

Dated: April 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95-9951 Filed 4-20-95; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP No. 1045]

RIN 1121-AA28

Formula Grants; Correction

Date: April 13, 1995.

AGENCY: Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Correction to final regulation.

SUMMARY: This document contains corrections to the Final Regulation, revising 28 CFR part 31, which was published in the **Federal Register** on Friday, March 10, 1995, (60 FR 13330). The regulation revisions provided clarification and guidance to States in the formulation, submission and implementation of the State Formula Grants Program under Part B of Title II of the Juvenile Justice and Delinquency Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992 (Pub. L. 102-586, November 18, 1992).

The 1992 Amendments reauthorize and modify the Federal assistance program to State, local governments, and private not-for-profit agencies for the prevention and control of delinquency and improvement of the juvenile justice system. This final revision to the existing regulation provides clarification and guidance to States in the formulation, submission, and implementation of State Formula Grants Program plans and determinations of State compliance with plan requirements. It provides additional flexibility and guidance to participating States while strengthening several key provisions related to the deinstitutionalization, separation, jail and lockup removal, and disproportionate minority confinement plan requirements of the JJDP Act. **EFFECTIVE DATE:** This regulation is effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency

Prevention (OJJDP), 633 Indiana Avenue NW., Room 543, Washington, D.C. 20531; (202) 307-5924.

SUPPLEMENTARY INFORMATION: The corrections include the requirement that collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before June 30, 1995, be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence. Facilities approved after the effective date of this regulation and prior to July 1, 1995, will be reviewed against the regulatory criteria in effect on the day before the effective date of this regulation. For those collocated juvenile detention facilities considered after June 30, 1995, OJJDP's concurrence is limited to one year and, thereafter, will be reviewed on an annual basis. The requirement that in order to receive OJJDP's initial and subsequent concurrences, a collocated juvenile detention facility must only provide secure custody for juvenile criminal-type offenders, status offenders accused of violating a valid court order, and adjudicated delinquents and valid court order violators who are awaiting disposition hearings or transfer to a long term juvenile correctional facility, has been eliminated.

Need for Correction

As published in the **Federal Register** on March 10, 1995, (60 FR 13330), the Final Regulation was an earlier draft version that is materially different from the final draft that was intended to be published. These errors are in need of correction.

Correction of Publication

Accordingly, the Final Regulation, as published in the **Federal Register** on March 10, 1995, which was the subject of FR Doc. 95-5919, is corrected as follows:

§ 31.301 [Corrected]

Paragraph 1. On page 13334 in amendatory instruction 6, paragraph (e) of § 31.301 was revised. Paragraph (e) of § 31.301 in the second column, line 30, the numerals "1994" are corrected to read "1995".

§ 31.302 [Corrected]

Paragraph 2. On page 13334 in amendatory instruction 7, paragraph (b)(2) of § 31.302 was revised. Paragraph (b)(2) of § 31.302 is corrected to read as follows:

* * * * *

(b) * * *

(2) Should consider in meeting the statutory membership requirements and responsibilities of section 223(a)(3) (A)-

(E), appointing at least one member who represents each of the following: A locally elected official representing general purpose local government; a law enforcement officer; representatives of juvenile justice agencies, including a juvenile or family court judge, a probation officer, a prosecutor, and a person who routinely provides legal representation to youth in juvenile court; a public agency representative concerned with delinquency prevention and treatment; a representative from a private, non-profit organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing problems of school violence and vandalism and alternatives to expulsion and suspension; and persons with knowledge concerning learning disabilities, child abuse and neglect, and youth violence.

* * * * *

§ 31.303 [Corrected]

Paragraph 3. On page 13335, in the second column, in amendatory instruction 11, paragraph (d)(l)(i) of § 31.303 was revised. Paragraph (d)(1)(i) of § 31.303, line ten, the word "no" is corrected to read "any".

Paragraph 4. On page 13335 in amendatory instruction 13, paragraph (e)(3) of § 31.303 was revised. Paragraph (e)(3) of § 31.303 is corrected by removing (e)(3)(v). As corrected, § 31.303(e)(3) reads as follows:

* * * * *

(e) * * *

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with these adult facilities are considered adult jails or lockups unless the paragraph (e)(3)(i)(D) (1)-(4) criteria established in this section are complied with and the determinations and concurrences set forth in paragraph (e)(3) (ii), (iii), and (iv) of this section have been made.

(A) A collocated facility is a juvenile facility that is located in the same building as is located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings

is considered "related" when it shares physical features such as walls and fences services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(D)(3) of this section.

(B) The State, with OJJDP concurrence, must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraph (e)(3)(i)(D) (1)-(4) of this section for the purpose of monitoring compliance with section 223(a) (12)(A), (13), and (14) of the JJDP Act.

(C) A needs based analysis must precede a jurisdiction's request for State approval and be included with the request for OJJDP concurrence that a collocated facility qualifies as a juvenile detention facility. The needs based analysis should include, but is not limited to, consideration of such factors as excessive travel time to an existing juvenile detention center, crowding in an existing facility (despite the use of objective detention criteria), obsolescence of an existing facility, and, in areas where there are no juvenile detention facilities, a measurable increase in the need for juvenile detention beds. OJJDP's technical assistance provider to the States should be involved in the needs based analysis (without cost to the State or local jurisdiction). The needs based analysis must take into consideration and be coordinated with the State's plans and programs designed to establish a continuum of detention care and to assist detention facilities to provide a full range of services for juvenile offenders.

(D) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(1) Total separation between juvenile and adult facility spatial areas such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Total separation of spatial areas can be achieved architecturally, and must provide for no common use areas (time-phasing is not permissible);

(2) Total separation in all juvenile and adult program areas, including recreation, education, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults.

However, equipment and other resources may be used by both populations subject to security concerns and the criterion in paragraph (e)(3)(i)(D)(1) of this section;

(3) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (food service, laundry, maintenance and engineering, etc.), who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, then the jurisdiction must cooperate in a preapproval review of its physical plant, staffing patterns, and programs by an organization selected and compensated by OJJDP. This review will be based on prevailing national juvenile detention standards, and will inform the State's approval process and concurrence by OJJDP.

(ii) The State must initially determine that the four criteria are fully met. Upon such determination, the State must submit to OJJDP a request for concurrence with the State's finding that a separate juvenile detention facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each criterion has been met. It is incumbent upon the State to make the initial determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth in paragraphs (e)(3)(i)(D) (1)-(4) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before June 30, 1995, are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except

that facilities approved after the effective date of this regulation, but prior to July 1, 1995, shall be reviewed against the regulatory criteria in effect on the day before the effective date of this regulation, and except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, as set forth in paragraph (e)(3)(i)(D)(3) of this section. Unless otherwise indicated, review of previously approved collocated facilities is expected to occur as part of the State's regularly scheduled monitoring activities.

(iv) OJJDP's concurrence for facilities considered after June 30, 1995, is limited to one year and thereafter, will be reviewed on an annual basis. An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence is required annually, and may involve on-site review by OJJDP staff. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraph (e)(3)(i)(D) (1)-(4) of this section is being maintained, and to assess the continuing need for the collocated facility and the jurisdiction's long term plan to move to a free-standing facility (single jurisdiction or regional) or other detention alternative, unless the juvenile detention center is part of a justice center, in which case the annual review will look solely at the four regulatory criteria. An example of a justice center is a building or a set of buildings in which various agencies are housed, such as law enforcement, courts, State's attorneys, public defenders, and probation, in addition to an adult jail or lockup and a juvenile detention facility.

* * * * *

Paragraph 5. On page 13337 in amendatory instruction 20, paragraph (f)(5) of section 31.303 was revised. Paragraph (f)(5) of § 31.303 is corrected by removing (f)(5)(i)(D) and redesignating paragraphs (f)(5)(i) (E), (F), (G) and (H) as paragraphs (f)(5)(i) (D), (E), (F) and (G), respectively. As corrected, § 31.303(f)(5) reads as follows:

* * * * *

(f) * * *
 (5) Reporting requirement. The State shall report annually to the Administrator on the results of monitoring for section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six

months. The report shall be submitted to the Administrator by December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) Total number of public and private secure detention and correctional facilities, the total number reported, and the number inspected on-site;

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than 24 hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section, or pursuant to section 922(x) of Title 18, United States Code, or a similar State law;

(D) The total number of accused status offenders (including valid court order violators, out of state runaways and Federal wards, but excluding Title 18 U.S.C. 922(x) violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for any length of time;

(E) The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the valid court order provision or pursuant to Title 18 U.S.C. 922(x);

(F) The total number of status offenders held in any secure detention or correctional facility pursuant to the valid court order provision set forth in paragraph (f)(3) of this section; and

(G) The total number of juvenile offenders held pursuant to Title 18 U.S.C. 922(x).

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and nonoffenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for the secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have been concurred with by OJJDP, including a list of such facilities;

(F) The total number of juveniles detained in collocated facilities concurred with by OJJDP that were not separated from the management, security, or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been concurred with by OJJDP, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State and concurred with by OJJDP, that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, in excess of six hours (including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section);

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP for less than six hours for purposes other than identification, investigation, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP for any length of time;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP for any length of time;

(J) The total number of adult jails, lockups, and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and collocated facilities not concurred with by OJJDP pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not more than an additional 48 hours in adult jails, lockups and collocated facilities not concurred with by OJJDP pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

* * * * *

Paragraph 6. On page 13338 in amendatory instruction 23, paragraph (f)(6)(iii)(A) in § 31.303 was removed and paragraphs (f)(6)(iii) (B), (C), (D), and (E) of § 31.303 were redesignated as paragraphs (f)(6)(iii) (A), (B), (C), and (D) of § 31.303, respectively. Redesignated

paragraph (f)(6)(iii)(B) of § 31.303 is corrected to read as follows:

* * * * *

- (f) * * *
- (6) * * *
- (iii) * * *

(B) Full compliance with de minimis exceptions is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(B) (1) or (2) of this section:

(1) *Substantive de minimis standard.* To comply with this standard the State must demonstrate that each of the following requirements have been met:

- (i) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);
- (ii) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(iii)(B)(1)(i) of this section;
- (iii) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;
- (iv) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(iii)(B)(1)(i) of this section are such that the instances of noncompliance are unlikely to recur in the future; and
- (v) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(B)(1)(iv) of this section.

(2) *Numerical de minimis standard.* To comply with this standard the State must demonstrate that each of the following requirements under paragraphs (f)(6)(iii)(B)(2) (i) and (ii) of this section have been met:

- (i) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and
- (ii) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.
- (iii) *Exception.* When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis

standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the State's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(iv) *Progress.* Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(B)(2)(i) of this § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(v) *Request submission.* Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(B) (1) or (2) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's Formula Grant Award.

* * * * *

Paragraph 7. On page 13338 in amendatory instruction 23, paragraph (f)(6)(iii)(D) of § 31.303 was redesignated as paragraph (f)(6)(iii)(C) of § 31.303. Redesignated paragraph (f)(6)(iii)(C) of § 31.303 is corrected to read as follows:

* * * * *

- (f) * * *
- (6) * * *
- (iii) * * *

(C) *Waiver.* Failure to achieve full compliance as defined in this section shall terminate any State's eligibility for FY 1993 and prior year formula grants funds unless the Administrator of OJJDP waives termination of the State's eligibility. In order to be eligible for a waiver of termination, a State must request a waiver and demonstrate that it meets the standards set forth in

paragraph (f)(6)(iii)(C) (1) through (7) of this section:

(1) Agrees to expend all of its formula grant award except planning and administration, advisory group set-aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(2) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable State law and did not constitute a pattern or practice within the State; and

(3) Made meaningful progress in removing juvenile criminal-type offenders from adult jails and lockups. Compliance with this standard requires the State to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or a significant reduction in the number of facilities securely detaining such juveniles; or a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or State legislation has recently been enacted and taken effect and which the State demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups; and

(4) Diligently carried out the State's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the State's jail and lockup removal goals and objectives within approved time lines, and that the State Advisory Group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the State's plan; and

(5) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the State, to eliminate noncompliant incidents; and

(6) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(7) Demonstrates an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance.

* * * * *

Paragraph 8. On page 13338 in amendatory instruction 23, paragraph (f)(6)(iii)(E) of § 31.303 was redesignated as paragraph (f)(6)(iii)(D) of § 31.303. Redesignated paragraph (f)(6)(iii)(D) is corrected to read as follows:

* * * * *

(f) * * *

(6) * * *

(iii) * * *

(D) *Waiver maximum.* A State may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(C) of this section for a combined maximum of four Formula Grant Awards through Fiscal Year 1993. No additional waivers will be granted.

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John J. Wilson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95-9826 Filed 4-20-95; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF DEFENSE

Department of the Army

33 CFR Part 222

Periodic Inspection and Continuing Evaluation of Completed Civil Works Structures and Inspection and Evaluation of Corps of Engineers Bridges; Rescission

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Rescission of regulations.

SUMMARY: This final rule rescinds regulations concerning periodic inspection and continuing evaluation of completed civil works structures and inspection and evaluation of Corps of Engineers bridges. Both regulations are no longer required to be published in the Code of Federal Regulations because they are for "in-house" guidance only. This rule renumbers the remaining regulations in part 222.

EFFECTIVE DATE: March 20, 1995.

ADDRESSES: U.S. Army Corps of Engineers, Engineering Division, Directorate of Civil Works, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Paul D. Barber or Yung Kuo, (202) 504-4533.

SUPPLEMENTARY INFORMATION:

List of Subjects in 33 CFR Part 222

Bridges, Dams, Reservoirs. Safety, Water resources.

For the reasons set forth in the preamble, 33 CFR part 222 is amended as follows:

PART 222—ENGINEERING AND DESIGN

1. The authority citations for part 222 continues to read as follows:

Authority: 23 U.S.C. 116(d); delegation in 49 CFR 1.45(b); 33 U.S.C. 467 et seq.; 33 U.S.C. 701, 701b, and 701c-1 and specific legislative authorization Acts and Public Laws listed in appendix E of § 222.7.

2. Sections 222.2 and 222.3 are removed and §§ 222.4 through 222.8 are redesignated as §§ 222.2 through 222.6.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95-9654 Filed 4-20-95; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AE72

Schedule for Rating Disabilities; Gynecological Conditions and Disorders of the Breast

AGENCY: Department of Veterans Affairs.
ACTION: Final regulation.

SUMMARY: This document amends the section of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities on Gynecological Conditions and Disorders of the Breast. This amendment is based on a General Accounting Office (GAO) study noting that there has been no comprehensive review of the rating schedule since 1945, and recommending that such a review be conducted. The intended effect of this action is to update the gynecological and breast disorders section of the rating schedule to ensure that it uses current medical terminology, unambiguous criteria, and that it reflects medical advances which have occurred since the last review.

EFFECTIVE DATE: This amendment is effective May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Carol McBrine, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273-7210.

SUPPLEMENTARY INFORMATION: In December 1988, the General Accounting Office (GAO) recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. As part of the process to implement these recommendations, VA published in the

Federal Register of March 26, 1992 (57 FR 10450-53) a proposal to amend 38 CFR 4.116 and 4.116a. Interested persons were invited to submit written comments, suggestions, or objections on or before April 27, 1992. We received comments from Disabled American Veterans, Veterans of Foreign Wars, Paralyzed Veterans of America, and from several VA employees.

Two commenters suggested that we revise the proposed criteria for rating endometriosis under diagnostic code (DC) 7629, placing the emphasis on pain and abnormal bleeding rather than on headaches.

Upon further review, VA concurs that symptoms such as headaches and muscle cramps are not the most appropriate criteria for evaluating endometriosis, and we have therefore modified the proposed criteria. At the 50 percent level, the proposed criteria specified endometriomas larger than 2x2 cm., ovary or tubes bound down or obstructed by adhesions, or obliteration of the cul-de-sac. These criteria have been modified to call for lesions involving the bladder or bowel confirmed by laparoscopy, pelvic pain or heavy or irregular bleeding not controlled by treatment, and bowel or bladder symptoms. The proposed 30 percent level called for several lesions or minimal adhesions with side effects such as headaches, muscle cramps, or edema despite treatment; but the schedule has been revised to require pelvic pain or heavy or irregular bleeding not controlled by treatment.

One commenter suggested that we include 10 percent and 100 percent levels for evaluation of endometriosis.

Upon further consideration we have added a 10 percent level for those cases in which pain or bleeding requires continuous treatment. However, endometriosis does not in our judgment reach the level of total disability. Some women have incapacitating symptoms, but on a cyclic basis related to their menstrual periods. Others have milder symptoms on a constant basis. Providing a 50 percent level recognizes the substantial level of disability that women may experience because of endometriosis, but we believe that, in general, the highest level of disability assigned for a condition should not exceed the evaluation for absence of the organ involved. In this case, 50 percent for removal of the uterus and both ovaries is the highest post-surgical evaluation.

One individual suggested that a convalescent period of six months at 100 percent should be provided for endometriosis following surgery or other corrective procedure.