

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, (202) 418-5100.

Jean A. Webb,

Secretary of the Commission.

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DEPARTMENT OF DEFENSE**Office of the Secretary**

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL)

AGENCY: Department of Defense; Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy).

ACTION: Notice of amendment of the demonstration project plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

This amendment revises the Air Force Research Laboratory (AFRL) demonstration project plan by changing from 180 days to 90 calendar days the amount of time required to be assessed under the Contribution-based Compensation System (CCS).

DATES: This amendment to the demonstration project may be implemented beginning on the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: AFRL: Ms. Michelle Williams, AFRL/DPL, 1981 Monahan Way, Wright-Patterson AFB, Ohio 45433-5209. DoD: Ms. Patricia M. Stewart, CPMS-AF, 1400 Key Boulevard, Suite B-200, Arlington, VA 22209-5144.

SUPPLEMENTARY INFORMATION:**1. Background**

The final plan was published in the **Federal Register** for the S&T Reinvention Laboratory personnel

Management Demonstration Project at AFRL (Wednesday, November 27, 1996, Volume 61, Number 230, Part V, page 60400). An amendment to the final plan was published in the **Federal Register** as follows: To clarify which employees are subject to the extended probationary period; provide the contribution-based compensation system (CCS) bonus to eligible employees subject to the GS-15, step 10 pay cap; and change the name of broadband level descriptor "Cooperation and Supervision" and CCS Factor 6 "Cooperation and Supervision" to "Teamwork and Leadership" (Friday, January 21, 2000, Volume 65, Number 14, Part I, page 3498).

This demonstration project involves simplified job classification, two types of appointment authorities, an extended probationary period, pay banding, and CCS.

2. Overview

This amendment changes from 180 to 90 calendar days the amount of time required to be assessed under CCS. Experience has revealed that 180 days is unduly long and unnecessary for effective employee assessments under CCS.

I. Executive Summary

The Department of the Air Force established the AFRL personnel demonstration project to be generally similar to the system in use at the Department of the Navy personnel demonstration project known as China Lake. The AFRL demonstration project was built upon the concepts of a contribution-based compensation system, two appointing authorities, extended probationary period, simplified classification procedures delegated to the AFRL Commander, and pay banding.

*II. Introduction***A. Purpose**

The AFRL demonstration project provides managers, at the lowest practical level, the authority and flexibility needed to achieve a quality laboratory and quality products. The purpose of this amendment is to change the time an employee must be covered under the demonstration project from 180 to 90 calendar days in order to be assessed under CCS. Other basic provisions of the approved AFRL project plan are unchanged.

B. Employee Notification and Collective Bargaining Requirements

Employees affected by this amendment will be provided a copy of this notice. Participating organizations

must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

III. Personnel System Changes

The AFRL demonstration project plan is amended as follows: Change section III.D.3., The CCS Assessment Process, (61 FR 60414) paragraph 5, second sentence to read: "If on October 1, the employee has served under CCS for less than 90 calendar days during the annual assessment cycle, the supervisor will wait for the subsequent annual cycle to assess the employee. Periods of approved, paid leave will be counted toward the 90-day time period."

Dated: October 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE**Department of the Air Force**

Active Duty Service Determinations for Civilian or Contractual Groups

On September 26, 2005, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as "The U.S. and Foreign Civilian Employees of CAT, Inc., Who Were Flight Crew Personnel (U.S. Pilots, Co-Pilots, Navigators, Flight Mechanics, and Air Freight Specialists) and Aviation Ground Support Personnel (U.S. Maintenance Supervisors, Operations Managers, and Flight Information Center Personnel) and Conducted Paramilitary Operations in Korea, French Indochina, Tibet and Indonesia From 1950 Through 1959; and U.S. and Foreign Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Laos from 1961 Through 1974, When the War in Laos Ended; and U.S. and Foreign Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Vietnam From 1964 Through 1975, When Saigon Was Evacuated and Air America Flight Operations Ceased" shall not be considered "active duty" for purposes of all laws administered by the Department of Veterans Affairs (VA).

FOR FURTHER INFORMATION CONTACT: Mr. James D. Johnston at the Secretary of the

Air Force Personnel Council (SAFPC);
1535 Command Drive, EE Wing, 3d Fl.;
Andrews AFB, MD 20762-7002.

Bruno Leuyer,

Air Force Federal Register Liaison Officer.

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DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendment to the Basin Regulations—Water Supply Charges and Comprehensive Plan Relating to Certificates of Entitlement

AGENCY: Delaware River Basin
Commission.

SUMMARY: The Delaware River Basin Commission (“Commission” or “DRBC”) will hold a public hearing to receive comments on proposed amendments to the Commission’s Basin Regulations—Water Supply Charges and Comprehensive Plan concerning certificates of entitlement. No changes in the substance or administration of the rule are proposed. The purpose of the proposed amendments is to clarify the language of the rule to conform to the Commission’s past decisions and current practices in order to provide better notice to users as to how the Commission is implementing its entitlements program and to avoid future controversy.

Background. The Delaware River Basin Compact (“Compact”), the 1961 statute that created the DRBC and defined its powers, authorizes the Commission to charge for the use of facilities that it may own or operate and for products and services rendered thereby. Compact, § 3.7. Congress limited this authority by providing that the Commission cannot charge for water withdrawals or diversions that could lawfully have been made without charge as of the effective date of the Compact. *Id.*, § 15.1(b).

By Resolution No. 64-16A in 1964 the Commission authorized a water charging program. It provided for the revenues generated by the program to be used for repayment of the nonfederal share of the investment cost of water supply storage facilities associated with federal projects within the Basin. In anticipation of Commission investment in storage at the Beltzville Lake and Blue Marsh Reservoir projects in Pennsylvania, the Commission by Resolution No. 1971-4 defined, among other things, the means by which it would establish water charging rates. Consistent with Section 15.1(b) of the

Compact, Resolution No. 1971-4 provided that charges would be applicable only to the amount of water withdrawn in excess of the amount taken or legally entitled to be taken by an entity during the preceding year. By Resolution No. 74-6, the Commission instituted a system of water supply charges for surface water withdrawals within the Basin. That resolution provided for the issuance of certificates of entitlement to then-current water users, establishing the amount of water each could lawfully take from the surface waters of the Basin without charge, consistent with Section 15.1(b) of the Compact. The resolution provided that a certificate of entitlement was not transferable, except under limited circumstances set forth in enumerated exceptions.

Because entitlements treat users that commenced water withdrawals before the enactment of the Compact more favorably than users who commenced water withdrawals later, even though all users benefit equally from the facilities financed by water supply charges, courts and the Commission have emphasized the need to eliminate entitlements over time. Both the Commission and the courts have construed narrowly the exceptions to the rule that entitlements are not transferable, and the Commission has in its decisions consistently held that changes in ownership or control would extinguish a certificate. However, the language of the regulations has never explicitly defined “changes in ownership or control.” As a consequence, in the decisions that the Commission has been asked to make in its adjudicatory capacity and that the courts have subsequently been asked to decide, the matter of what constitutes a change of ownership or control has been controversial.

In 1994, in response to a ruling by the Third Circuit in *Texaco Refining and Marketing, Inc. v. DRBC*, 824 F. Supp. 500 (D.Del. 1993), *aff’d.*, No. 93-7475 (3d Cir. June 24, 1994) (*per curiam*), the Commission adopted Resolution No. 94-20. That resolution incorporated an explicit “ownership and/or control” test and eliminated the merger exception included in the Commission’s regulations at the time. In addition, the exception for corporate reorganizations embodied in Section 5.2.1.F.2 of the Water Charging Regulations was amended to apply only when the reorganization “does not affect ownership and/or control.”

In spite of the 1994 amendment, some members of the Basin community have continued to interpret the language of the rule in a manner contrary to the

Commission’s consistent interpretation. To avoid further controversy, the Commission proposes a more thorough revision of the language, intended to remove any ambiguity.

Key Provisions. In addition to defining “change in ownership and/or control” with much greater specificity, the proposed revisions also make clear that a merger at any tier in a corporate organization will extinguish a certificate held by a subsidiary in the same way as if the merger had occurred at the subsidiary level. Although the Commission has interpreted its rule this way in the past, the rules have never been explicit on this point.

The proposed amendments preserve and clarify the corporate reorganization exception contained in the current regulation. The Commission traditionally has not extinguished an entitlement in the case of an internal reorganization, and it does not propose a change in this practice.

The proposed amendments also preserve the existing exception for agricultural uses. Historically, agriculture has been treated differently than other uses. For purposes other than agriculture, an entitlement is issued to a user and would not be transferable to a different user, even if the use remained the same. In the case of agriculture, however, an entitlement effectively runs with the land, as long as the land remains in agriculture. The proposed amendments provide that an entitlement can be reissued to the successor of a holder of a certificate issued for agricultural water use, provided that the successor demonstrates that the water will continue to be used for agricultural irrigation purposes.

DATES: The public hearing will be held on Wednesday, December 7, 2005 at approximately 2:30 p.m. as part of the Commission’s regularly scheduled business meeting. The time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 p.m. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event that all those who wish to testify cannot be heard on December 7, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Written comments will be accepted through Tuesday, January 10, 2006.