the Department should only propose new regulations in conjunction with the reauthorization of the Act because any subsequent regulations would require States to amend their regulations and this process is expensive and time consuming. These comments were considered in conducting the analysis of the costs and benefits of the final regulations. The Department's estimates and assumptions included in the analysis are described in the following paragraphs.

1. Summary of Costs and Benefits

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined are necessary to administer these programs effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs. We also have determined that this regulatory action will not unduly interfere with State, local, private, and tribal governments in the exercise of their governmental functions.

The following is an analysis of the costs and benefits of the most significant changes reflected in these final regulations. In conducting this analysis, the Department examined the extent the changes made by these regulations add to or reduce the costs for States, LEAs, and others, as compared to the costs of implementing the current Part B program regulations. Variations in practice from State to State and a lack of pertinent data make it difficult to predict the effect of these changes. However, based on the following analysis, the Secretary has concluded

that the changes reflected in the final regulations will not impose significant net costs on the States, LEAs, and others.

Parental Revocation of Consent for Special Education Services (§§ 300.9 and 300.300)

Section 300.300(b)(4) allows a parent, at any time subsequent to the initial provision of special education and related services, to revoke consent in writing for the continued provision of special education and related services. Once the parent revokes consent for special education and related services the public agency must provide the parent with prior written notice consistent with § 300.503. The final regulations do not allow public agencies to take steps to override a parent's refusal to consent to further services.

We do not agree with the commenters who recommended that the Department postpone making these regulatory revisions until the next reauthorization of IDEA. The changes reflected in §§ 300.9 and 300.300 were made in response to comments received on the consent provisions proposed in the notice of proposed rulemaking for Part B of the Act that was published in the **Federal Register** on June 21, 2005 (70 FR 35782), including comments requesting that we address situations when a child's parent wants to discontinue special education and related services because he or she believes that the child no longer needs those services. In response to these comments, we indicated that we would solicit comment on this suggested change in a subsequent notice of proposed rulemaking. While States may have to revise some of their regulations to conform with the changes in §§ 300.9 and 300.300, the provisions related to parental revocation of consent may reduce burden on, and costs to, LEAs by relieving them of the obligation to override a parent's refusal to consent subsequent to the initiation of special education services through informal means or through due process procedures. Therefore, the Department's position is that allowing parents to revoke consent for special education and related services will not have a significant cost impact on States, LEAs, or others.

2. Clarity of the Regulations

The Department received one comment concerning the clarity of the regulations proposed in the NPRM. The commenter stated that the regulations are written at an advanced reading level, not written in plain language, and are in a font that is too small. We have reviewed the regulations to ensure that they are easy to understand and written in plain language. Additionally, the final regulations will be posted on the Department's Web site and the Department's Web site meets the accessibility standards included in section 508 of the Rehabilitation Act of 1973, as amended.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), we have assessed the information collections in these regulations that are subject to review by the Office of Management and Budget. Based on this analysis, the Secretary has concluded that these amendments to the Part B IDEA regulations do not impose additional information collection requirements. The changes to § 300.602(b)(1)(i)(B) add the State's APR to the list of documents that a State must make available through public means, and specify that the SEA must make the State's SPP/APR and the State's annual reports on the performance of each LEA in the State available to the public by posting the documents on the SEA's Web site and distributing the documents to the media and through public agencies. Each State already is required to report to the Secretary on the annual performance of the State as a whole in the APR. We expect the additional time for reporting to the public to be minimal because the APR is a completed document. Additionally, this reporting requirement is within the established reporting and recordkeeping estimate of current information collection 1820–0624 (71 FR 46751–46752). States already are required by current § 300.602(a) and (b)(1)(i)(A) to analyze the performance of each LEA on the State's targets, and to report annually to the public on the performance of each LEA in meeting the targets. Requiring that these documents be posted on the SEA's Web site and be distributed to the media and through public agencies merely adds specificity about the means of public reporting. The additional time for reporting to the public through these means will be minimal and is within the established reporting and recordkeeping estimate of current information collection 1820–0624 (71 FR 46751–46752).

Intergovernmental Review

This program is subject to requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of Federal financial assistance.

In accordance with this order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM, and in accordance with section 411 of GEPA, 20 U.S.C. 1221e–4, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: November 21, 2008.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 1. The authority citation for part 300 continues to read as follows: