

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1500 is amended by adding new paragraph (a)(15) and in the

table in paragraph (b) by adding new entry "15" to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(a) * * *

(15) Nylon 46 resins (CAS Reg. No. 50327-77-0) are manufactured by the condensation of 1,4-butanediamine and adipic acid.

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2N HCL	Viscosity No. (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
* * * * *								
15. Nylon 46 resins for use only in food-contact membrane filters intended for repeated use. The finished membrane filter is intended to contact beverages containing no more than 13 percent alcohol, under conditions of use E, F, and G listed in table 2 of § 176.170(c) of this chapter.	1.18 ± 0.015	551–592	Dissolves in 1 hour	0.3	0.2	0.2	0.3

* * * * *

Dated: June 12, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 10

RIN 1076-AD77

Indian Country Detention Facilities and Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (Bureau) is establishing regulations to ensure that all Bureau and tribal entities that receive Federal funding for the operation, maintenance, design and construction, or renovation of detention facilities are operated and maintained in a constitutionally sound manner and comply with the Indian Law Enforcement Reform Act of 1990, Public Law 101-379 (25 U.S.C. 2801 et seq.). These regulations define the policies, standards and guidelines for detention and rehabilitation programs within Indian country.

EFFECTIVE DATE: These regulations take effect on August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Theodore R. Quasula, 202-208-5786.

SUPPLEMENTARY INFORMATION:

Background

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9. The proposed rule was published August 5, 1994, (59 FR 40086). Comments received during the comment period ending November 3, 1994, were considered in the drafting this final rule.

What is the purpose of this rule? The purpose of this rule is to provide standards and procedures for the operation of detention facilities funded under the Indian Alcohol and Substance Abuse Prevention and Treatment Act, Pub. L. 99-570, (25 U.S.C. § 2453).

Who must follow these regulations? Every BIA and tribal law enforcement program receiving Federal funding or performing duties during the operation of detention or rehabilitation facilities or functions must follow these minimum standards. These programs and functions are high risk activities that subject the Federal Government to the risk of liability for tort claims. Self-governance tribes and tribes with limited jurisdiction are encouraged to use this rule, Chapter 69 Bureau of

Indian Affairs Manual (BIAM), and handbooks for detention and rehabilitation programs under their administration.

How will these regulations be enforced? All programs will be subject to periodic inspections or evaluations during which the BIA will provide technical assistance, will ensure compliance with the standards and procedures contained in this rule, and will identify necessary corrective actions or improvements to policies and procedures. The Bureau adopted a voluntary accreditation process with an audit and evaluation system.

Why were regulations rewritten and moved? Detention standards were published in 25 CFR § 11.305 and later moved to Section 12.104. The regulations had not been modified for sixteen years. They did not address current detention problems and were inconsistent with current acceptable detention practices and procedures. The regulations also failed to address code compliance and related physical plant issues, and lacked options to allow for alternative types of detention programs. The need for more detailed and contemporary standards was intensified by the provision of funding for detention programs under Indian Alcohol and Substance Abuse Prevention and Treatment Act.

Are all the standards and procedures applicable to adult and juvenile detention facilities, Inmate Handbook

facilities, and holding facilities and programs published in this rule? No. Although Part 10 is reserved entirely for Indian country detention and rehabilitation programs, Chapter 69 BIAM, and handbooks for detention and rehabilitation programs detail the standards and procedures.

How were the rules or regulations revised and updated? A multi-agency task force was assembled to develop the first draft of these standards. The task force included representatives from the Office of Law Enforcement Services, Area Office Supervisory Criminal Investigators, Agency Criminal Investigators, detention staff, and Indian Health Service program specialists. The task force also included individuals with experience working in tribal detention programs. Additional internal reviews were conducted at the Bureau area and agency level. Interested parties and professionals submitted written comments, suggestions or objections to the proposed rules.

Review of Public Comments

Building and Safety Code Compliance.

The Bureau of Indian Affairs, Facilities Management & Construction Center recommended the standards relating to building and safety code compliance be revised to reflect current requirements. If the facility is owned by the BIA, it must comply with the codes and standards adopted by the BIA in the Chapter 25 Bureau of Indian Affairs Manual (BIAM) Supplements 18 and 19. If the facility is owned by a tribe, it must comply with either tribally adopted building codes, tribally adopted state or municipal building codes, or the Chapter 25 BIAM Supplements 18 and 19. This change has been incorporated into each applicable standard.

Mississippi Band of Choctaw Indians

The Mississippi Band of Choctaw Indians expressed numerous concerns and recommendations. Each of the Tribe's concerns has been addressed:

(1) Development of requirements that are applicable to all facility types. As directed of the Department of the Interior, Office of Regulatory Affairs, the format for the rule must be general in nature. Specific requirements are published in the policy and standards manuals, rather than as rules. The recommendation will not be incorporated in this rule.

(2) Publication of an accreditation process prior to the approval of the final rule. An accreditation process has been drafted. A standards compliance information packet, corrective action plan workbook, self-audit workbook,

and standard accreditation workbook have been developed. This process will be field tested and adopted by the BIA.

(3) Reduction of the levels of Bureau approval required for standard compliance—operational descriptions. Standards have been developed for Bureau operated detention/correctional facilities and programs. Through the contracting programs of the Indian Self-Determination and Education Assistance Act, The tribe can develop a facility specific line of authority and approval process of their own when contracting detention/correction programs under the Indian Self-Determination and Education Assistance Act.

(4) Involvement of the Indian Health Service and tribes in the drafting of these standards. The Bureau established a task force to draft these standards. The task force was comprised of representatives from the Office of Law Enforcement Services, Area Office Supervisory Criminal Investigators, Agency Criminal Investigators, detention staff, and Indian Health Service program specialists and tribes. They provided Indian Health Services and the tribes many opportunities to review the standards, including the publication of the proposed rule in the Federal Register on August 5, 1994.

(5) Incorporation of the numbering changes for various tables and charts for Mandatory Standards, Separation of Adults and Juveniles, and Suicide Screening. This has been done.

(6) Modification of accreditation requirements and the minimum qualifications for new recruits. The minimum standards are critical to a quantified accreditation process in order to evaluate compliance and performance. The recommendation will not be incorporated in this rule.

(7) Addition of Detention Officer to the definitions section. The definition section for this rule and the definition has been added.

(8) Provision of funds to train detention staff in the operation of new generation jails. The BIA Indian Police Academy offers detention officer training and is revamping its detention officers' curriculum to incorporate direct supervision methodologies and philosophies.

(9) Incorporation of the rate of facility capacity as a mandatory standard. During drafting of the rule, BIA agreed that mandatory standards would be limited to those areas that create a potential danger to the life, health, and safety of inmates, staff, and/or the community, and those areas in which there are other statutes, regulations, or directives that mandate compliance.

The recommendation will not be incorporated in this rule.

(10) Inclusion and/or clarification of the following definitions: (a) Protective Holding Cell—a specialized cell or room that is utilized to detain or isolate an incapacitated or combative individual(s) for a short period of time, in the standards. The protective holding cell may be equipped with specialized security and/or medical equipment to control and manage individuals detained in these areas in a safe, secure, and humane environment. (b) Special Management—confinement of a detainee in an individual cell that is separated from the remainder of the population for the purpose of disciplinary, administrative segregation, protective custody, or medical segregation, in standards. The exceptions to house an inmate in special management must coincide with this criteria. (c) Multiple Occupancy Cells or Rooms—an area, room or cell housing more than two and less than fifty persons. These recommendations were incorporated in the standards or rule.

(11) Addition of Designated Security Post to clarify staffing requirements.

(12) Addition of Adult Holding Facility and Mass Arrest to the definitions for this rule. The Department of the Interior, Office of Regulatory Affairs established the definitions section for this rule. The recommendation will not be incorporated in this rule.

(13) Inclusion of square footage requirements as a mandatory standard. During drafting of the rule, BIA agreed that mandatory standards would be limited to those areas that create a potential danger to the life, health, and safety of inmates, staff, and/or the community, and those areas in which there are other statutes, regulations, or directives that mandate compliance. The recommendation will not be incorporated in this rule.

(14) Addition of a transition program for accepting, moving into, and operating a new facility beginning one year prior to the completion of a facility. The Planning of New Institutions (PONI) is the Bureau's process for constructing and operating new facilities in Indian country. The Bureau has determined that this transition must begin when the construction phase starts. The recommendation will not be incorporated in this rule.

(15) Consolidation of limitations on inmate correspondence and inspection of letters and packages. Upon review, it was decided that no change would be made. The limitations on inmate correspondence addresses the volume of lawful correspondence an inmate may

send or receive. The standard dealing with the inspection of letters and packages addresses the search of inmate mail for contraband. The recommendation will not be incorporated in this rule.

(16) Removal of the requirement that a governing board or advisory committee oversee the operation of a residential facility. The structure of these programs will be the responsibility of the tribe. Oversight of these facilities should include representation from the community and the overall Tribal government. The recommendation will not be incorporated in this rule.

(17) Removal of the designated staff position for recreational and leisure activities, would not be realistic due to the limited staff resources. A position must be specified for accountability purposes, however, the administrator will have the latitude to designate collateral duties where staff is limited. The recommendation will not be incorporated in this rule.

(18) Amendment of Staffing Requirements to Administrative Review of Staff Requirement to include institutional operations dealing with staff requirements. The staffing requirement in the Administration and Management section is an institutional requirement that staff be on board at all times to operate the facility, rather than the administrative process to review staffing patterns within the institution. The recommendation will not be incorporated in this rule.

(19) Inclusion of comparable tribal regulations in the standards. The standards indicate that non-regulatory documents will not be incorporated into the rule. The standards were developed for BIA operated detention/correctional facilities and programs, but permit tribes to operate under comparable tribal regulations when the program is contracted under the Indian Self-Determination and Education Assistance Act. The recommendation will not be incorporated in this rule.

National Commission on Correctional Health Care and the American Psychiatric Association

The recommendation by the National Commission on Correctional Health Care (NCOCHC) and American Psychiatric Association suggested replacing the drafted health care standards developed in association with the Indian Health Service with the NCOCHC's standards for health services in jails. Indian country detention and holding facilities, in general, are smaller than the facilities referenced in NCOCHC standards. The NCOCHC

standards are unrealistic for reservation facilities. The Indian Health Service has a legal obligation to provide health services to Indian people and to mandate NCOCHC's standards is duplicative. The Bureau standards are equal to or exceed the American Correctional Association standards. These standards are consistent with national professional standards. The recommendation will not be incorporated in this rule.

Changes Reflecting Department of the Interior Policy

The Office of Regulatory Affairs and the Office of the Solicitor, Department of the Interior, indicated that the proposed rule was predominately standards and procedures for the operation of detention or holding facilities in Indian country; as such they should not be published in the Code of Federal Regulations. This is consistent with Executive Order 12866 that mandates that agencies streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

The Bureau has separated the operational standards and day-to-day guidance from the rulemaking process. The operational standards are now included in easy-to-read reference handbooks and guides. These handbooks and guides are specific to Indian country detention and holding facilities. They are now part of the Bureau's operations management handbook and are available to the public, tribal programs, and BIA employees upon request. Inmates will receive written guidelines at the time of booking into a facility detailing what behavior will be expected of them, their rights and privileges, and the nutritional/medical/emergency treatment to be provided.

Public comments have been incorporated in the "Indian Country Detention Facilities and Programs 69" (Chapter 69 Bureau of Indian Affairs Manual) and accompanying handbooks. The Inmate Handbook ensures that all persons incarcerated in Indian country detention or holding facilities understand their rights, privileges, safety procedures, detainee treatment during incarceration, and the behavior expected of detainees.

Evaluation and Certification
Executive Order 12988

The Department has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.)

Executive Order 12630

The Department has determined that this rule does not have "significant" takings implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information

The primary author of this document is Warren LeBeau, Detention Specialist, Bureau of Indian Affairs, Office of Law Enforcement Services.

List of Subjects in 25 CFR Part 10

Buildings, Indians, Law enforcement, Prisoners, Youth.

For the reasons given in the preamble, a new part 10 is added to Chapter I of title 25 of the Code of Federal Regulations as set forth below.

PART 10—INDIAN COUNTRY DETENTION FACILITIES AND PROGRAMS

Sec.

- 10.1 Why are policies and standards needed for Indian country detention programs?
- 10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?
- 10.3 Who must follow these policies and standards?
- 10.4 What happens if the policies and standards are not followed?
- 10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, Inmate Handbook, and holding facilities?
- 10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?
- 10.7 Where do I find help or receive technical assistance in complying with the policies and standards?
- 10.8 What minimum records must be kept and reports made at each detention, Inmate Handbook, or holding facility in Indian country?
- 10.9 If a person is detained or incarcerated in an Indian country detention, Inmate Handbook, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?
- 10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?
- 10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 2417, 2453, and 2802.

§ 10.1 Why are policies and standards needed for Indian country detention programs?

Policies and standards are required to ensure that all Bureau of Indian Affairs (BIA) and tribal entities that receive Federal funding for the operation, maintenance, design and construction or renovation of detention facilities, Inmate Handbook, or holding facilities are supporting constitutional rights and are complying with the Indian Law Enforcement Reform Act of 1990. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. The provision for funding tribes for detention programs under the Indian Alcohol and Substance Abuse Prevention and Treatment Act, Public Law 99-570, (25 U.S.C. 2453) requires standards and procedures for such facilities.

§ 10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?

The Director, Office of Law Enforcement Services who reports to the Deputy Commissioner of Indian Affairs, BIA, establishes policies, procedures, and standards for the operations, design, planning, maintenance, renovation, and construction of detention programs in the BIA and by tribal contract under Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended, 25 U.S.C. 450.

§ 10.3 Who must follow these policies and standards?

You must follow these minimum policies, standards, and guides if you are part of the BIA or tribal detention or rehabilitation program receiving Federal funding. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. Detention officers, guards, cooks and other staff conducting business in the facilities must meet minimum standards of law enforcement personnel as prescribed in 25 CFR part 12, subpart D, "Qualifications and Training Requirements." Those tribal programs not receiving Federal funding under the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) who wish to be accredited are encouraged to use the policies and standards in that part since they have been modified and approved for Indian country.

§ 10.4 What happens if the policies and standards are not followed?

The risk for human and civil rights violations due to lack of common standards will subject the operation and/or facility to unnecessary exposure to liability. Lack of employee standards, particularly for training and background checks, will increase the risk of misconduct and vicarious liability of the tribes and the Federal government through tort claims. Funding sources for detention programs may become scarce to nonexistent because of contract noncompliance. The tribes' opportunity to receive funding from potential resource sharing agreements with other law enforcement agencies may be damaged because the facility may have to be closed for cause due to violation of the life safety codes.

§ 10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, Inmate Handbook, and holding facilities?

The Bureau of Indian Affairs, Department of the Interior, maintains a manual of policies and procedures called the *Bureau of Indian Affairs Manual (BIAM)*. The Chapter 69 BIAM titled "Indian Country Detention Facilities and Programs," contains the BIA's policies, procedures, and standards for detention and holding programs in Indian country. The standards for the programs within the *BIAM* are in handbook format for easy field reference and use. Copies of the Chapter 69 *BIAM* and handbooks may be obtained from the Director, Office of Law Enforcement Services.

§ 10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?

The tribes and BIA programs will use a phased approach to meeting all non-mandatory detention standards and will document progress on uniform reporting. The BIA Office of Law Enforcement Services will conduct periodic operational evaluations for oversight.

§ 10.7 Where do I find help or receive technical assistance in complying with the policies and standards?

The BIA has a trained Detention Specialist on the staff of the Office of Law Enforcement Services, Albuquerque, New Mexico, who is available to conduct evaluations and provide technical assistance or guidance in all facets of Indian country detention programs.

§ 10.8 What minimum records must be kept and reports made at each detention, Inmate Handbook, or holding facility in Indian country?

The Director, Office of Law Enforcement Services, BIA, will develop all necessary requirements for maintaining records, reporting data, and archiving information. These requirements will be published in 69 BIAM, "Indian Country Detention Facilities and Programs."

§ 10.9 If a person is detained or incarcerated in an Indian country detention, Inmate Handbook, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?

When an individual is incarcerated in an Indian country detention, Inmate Handbook, or holding facility, he/she will be given, or in some cases notified of the availability of, an Inmate

Handbook. This book of guidelines describes in detail the inmate's rights, privileges, protection and safety, cleanliness and sanitation, and general health and nutritional standards. The Inmate Handbook describes the emergency evacuation procedures, medical, counseling, rehabilitation services, visitation procedures, and other appropriate information. The Inmate Handbook is published by the Director, Office of Law Enforcement Services and maintained by the detention facility administrator at each facility location.

§ 10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?

All allegations of civil rights violations must be reported immediately to the Internal Affairs Branch of the Office of Law Enforcement Services. This office will ensure that such allegations are immediately reported to the Civil Rights Division of the U.S. Department of Justice through established procedures. The BIA Internal Affairs Branch may also investigate alleged violations and make recommendations for additional action as necessary. Detailed instructions on the procedure to report violations can be found in the Inmate Handbook.

§ 10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

At each detention, Inmate Handbook, or holding facility located in a tribal jurisdiction where federal funds are used for operations or maintenance programs, the BIA's policies, standards, and procedures will be made available upon request. The Inmate Handbook will be made available to all persons at the time they are incarcerated or detained in a facility. There may be times when this may be delayed due to the physical or mental condition of the person at time of incarceration. In these cases, the Inmate Handbook will be made available when the person is deemed receptive and cognizant by the detention officer in charge. All policies, standards, procedures, and guidelines are available at each facility to the public or by writing to the Director, Office of Law Enforcement Services.

Dated: May 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-16042 Filed 7-1-96; 8:45 am]

BILLING CODE 4310-02-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 96-18; PP Docket No. 93-253; FCC 96-260]

Future Development of Paging Systems; Implementation of Section 309(J) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Order on Reconsideration of Interim Rules.

SUMMARY: In this *Order on Reconsideration* in WT Docket No. 96-18 and PP Docket No. 93-253, the Commission modifies the *First Report and Order* in this docket by expanding the number of licensees that can modify their paging systems by adding sites, due to the paging industry's claims that such relief is necessary to allow paging operators to meet customer needs and improve service to the public while this rulemaking is pending. The Commission will allow applications for additional sites by incumbent licensees who had filed paging applications by October 1, 1995, rather than February 8, 1996, thus expanding the potential number of paging licensees that can expand their systems.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mika Savir or Rhonda Lien, Commercial Wireless Division at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This *Order on Reconsideration* in WT Docket No. 96-18, PP Docket No. 93-253, adopted June 10, 1996 and released June 11, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington DC., 20037, (202) 857-3800.

Synopsis of Order on Reconsideration of First Report and Order:

I. Background

In the *Notice of Proposed Rulemaking (NPRM)*, 61 FR 06199, February 16, 1996, the Commission suspended acceptance of new paging applications governed by parts 22 and 90 of the Commission's rules in conjunction with a proposal to convert from site-by-site licensing of paging channels to licensing on a geographic area basis. In the *First Report and Order (First R&O)*, 61 FR 21380, May 10, 1996, the Commission

adopted interim measures allowing incumbents on non-nationwide paging channels to apply for new sites to expand existing systems, subject to certain limitations, during the pendency of the rulemaking proceeding. On its own motion, the Commission makes certain modifications to the interim licensing rules established by the *First R&O*, as discussed below.

In the *First R&O*, the Commission allowed incumbents to expand the geographic coverage of their systems by adding transmission sites to their systems within a defined distance of existing, operating sites. Specifically, the *First R&O* provided that applications could be filed for new sites provided that the applicant certifies that the proposed site is within 65 kilometers (40 miles) of an operating site licensed to the same applicant on the same channel prior to the *NPRM*, that is, February 8, 1996. Thus, under the terms of the *First R&O*, incumbents may not use sites licensed after February 8, 1996 as the basis for filing applications for additional expansion sites under the interim rules.

II. Order on Reconsideration

At the time the Commission adopted the *NPRM*, the Wireless Telecommunications Bureau (Bureau) was engaged in reducing a significant backlog of pending paging applications, primarily in the 931 MHz band, many of which had been pending for a year or more. Since the *NPRM* was adopted, the Bureau has significantly reduced the backlog by processing all non-mutually exclusive applications filed through September 30, 1995. In *ex parte* presentations and in comments filed with the Commission, incumbent paging operators have argued that the processing backlog delayed licensing of sites that otherwise would have been granted prior to February 8, 1996. Accordingly, these commenters contend that they should not be precluded from using these newly licensed sites as a basis for expansion.

III. Discussion

The Commission agrees that because of the time it has taken to process certain paging applications, it should allow incumbents to use some sites that were not licensed as of February 8, 1996 as a basis for expansion. Due to the large number of 931 MHz applications filed in the past few years, the Bureau has developed a computer software program to identify and process non-mutually exclusive applications. The Bureau began using the program to process backlogged applications in mid-1995. However, some applications for 931