Rules and Regulations

Federal Register
Vol. 58, No. 37
Friday, February 26, 1993

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Drug and Other Harmful Substance Abuse Information and Referrals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to comply with the mandates of Section 3201 of the Anti-Drug Abuse Act of 1988, enacted November 18, 1988. The rule delineates WIC's role in screening participants and making referrals to drug and other harmful substance abuse counseling, treatment and education programs. The rule also integrates responsibilities for the provision of information about the dangers of abusing drugs and other harmful substances into the nutrition education provided through the WIC Program. The intended effect of this rule is to increase WIC participants' access to information about the dangers of the use of drugs and other harmful substances during pregnancy and while breastfeeding and to facilitate referrals of participants for counseling and treatment, as appropriate.

In addition, this rule amends regulations governing the WIC Program to comply with the mandates of the Child Nutrition and WIC Reauthorization Act of 1989, enacted November 10, 1989, which requires WIC State agencies to include in their State plan of program operation and administration a plan to coordinate operations under the program with alcohol and drug abuse treatment services. This reauthorization also requires State agencies to ensure that each local agency maintains and makes available for distribution to WIC adult participants and applicants, as appropriate, a list of local resources for substance abuse counseling and treatment.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed under Executive Order 12291, and has been classified to be not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual impact on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, it was determined that this rule does not have a significant economic impact on a substantial number of small entities. State and local agencies will be most affected because of the additional program administration and education involved, however, the effect on these small entities will be minimal. Participants and applicants will be affected because of the distribution of the list of local resources for drug and other harmful substance abuse counseling and treatment. Pregnant, postpartum, and breastfeeding women and parents or caretakers of infants and children will be affected because of the provision of information about the dangers of the use of drugs and other harmful substances and the potential for referrals to counseling and treatment.

Paperwork Reduction Act

The reporting requirements established in the proposed rulemaking of March 30, 1990, in §§ 246.4, 246.7, and 246.11 were reviewed by the Office of Management and Budget under Control Number 0584–0386 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) No changes in the reporting/recordkeeping burden have been incorporated into the final rule.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows:

(1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18;

(2) Applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9;

(3) Sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and

(4) Procurement by State or local agencies—administrative appeal to the

extent available under 7 CFR 246.24(b) and 3016.36.

Background

This final rule has three purposes: the codification of the self-implementing provisions of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690); the augmentation, pursuant to the intent of the Child Nutrition Act of 1966, as amended, of the categories of substances which should be included in the WIC Program's drug abuse information and referral activities by adding a definition of the term "other harmful substances"; and the codification of the requirements of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147) pertaining to coordination of Program operations with alcohol and drug abuse counseling and treatment services and provision of abuse education.

Section 3201 of Public Law 100-690, the Anti-Drug Abuse Act of 1988, amended section 17 of the Child Nutrition Act of 1966 (CNA) to require enhanced emphasis on the provision of drug abuse information and referrals to WIC participants. The WIC Program provides supplemental foods, nutrition education, and health and social service referrals to program participants. Since enactment of Public Law 95-627 in 1978, program regulations have required that health and social service referrals include the referral of participants, when appropriate, to alcohol and drug abuse counseling. Section 3201 of Public Law 100-690 further emphasizes WIC's role in this area by mandating that the program provide drug abuse education. The legislation specifically defines drug abuse education for the WIC Program to be the provision of information concerning the dangers of drug abuse and referrals for drug abuse counseling and treatment.

For the purpose of this regulation, the Department is using the two terms "drug" and "other harmful substances." Use of the term "other harmful substances" allows this final regulation to augment the term "drug" as defined in Public Law 100-690. The term "other harmful substances" includes substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus. The use of both of these terms permits the Department's definitions to encompass the definition of the term "alcohol and other drugs" which is used by the Center for Substance Abuse Prevention (CSAP), U.S. Department of Health and Human Services, when communicating drug abuse prevention messages. In order to promote coordination at the Federal level and adhere to the CSAP guidelines, the term "alcohol and other drugs" is used interchangeably with the two terms "drug" and "other harmful substances" in many of the drug abuse prevention education materials developed by USDA. See the more extensive explanation and definitions which follow in this preamble in section 2. Additions to definitions (§ 246.2).

The document entitled Healthy People 2000: National Health Promotion and Disease Prevention Objectives, prepared by the Public Health Service, U.S. Department of Health and Human Services, contains a national strategy for improving the health of the nation. The objectives are organized under four broad categories—health promotion, health protection, preventive services, and surveillance and data systems. With its statutory mandate to serve as an adjunct to good health care, the WIC Program can play an important role in helping to achieve some of these long-term health objectives. Several of the health objectives relate directly to increasing abstinence from tobacco, alcohol and other drug use by pregnant women. Although there is no statutory requirement that the Department coordinate WIC Program goals with DHHS' health objectives, the Department does have a mandate to coordinate WIC Program operations with other health and social services programs, including many administered by DHHS. Therefore, in an effort to further improve the health status of WIC participants, the Department takes these objectives into consideration whenever feasible. The Department believes that the WIC Program can help attain the following Healthy People 2000 goals: promote smoking cessation during pregnancy; increase the proportion of service providers who screen for alcohol and other drug use problems and provide counseling and referral as needed; reduce the rate of fetal alcohol syndrome; and, increase abstinence from use of tobacco, alcohol, cocaine, and marijuana by pregnant women.

Low birth weight and prematurity, both of which are associated with an increased risk of infant mortality, are the most serious known consequences of maternal drug use. By providing drug abuse prevention information and referrals, the WIC Program can also contribute to the attainment of two additional Healthy People 2000 health objectives: Reduce the infant mortality rate; and reduce low birth weight and very low birth weight.

By improving the health of infants and children through the provision of nutritious, supplemental foods, health care referrals, nutrition education and information about the dangers to the fetus of drug and other harmful substance use, the WIC Program can assist in the attainment of the health component of the first of the President's six National Goals for Education: "By the year 2000, all children in America will start school ready to learn." One of the objectives of this goal is, "children will receive the nutrition and health care needed to arrive at school with healthy minds and bodies, and the number of low birth weight babies will be significantly reduced through enhanced pre-natal systems."

A child must be physically and emotionally healthy in order to learn. Ensuring that a child arrives at school healthy and well nourished and ready to learn begins with the health of their parents and the care the child received prenatally. Early, high-quality prenatal care, including attention to maternal nutrition, illness, smoking and alcohol or other drug use, is critical to improving pregnancy outcomes, especially low birth weight. For example, women who are substance abusers are less likely to get prenatal care. In addition, parents or caretakers of infants and children who use drugs or other harmful substances may not be able to provide their infants and young children with the nurturing necessary to enable them to be physically and emotionally healthy in order to learn and be successful in school.

The Department of Health and Human Services' Healthy Start initiative has the goal of reducing infant mortality by 50 percent in 5 years in 15 U.S. communities with extremely high infant mortality rates. Through grants administered by the Health Resources and Services Administration, medical and social services providers in these 15 Healthy Start Communities will work collaboratively to develop new and innovative means to deliver services that meet the needs of pregnant women and infants. Each community that received a grant is tailoring its program to its special needs and population groups by developing creative plans to deal with teenage pregnancy, inadequate prenatal care, poor nutrition, smoking, alcohol and other drug abuse. Clearly, the WIC Program, by providing referrals to health care providers and drug and other harmful substance abuse counseling, treatment and education programs, will be an important resource in assisting the selected communities in this effort.

The legislative emphasis on the problem of drug use during pregnancy results from continuing concerns about the infant mortality rate in the United

States and the number of infants born with health problems associated with the drug use of their mothers. The WIC Program was included under Public Law 100–690 because of its experience in providing direct services to low-income, high-risk pregnant, postpartum and breastfeeding women as well as the program's ability to link this high-risk population with needed social services through referrals and service coordination. Congress realistically limited WIC Program involvement to the provision of drug abuse information and referrals. This limitation is based on the recognition that the complex nature of drug use and the physiology of addiction demand specialized professional assistance. The WIC Program can encourage and assist women and teenage girls who have or are at risk for drug and other harmful substance use problems to seek necessary comprehensive prevention, education, counseling and treatment services offered by community drug treatment specialists. By warning women about the dangers of abusing drugs and other harmful substances and making appropriate referrals, WIC contributes to the broader goal of decreasing the incidence of drug abuse among pregnant women, perinatal addiction, and infant mortality and morbidity.

The legislation and this rule recognize that WIC's overall effectiveness in this effort is dependent upon the availability of professional drug abuse prevention, education, counseling and treatment resources and commitments of the health community at large. Further, the rule recognizes that WIC's effectiveness in providing drug and other harmful substance abuse information and referrals will be limited if drug-abusing individuals avoid or discontinue participation in the WIC Program. Therefore, this rule incorporates the legislative mandates in a manner that depends appropriately on external expertise and will not act as a barrier to program participation.

Some WIC Program activity in the area of drug and other harmful substance abuse prevention already exists. In addition to current regulations that require referrals to be made to alcohol and drug abuse counseling as part of the WIC Program's role as an adjunct to health care, it is routine for many WIC local agencies to warn pregnant and breastfeeding women about the dangers of using alcohol, tobacco and other drugs and harmful substances. Most WIC State agencies consider alcohol, tobacco and drug abuse as nutritionally-related risk criteria for certification purposes. Also, many WIC State and local agencies are involved in special initiatives that address the problem of drug and other harmful substance use during pregnancy and while breastfeeding.

The amendments to Program regulations made necessary by Public Law 100–690 reflect Congressional intent that there be very little change from current operations. A review of the legislative history indicates the recognition that most of the WIC responsibilities mandated by Public Law 100–690 are already common practice. In debating the Anti-Drug Abuse Act of 1988, Senator Leahy stated that the drug abuse education responsibilities required by Public Law 100–690, especially the referrals, are "likely already being done in most instances" (134 Cong. Rec. 17,316 (daily ed. Oct. 21, 1988, statement of Sen. Leahy)). The Senator further stated that Congress does not intend the drug abuse education efforts to "reduce or impair each State agency's operation of WIC nutrition education efforts, WIC nutrition risk assessments and the other vital aspects of the WIC Program." Rather, Congress emphasizes WIC's responsibility to refer participants with possible drug or alcohol problems to appropriate counseling or treatment where it is locally available.

The provisions of Public Law 100–690 make it necessary to include explicit reference in program regulations to WIC's responsibility to provide drug and other harmful substance abuse information and to reemphasize WIC's role in making referrals to drug and other harmful substance abuse counseling, treatment and education programs. Program operation will be primarily affected in agencies in which such efforts are not already underway.

It is important to note that State efforts will be facilitated by legislatively mandated Federal responsibilities for identifying effective methods for providing drug abuse information and referrals and developing and distributing materials. The Department, as required by Public Law 100–690, conducted a study of appropriate methods of drug abuse education in the WIC program. The study report, entitled "A Study of Appropriate Methods of Drug Abuse Education for Use in the WIC Program," was published in January 1990, and distributed to all WIC State and local agencies. The report presents practical information about drug abuse prevention which can be applied to decisions about drug abuse education in WIC. The report also emphasizes that drug abuse assessment, counseling and treatment services must be provided by drug abuse prevention professionals. It stresses that WIC's appropriate complementary role is to provide information about the dangers of drug abuse and to make referrals to appropriate drug abuse services.

The following materials have been or are currently being developed by the Department to assist WIC local agency professionals with their drug abuse prevention information and referral activities and to warn WIC participants about the dangers of alcohol and other drug use during pregnancy and while breastfeeding:

- A brochure in English entitled "Pregnant? Drugs and Alcohol Can Hurt Your Unborn Baby" and a companion poster in English and Spanish were developed to warn WIC participants about the dangers of alcohol and other drug use during pregnancy and breastfeeding. These materials were distributed to WIC State agencies in January 1991. The brochure should be available in Spanish in early Fiscal Year 1993.
- A videotape entitled "Lifelines: To Healthy Babies" has been developed to warn participants about the dangers of alcohol and other drug use during pregnancy and breastfeeding. A companion leader's guide for WIC professionals to use with participants in discussing the dangers of alcohol and other drug use during pregnancy is currently under development. The videotape and companion guide will be available for distribution in early Fiscal Year 1993.
- A resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" has been developed to assist WIC local agency staff. It contains information about the following: The various types of drugs; the dangers of drug use during pregnancy and breastfeeding; methods for screening for drug use and presenting anti-drug use messages; how to identify local drug abuse resources and establish referral networks; and selected professional and participant materials. The manual will be available for distribution in early Fiscal Year 1993.
- A videotape entitled "The WIC Connection: Substance Use Information and Referral" has been developed to assist WIC local agency staff in meeting the drug abuse information and referral requirements. A companion piece which will outline effective interviewing, screening and referral techniques is currently under development. These materials will be available for distribution in early Fiscal Year 1993.

Section 123(a)(4) of Public Law 101–147, which amended section 27(f)(1)(C)(iii)of the CNA, requires WIC State agencies to include in their State plan of operation and administration a plan to coordinate operations under the program with alcohol and drug abuse treatment services. State agency plans to coordinate operations with alcohol and drug abuse counseling services were already required. Section 123(a)(3)(D) of Public Law 101–147, which amended section 17(e)(4) of the CNA, requires State agencies to ensure that each local agency maintains and makes available for distribution a list of local resources for substance abuse counseling and treatment.

The proposed rule, published on March 30, 1990 (55 FR 11946), provided for a 60-day comment period, which ended on May 29, 1990. During that period, 15 comments were received from a variety of sources, including State and local health professionals, other State agency staff and a non-profit public interest group. The Department would like to thank all of the commenters who responded to the proposed rule. Their comments were helpful in formulating this final rule.

All provisions of the proposed rule are being finalized as proposed except for the paragraph (n) in § 246.7 and new paragraph (a)(3) in § 246.11. The proposed language in § 246.7(n) was revised to clarify that if a State agency determines that screening is necessary to fulfill referral requirements for drug and other harmful substance abuse, the State agency must require local agencies to undertake screening as part of their referral process. The proposed paragraph in § 246.11(a)(3) would have required distribution of anti-drug and other harmful substance abuse materials to all pregnant, postpartum and breastfeeding women and to parents or caretakers of infants and children applying for and participating in the Program. In response to comments that such a wide distribution of materials would be a waste of resources, the proposed paragraph is revised in this final rule to require the provision of anti-drug and other harmful substance abuse information, which does not necessarily have to be in the form of written materials, to all categories of adult participants and to parents or caretakers of child participants. Anti-drug and other harmful substance abuse information may also be provided to WIC Program applicants and pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the WIC Program, as deemed appropriate by State and local WIC agencies.

The remainder of this preamble discusses each provision, the major concerns expressed by commenters regarding each provision, and the rationale behind the decisions embodied in this final rule.

1. Drug and Other Harmful Substance Abuse Prevention Specified in General Purpose and Scope (Section 246.1)

Public Law 100–690 amended section 17(a) of the CNA by adding a specific reference to drug abuse as one of the health problems to be addressed by the WIC Program. The legislation amends the last sentence in section 17(a) to read: "The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons" (Pub. L. 100–690, sec. 3201). To parallel this amendment to the CNA and the associated concern for other harmful substances, the proposed rule added specific reference to drug and other harmful substance abuse to § 246.1.

The Department received five comments concerning the reference to drug and other harmful substance abuse prevention in the general purpose and scope of the WIC Program. Three commenters were supportive. Two commenters questioned whether this requirement is within the mission of the WIC Program, including one who suggested that it is not appropriate to identify a specific health problem in this section without addressing other critical health problems. This change, however, reflects Congress' decision to make drug abuse an area of focus for the WIC Program. Although the explicit reference to the prevention of the occurrence of health problems, including drug and other harmful substance abuse, in the Program's legislative purpose statement is new, as indicated previously, State agency activity and interest in the potential problems of drug and other harmful substance abuse among WIC's target population is not.

Because drug and other harmful substance use is associated with low birthweight, prematurity and other major causes of infant death and disability, the Department believes it is appropriate and within the mission of the WIC Program to address this problem. Further, it was Congress' clear intent in enacting Public Law 101–147 and the WIC-related provisions of Public Law 100–690 that WIC play a role in drug and other harmful substance abuse referrals. In addition, coordination of WIC Program services with programs serving the same population, within the legislated parameters of the WIC Program, may help further the goals set forth by the President as described earlier in this preamble. Therefore with the exception of one change discussed in §§ 246.7 and 246.11 this rule will be adopted as proposed.

2. Additions to Definitions (Section 246.2)

Section 3201 of Public Law 100–690 added the definition of "drug abuse education" to section 17(b) of the CNA. Section 3201 of the legislation stipulates that, for WIC. " 'Drug abuse education' means—(A) the provision of information concerning the dangers of drug abuse; (B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals; and (C) the provision of materials developed by the Secretary * * *." This definition outlines the role Congress envisioned as feasible for the WIC Program, to inform but not necessarily educate WIC participants about the dangers of drug abuse and to make appropriate referrals. In order to make clear the role envisioned for WIC by Congress, the term "drug abuse education" is not used in program regulations. Rather, the regulatory amendments reference the relevant components of drug abuse education for WIC as defined by the legislation: drug abuse information and referrals.

In connection with this, definitions for the terms "drug" and "other harmful substances" were proposed to be added to program regulations. The term "drug" is defined in section 3601 of Public Law 100–690 as "(A) a beverage containing alcohol, (B) a controlled substance, or (C) a controlled substance analogue." However, the scientific literature also attributes serious health problems of pregnant women and their fetuses to the use of substance not addressed by this definition. Since the CNA of 1966, as amended, states that the purpose of the WIC Program is to prevent the occurrence of health problems, including drug abuse, the restricted definition of drugs stipulated in Public Law 100–690 does not address the full range of substances that could be harmful to maternal and fetal health. Therefore, the Department also proposed to add a definition of the term "other harmful substances," which includes "such substances as tobacco, prescription drugs and over-the-counter medications, that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus."

Three commenters addressed the proposed additions to the definitions. One commenter agreed with the definitions. One commenter suggested that the definition "other harmful substances" is too broad and one commenter suggested that the Department should change the definition of "other harmful substances" to include: "(a) drugs, as defined above; and (b) substances such as tobacco, prescription drugs * * *".

The Department agrees that defining both "drugs" and "other harmful substances" is cumbersome. However, to be legally sufficient, it is necessary to use the definition of "drug" as defined in Public Law 100–690. Furthermore, it is also important to augment this definition and to include a definition of other substances that are not addressed in Public Law 100–690, but which are nonetheless harmful to the WIC population. Therefore, the definitions of "drugs" and "other harmful substances" are adopted as proposed in this final rule.

As stated previously, CSAP, U.S. Department of Health and Human Services, encourages use of the term "alcohol and other drugs" when communicating drug abuse prevention messages. In addition to illegal drugs, this term includes tobacco, prescription drugs and over-the-counter medications. The fact that alcohol is a drug is emphasized. Therefore, in order to promote coordination at the Federal level and to be consistent with the CSAP guidelines, the Department has used the term "alcohol and other drugs" in various materials it has developed for both WIC participants and professionals. This term encompasses both the WIC regulatory definitions for "drug" and "other harmful substances" in § 246.2 and is used interchangeably with these two terms defined in this rulemaking.

3. State Plan (Section 246.4)

One addition was proposed to be made to § 246.4(a)(8), which outlines responsibilities for referrals to health and social services, to comply with the referral requirements stipulated in Public Law 100–690.

WIC's responsibility to refer participants to alcohol and drug abuse treatment and education programs was proposed to be added to § 246.4(a)(8). The proposed rule amended § 246.4(a)(8) to reference "drug and other harmful substance abuse counseling, treatment and education programs" to be consistent with the newly defined terms in the proposal and the Congressional intent that the role of the WIC Program is to refer possible drug-abusing participants not only to necessary professional alcohol and drug abuse counseling, but also to treatment and education services, when such services are available (134 Cong. Rec. 17,316 (daily ed. Oct. 21, 1988, statement of Sen. Leahy)).

Six comments were received on this proposal. The majority of commenters supported the provision as proposed. One commenter suggested that WIC's role should be to coordinate and refer participants to counseling, treatment and education programs only, and this role is adequately described in § 246.4(a)(8). The Department believes, however, that these actions alone would not fulfill the legislative mandate, which specifically defines drug abuse education as including the provision of information concerning the dangers of drug abuse. Therefore, § 246.4(a)(8) is adopted in this final rule as originally proposed.

One commenter requested clarification about the categories of participants which should be referred to such services. Since section 3201 of Public Law 100–690 specifically includes referrals of pregnant, postpartum and breastfeeding participants in its definition of "drug abuse education," clearly it is the intent of the Congress that referrals should be provided to all categories of adult participants. However, local agencies may also provide referrals to parents or caretakers of infant and child participants, when appropriate. Pursuant to Public Law 100–690, referrals may also be provided to pregnant, postpartum and breastfeeding women and to caretakers of infants and children participating in local agency services other than the program, as deemed appropriate by local agencies. Providing referrals to all categories of participants and to caretakers reflects concern about the effects of drug and other harmful substance abuse on maternal health, the health of the fetus and newborn, and the impact on the nurturing and care of young children when their mothers or caretakers are using drugs and other harmful substances.

Concern was expressed by one commenter that referral of participants to drug abuse counseling can be time consuming. To allow flexibility for the development of appropriate referral protocols at the State level based on local program and legal requirements, the Department is not including specific requirements for referral protocols in these regulatory amendments. A referral can be accomplished simply by providing all adult participants and caretakers of participating infants and children with the list of local substance abuse counseling and treatment resources which Public Law 101–147 and this regulation require WIC local agencies to maintain and make available for distribution. Receiving such a resource list may prompt some participants and caretakers to voluntarily seek out counseling or group support services. Some State agencies may, however, opt to develop a more formal referral system wherein a staff member initiates contact with a substance abuse counseling or treatment agency on behalf of an interested participant. Information about developing appropriate referral protocols is included in the resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" that the Department has developed for WIC professionals.

Section 246.4(a)(9) of the proposed rule would require that a description of the methods that will be used to provide drug and other harmful substance abuse information be included in the State plan of operation and administration's description of nutrition education goals and action plans. This revision provides a mechanism for State planning and allows Departmental review of State compliance with the mandate.

Of the four comments received on this Section of the proposal, two commenters were opposed, stating that including a description of methods that will be used to provide drug and other harmful substance abuse information in the description of nutrition education goals and action plans implies that this is a part of nutrition education. One commenter noted that past experience identifying and referring alcohol abusers has not been entirely successful, and urged the provision of effective staff training.

The rationale for including a description of the methods that will be used to provide drug and other harmful substance abuse information in the State plan description of nutrition education goals and action plans is that abuse of drugs and other harmful substances is incompatible with good nutrition. Tobacco, alcohol and other drugs tend to suppress appetite and can, therefore, interfere with healthy eating habits and normal weight gain during pregnancy. Cigarette smoking may affect maternal nutrition (and consequently, fetal nutrition) in the following ways: the increased metabolic rate in smokers can lead to the lower availability of calories; and exposure to tobacco may increase iron requirements and decrease the availability of certain nutrients such as vitamin B12, amino acids, vitamin C,

folate, and zinc. Alcohol consumption may be related to decreased dietary intake, impaired metabolism and absorption of nutrients, and altered nutrient activation and utilization. Interactions between alcohol and deficiencies of such nutrients as protein and zinc may also play a role in the etiology of alcohol-related effects in the fetus. Therefore, the Department continues to believe that inclusion of drug and other harmful substance use information in the provision of nutrition education is appropriate, and § 246.4(a)(9) is adopted by this final rule as originally proposed.

Additionally, § 246.4(a)(11)(ii) was proposed to be revised to require that methods for providing drug and other harmful substance abuse information to participants be described in the local agency procedure manual. This change is necessary to reinforce the responsibility of State agencies for providing local agencies with the guidance or materials to facilitate incorporation of drug and other harmful substance abuse information in nutrition education.

Also, to implement the goals of coordinating WIC services with those of other counseling and treatment services, as set forth in section 123(a)(3)(D) of Public Law 101–147, which amended Section 17(e) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(e), a new paragraph 246.4(a)(11)(v) was proposed to be added to require that the local agency procedure manual include instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

One commenter addressed both of the proposed local agency procedure manual requirements. The commenter was opposed to the requirements and objected to incorporating drug and other harmful substance abuse information in nutrition education. As described previously, however, the rationale for including drug and other harmful and substance abuse information with nutrition education is that abuse of drugs and other harmful substances is incompatible with good nutrition because it can affect dietary intake, nutritional status, and metabolism.

Another commenter addressed only the proposed requirement that methods for providing drug and other harmful substance abuse information be described in the local agency procedure manual. The commenter was opposed and stated that the requirement is unnecessary because the appropriateness of particular methods and services varies among communities. The Department acknowledges that the extent and pervasiveness of drug and other harmful substance abuse problems, and, therefore, the appropriateness of particular methods and services, do vary greatly from community to community. The Department believes, however, that the local agency procedure manual requirement is the most effective way to reinforce the responsibility of the State agencies for providing local agencies with the guidance or materials to facilitate incorporation of drug and other harmful substance abuse information in nutrition education. Therefore, the referral requirement and the inclusion in the State plan of the procedure to be used in making such referrals, are adopted in this final rule as proposed.

4. Provision of List of Local Resources for Substance Abuse Counseling and Treatment; and Screening for Drug and Other Harmful Substance Abuse (Section 246.7)

Section 123(a)(3)(D) of Public Law 101–147 revised section 17(e) of the CNA to require the State agency to ensure that each local agency maintains and makes available for distribution to WIC participants and applicants, as appropriate, a list of local resources for substance abuse counseling and treatment. Section 246.7(a) was proposed to be revised to incorporate this requirement. It should be pointed out, however, that it was neither the intent of Congress nor of the Department that there be documentation in case files that applicants or WIC participants were provided with this list.

The Department received eight comments addressing the requirement to maintain and make available a list of local resources for substance abuse counseling and treatment. All of these commenters supported the general concept, but expressed concern about the unavailability of services and barriers to treatment, especially for low-income pregnant women. As previously stated in the background section, the legislation and this rule recognize that WIC's overall effectiveness in this effort is dependent upon the availability of professional substance abuse resources and commitments of the health community at large. The Department also recognizes that reaching women who are dependent on drugs or other harmful substances with health information and encouraging them to follow through on referrals can be difficult, and not always successful. Simply handing out a list of referral resources is unlikely to help these women. However, the Department believes that receiving such a resource list may prompt some participants and applicants to voluntarily seek out counseling or group support services. These individuals might include nondependent drug and other harmful substance users and cigarette smokers who are sufficiently motivated to assume responsibility for their own health.

The Department is aware that resources in many communities are limited and that often programs are filled to capacity. Some WIC agencies may find that participants referred for assessment and then diagnosed as dependent on drugs or other harmful substances cannot be accommodated. Even those areas with limited or no substance abuse treatment resources, however, are likely to have hotlines or self-help groups which may be able to provide assistance. The list of local resources maintained by WIC local agencies should include a listing of hotlines and self-help groups for alcohol and other drug users (e.g., Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, Al-Anon Family Groups, Adult Children of Alcoholics, Women for Sobriety) as well as local smoking cessation programs sponsored by organizations such as the American Lung Association and American Cancer Society. Staff should be realistic with participants about the availability of resources. Therefore, in light of the support generally expressed by commenters, § 246.7(a) is adopted unchanged by this final rule.

As noted in the preamble to the proposed rule, Public Law 100–690 does not include specific requirements for assessing drug abuse by WIC participants. Further, the Department believes drug use assessments could create barriers to program participation by discouraging drug-using women from applying for or participating in the program. Most States already include some basic screening for alcohol, tobacco and other drug use as part of WIC's medical or nutritional assessment since abuse by pregnant women is identified as a nutritional risk criterion in current WIC regulations at § 246.7(d)(2)(iv). Individual States may deem additional screening necessary to effectively fulfill WIC's drug and other harmful substance abuse information and referral responsibilities.

In the WIC Program, screening for drug and other harmful substance use is not intended to diagnose, but to detect warning signs of drug and other harmful substance use and to uncover potential problems. The results of such screening are not intended to be definitive and, if appropriate, should be followed by a referral for assessment. The assessment

process is an in-depth evaluation of the extent of an individual's problems with drugs and other harmful substances and should be conducted by a professional trained in drug and other harmful substance abuse assessment, counseling and treatment.

In the proposed rule a paragraph was added to § 246.7(n) which would permit State agencies to require screening for the use of drugs and other harmful substances. This paragraph stipulated that, where such screening is required, it must be limited to the minimum extent necessary to facilitate drug and other harmful substance abuse information and referral responsibilities. Any screening WIC State agencies determine to be necessary to fulfill the requirements of this regulation would be integrated into the medical or nutritional assessment performed during a participant's certification process. In the proposed rule, it was the intention of the Department that such screening should be reasonably related to the mandated referral requirement. Screening was not required to meet the minimum referral obligations, but if screening was performed, it was proposed that it must be reasonably related to the mandated referral requirement in order to be considered an allowable WIC cost.

Six comments addressing screening were received. Four commenters opposed regulations that would permit screening, stating that it:

(1) Would be a drain on nutrition assessment and education resources;

(2) Would require a level of skill not obtainable through in-service training alone; and

(3) Could discourage drug-abusing women from participating in WIC.

One commenter suggested that a public health nurse has the medical training or is more adept in evaluating and screening for the effects of drugs and other harmful substances than a WIC nutritionist, and recommended that referral be made in conjunction with the public health nurse at the time of prenatal visits at the clinic, not during WIC certification. The commenter also questioned the validity of screening and referring for drugs and other harmful substances, since most nutritional risk criteria are based on self-declaration by the client or on diagnosis by the physician in conjunction with current treatment in a drug or other harmful substance abuse treatment program.

One commenter stated that screening for tobacco, alcohol and other drugs has been incorporated into the certification process for some time, and one commenter suggested that screening would be more effective if there were mandatory drug testing.

Comments which opposed the proposed provision permitting screening were given serious consideration by the Department. Since referrals are required by Public Law 100–690 as a part of drug abuse education, however, some very basic screening may be necessary to effectively fulfill WIC's drug and other harmful substance abuse information and referral responsibilities. The Department continues to believe that screening WIC participants for drug and other harmful substance use is well within the Congressional mandate that WIC refer participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals. As previously discussed, this final regulation allows State agencies flexibility in deciding the extent and type of screening activities, if any, which will be appropriate for that State's particular WIC population. If a State agency determines screening is necessary, asking a limited number of questions during certification in order to screen for drug and other harmful substance use would be an adequate and reasonable method for determining which WIC participants need referral for assessment. Many State agencies already include some basic screening as part of the medical or nutritional assessment.

In response to the concern expressed that screening would be a drain on nutrition assessment and education resources, the sponsoring legislators made it clear that the drug abuse information and referral efforts are not meant to reduce or interfere with WIC's primary and ongoing responsibilities. Although some basic screening may be necessary to assist in fulfilling the referral mandate, WIC staff are not expected to diagnose drug and other harmful substance abuse problems or to provide in-depth counseling. Through established linkages and coordination with local resources, suspected drug and other harmful substance users are to be referred to existing assessment agencies for professional evaluation, as appropriate. Special in-service staff training should be sufficient to provide the skills necessary for conducting minimal basic screening activities.

In response to the commenter suggesting mandatory drug testing, the Department believes that such testing would serve as a barrier to program participation. In addition, the costs related to mandatory testing could lead to a diversion of resources which would run counter to Congressional intent that WIC's drug abuse information and referral activities not detract from other vital program services. And finally, such a requirement would impose a condition on eligibility not authorized by current legislation.

Concern was expressed by several commenters that the proposed regulation made no mention of the need for participant consent when screening for the use of drugs and other harmful substances to the extent needed to fulfill the referral mandate. Pub. L. 100–690 does not address the issue of confidentiality pertaining to WIC's drug and other harmful substance abuse referral activities. However, in response to this concern, the Department would like to clarify that current WIC regulations at 7 CFR 246.26(d) and instructions pertaining to confidentiality of information (FNS Instruction 800–1 "WIC Program—General Administration: Confidentiality") apply in the unusual situations of providing information on drug and other harmful substance use in general nutrition education sessions, handing out brochures, providing a list of local resources for counseling and treatment or performing minimal basic screening for purposes of informal or formal referral for further assessment.

If an agency carries out activities beyond the minimum mandates of Public Law 100–690 and has drug and alcohol abuse specialists, whose primary function is to conduct screening and referral activities, or has a separate unit whose primary function is drug and alcohol abuse diagnosis, treatment, or referral for treatment, the information obtained on WIC participants may also be subject to the Department of Health and Human Services' (DHHS) "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations (42 CFR part 2). WIC agencies performing activities which cause DHHS confidentiality regulations to apply must adhere to these regulations or potentially face criminal penalty. DHHS confidentiality regulations specifically mandate, for example, the content of written release forms, the notice of DHHS's Federal confidentiality requirements, and security of the records which contain alcohol and other drug abuse information. It is not anticipated, however, that DHHS regulations will apply to the basic minimal screening activities that will characterize the majority of WIC local agency efforts in support of the legislative mandate to provide drug abuse information and referrals. It is not the intent of the Department to require State agencies to go beyond the mandates of Public Law 100–690 and hire drug and alcohol

abuse specialists or otherwise conduct drug and other harmful substance abuse information and referral activities in such a way as to be subject to DHHS' confidentiality regulations.

In addition to Federal regulations, once WIC agencies screen participants for drug and other harmful substance use, they may, depending on the answers given, possess information deemed confidential by the State or by the code of ethics governing the professional conduct of the screener.

Participant consent issues are discussed in detail in the resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" that the Department has developed for WIC professionals. It must be emphasized that before State and local WIC agencies develop screening procedures, all relevant legal issues need to be resolved. Current State laws and reporting requirements about prenatal drug use must be considered. Applicable statutes for the protection of client confidentiality and specific State regulations governing consent by emancipated minors must also be considered. Laws governing these issues vary from State to State. WIC State agencies should consult with State legal counsel prior to developing screening procedures.

Finally, a commenter suggested that since the intent of the drug and other harmful substance abuse information and referral policy seems to be for the WIC Program to initiate outreach for drug and other harmful substance abuse programs, it may be more cost-effective for those facilities working with drug and other harmful substance abuse rehabilitation to have copies of WIC outreach brochures for referral to WIC. It should be emphasized that the primary intent of providing drug and other harmful substance abuse information and referrals is not for the WIC Program to initiate outreach for drug and other harmful substance abuse programs, per se. The intent of WIC's drug and other harmful substance abuse information and referral responsibilities is to increase participants' access to information about the dangers of the use of drugs and other harmful substances during pregnancy and while breastfeeding and to facilitate referrals of participants for counseling and treatment and thereby contribute to the broader goal of decreasing perinatal addiction, infant mortality and morbidity, and the incidence of drug and other harmful substance abuse among pregnant women.

For the reasons discussed above, the Department has decided to finalize § 246.7 (a) and (n) essentially as proposed. The only change has been to reorganize § 246.7(n) to make clear that a State agency shall mandate screening when the State agency determines that screening is necessary to fulfill the referral and other harmful substance abuse information requirements.

5. Provision of Information to Participants About the Dangers of Drug and Other Harmful Substance Use (Section 246.11)

Section 3201(3) of Public law 100–690 added drug abuse education to services required to be provided by the WIC Program. Section 17(e)(1) of the CNA, as amended, states in part that the State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program; and that the State agency may also provide nutrition education and drug abuse education to pregnant, postpartum and breastfeeding women who do not participate in the program.

In response, the Department proposed to add a paragraph to § 246.11(a) of the regulations which would outline requirements regarding the provision of drug and other harmful substance abuse information to WIC Program participants and parents or caretakers of infant and child participants. Section 246.11(a)(3) was proposed to clarify the extent and scope of WIC's involvement in drug and other harmful substance abuse information efforts.

This proposed paragraph would require that information about the dangers of using drugs and other harmful substances be integrated into the nutrition education provided by the WIC Program. Consistent with Congressional intent, the goal of WIC's information provision effort about the use of drugs and other harmful substances would be the heightened awareness among WIC participants about the dangers of such use, especially during pregnancy and while breastfeeding.

State agencies would have the discretion to determine who at the local agency level can most reasonably provide drug and other harmful substance abuse information. The delivery of such information would not necessarily have to be the responsibility of WIC nutritionists.

It would continue to be the responsibility of the State and local agencies to determine the appropriate amount of emphasis to be placed on drug and other harmful substance abuse information within nutrition education, based on the magnitude of the drug and other harmful substance abuse problem among the State or local WIC population. Proposed § 246.11(a)(3) was not intended to diminish the traditional goals of the nutrition services component of the WIC Program; rather, it was designed to permit attention to the problem of abusing drugs and other harmful substances in the larger context of the WIC Program. The proposal did not specify a minimum amount of time to be spent on providing drug and other harmful substance abuse information.

The Department received twelve comments concerning the integration of drug and other harmful substance abuse information into the nutrition education provided through the WIC Program. Five commenters were supportive of the requirement and provided suggestions for the materials to be distributed, stating that they should be appropriate for a semi-literate and multicultural population. Five commenters also discussed the inclusion of drug and other harmful substance abuse prevention information as part of the one-sixth nutrition education requirement.

Seven commenters opposed the requirement to integrate drug and other harmful substance abuse information into the nutrition education provided through WIC, stating that this would undermine the current level of nutrition education. Another concern was that it would imply that dissemination of written information through distribution of materials is nutrition education. Concern was also expressed that it is not an effective way to get drug-abusing women into treatment programs, and distributing materials that are not targeted to those who need them will be a waste of program resources. One of these commenters suggested incorporating information about the dangers of abusing drugs and other harmful substances into Subpart D, Participant Benefits, as a new and separate section.

Another commenter stated that making the provision of information on drugs and other harmful substance abuse an integral part of nutrition education infers that the provision of this information is the responsibility of the nutritionist, despite a later statement which gives States discretion in determining who at the local level will provide this information. The commenter indicated that this inference is contradictory to the intent of retaining WIC's traditional role as a provider of nutrition services. If the State elects to have a health professional other than the nutritionist (or the individual providing nutrition information) provide drug and other harmful substance information, such integration

could result in nutrition counseling which contains no nutrition information or nutrition counseling provided by individuals with no expertise on the subject matter.

As discussed earlier in relation to the revised State Plan requirements, the Department has carefully considered suggestions by those commenters who oppose the requirement to integrate drug and other harmful substance abuse information in the nutrition education provided through WIC. The strategy of integrating information about the danger of abusing drugs and other harmful substances in nutrition education is, however, intended to reflect current knowledge about the effectiveness of delivering anti-drug and other harmful substance abuse messages in the context of advice about positive lifestyle choices such as healthy eating. The Department believes that this approach most closely resembles current WIC local agency practices for warning pregnant women about the danger of abusing drugs and other harmful substances. The purpose of this requirement is to ensure that WIC provides drug and other harmful substance abuse information to program participants while retaining its traditional role as a provider of nutrition services. In addition, as previously noted, abuse of drugs and other harmful substances is incompatible with good nutrition.

In response to the concern that providing drug abuse information is not an effective way to get drug abusing women into treatment, the Department believes that for many participants, a clear presentation of basic information about the potential reproductive hazards of using drugs and other harmful substances may be enough to change attitudes and behaviors. Further, many pregnant women are already abstinent and only need reinforcement of this chosen lifestyle. Many participants do not use drugs and other harmful substances and will welcome information that can help them assure healthier pregnancies.

For other clients, a goal of total abstinence during pregnancy is not achievable because they used drugs or other harmful substances before confirming their pregnancy or before receiving and understanding prevention information. Some of these women, however, may be persuaded to stop using drugs or other harmful substances. They need to know that stopping use at any time, even late in pregnancy, can decrease risk of harm to the developing fetus and improve parenting practices. The Department acknowledges that reaching women who are dependent on drugs or other harmful substances with health information and encouraging them to follow through on referrals can be difficult, and frequently unsuccessful.

In response to the commenters' concern that distribution of drug and other harmful substance abuse materials to all pregnant, postpartum and breastfeeding women and to parents or caretakers of infants and children applying for and participating in WIC would be a waste of resources, in § 246.11(a)(3) of this final rule the Department is deleting the requirement that drug and other harmful substance abuse information be provided to WIC applicants. As required by section 17(e)(1) of the CNA, final § 246.11(a)(3) further makes clear that drug and other harmful substance abuse information may be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the WIC Program, as the local agency deems appropriate.

In addition, § 246.11(a)(3) of this final rule specifies the provision of drug and other harmful substance abuse information, rather than the actual distribution of drug and other harmful substance abuse materials. Thus, under the final rule it is not a requirement that written drug and other harmful substance abuse materials be distributed to all the listed categories of participants and caretakers; however, for the reasons cited in section 3 of this preamble, information about the dangers of drug and other harmful substance use must be communicated to all these groups in some manner. As one example, a participant could receive information by viewing the video "Lifelines: To Healthy Babies" and would not necessarily have to receive a brochure containing information.

The inclusion of drug and other harmful substance abuse information as a component of nutrition education also means that, as stipulated in § 246.14(c)(1) of the current regulations, costs incurred for providing drug and other harmful substance abuse information may be counted toward the requirement that an amount equal to one-sixth of the State agency's administrative grant or expenditures be spent on nutrition education. However, the proposed rule would have amended § 246.14(c)(1) to make clear that costs incurred for screening for drug and other harmful substance use and making referrals to drug and other harmful substance abuse services would not contribute toward fulfillment of the one-sixth requirement. This rule would not preclude States from funding drug and other harmful substance abuse initiatives with their WIC administration and program services grants, except as provided in the new § 246.14(c)(9), which is discussed in section 6 of this preamble, and in new § 246.7(n), as discussed in section 4 of this preamble.

With respect to commenter concern that materials should be appropriate for multi-cultural populations, the Department notes that the provision of drug and other harmful substance abuse education materials in languages other than English as required by the amendment to section 17(f)(14) of the CNA is already reflected in WIC regulations, given the longstanding requirement for bilingual nutrition education materials in § 246.11(c)(3).

The Department received five comments discussing the consequence of including drug and other harmful substance abuse prevention information in nutrition education, i.e., that provision of such information may be counted toward the one-sixth nutrition education requirement. One commenter supported this result and four commenters opposed it, stating that resources are insufficient and this would diminish the nutrition education component. In response to the concern that WIC is not adequately funded to conduct these activities, the Department would like to reiterate that no new major requirements are being imposed and that, in fact, most of the WIC responsibilities mandated by Public Law 100–690 are already common practice. It should also be noted that recent legislative (Pub. L. 101–147) and regulatory changes to the administrative funding formula will generate more, and more stable, administrative and service grants, thus ensuring States' ability to perform this program function effectively. For the reasons discussed above, no change is made to this provision in the final rule.

6. Costs for Drug and Other Harmful Substance Abuse Screening and Referral (Section 246.14)

Section 246.14(c)(9) was proposed to be added to identify drug and other harmful substance abuse screening and referral as allowable administrative and program services costs. The screening would be limited to the level deemed necessary by the State agency to determine when referrals to drug and other harmful substance abuse counseling and treatment services are appropriate. Proposed § 246.14(c)(9) also indicated that laboratory tests for the purpose of drug and other harmful substance use screening would not be allowable WIC administrative and

program services costs. As stated previously, the Department believes that allowing the cost of laboratory tests may lead to a diversion of resources which would run counter to Congressional intent that WIC's drug and other harmful substance abuse information and referral activities not detract from other vital program services.

The Department received six comments concerning the provision that the cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals to drug abuse services would be considered an allowable administrative and program services cost. All six commenters expressed concern that WIC is not adequately funded to conduct these activities. Two of these commenters suggested limiting WIC's involvement in providing drug and other harmful substance abuse information and referrals, and four commenters recommended additional funding and personnel.

The Department's rationale behind the strategy of integrating information about the danger of abusing drugs and other harmful substances into the nutrition education provided through WIC has been previously discussed in section 5 of this Preamble. It logically follows that the costs incurred for providing this information may be counted toward the nutrition education expenditure requirement. Further, should a State agency determine that screening is not a necessary part of the referral process, it may not be treated as an allowable expense. Therefore, no change is made to this provision in the final rule.

Finally, pursuant to the review and approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), § 246.28 is amended to reflect the appropriate document control numbers.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set out in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101–147, 103 Stat. 877 (42 U.S.C. 1786); sec. 3201, Pub. L. 100–690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100–460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.1, the fourth sentence is revised to read as follows:

§ 246.1 General purpose and scope.

* * * The Program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons.* * *

3. In § 246.2, the definitions of *Drug* and *Other harmful substances* are added in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Drug means:

(a) A beverage containing alcohol;

(b) A controlled substance (having the meaning given it in section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)); or

(c) A controlled substance analogue (having the meaning given it in section 102(32) of the Controlled Substance Act (21 U.S.C. 802(32)).

* * * * *

Other harmful substances means other substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus.

* * * * *

4. In § 246.4:

a. Paragraph (a)(8) is revised;

b. paragraph (a)(9) is revised;

c. paragraph (a)(11)(ii) is revised;

d. the word "and" is removed at the end of paragraph (a)(11)(iii);

e. the period at the end of paragraph (a)(11)(iv) is removed, and "; and" is added in its place; and

f. a new paragraph (a)(11)(v) is added.

The revisions and addition read as follows:

§ 246.4 State plan.

(a) * * *

(8) A description of how the State agency plans to coordinate program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011–2032), the Early and Periodic Screening, Diagnosis and Treatment Program (title XIX of the Social Security Act), the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601–615), the Maternal and Child Health (MCH) Program (42 U.S.C. 701–709), the Medicaid Program (42 U.S.C. 1396 et seq.), family planning, immunization, prenatal care, well-child care, drug and other harmful substance abuse counseling, treatment and education programs, and child abuse counseling.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to provide drug and other harmful substance abuse information, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

* * * * *

(11) * * *

(ii) Methods for providing nutrition education, including drug and other harmful substance abuse information, to participants, including homeless individuals;

* * * * *

(v) Instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

* * * * *

5. In § 246.7:

a. A new sentence is added at the end of paragraph (a); and

b. a new paragraph (n) is added.

The additions read as follows:

§ 246.7 Certification of participants.

(a) * * * Local agencies shall maintain and make available for distribution to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children applying for and participating in the Program a list of local resources for drug and other harmful substance abuse counseling and treatment.

* * * * *

(n) *Drug and other harmful substance abuse screening.* When a State agency determines that screening is necessary to fulfill the referral requirements in this part, the State agency must require screening for the use of drugs and other harmful substances. When such screening is required, it shall:

(1) Be limited to the extent the State agency deems necessary to fulfill the referral requirement of § 246.4(a)(8) of this part and the drug and other harmful substance abuse information requirement of § 246.11(a)(3) of this part, and

(2) Be integrated into certification process as part of the medical or nutritional assessment.

6. In § 246.11:

a. A new paragraph (a)(3) is added; and

b. paragraph (b)(1) is revised.

The addition and revision read as follows:

§ 246.11 Nutrition education.

(a) * * *

(3) As an integral part of nutrition education, the State agency shall ensure that local agencies provide drug and other harmful substance abuse information to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in the program. Drug and other harmful substance abuse information may also be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the Program.

(b) * * *

(1) Stress the relationship between proper nutrition and good health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under five years of age, and raise awareness about the dangers of using drugs and other harmful substances during pregnancy and while breastfeeding.

* * * * *

7. In § 246.14:

a. In paragraph (c)(1) introductory text, the eighth sentence is revised; and

b. A new paragraph (c)(9) is added.

The revision and addition read as follows:

§ 246.14 Program costs.

* * * * *

(c) * * *

(1) * * * The cost of dietary assessments for the purpose of certification, the cost of prescribing and issuing supplemental foods, and the cost of screening for drug other harmful substance use and making referrals to drug and other harmful substance abuse services shall not be applied to the one-sixth minimum amount required to be spent on nutrition education. * * *

* * * * *

(9) The cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals for counseling and treatment services.

* * * * *

8. In § 246.28, in the table:

a. The OMB control number for § 246.4 is removed; and

b. OMB control numbers for §§ 246.4 (a)(8), (9), (11), 246.7 (a) and (n) and 246.11(a)(3) are added.

§ 246.28 OMB control numbers.

* * * * *

7 CFR Part 246 section where requirements are described	Current OMB control no.
.4(a) (8), (9), (11)	0584-0386
* * * * *	
.7(a)	0584-0386
* * * * *	
.7(n)	0584-0386
* * * * *	
.11(a)(3)	0584-0386
* * * * *	

Dated: February 18, 1993.

George A. Braley,

Acting Assistant Secretary for Food and Consumer Services

[FR Doc. 93-4317 Filed 2-25-25; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

7 CFR Part 1703

Distance Learning and Medical Link Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds a regulation concerning the Distance Learning and Medical Link Grant Program. This final rule will promulgate regulations for a program that will provide grants for distance learning and medical link projects benefiting rural areas. The regulation is necessary to implement a rural development program created by the Rural Economic Development Act of 1990. The program will provide grants to rural community facilities, such as schools, hospitals, and medical centers, to encourage, improve, and make affordable the use of advanced telecommunications and computer networks to provide educational and medical benefits to people living in rural areas and to improve rural opportunities. The regulation will establish REA's policy, the method of selecting projects to receive grants and allocating the available funds, the method of determining the beneficiaries of the program, the requirements for the application to be submitted to REA, the method of notifying potential applicants of maximum and minimum amounts of grant funds that will be considered for a single application, and the requirements for qualifying for expedited telephone loan consideration and determination.

EFFECTIVE DATE: This regulation is effective on March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, telephone number (202) 720-9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule: (1) Will not preempt any State or local laws, regulations, or policies; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Distance Learning and Medical Link Grant Program has been designed specifically to benefit small rural educational and health organizations, thus enhancing the rural environment for business formation and expansion. In response to the proposed rule some comments were received indicating that the Distance Learning and Medical Link Grant Program is too complex for those who intend to apply for grants under the program. Notwithstanding the inherent complexity of the highly technical Distance Learning and Medical Link Grant Program, REA has crafted a regulation which addresses the complexities, while requiring a minimum amount of documentation to support a grant application in order to ensure prudent use of grant funds. Further, since the application for grants under the program are discretionary, regulatory requirements will apply only to those entities which choose to apply for funding. For those relatively few entities which encounter difficulty meeting regulatory requirements for application, REA's Rural Development