DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Parts 426 and 427

RIN 1006–AA32

Acreage Limitation and Water Conservation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This final rule retitles and revises the Rules and Regulations for Projects Governed by Federal Reclamation Law and moves the water conservation provisions to a new part. These rules replace prior rules on the administration of the Reclamation Reform Act of 1982 (RRA). The final rule, among other things, incorporates existing policies that are not included in the prior rules and raises certain certification and reporting thresholds. Reclamation has rewritten and reorganized these regulations to make them clearer and less administratively burdensome, while maintaining compliance with and achievement of programmatic goals.

EFFECTIVE DATES: The effective date of revised part 426, Acreage Limitation Rules and Regulations, and the new part 427, Water Conservation Rules and Regulations, is January 1, 1998. The amendment to current § 426.10 is effective on January 1, 1997. The text for the amendment is located at the end of this document.

ADDRESSES: A copy of all comments received on the proposed rules are on display to the public in the Bureau of Reclamation Library, Denver Federal Center, Building 67, Room 167, 6th and Kipling, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Austin Burke, Director, Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Mail Code D–5000, Denver, Colorado 80225–0007, telephone (303) 236–3292.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. § 553(d)(1) and (3) the amendment to § 426.10, which pertains to submittal of certification and reporting forms, may take effect less than thirty days after the date of publication in the Federal Register. Section 553(d)(1) permits a substantive rule, which grants or recognizes an exemption or relieves a restriction, to take effect less than thirty days after the date of publication. Section 553(d)(1) applies to the provisions amending current § 426.10, as the amendment excepts certain individuals and entities holding only a relatively small amount of land from having to submit forms to Reclamation.

Moreover, § 553(d)(3) could also permit the amendment to take effect on January 1, 1997. Section 553(d)(3) of the Administrative Procedure Act permits final rules to take effect less than thirty days after publication upon a showing of good cause. For many farmers in the western United States, including many landholders who receive Reclamation project water, the water year begins on January 1, 1997. If the amendment to the forms provisions was to take effect thirty or more days after the date of publication, these landholders would have to submit reporting forms which other landholders, whose water year begins later in the year, would not. Thus, in order to apply the same rules and regulations to all landholders receiving Reclamation project water and to ensure fairness, the amendment to the forms provisions will take effect on January 1, 1997.

Table of Contents

This section provides the following information:

Introduction

These rules and regulations govern the Bureau of Reclamation's (Reclamation) westwide implementation and administration of the Reclamation Reform Act of 1982. The rules retitle and revise prior rules on acreage limitation and place water conservation rules in a separate CFR part.

Summary of Changes

These final rules implement and interpret the Reclamation Reform Act of 1982, as amended, consistent with Reclamation's role of managing and protecting water resources. The final rules, among other things, incorporate existing policies that are not included in the prior rules and raise certain certification and reporting thresholds. Reclamation has rewritten and reorganized these regulations to make them clearer and easier to administer.

Reclamation published proposed rules in the Federal Register (60 FR 16922, Apr. 3, 1995).

This section summarizes the most significant differences between the prior rules, proposed rules, and final rules. A section-by-section analysis, found later in this preamble, provides a more detailed description of the changes.

Certification and Reporting Thresholds

Landholders whose total westwide landholding is equal to or less than the certification and reporting thresholds, as presented below, are exempt from the annual RRA forms submittal requirements.

Acreage limitation status	Prior rule	Proposed rule		Final rule	
		Category 1	Category 2	Category 1	Category 2
Prior law	40	40	40	40	40
Qualified recipient	40	240	80	240	80
Limited recipient:					
Received water before 10/1/81	40	80	5	40	40
Did not receive water before 10/1/81	40	5	5	40	40

Both the proposed and final rules provide that all districts will be Category 2 unless certain criteria are met. Under the proposed rule criteria, the district had to: (1) Be subject to the discretionary provisions of the RRA; (2)

enter into a resources management ''partnership'' with Reclamation; and (3) not have delinquent financial obligations owed to the United States. Under the final rule criteria, the district must : (1) be subject to the discretionary provisions of the RRA; and (2) not have delinquent financial obligations owed to Reclamation. The ''partnership'' criterion is not included in the final rule.

Application of the Nonfull-Cost Entitlement

Under the prior rule, the following were examined to determine if a farming arrangement was considered to be a lease for acreage limitation purposes:

Who assumes the economic risk in the farming operation?
Who retains the right to the use or possession of the land being farmed?
Who is responsible for payment of the operating expenses?
Who is entitled to receive the profits of the farming operation?

Under the proposed rule, a farming arrangement would have been considered to be a lease for acreage limitation purposes if possession of the lessee's land was partially or wholly transferred to the ''lessee.'' Economic risk was relegated to simply be an indicator of possession.

In the final rule, the criteria found in the prior rule are restated and clarified. Any farming arrangement under which the economic risk and the use or possession of the land has partially or wholly transferred to a party other than the landowner will be considered to be a lease. Once again, who is responsible for payment of operating expenses and who is entitled to receive the profits from the farming operation have been highlighted as indicators of use or possession and economic risk. Unlike the prior rule, this provision is included in the definitions section rather than in the leasing and full-cost pricing section.

Nonresident Alien and Foreign Entity Entitlements

Under the prior, proposed, and final rules, certain applications of the acreage limitation provisions for nonresident aliens and entities not established under State or Federal law (foreign entities) are constant. Specifically:

- Nonresident aliens and foreign entities are eligible to receive Reclamation irrigation water on directly held land in prior law districts only as prior law recipients.
- Land held directly by nonresident aliens and foreign entities in discretionary provision districts is ineligible to receive Reclamation irrigation water.

The difference in application between the three versions of the rule is centered on land held indirectly by nonresident aliens and foreign entities, primarily in discretionary provision districts. Under the prior rules, a nonresident alien could hold up to 960 acres indirectly in a discretionary provision district and receive Reclamation irrigation water. The prior rules do not address holdings by foreign entities. Reclamation policy has been that any land held by a foreign entity in a discretionary district is ineligible to receive Reclamation irrigation water.

Under the proposed rules, both nonresident aliens and foreign entities would be limited to qualifying as prior law recipients with the associated acreage limitations even if they held land indirectly through a domestic entity.

Under the final rules, the prior law entitlements still serve as base entitlements for all nonresident aliens and foreign entities. However, if a nonresident alien is a citizen of, or a foreign entity is established in, a country that has certain treaty or other international agreements with the United States, they will be treated as a United States citizen or as an entity established under State or Federal law for acreage limitation purposes. Accordingly, they may elect to conform to the discretionary provisions and receive the entitlements applicable to qualified and limited recipients for land that they hold indirectly.

Type of Contracts Considered To Be Additional and Supplemental Benefits

Under the prior rules, the general criteria for determining whether a contract action will be considered an additional or supplemental benefit are provided. The provision also lists specific types of contract actions which Reclamation does not consider to provide such benefits. If a district's contract action provides an additional or supplemental benefit, then the district must conform to the discretionary provisions.

Under the proposed rules, the general criteria would have been modified to include specific types of contract actions which Reclamation would consider as providing supplemental or additional benefits. Under the prior rule, some of these contract actions did not require conformance to the discretionary provisions, while for others application of that requirement was not clear.

The final rules retain the more general criteria provided in the prior rules with modifications to remove provisions that are no longer applicable. No policy change is intended.

Application of the RRA to Religious or Charitable Organizations

Under the prior rule, a subdivision of a religious or charitable organization that is subject to the discretionary provisions is treated as an individual qualified recipient if certain RRA criteria are met. If any of the criteria are not met by either the central organization or any of its subdivisions, the entire organization, including all subdivisions, is treated as one limited recipient.

Under the proposed and final rules, a subdivision of a religious or charitable organization that is subject to the discretionary provisions is treated as an individual qualified recipient if the same criteria as found in the prior rules are met. If any of the criteria are not met, only that subdivision, and any subdivision of it, will be affected. Reclamation will determine the acreage limitation status (qualified or limited recipient) of such a subdivision based on the total number of members of that subdivision.

Application of Class 1 Equivalency

Under the prior, proposed, and final rules, Class 1 equivalency factors are based on the productive potential of Class 2 or 3 land as compared to Class 1 land within the same district. The proposed rule added a study of potential toxic or hazardous return flows to any reclassification or Class 1 equivalency factor determination activity. Under the proposed rule if Reclamation determined that soils could contribute to toxic or hazardous return flows, then the land so identified would not be eligible for application of the Class 1 equivalency factors. The final rule continues the policy of the prior rule. The final rule does not include the proposed rule provision to conduct a study of potential toxic or hazardous return flows and use the results of that study as a factor in determining Class 1 equivalency. However, Reclamation will undertake a review of its land classification and soils review procedures, and will implement appropriate changes in those procedures.

Future Operation of Formerly Excess Land by Excess Land Sellers

Under the prior rule, if a landholder sells his/her excess land, the landholder can immediately become the lessee of that land and continue to farm it with Reclamation irrigation water. This provision allows a landholder to avoid

the intent of the anti-speculation provision of the RRA.

Under the proposed rule, landholders would be prohibited from receiving Reclamation irrigation water on land which they previously held as excess. The only exceptions would be if the landholder became, or contracted to become, a direct or indirect landholder of the land prior to July 1, 1995, or such land becomes exempt from the acreage limitation provisions.

Under the final rule, landholders will be prohibited from receiving Reclamation irrigation water on land which they previously held as excess only for the term of the deed covenant associated with the sale of the excess land (10 years). In addition, other changes were made to the list of exceptions to this prohibition. The date for having contracted to become the landholder was changed from July 1, 1995, to December 18, 1996. While this date is prior to the effective date of this section, Reclamation has determined it is appropriate to set such a date, since the public was already notified that the date was going to be in advance of the effective date of the final rulemaking, July 1, 1995, in the proposed rule. Also a broad exception was provided for landholders who pay the full-cost rate for Reclamation irrigation water delivered to land that they formerly held as excess.

Involuntary Acquisition of Formerly Excess Land by Excess Land Sellers

Under the prior rules, no distinction was made between landowners who involuntarily acquired land that had previously been excess in his or her landholding or under recordable contract and those for which the land had not previously been excess or under recordable contract in their landholding. Any involuntarily acquired land that had been nonexcess before the acquisition and was designated as excess by the involuntarily acquiring party was eligible to receive Reclamation irrigation water for 5 years. In addition, such land could be redesignated as nonexcess by the involuntarily acquiring party or sold at full market value at any time.

Under the proposed rule, the landholder could not take advantage of the involuntary acquisition provision and receive water for 5 years, if the land involuntarily acquired had been excess or under recordable contract in his or her landholding. In order for such land to become eligible to receive Reclamation irrigation water, it had to be sold to an eligible buyer at a price approved by Reclamation. In addition, once designated as excess by the landholder who involuntarily acquired the land, the land could not be redesignated as nonexcess.

Under the final rule, two exceptions have been added to modify the prohibition on delivering Reclamation irrigation water to landholders who involuntarily acquire land that had been excess or under recordable contract in his or her landholding. Specifically, financial institutions have been defined and are excluded from this application and landholders that meet certain criteria listed in § 426.12 (deed covenant has expired, they pay the full-cost rate for the water delivered, etc.) may take advantage of the involuntary acquisition provision and receive water for 5 years. Financial institutions have also been fully exempted from the prohibition of selling the land at full market value.

In addition, the final rule provides that involuntarily acquired excess land may be redesignated as nonexcess, as long as the landowner follows the normal procedure for redesignating excess land and pays Reclamation any difference between the rate paid for the delivery of Reclamation irrigation water and what would have been paid if the land had initially been declared nonexcess when the land was involuntarily acquired.

Application of Compensation Rate and Administrative Fees in Cases of Irrigation of Ineligible Excess Land

Under the prior rule, actions that will be taken if Reclamation irrigation water is delivered to excess land are not addressed, other than such deliveries will be terminated. Current Reclamation policy is to also charge the compensation rate (full-cost rate) for such deliveries.

Under the proposed and final rules, Reclamation's existing policy on charging the compensation rate for any deliveries of water to ineligible excess land is incorporated. In addition, the proposed and final rules apply an administrative fee ($260) for such deliveries.

New Procedures for Administrative Appeals of RRA-Related Determinations

Under the prior rule, a two-step process is provided to appeal final RRA determinations made by Reclamation regional directors. The first level of appeal is to the Commissioner of Reclamation. The second level of appeal is to the Office of Hearings and Appeals (OHA).

Under the proposed rule, the Commissioner's review of the regional director's decision would have been eliminated. In its place was the right of the district or the landholder to request that the regional director reconsider his or her final determination. After the regional director reconsidered a determination, a direct appeal to OHA was provided. The proposed rule also required Reclamation to wait 10 days before implementing a regional director's decision to terminate delivery of water and allowed the Commissioner to stay decisions pending appeal to OHA.

Under the final rule, the two-step appeals process of the prior rule is retained, while the proposed rule step of requesting regional directors to reconsider their final determination is removed. The final rule allows the Commissioner to stay decisions pending and during appeal to OHA. The final rule also establishes time periods for affected parties to request stays and to submit supporting briefs to the Commissioner.

Language Changes

Throughout part 426 regulations, language has been redrafted for readability and clarity. The preamble of these regulations explains all intended substantive changes. Where no change is explained, the new language is intended only for clarity and no substantive change is intended.

Water Conservation

The prior rule required all districts to prepare and submit to Reclamation water conservation plans that contain definite objectives that are economically feasible, and a time schedule for meeting those objectives.

The proposed rule required districts to prepare and submit water conservation plans to Reclamation for approval, but provided some exceptions and opportunities for alternative compliance. The proposed rule required that plans set forth definite goals, identify actions for achieving the goals, and establish a reasonable time schedule for meeting the goals. The proposed rule also required that a plan contain the following four critical measures: (1) A water measurement and accounting system, (2) a water pricing structure designed to encourage increased efficiency of water use, (3) an information/education program, and (4) the designation of a district water conservation coordinator. The proposed rule also linked a district's progress in development and implementation of water conservation plans with the allocation of future discretionary Reclamation program benefits.

The final rule is the same as the prior rule regarding preparing and submitting a plan to Reclamation. There is no requirement for plan approval by

Reclamation in the final rules. Reclamation intends to encourage and assist districts in the development of quality water conservation plans, the demonstration of innovative conservation technologies, and the implementation of effective energy efficiency measures. Reclamation also recognizes the need for coordination with State and other Federal conservation programs.

Reclamation has the responsibility under Section 210(a) of the RRA to encourage water conservation. Districts have the responsibility under Section 210(b) to develop water conservation plans. Reclamation is presently implementing a Water Conservation Field Services Program (WCFSP) to actively encourage water conservation, assist districts with their responsibility to develop plans, and complement and support State and other conservation programs. The WCFSP will emphasize effective water conservation planning, the demonstration of innovative conservation technologies, and the implementation of effective efficiency measures.

Through the WCFSP, Reclamation Area Offices will work directly with districts to provide technical assistance in the preparation of effective water conservation plans, including how to incorporate appropriate environmental considerations into the planning process. Reclamation will review each water conservation plan submitted by a district, and provide advisory comments and recommendations on their identified goals and measures. Within available resources, Reclamation will also provide technical guidance in water conservation planning and implementation in the form of handbooks, workshops and training opportunities to ensure all districts an opportunity to develop and implement effective water conservation plans. Reclamation recognizes that a transition period will be required to receive updated plans from all affected districts and re-establish the 5-year cycle for all plans. Each fiscal year, Area Offices will develop a schedule for water conservation planning activities with districts, and annually report on the status of plan updates.

The main objective in water conservation planning is to accomplish water conservation on the ground. Reclamation will monitor the implementation of water conservation plans to determine whether water conservation planning has facilitated water conservation.

Background

The RRA (43 U.S.C. 390aa, *et seq.*) was signed into law on October 12, 1982. It was the culmination of an effort to modernize Federal reclamation law that began with the 95th Congress. The RRA made a number of changes to prior Federal reclamation law while retaining the basic principle of limiting the amount of land in ownership which may receive water deliveries from Reclamation projects. The RRA also made a major change to prior law by introducing the concept of full-cost pricing for some water deliveries.

Rules and regulations for implementing the RRA were published in the Federal Register (43 FR 54768, Dec. 6, 1983) and became effective on January 5, 1984. In 1987, the rules and regulations were amended, primarily to implement Section 203(b) of the RRA. The provision was intended to encourage Districts to amend contracts to conform to the discretionary provisions which were not addressed in the 1983 rulemaking. Revisions also were made to those provisions of the rules and regulations pertaining to submission of certification and reporting forms, trusts, nonresident aliens, water transfers, covenant restrictions, and religious and charitable organizations.

The 1987 rules and regulations and three alternatives were evaluated in an Environmental Assessment (EA) published by Reclamation in April 1987. The EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1987 rulemaking was therefore issued by Reclamation on April 8, 1987. Final rules and regulations were published in the Federal Register (52 FR 11954, Apr. 13, 1987) and became effective on May 13, 1987.

The Omnibus Budget Reconciliation Act of 1987, enacted on December 22, 1987, included amendments to the RRA. The amendments addressed revocable trust agreements, provisions for audits by Reclamation of compliance with reclamation law, application of full-cost water rates for lands under extendable recordable contracts, and interest on underpayments or nonpayments. Consequently, further proposed amendments to the rules and regulations were evaluated in a supplemental EA published by Reclamation in September 1988. The supplemental EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1988 rulemaking was therefore issued by Reclamation on September 23, 1988. Final rules and regulations were published in the Federal Register (53 FR 50535, Dec. 16, 1988) and became effective on January 17, 1989.

Final rules and regulations were published in the Federal Register (60 FR 10030, Feb. 23, 1995) and became effective on March 27, 1995, revising part 426 to impose administrative fees to recover costs incurred by Reclamation when irrigation water has been delivered to landholders who have not complied with the information collection requirements of the RRA, as amended.

Litigation Concerning the RRA Rules and Regulations

In 1988, the Natural Resources Defense Council (NRDC) and others filed a lawsuit challenging the validity of the 1987 and 1988 rules and regulations (*NRDC* v. *Underwood, No. Civ. S–88–375–LKK*). On July 26, 1991, the United States District Court for the Eastern District of California (Court) granted NRDC's partial motion for summary judgment. The Court ruled that Reclamation had not complied with the requirements of the National Environmental Policy Act (NEPA) in preparing the EA and the Findings of No Significant Impact in the promulgation of the 1987 rules and regulations.

Reclamation appealed the Court's decision to the Ninth Circuit Court of Appeals. In September 1993, while the appeal was still pending, the Department of the Interior (Interior), the Department of Justice, and NRDC entered into a Settlement Contract which required Reclamation ''to propose new rules and regulations implementing, on a westwide basis, the * * * [RRA] as part of a new rulemaking proceeding that comprehensively reexamines the implementation of the RRA.'' Reclamation published a proposed rulemaking on April 3, 1995.

The Settlement Contract also required Interior to prepare an environmental impact statement (EIS) considering the westwide impact of the proposed rules and regulations and alternatives. The Settlement Contract does not require the Department to change its existing rules. The required EIS has been published separately and notice of its availability was published in the ''notice'' section of the Federal Register (60 FR 4677, Feb. 7, 1996). A Record of Decision was

signed by the Assistant Secretary—Water and Science on December 10, 1996.

Advance Notice of Proposed Rulemaking

During the rulemaking process, the Department received a number of comments regarding the compliance of certain large trusts with the acreage limitation provisions of the RRA. Comments expressed a variety of viewpoints, including the assertion that some trusts with landholdings (owned and leased land) in excess of 960 acres total may circumvent the requirements of Reclamation law.

In response to these comments, the Department intends to publish an advance notice of proposed rulemaking in the Federal Register accompanying the final rules and regulations described here. This advance notice of proposed rulemaking addresses and builds upon the widely divergent views and comments received from the public regarding trusts holding more than 960 acres. Some comments alleged that water users employ certain devices, such as the creation of trusts, as a means to avoid the acreage limitation provisions of the RRA.

The treatment of various trust arrangements under the RRA can significantly affect how much acreage in a given farm arrangement is entitled to the delivery of subsidized water. Many family farms, trust departments of financial institutions, and others use trusts for estate planning and other purposes. The Congress included Section 214 in the RRA, which provides that lands held in trust are eligible under certain circumstances to receive subsidized water from Reclamation projects. Following the enactment of RRA and relying on Section 214, some large farms reorganized as trusts, and continue to receive nonfull-cost water.

The proposed rulemaking sought to address these concerns by changing the definition of what constitutes a lease for the purposes of the acreage limitation provisions. To prevent circumvention of the RRA, Reclamation has treated farm operators as lessees subject to the acreage limitation provisions if the operator assumes the economic risk of the farming enterprise and has use or possession of the land. The proposed rulemaking focused on possession of the land. Under that proposed change, if someone other than the landowner has possession of the land, then Reclamation would determine that a lease subject to the acreage limitation provisions existed regardless of whether that person or entity also assumed the economic risk. One of the effects of that proposal may have been to treat certain operators of land held in trust as lessees.

Based upon comments on the proposed rulemaking, Reclamation has determined that the proposed provision altering the definition of a lease is an inadequate means of addressing the concerns about compliance with the acreage limitation provisions of the RRA and could have produced unintended consequences. Many comments from the public raised concerns about the effects of such a change on custom service providers, specialty services, and lenders among others. Many comments noted that modern farm operators often provide the necessary equipment and services to farming operations that cannot be economically provided to only 960 acres if the farmer is to cover expenses and make a reasonable return on investment. Other comments noted that the proposed change would not work and could be easily avoided. As a result of its review of the proposed rulemaking and the widely divergent comments received from the public, the Department has determined that seeking further public comment to an advance notice of proposed rulemaking is appropriate.

Reclamation's comprehensive February 1991 review of RRA implementation contains the most recently published data on administration and enforcement of RRA through 1990. According to this review, out of a total of 550 trust arrangements, only 35 trusts (primarily in California, Arizona, and Washington) held more than 960 acres. Thus, the vast majority of the 550 trusts were found to be well within the RRA's acreage limitations.

Through the advance notice of proposed rulemaking, the Department will invite comments and suggestions on: (1) Whether to limit nonfull-cost water deliveries to large trust arrangements that exceed 960 acres; (2) the criteria used to determine whether landholdings (owned and leased land) in excess of 960 acres total, operated under a trust agreement, should be eligible to receive non-full cost water deliveries; (3) whether Reclamation project non-full cost water deliveries to such large scale trusts are consistent with the principles of Federal reclamation law; (4) the appropriate criteria and standards to be applied to such trusts, implementation of the criteria and standards; and (5) the extent of the Department's statutory authority to address this issue. For example, what is the extent of the Department's legal authority to regulate: (a) Future trusts, (b) trusts established from 1982 to the present, and (c) trusts established prior to 1982. Suggested approaches should ensure fairness for those farming operations which are subject to acreage limitation provisions, while eliminating the use of arrangements which are inconsistent with the acreage limitation provisions of Federal reclamation law.

Public Involvement

A notice of intent regarding preparation of the EIS and a notice of intent regarding the proposed rulemaking were published in the Federal Register (58 FR 64277 and 58 FR 64336, Dec. 6, 1993). A press release was issued on December 29, 1993, and approximately 3,500 information packets were distributed to environmental groups, entities that have contracts with Reclamation for project water supplies, the media, and other interested parties. Public scoping meetings were held in January 1994 to receive public input regarding the issues and alternatives to be considered in the EIS and rulemaking. Scoping sessions were held in Billings, MT; Fresno, CA; Salt Lake City, UT; Phoenix, AZ; Boise, ID; Spokane, WA; Portland, OR; and Denver, CO. In addition to the oral comments received at the scoping sessions, approximately 150 letters were received.

A notice of availability regarding the draft EIS was published in the Federal Register (60 FR 16662, Mar. 27, 1995). Proposed rules and regulations were published in the Federal Register (60 FR 16940, Apr. 3, 1995). A press release was issued on April 3, 1995, and copies of the draft EIS and proposed rules were distributed to environmental groups, entities that have contracts with Reclamation for project water supplies, State and Federal offices, libraries, and other interested parties.

Notices of public hearings on the draft EIS and proposed rules were published in the Federal Register (60 FR 20114 and 60 FR 20068, Apr. 24, 1995). Public hearings on the draft EIS and proposed rules were held in May 1995. Hearings were held in Billings, MT; Yakima, WA; Denver, CO; Boise, ID; Phoenix, AZ; Sacramento, CA; Salt Lake City, UT; and Fresno, CA. One week prior to the public hearings, informational public forums were held in Billings, MT; Yakima, WA; Bend, OR; Denver, CO; Boise, ID; Phoenix, AZ; Sacramento, CA; Salt Lake City, UT; Fresno, CA; Albuquerque, NM; and Palm Desert, CA.

The public comment period ran from April 3 through June 26, 1995. In addition to oral comments received at the hearings, 382 letters and 80 recorded phone calls were received during the comment period.

Responses to public comments on the proposed rules are provided below.

Comments on the draft EIS are responded to in the final EIS.

Public Comments and Responses on General Issues

The following section presents public comments on the proposed rules that are general in nature. This section includes comments on authority, process, relationship with other documents, relationship with other laws and mandates, water rights and contracts, westwide action, and other general beliefs and comments that were not specifically directed toward parts 426 or 427.

Authority/Settlement Contract

Comment: Do you have the authority to change these laws without going through Congress?

Response: Only Congress has the authority to change the RRA. However, Reclamation has the authority to promulgate and amend rules and regulations that implement and interpret the RRA. This rulemaking amends the prior rules and regulations, not the RRA.

Comment: We do not feel Reclamation had legal authority to sign the settlement agreement as drafted; therefore, the proposed rules and draft EIS which are the product of that contract are invalid. We request that Reclamation, in the final EIS, provide a detailed description of the sections of the RRA that provide the authority to carry out the various provisions found within the settlement contract.

Response: The Department of the Interior and the Department of Justice certainly have legal authority to sign the Settlement Contract. Moreover, Reclamation's authority to promulgate new regulations and prepare an EIS comes from the Secretary's general authority, NEPA, the RRA, and Federal reclamation law in general. In preparing an EIS, an agency is required to consider a range of alternatives and is allowed to include alternatives that fall outside current authorities. However, all provisions included in the final rules and regulations must fall within the agency's legal authorities. All provisions in these final rules fall within Reclamation's authorities, which are stated at the beginning of the regulations.

Comment: The Settlement Contract between NRDC, Interior, and the Department of Justice calls for Reclamation to consider ''alternatives designed to achieve the greatest degree of water conservation and environmental restoration possible under the RRA and other applicable laws and return a maximum amount of revenues to the United States * * *.'' While the proposed rules represent significant progress, we feel that Reclamation has not yet adequately addressed all of the provisions of the Settlement Contract.

Response: The Settlement Contract requires Reclamation to consider specific alternatives in the EIS. Reclamation fulfilled its responsibilities under the Settlement Contract by issuing a final EIS that considers all alternatives identified in the Settlement Contract. Reclamation also reexamined the alternatives discussed in the draft EIS and expanded its consideration of environmental impacts of the alternatives.

Comment: It's my understanding it is not necessary that Reclamation impose new rules and regulations, but this matter be merely considered. I feel that in view of the fact that the prior rules and regulations have worked in a generally satisfactory manner, they should not be modified.

Response: The Settlement Contract does not require Interior to adopt final rules that are different from the rules in effect on the date of the agreement (the prior rules). However, Interior has chosen to modify the prior regulations in some areas to clarify some prior provisions, include changes which increase Reclamation's effectiveness in administering the RRA, or incorporate existing Reclamation policies.

Process

Comment: As we go through this entire process of public input, what priority will be placed on comments from those who are truly impacted by these proposed regulations? What will happen if the alternatives specified in the Settlement Contract are not met?

Response: Reclamation gives equal priority to all comments when considering proposed rules and writing final rules. The Settlement Contract requires Reclamation to prepare an EIS considering the impacts of the proposed regulations and specific alternatives included in the Settlement Contract. Reclamation fulfilled its responsibilities under the Settlement Contract by issuing a final EIS that considers all alternatives identified in the Settlement Contract.

Comment: We ask that Reclamation withdraw and reconsider the proposed rules.

Response: If appropriate, Reclamation proposes new rules or changes to rules, reviews public comments on the proposed rules and changes, and issues final rules based on the comments received. Reclamation has reviewed and considered public comments as part of the rulemaking process and has determined that the final rules will improve the administration of the RRA.

Comment: It is necessary for Reclamation to confirm that no substantive changes are intended except as specifically noted; otherwise farmers will be left guessing whether new words mean something different than old words.

Response: Substantive changes between the prior and final rules are summarized in this preamble. In part 426 the regulations have been reworded for clarity. In those instances, Reclamation has indicated in the preamble where substantive policy change is intended.

Comment: The timing of these proposed rules is the worst it could be for farmers. It requires them to take time from their job of planting to address these issues before they become fact.

Response: The proposed rules were originally scheduled for publication in December 1994, which would have avoided this problem. Unfortunately, publication was delayed until April 3, 1995. As described later in this preamble, most of the final Acreage Limitation Rules and Regulations will not be effective until January 1, 1998 (the RRA forms submittal threshold is effective January 1, 1997). This action is taken to provide time for landholders and districts to review, understand, and implement any revisions.

Comment: The process of reviewing, attending meetings, and commenting on these proposed rules has been tremendously time-consuming and expensive. The review of just one of these documents can be intimidating to an irrigation district manager who has many other tasks to perform on a daily basis to keep the district running smoothly.

Response: During many activities, Reclamation receives comments stating that Reclamation is conducting too many public reviews and meetings, and receives comments stating that Reclamation is not conducting enough public reviews and meetings. Reclamation realizes there are many resource management issues facing the public today and that many of these issues require substantive input. However, Reclamation would rather provide sufficient opportunity for public input on each issue, than take steps to minimize the opportunity for providing input.

Comment: We would appreciate a written response to our comments.

Response: All comments received during the public comment period are included in the administrative record. Each comment was considered when

the final rules and regulations were developed. In the preamble to the final rules, Reclamation provides a written response to comments received. Reclamation does not generally provide individual response letters to comments received as part of the rulemaking process.

Comment: I just called on your toll-free line for commenting on the proposed rules—that's the shortest 10 minutes I ever saw in my life—about 30 seconds.

Response: There was a short time when the computer software connected to our toll-free number malfunctioned and didn't allow a full 10 minutes for making comments. After fixing the problem, Reclamation attempted to contact everyone that had left their names and phone numbers before being cut off. The toll-free comment line received 88 calls, some of which were requests for information. Only one person commented on the idea of a toll-free comment line to take public comments, stating that it was a very good idea and should be used throughout Interior more often.

Relationship With Other Documents

Comment: What is the necessity of having three separate documents [proposed regulations, water conservation guidelines and criteria (Guidelines and Criteria), and EIS] and what is the connection?

Response: The proposed regulations contained all the proposed Federal regulations for implementing and interpreting the Reclamation Reform Act of 1982. The draft and final EIS analyzed the potential environmental (including economic) impacts of implementing the proposed regulations, and alternatives. The draft Guidelines and Criteria contained Reclamation's draft recommendations for a sound water management and conservation planning process. Under the proposed rule alternative of the draft EIS, the Guidelines and Criteria were characterized as a stand-alone document which would be used as the standard upon which to approve plans required by the proposed rules. Under alternatives B and C, the contents of the Guidelines and Criteria were incorporated into the actual rules.

The final rules contain the same regulatory requirements for preparing water conservation plans as the prior rules. The requirement for plan approval is not included in the final rules. Reclamation will issue advisory guidance relating to its water conservation program. Also, a handbook entitled ''Achieving Efficient Water Management: A Guidebook for Preparing Agricultural Water Conservation Plans'' will be available to aid water conservation efforts. Neither of these documents has been incorporated into the final rules, and they do not constitute regulatory requirements.

Comment: The timing of the publication of the proposed rules made it impossible for Reclamation staff to benefit prior to the rulemaking from the most recent comments on the Guidelines and Criteria.

Response: Although the proposed rules and draft Guidelines and Criteria had some common elements, the two documents served different purposes. The draft Guidelines and Criteria were being developed before the rulemaking began. The draft Guidelines and Criteria contained Reclamation's recommendations for a sound water management and conservation planning process and could have been used in conjunction with either the prior rules or the proposed rules. Therefore, it was appropriate to seek comments separately on the Guidelines and Criteria, and prior to publication of the proposed rules.

Comment: These proposed rules, by incorporating the Guidelines and Criteria, are in violation of the Administrative Procedure Act.

Response: There was a link between the proposed rules and Guidelines and Criteria, because the rules proposed to use the draft Guidelines and Criteria as the standard upon which Reclamation would base its approval of water conservation plans. The final rules contain no requirement for plan approval, thus, the final rules do not incorporate Reclamation's advisory guidance on water conservation in a regulatory fashion.

Comment: The draft EIS states that ''ultimately, the rules and regulations, when published as final rules, will replace the Guidelines and Criteria.''

Response: This statement was true for alternatives B and C, but not the proposed rule alternative. Alternatives B and C incorporated elements of the draft Guidelines and Criteria as integral parts of the proposed rules. Under these alternatives, the final rules would eventually replace the Guidelines and Criteria. The proposed rule alternative characterized the proposed rules and draft Guidelines and Criteria as separate, related documents. Under the proposed rule alternative, the Guidelines and Criteria would have provided guidance in addition to the rules. The final rules published today do not replace the advisory guidance.

Relationship With Other Laws and Mandates

Comment: The proposed rules document declares:

> * * *any future actions taken pursuant to final rules and regulations by the Federal Government or by contracting entities (e.g., irrigation districts, drainage districts, municipal and industrial water districts, etc.) shall be subject to the requirements of all applicable Federal environmental laws including, but not limited to, the NEPA, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Clean Water Act, and the National Historic Preservation Act, and laws relating to Indian treaty and trust responsibilities.
>
> Just this list of compliance requirements alone will paralyze districts, defeating Reclamation's purpose.

Response: The above statement was included in the preamble to the proposed rules, but does not add to a district's existing obligations. The statement was intended to convey the message that nothing in the proposed rules would nullify any applicable requirements of these laws.

Comment: Both the publication of the rules and the EIS constitute major Federal regulatory actions which together will impose massive additional unfunded Federal mandates upon local governments and private businesses and individuals. Such action violates the spirit and intent of Public Law 104–4, which was signed into law on March 22, 1995.

Response: Reclamation has reviewed these final rules and determined that the rulemaking meets all of the requirements set forth in the Unfunded Mandates Reform Act of 1995. The final rules do not impose additional unfunded Federal mandates and, in fact, reduce some RRA forms requirements contained in the prior rules and regulations.

Water Rights and Contracts

Comment: While farmers have contracts for delivery of water from Reclamation irrigation projects, the water users themselves hold the rights to the use of the water. It is these private property rights to the use of water that could be impaired or essentially taken if the water users in the district do not accept or satisfy new contract requirements and regulation changes that would be mandated by the proposed rules and regulations.

Response: The final rules contain no provisions that would directly affect any privately held property rights to the use of water or that would affect contract language with regard to privately held property rights to the use of water.

Comment: We believe that the proposed rules and regulations would

attempt to exert undue Federal influence through monetary incentives or penalties and through contractual requirements for water contract renewals in order to reallocate water from traditional uses such as irrigation to nontraditional purposes such as instream flow.

Response: Neither the proposed nor final rules contain any monetary incentives, penalties, or requirements for water contract renewals that would result in the reallocation of water from traditional uses such as irrigation to purposes such as instream flow. The final regulations do not adopt any provisions regarding the use or reallocation of conserved water.

Comment: The new rules allow for unlimited charges to be imposed on farmers with no studies being done to determine ability to pay.

Response: The final rules do not allow unlimited charges. The final rules do not affect application of the statutory ''ability to pay'' concept to project repayment costs.

Comment: The proposed rules mandate compliance with the water conservation plan requirements imposed by the proposed rules and Guidelines and Criteria. Failure to comply, according to the proposed rules, will result in the cancellation or refusal to renew storage contracts, thereby depriving the irrigation water users of established rights. Such action will constitute a ''taking'' of a constitutionally protected property right in violation of the United States Constitution.

Response: The proposed rules would have provided that Reclamation consider a district's progress in development and implementation of water conservation plans when prioritizing the allocation of ''future discretionary Reclamation program benefits.'' In the proposed rules, the description of this type of benefit included future, temporary, or short-term contracts and Warren Act contracts that Reclamation has the discretion to provide. In the final rules, this provision has been deleted. The final rules do not adopt any provisions calling for refusal to renew storage contracts.

Westwide Nature

Comment: The rules should not be implemented in a ''one-size-fits-all'' manner. The regulations and their enforcement must be flexible and adaptable to meet various situations in a practical way. We strongly urge that rules and regulations be developed and applied locally, rather than on a westwide basis.

Response: The rules and regulations implement the requirements of the RRA. The law contains specific requirements that are to be applied in a consistent fashion on a westwide basis. Where the law does allow for flexibility, this flexibility has been integrated into the rules and regulations.

Comment: I am concerned that the settlement agreement reached with NRDC over litigation on water management practices in California is now dictating Reclamation policy westwide, into areas which have very different water issues and concerns. All of your water contractors outside of California are now having to comply with settlement provisions on which they had no opportunity to comment or to participate in the development of the conditions.

Response: The settlement agreement did not require Reclamation to consider issues of concern only in California. Neither the proposed nor the final rules were written to address specific concerns in California or any other geographic area, but were written to implement the requirements of the RRA imposed by the Congress on all areas westwide. Water contractors and the public were provided ample opportunity during the scoping process to provide written and oral comments on what should be considered in the proposed rules and EIS.

General

Comment: Reclamation has the responsibility to protect and restore the environment and the authority to allocate water for fish and wildlife purposes under a variety of statutes and treaties, including the Endangered Species Act, the Northwest Electric Power Planning Conservation Act, the Grand Canyon Protection Act, and treaties with Native American tribes. Reclamation needs to develop new strategies and mechanisms to ensure that efficiency improvements do benefit the environment rather than simply increasing consumptive uses.

Response: Reclamation takes seriously its responsibility to protect and restore the environment and has some responsibility to allocate water for fish and wildlife purposes under certain statutes and treaties. Reclamation will also encourage districts to consider environmental uses of conserved water.

Comment: The rule should have an increased emphasis on important nonconsumptive uses of water. While it is necessary to maintain flexibility in the rule it is also critical to provide mechanisms that strongly encourage water users to provide adequate water flows to support fish and wildlife.

Response: A rule can provide mechanisms to encourage a desired response by the affected public, but these mechanisms must fall within the intent of the authorities upon which the rules are based. The RRA and other referenced authorities provide limited opportunity to develop regulatory mechanisms that encourage water users to provide water flows to support fish and wildlife. As resources permit, Reclamation will provide technical and financial assistance to districts in the development and implementation of water conservation plans. As part of this assistance, Reclamation will encourage districts to look at all water needs including non-consumptive uses and flows to support fish and wildlife.

Comment: The rule should not treat the issues of water spreading and incentive pricing as ''beyond the scope.''

Response: These rules and regulations implement the acreage limitation and water conservation provisions contained in the RRA and other related laws. ''Water spreading,'' which is generally defined as the unauthorized use of project water, may involve acreage limitation or reporting issues. Those issues are addressed through the acreage limitation provisions of these rules. However, the majority of what is considered to be ''water spreading'' is not an acreage limitation or water conservation issue and is, therefore, not addressed by this rulemaking. Incentive pricing is a water pricing issue, a contracting issue, and a water conservation issue. Incentive pricing was included as an alternative in the EIS and was considered in this rulemaking.

Comment: We believe the old rules probably are as workable as is possible in trying to put this together on an overall basis. The public's best interest would be served if there would be no changes in the prior rules and regulations.

Response: Reclamation received many comments stating that the prior rules were acceptable, widely understood, and should be retained. In the proposed rule, Reclamation attempted to improve the clarity of many regulatory provisions, include current Reclamation policies that were not part of the prior rule, and respond to public criticism over past interpretation of some provisions of the law. In some cases, public comments indicated that the proposed changes could create additional problems or could cause problems for entities that should not be affected by the changes. Reclamation has reviewed each proposed change in light of public comments and has

addressed those comments in the content of each section. In many cases, Reclamation has made changes for clarity while making no substantive change in the provision, or merely codifying existing policy.

Part 426 (Acreage Limitation)—Summary of Changes; Public Comments and Responses

This section of the preamble describes changes from the prior acreage limitation rules to the final acreage limitation rules, provides examples of how the new provisions would be applied, and provides responses to public comments received on the proposed rules.

Redesignation Table

A number of changes have been made to the location and titles of the various sections of the Acreage Limitation Rules and Regulations. The following provides an overview of these changes. More detailed information is provided in the section-by-section analysis.

Section No.	Old title	Revision(s) made to old title	New title
426.1	Objectives	Renamed	Purpose.
426.2	Applicability	Removed	Definitions.
426.3	Authority	Removed	Conformance to the discretionary provisions.
426.4	Definitions	Moved to § 426.2	Attribution of land.
426.5	Contracts	Moved to § 426.3 and renamed	Ownership entitlement.
426.6	Ownership entitlement	Moved to § 426.5	Leasing and full-cost pricing.
426.7	Leasing and full-cost pricing	Moved to § 426.6	Trusts.
426.8	Operation and maintenance (O&M) charges.	Moved to § 426.23 and renamed	Nonresident aliens and foreign entities.
426.9	Class 1 equivalency	Moved to § 426.11	Religious or charitable organizations.
426.10	Information requirements	Moved to § 426.18 and renamed	Public entities.
426.11	Excess land	Moved to § 426.12	Class 1 equivalency.
426.12	Excess land appraisals	Moved to § 426.13	Excess land.
426.13	Exemptions	Moved to § 426.16 and renamed	Excess land appraisals.
426.14	Residency	Removed	Involuntary acquisition of land.
426.15	Religious and charitable organizations	Moved to § 426.9 and renamed	Commingling.
426.16	Involuntary acquisition of land	Moved to § 426.14	Exemptions and exclusions.
426.17	Land held by governmental agencies	Moved to § 426.10 and renamed	Small reclamation projects.
426.18	Commingling	Moved to § 426.15	Landholder information requirements.
426.19	Water conservation	Moved to 43 CFR Part 427	District responsibilities.
426.20	Public participation	Moved to § 426.22	Assessment of administrative costs.
426.21	Small reclamation projects	Moved to § 426.17	Interest on underpayments.
426.22	Decisions and appeals	Moved to § 426.24 and renamed	Public participation.
426.23	Interest on underpayments	Moved to § 426.21	Recovery of operation and maintenance (O&M) costs.
426.24	Assessment of administrative costs	Moved to § 426.20	Reclamation decisions and appeals.
426.25	Severability	Moved to § 426.26	Reclamation audits.
426.26	Not applicable	Not applicable	Severability.

Part 426 General Comments

Comment: Several commenters noted that the revisions to the acreage limitation provisions are not necessary. If revisions are made, they should be kept to a minimum; in certain areas such as leases, trusts, involuntary acquisitions, etc., no changes should be made.

Response: Reclamation believes that changes can be made to the prior rules that will ease certain burdens placed on districts and landholders and will answer questions that have arisen with regard to application of the acreage limitation provisions. The prior rule has been rewritten to state requirements more clearly and in plain English. In addition, certain possible abuses to the system have been addressed. Reclamation believes the comments received have allowed these regulations to be revised to improve the regulatory effectiveness of the program without creating unnecessary burdens.

Comment: Several commenters asked that Reclamation provide greater flexibility in the administration of the RRA. For example, one commenter suggested that area offices be allowed to modify the rules to meet local needs. Other commenters suggested that Reclamation should exercise greater flexibility to reward consistent payment of bills or a good environmental record.

Response: The RRA requires Reclamation to establish westwide standards for such things as ownership and nonfull-cost entitlements, and RRA forms threshold, (e.g., 43 U.S.C. 390cc through 390ff). Therefore, Reclamation must administer the acreage limitation provisions consistently westwide. Even if Reclamation could establish regulations on a project-by-project basis, the westwide nature of the statute and the resultant costs on both Reclamation and districts to administer such a program do not allow for such an action.

Comment: Several commenters wanted assurance that any changes to the regulations would not be applied retroactively. In addition, a number of commenters wanted any changes to the rules either phased-in or accompanied with a grace period.

Response: Reclamation has taken these comments into account by providing for an effective date of January 1, 1998, except for the RRA forms submittal threshold, which will be effective January 1, 1997. The January 1, 1998, effective date was established to provide all interested parties with an opportunity to review the final regulations and initiate any actions that would be advantageous for them.

Comment: The proposed regulations include numerous examples in the preamble rather than in the body of the rules. If it is determined that, as a matter of style, the examples should be kept physically separated from the text of the

rules, there should be a statement to the effect that the examples are incorporated by reference into the text of the final regulations.

Response: The examples have been included in the preamble of this final rulemaking. However, the examples were purposely removed from the text of the rule because Reclamation reconsidered its previous position and decided that regulations should not be promulgated through examples. The examples are included in the preamble strictly for illustrative purposes.

Comment: A forced sale results in a taking of property without appropriate compensation.

Response: Nothing in these regulations results in forcing landowners to sell their land or water rights. These rules address who may receive irrigation water and what water rate must be paid. In the case of recordable contracts, landowners voluntarily agree to sell excess land in order to receive a benefit from Reclamation, namely, the delivery of irrigation water to land that is otherwise ineligible to receive such water.

Comment: Several commenters noted that training will be needed on the new regulations.

Response: Reclamation plans to hold westwide training for district and Reclamation staff.

Section 426.1. Purpose

The final rule changes the title of this section from *Objectives* to *Purpose.* The regulatory text has been rewritten to include a straightforward statement as to the purpose of these regulations.

No comments were received concerning this section.

Section 426.2. Definitions

The prior section on applicability is removed. Because the rule's scope of effect is not the same for the various provisions of the regulations, Reclamation has determined that the best approach is to have each section speak for itself as to its applicability. Section 426.2 defines terms used in the regulation and replaces § 426.4 of the prior regulations.

Numerous changes are made to the definition section, most with the intent of clarifying existing policy. The more significant of the changes, that were also included in the proposed rules, are discussed as follows in alphabetical order:

Acreage limitation entitlement, acreage limitation provisions, and *acreage limitation status* are added to the regulations to add precision and to replace the compound term *ownership limitation and pricing restrictions.*

Arable land is deleted because the term's only use is within the definition of *irrigable land.* The term *arable land* was included in the prior rules because the definition of *irrigable land* is based on one more useful for formal land classification purposes. Reclamation has determined that a simpler definition of the term *irrigable land* is appropriate for this regulation, and, therefore, a definition of the term *arable land* is unnecessary.

Commissioner is added to define a term that is used in these regulations.

For conciseness only, the two sentences in the definition of the term *contract* have been merged. In addition, the term *agreement* was added to broaden the definition to ensure all arrangements between Reclamation and water users that may be subject to application of the acreage limitation provisions are captured.

Contract rate is changed to reflect awareness of the fact that many contracts do not include per acre or per acre-foot rates. For purposes of this part, however, *contract rate* means such a rate on a per acre or per-acre-foot basis.

Direct and *indirect* are defined in this final regulation because they are used in the RRA and are frequently used in the text of the regulation. The terms apply in situations wherein land is held *directly* by a landowner or lessee, or *indirectly* by a party that has a beneficial interest in an entity that is a landowner or lessee (such as a stockholder, partner, or trust beneficiary).

Discretionary provisions of Title II is replaced with *discretionary provisions.* Also, Section 203(b) is excepted from this definition, since it applies even to prior law districts and landholders. Finally, United States Code (U.S.C.) citations are substituted, as they are more useful in locating the relevant statutes.

District is changed to replace the phrase *eligible to contract* with *can potentially enter into a contract,* in order to avoid the use of the term *eligible,* which has its own specific meaning under part 426.

Eligible is included to reflect its common meaning among those familiar with acreage limitation provisions: the right to receive irrigation water without consideration of the price paid for that water. This definition can be compared with that of *ineligible.*

Exempt land is replaced with the term *exempt* primarily because that term can be applied to districts and certain types of landholders (e.g., trusts and public entities), as well as to specific land parcels.

Extended recordable contract is added to define a term that is used in these regulations.

In the definition of the term *full cost, Secretary* is changed to *Reclamation.*

Full-cost rate and *full-cost charge* are defined to differentiate between the two terms.

The reference to the Internal Revenue Code is deleted from the definition of *individual* because that concept is covered in the definition of *dependent.*

Ineligible is added to reflect that term's common meaning among those familiar with acreage limitation provisions: the lack of eligibility to receive irrigation water at any price. This definition can be compared with that of *eligible.*

Intermediate entity is added to define a term used in these regulations.

Involuntary acquisition is added to define a term used in these regulations.

Irrevocable elector is added to define a term that is used in these regulations.

Irrigable land is changed to be more concise and understandable. The phrases from the prior regulation excluding permanent buildings, etc., are transferred to the definition of *nonexempt land.*

Landholder is modified to delete the references to the terms *qualified recipient, limited recipient,* and *prior law recipient,* because not all landholders fall into these categories (i.e., trusts and public entities). The terms *directly* and *indirectly* have been added to the definition to clarify which landowners and lessees are considered to be landholders.

Landholding has been greatly simplified. The final definition is clearer, and takes advantage of the new term *nonexempt land.* It should be noted that involuntarily acquired land is included within this definition of *landholding.*

Nondiscretionary provisions is modified to eliminate the reference to Title II, to include Section 203(b), and to include the United States Code citation. The second sentence of the prior definition has been eliminated because that concept is covered elsewhere in the regulations.

Nonexempt land is newly defined in these final regulations to replace the compound term *irrigable and irrigation land. Nonexempt land* is defined more precisely than *irrigable and irrigation land,* and is used as a concise term to describe, generally, all land subject to the acreage limitation provisions of Federal reclamation law.

Nonfull-cost entitlement is modified to enhance clarity by including the defined term *nonfull-cost rate.*

Nonresident alien entitlement is eliminated because, under the final rules, nonresident aliens will be treated as prior law recipients, unless certain criteria have been met. See § 426.8.

Operation and maintenance costs or O&M costs is newly defined in order to clarify the types of activities that are included in the calculation of operation and maintenance costs.

Ownership entitlement is added to define a term that is used in these regulations.

Prior law is modified primarily to include United States Code citations.

Public entity is added to define a term that is used in these regulations.

Qualified recipient is modified to include married couples in which only one spouse is a U.S. citizen or resident alien.

Reclamation is added to define a term that is used in these regulations.

Reclamation fund is modified to eliminate unnecessary language.

RRA is added. This term is used throughout the regulations as it is concise and well understood by most readers.

Standard certification or reporting forms is added to define a term that is used in these regulations.

Title II is eliminated in favor of a definition of the term *RRA* which is used throughout these regulations.

The following changes to definitions included in the final rules were not reflected in the proposed rules.

Compensation rate was defined in proposed regulations to describe the full-cost charges applied to certain types of illegal irrigation water deliveries that are not discovered until after they have taken place. This was retained. In addition, it has been further revised for these final regulations to ensure it is understood that application of the full-cost rate is for the legal delivery of irrigation water to land that exceeds the nonfull-cost entitlement.

As in the proposed rules, *indirect* is added. See the above discussion of the term *direct.* In the final rules it has been specified that lenders holding only a security interest in the land are specifically excluded from the definition of *indirect.*

Again, as in the proposed rules, *irrevocable election* is changed to delete both the reference to *Title II* and the second sentence which presently contains additional explanation that is redundant with that contained in the text of the prior rule. The final version has been revised to make it clear that this term is referring to a process, not to any specific document.

Irrigation land was modified in the proposed rule primarily to exclude land exempt from acreage limitation laws. Also, the phrase *in a given water year* is added to clarify that land which has received irrigation water retains *irrigation land* status for the entire water year, even if irrigation is not taking place at any particular time. The final rule includes an additional modification to ensure that any land receiving water for irrigation purposes from a Reclamation project facility will be counted against the landholder's acreage limitation entitlements. While this reflects current policy, Reclamation would like to ensure there is no confusion on this issue based on the regulatory definitions.

Irrigation water was modified from the proposed version so that it would more closely reflect the statutory definition.

Lease has been changed from the definition in the proposed rule and in the prior rule. The final definition revises the prior rule for clarity and to conform it with long standing Reclamation policy. It includes the same key elements Reclamation examined under the prior rule when determining if a farming arrangement is a *lease,* rather than focussing solely on possession of the land as had been proposed. After considering comments, Reclamation determined that this would not be workable.

Specifically, when Reclamation examines a farming arrangement to determine if it is a lease Reclamation will consider who assumes the economic risk in the farming operation; who has the use or possession of the land; who is responsible for paying operating expenses; and who is entitled to receive the profits from the farming operation. Since most individuals or entities involved in a farming operation have use or possession of the land, the key element will often be if the operator in question also has assumed a portion of the economic risk. By contrast, if an individual has a typical forward contract, the economic risk is often shared by the landholder and the contracting company, but the contracting company has no use or possession of the land. This definition differs from the prior rule in that the prior rule contained the term ''use and possession''. Reclamation has become aware that this might lead to confusion if anyone felt that two separate elements must both be present. Reclamation has always construed the language such that either use or possession, together with economic risk, constituted a lease. Therefore, it has adopted the language to clarify this intent. This definition is not intended to have a different substantive effect than the prior rules and how the prior rules have been administered by Reclamation.

In administering the nonfull-cost entitlement provision, Reclamation must determine if the farming arrangement constitutes a lease for acreage limitation purposes. In general, Reclamation must make this determination on a case-by-case basis. However, Reclamation has determined that most custom service arrangements in which only one narrow farm service is provided, or arrangements in which lenders hold only a security interest in the farming operation, usually do not constitute leases. On the other hand, Reclamation has determined that, consistent with current Reclamation interpretation, sharecropping arrangements are always leases for acreage limitation purposes.

Some comments alleged that water users employ certain devices, such as the creation of trusts, as a means to avoid the acreage limitation provisions of the RRA. The proposed rulemaking sought to address these concerns by changing the definition of what constitutes a lease for the purposes of the acreage limitation provisions. To prevent circumvention of the RRA, Reclamation has treated farm operators as lessees subject to the acreage limitation provisions if the operator assumes the economic risk of the farming enterprise and has use or possession of the land. The proposed rulemaking focused on possession of the land. Under that proposed change, if someone other than the landowner has possession of the land, then Reclamation would determine that a lease subject to the acreage limitation provisions existed regardless of whether that person or entity also assumed the economic risk. One of the effects of that proposal may have been to treat certain operators of land held in trust as lessees.

Based upon comments on the proposed rulemaking, Reclamation has determined that the proposed provision altering the definition of a lease is an inadequate means of addressing the concerns about compliance with the acreage limitation provisions of the RRA and could have produced unintended consequences. Many comments from the public raised concerns about the effects of such a change on custom service providers, specialty services, and lenders among others. Many comments noted that modern farm operators often provide the necessary equipment and services to farming operations that cannot be economically provided to only 960 acres if the farmer is to cover expenses and make a reasonable return on investment. Other comments noted that the proposed change would not

work and could be easily avoided. As a result of its review of the proposed rulemaking and the widely divergent comments received from the public, Reclamation has determined that seeking further public comment to an advance notice of proposed rulemaking is appropriate.

As in the proposed rule, *legal entity* is broadened to include certain types of landholding arrangements whose status for acreage limitation purposes had been unclear under the prior regulation. The final rule clarifies the proposed definition, stating that trusts are included as *legal entities* only for purposes of RRA forms submission.

The term *nonproject water* was added in the proposed rules in the commingling section to define a term that is used in these regulations. In the final rules this term was moved to the definitions section because it is found in multiple sections.

Part owner was added in the proposed rule to define a term that is used in these regulations. The final rule retains the proposed rules' definition, but it has been revised to clarify that lenders, who only have a security interest and are not otherwise considered to be the landholder of the land, are not considered to be part owners for acreage limitation purposes.

The definition of *prior law recipient* has been modified from the proposed version to eliminate the statement that nonresident aliens and entities not established under State or Federal law are always *prior law recipients.* The entitlements of nonresident aliens and foreign entities are now discussed in a separate section (§ 426.8).

Water year is a new addition to the final rules that defines a term that is used in these regulations.

Comments Concerning § 426.2—Definitions

Comment: There is no authority to expand the definition of ''district'' beyond that provided in RRA Section 202(2).

Response: The definition in the final regulations mirrors the statutory definition, except that ''Secretary'' has been replaced with ''United States.'' In addition, some explanatory language was included to explain exactly what types of contracts are included. The language in the final regulations is essentially the same as that found in the prior regulations. Reclamation does not intend to expand the definition beyond that provided in the statute.

Comment: The definition of ''full cost'' or ''full-cost rate'' should clarify that the full-cost charge is the difference between the applicable nonfull-cost rate, which may include a capital component, and the full-cost rate, which includes the applicable interest component required by RRA.

Response: Reclamation recognizes that there are various rates associated with the delivery of irrigation water, including, among others: contract rate, operation and maintenance rate, cost-of-service rate, and the full-cost rate. The definition of ''full-cost charge'' includes construction and interest, but not the operation, maintenance, and replacement component. The term ''full-cost rate'' includes the operation, maintenance, and replacement component as well as the components included in the ''full-cost charge.'' The term ''nonfull-cost rate'' does not consistently include the same components. Accordingly, to state that the full-cost charge always represents the difference between the nonfull-cost rate and the full-cost rate would be incorrect for purposes of how ''full-cost charge'' is used in these rules.

Comment: The use of the term ''beneficial interest'' in the definition of ''indirect'' is ambiguous. The definition should be clarified so that it does not allow the interpretation that a lender's security interest could be considered a beneficial interest. This can be accomplished by adding another sentence as follows: ''A security interest in a legal entity or in a land parcel shall not be considered an indirect interest or a beneficial interest under these regulations.''

Response: This comment has been accommodated in the final regulations. Reclamation agrees that if a lender strictly has a security interest in a legal entity or a land parcel, that interest will not be considered a beneficial interest for purposes of attribution of the land.

Comment: The ''irrigable land'' definition would be improved by citing the classification standards specified in the Class 1 equivalency section of the rules.

Response: This comment has not been accommodated in the final regulations. The classification standards have a different purpose from what is intended in the definition of irrigable land. Specifically, ''irrigable land'' refers to the general concept of whether land can be irrigated. The Class 1 equivalency classification standards are much more precise, pertaining to the productive potential of the land. The commenter's suggestion, if incorporated, could create confusion.

Comment: A commenter asked if the definition of ''irrigable land'' includes all land that has the legal right to receive water, the practical possibility of obtaining a legal right, or just the physical possibility of receiving the water presently or in the future? Another commenter suggested that if the definition included all such land, it represented a change from current Reclamation policy.

Response: All land which is defined as irrigable must be included on RRA forms and counted against the landholder's acreage limitation entitlements. This includes all land that has the legal right to receive irrigation water, the practical possibility of obtaining a legal right, or just the physical possibility of receiving irrigation water presently or in the future. This is not a change from current Reclamation policy. If landholders do not want to report land for which irrigation water cannot be received, they need to work with their districts and Reclamation to have any unbuilt features removed from Reclamation's books. It should be noted that often land in areas not yet served with irrigation water is used to further distribute the construction costs and thus lower the per acre full-cost rate. In such cases, the landholders and districts will have to decide if higher full-cost rates are an acceptable trade-off for not having to include certain land on RRA forms.

Comment: Terms such as ''irrigable land,'' irrigation land,''and ''irrigation water,'' have common meanings that are different than what the regulations described for these terms. Therefore, other terms should be used.

Response: While these terms have different meanings in different contexts, they are clearly defined in the definitions section for use when administering or complying with these regulations. Reclamation has tried to make the definitions consistent with other uses of the terminology to the extent possible.

Comment: The ''irrigation water'' definition goes beyond the definition in the existing rules and the RRA. By deleting the phrase ''pursuant to a contract with the Secretary'' from the definition, Reclamation is going beyond what is provided in the RRA and is attempting to extend its own regulatory authority without congressional approval.

Response: Reclamation has changed the definition of the term ''irrigation water'' in the final regulations to make it consistent with the RRA definition. Any land used for agricultural purposes that receives irrigation water subject to acreage limitations must be counted against the landholder's acreage limitation entitlements. Otherwise, such landholders could evade the acreage limitation provisions by applying such water on, for example, ineligible land.

Although Reclamation has made a change to the definition of ''irrigation water'' to include the reference to contracts with Reclamation, Reclamation requires any land receiving irrigation water subject to acreage limitation to be included on the RRA forms (see the definition of ''irrigation land''). Land receiving such water in violation of contract provisions will count against the landholder's acreage limitation entitlements.

Comment: To clarify treatment of involuntarily acquired land, the definition of ''landholder'' should be changed by adding: ''Landholding includes involuntarily acquired land, although involuntarily acquired land is not counted as part of a landholder's nonfull-cost entitlement, pursuant to the applicable regulations concerning involuntarily acquired land.''

Response: This comment has not been accommodated in the final regulations. Section 426.14 concerning involuntarily acquired land clearly provides which water rate will be applied. Such land must be included on RRA forms. Reclamation believes the proposed addition would only confuse the issue of what land needs to be included on RRA forms, what water rate should be charged, etc.

Comment: Reclamation received many comments on the proposed change to the definition of ''lease'' and criteria to determine whether a farming arrangement is considered a ''lease.''

Response: Reclamation has not changed its interpretation of the term ''lease'' from the prior rules. It continues to treat as leases, arrangements which transfer ''economic risk'' and ''use or possession'' of land. To accommodate this change from the proposed rules, Reclamation used the language from § 426.7(a)(1) in the prior regulations in the final rule definition of ''lease.'' Under existing policy, Reclamation examines economic risk, use, possession, who received the profits from the farming operation, and who is responsible for payment of the operating expenses, in determining if an arrangement is a lease. Since the commenters were generally supportive of how Reclamation presently examines farming arrangements Reclamation wanted to make sure that the current practices are clearly incorporated in the regulations.

Comment: Some commenters suggested that custom operators, employees, lenders, etc. should be categorically exempted from the definition of a lease, while another commenter wanted to know at what point a custom operator becomes a lessee under the proposed definition of lease?

Response: Reclamation will not consider the provision of a single service alone to be a lease for purposes of applying the nonfull-cost entitlement. While such operators have the use of the land while they are providing their services, they do not assume any of the economic risk associated with the production of the crop. Businesses and individuals providing multiple custom services will be considered on a case-by-case basis to determine whether they are lessees. In addition, lenders who only have a security interest in the farming operation will not be considered to be lessees.

Comment: Several commenters believed that forward contracting arrangements should be categorically exempted from the definition of a lease.

Response: A typical forward contract is one in which the landholder is guaranteed a market and price for specified production; the individual or entity that will receive the crop does not participate in any aspect of the actual growing of the crop. As such, a typical forward contract is not a lease for acreage limitation purposes because the contractor does not have use or possession of the land.

Nevertheless, Reclamation did not provide a categorical exemption in the final regulations. As under the prior rules, each forward contracting arrangement will be considered on its own merits in order to determine whether it is a lease. Based on past experience, Reclamation expects the vast majority of forward contracting arrangements will not be considered leases, some arrangements will require minor modifications, and a few arrangements will be found to be leases.

Comment: A few commenters suggested that family farming arrangements should be exempted from being a lease where only a few family members make the farming decisions, but the economic risk is shared by all the members of the family.

Response: This comment was not accommodated. Whether a family farming operation will be considered to be a leasing arrangement will have to be determined on a case-by-case basis. Congress did not exempt family farms from the acreage limitation entitlements.

Comment: ''Lease'' needs to be redefined in order to comply with and enforce the intent of acreage limitations.

Response: Reclamation determined that the proposed definition of ''lease'' would not efficiently meet Reclamation's intended goals and objectives. Reclamation believes the intent of reclamation law will be better met with the application of the criteria found in the prior rules. Reclamation agrees with comments that altering the definition of a lease in itself is an inadequate means of addressing the concerns about efforts to avoid the acreage limitation provisions of the RRA and could have produced unintended consequences. As a result of its review of the proposed rulemaking and the widely divergent comments received from the public, Reclamation has determined that seeking further public comment to an advance notice of proposed rulemaking is appropriate.

Comment: A concern was expressed that for trusts the trustee must make farming decisions and, thus, might be considered to be the lessee, with application of the nonfull-cost entitlement.

Response: Under the proposed rule, some trustees might have been treated as lessees. As discussed in the advance notice of proposed rulemaking published today, Reclamation is concerned about how trusts are treated. Under the rules adopted today, trustees will not be subject to application of the nonfull-cost entitlement with regard to land held in trust if the trust meets the criteria specified in § 426.7 of the final regulations. However, Reclamation will publish an Advance Notice of Proposed Rulemaking on this subject with respect to some trusts with landholdings (owned and leased) in excess of 960 acres.

Comment: The terms ''organization'' and ''association'' do not have a clearly understood legal meaning and should be deleted from the definition of ''legal entity.''

Response: This comment has been partially accommodated in the final regulations in that ''association'' has been removed. Reclamation finds ''organization'' to be widely understood.

Comment: The inclusion of the term ''trust'' in the definition of ''legal entity'' will cause problems. If this inclusion is solely to ensure it is understood that RRA forms must be submitted for trusts, then that concept should be included in the Information Requirements section.

Response: This comment was partially accommodated in the final regulations. The term ''trust'' was removed from the definition of ''legal entity.'' A sentence was added to the end of this definition that states trusts will only be considered as legal entities with regard to the RRA forms requirements. Reclamation does not intend to provide trusts with any acreage limitation entitlements, and therefore, they are not subject to the limitations inherent in those provisions.

Comment: In the definition of ''nonexempt land,'' it should be irrigable AND irrigation land, not irrigable OR irrigation land, since both are used in calculating the amount of nonexempt land.

Response: This comment has been accommodated in the final regulations. Reclamation has added the word ''all'' and adopted the word ''and'' to indicate that both types of land must be included when calculating the amount of nonexempt land. This does not change Reclamation's longstanding interpretation of this term.

Comment: The definition of ''part owner'' should use the term ''legal entity'' not just ''entity,'' unless a different meaning is intended.

Response: This comment has been accommodated in the final regulations.

Comment: The definition of ''part owner'' should be clarified with another sentence that states: ''A holder of a security interest in a legal entity or land owned by a legal entity shall not be considered a part owner under these regulations.''

Response: This comment has been accommodated in the final regulations.

Comment: The definition of ''nonresident alien'' should be modified by adding ''a nonresident alien will be treated as the indirect owner of the land of which he is the beneficial owner through direct or indirect corporate (direct or indirect) ownership.''

Response: Reclamation does not feel this addition is fully explanatory or necessary. Based on the comments received concerning the nonresident/foreign entity provisions, Reclamation added a new section to the rules to address the entitlements of such landholders. Please see the comments for the new § 426.8.

Comment: A definition of ''Preamble'' is needed that states: ''Means the introduction to these regulations as concurrently published in the Federal Register, the text of which (including the examples) are designed to be read as the official explanatory material by Reclamation of these regulations.''

Response: The preamble accompanying the rules constitutes explanatory material even without a definition.

Comment: The definition of ''resident alien'' is unworkable due to the test used (Internal Revenue Code). Under that provision, a person can drift in and out of resident alien status. Reclamation should use the ''green card'' test instead.

Response: Reclamation considered using Internal Revenue Code section 7701(b) as part of the 1987 rulemaking. Reclamation was aware that changes to the code were imminent as part of a 1986 statute. No major changes have occurred to the cited section since. Reclamation believes the definition with the reference to the Internal Revenue Code section is acceptable. One of the tests utilized by the cited section is the so-called ''green card'' test.

Comment: Because of the way ''qualified recipient'' is defined in the RRA, Reclamation should not apply the excess land provision to anyone who holds less than the discretionary provisions entitlement. But, do not let such landholders receive water on land held above the prior law entitlements, unless they become subject to the discretionary provisions as provided for in § 426.3.

Response: The respondent appears to be requesting that Reclamation establish a new application of the acreage limitation entitlements. Specifically, the only ownership entitlements would be those created by the RRA under the discretionary provisions while the restrictions of RRA Section 203(b) would apply with regard to nonfull-cost entitlements. By doing this, certain landholders could sell land that is, in fact, excess under prior law provisions without price approval.

Reclamation has not accommodated this comment in the final regulations. If a landholder would like the benefits that are associated with the discretionary provisions, specifically the larger ownership entitlement, then that landholder must conform to the discretionary provisions by making an irrevocable election or convincing the district to conform to the discretionary provisions.

Comment: The term ''registered'' does not have a clear legal meaning when applied to legal entities. It should be deleted and replaced with either ''created'' or ''established'' throughout the regulations.

Response: Reclamation has replaced ''registered'' with ''established'' throughout the final regulations.

Comment: What is meant by ''natural person''?

Response: A ''natural person'' is a living human being.

Section 426.3 Conformance to the Discretionary Provisions

The section in the prior regulations, entitled Authority, is removed because it is redundant with the authorities statement that immediately follows the table of contents. The new § 426.3, *Conformance to the discretionary provisions*, replaces the prior § 426.5 and adds a more precise description of the section's contents. This section has been generally rewritten to eliminate redundancy with other sections and paragraphs within the section. The main purpose of this section is to present what actions taken by a district or individual landholder will result in the district or landholder conforming to the discretionary provisions. The section also presents information on the effect of conforming to the discretionary provisions in terms of the rate that will be charged for irrigation water.

The final rules retain the more general criteria provided in the prior rules with modifications to remove provisions that are no longer applicable. Unlike the proposed rule, specific contract actions are not specifically listed.

Actions pursuant to the Reclamation Safety of Dams Act of 1978 are added to the list of items not considered to provide additional and supplemental benefits, as provided by statute.

Paragraph (a) details under what conditions or actions an entire district will be considered to be subject to the discretionary provisions of the RRA. An addition has been made to these final rules as compared to the proposed rules in that (a)(2)(iii) has been revised to make clear that Reclamation will amend a contract to conform to the discretionary provisions if certain requirements are met. In addition, (a)(2)(iv) was added to make it clear that if a district wants to conform to the discretionary provisions it will not be required to make any other changes to its contract.

Paragraph (b) categorically describes the conditions under which districts remain subject to prior law.

A new standard RRA contract article is included under paragraph (c) to clarify any misconceptions concerning the applicability of the Acreage Limitation Rules and Regulations.

Paragraph (d), *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions*, of the final regulation has been rewritten for conciseness. The following examples illustrate the application of this paragraph:

Example (1). Assume Districts A, B, and C are members of a water conservancy district which entered into a master contract with the United States prior to October 12, 1982. The water conservancy district has allocated all the irrigation water made available to it under the master contract to Districts A and B, pursuant to pre-October 12, 1982, subcontracts with the conservancy district to which the United States is a party. The irrigation water is not made available to District C or any other districts or landholders within the water conservancy district. Consequently, Districts A and B are subject to the acreage limitation and pricing provisions of prior law. Districts A and B may amend their subcontracts to conform to the discretionary provisions without making

it necessary for the conservancy district or the other subcontracting entity with the conservancy district to so amend their contract or the subcontract.

Example (2). Assume District XYZ has a pre-October 12, 1982, contract with the United States for the delivery of irrigation water. The district also has allocated that irrigation water pursuant to subcontracts with six subcontracting entities. However, the United States is not a party to these subcontracts. A subcontractor may choose to conform to the discretionary provisions only if it makes the United States a party to the subcontract. Such action will not require the prior law master contractor or the other subcontractors to so amend.

Example (3). Assume District A, a master contracting agency, executes a water service contract with the United States after October 12, 1982. The irrigation water is to be delivered to only two of the eight member agencies within District A. Subcontracts are executed between District A, the United States, and each of the two member agencies to provide irrigation water service to the two member agencies. In this instance, the discretionary provisions become applicable to only the two member agencies which execute subcontracts with District A and the United States.

Paragraph (e), which is new, explains the effect on a landholder's status of a district becoming subject to the discretionary provisions. While this paragraph goes on to explain how Reclamation treats direct and indirect landholdings of nonresident aliens and foreign entities in districts conforming to the discretionary provisions, the final version of this paragraph has been revised to reflect the addition of the new § 426.8 that discusses entitlements for nonresident aliens and foreign entities.

Paragraph (f) expands on the prior rules' discussion of individual elections to address the effects of elections by part owners on entities and vice versa. It also explains how certain indirect landholders in districts with an amended contract can conform to the discretionary provisions by simply submitting a certification form.

Paragraph (g) provides that districts may rely on the information included on the irrevocable election form.

Paragraph (h) highlights how irrevocable elections made between April 12, 1987, and May 13, 1987, will be treated.

Comments Concerning § 426.3—Conformance to the Discretionary Provisions

Section 426.3(a)

Comment: The proposed rules seem to provide that Reclamation has discretion as to whether to accept a district's action to conform to the discretionary provisions.

Response: A change has been made to § 426.3(a)(2)(iii), to make it clear that if the stated requirements have been met, Reclamation will amend the contract to allow the district to conform to the discretionary provisions.

Comment: One commenter wanted the effective date of a district's request to conform to the discretionary provisions to be the date of Reclamation's approval, not the date of the district's request. This could avoid problems with the pricing of water, etc., if Reclamation should take some time to approve the request.

Response: This comment has not been accommodated in the final regulations. Reclamation believes the beneficial effect for landholders of conforming to the discretionary provisions outweighs the difficulties the district may encounter if a request should not be approved. It is in the district's control as to whether or not the criteria specified in § 426.3(a)(2) have been met when the district submits its request. If the criteria have been met, the district should consider itself subject to the discretionary provisions when it submits its request because Reclamation will approve that request.

Comment: Districts that have been paid out should not be again placed under the acreage limitation restrictions if they receive some additional or supplemental benefit.

Response: If a district is paid out, it is no longer subject to the acreage limitation provisions. A paid out district would normally enter a new contract if the United States provided new, additional, or supplemental benefits. New repayment contracts trigger the Discretionary Provisions under § 203 of the RRA.

Comment: Some commenters thought too much discretion remains as to what will be considered an additional or supplemental benefit that requires conformance to the discretionary provisions. All contract actions that provide for supplemental or additional benefits should require conformance to the discretionary provisions, no matter how minor the benefit. On the other hand, other commenters believed that a district that receives a supplemental benefit should not be required to conform to the discretionary provisions.

Response: The final regulations include both contract amendments and other types of contract actions as providing additional or supplemental benefits. However, some contract actions primarily benefit Reclamation, and Reclamation does not want to discourage such amendments. The statute requires, and these regulations implement, a program where only such actions which confer additional or supplemental benefits to the district require conformance with the discretionary provisions of the RRA.

Comment: Commenters suggested that in approving water transfers the transferees should pay a rate sufficient to eliminate any operating losses to the United States, and the language of the regulations should be changed to reflect this suggestion.

Response: The discussion of water transfers concerns only those made on an annual basis as they relate to additional and supplemental benefits. Reclamation's long standing policy has been to encourage efficient use of water through water transfers.

Comment: Water transfers should not be considered an additional or supplemental benefit if a portion of the transferred water is used for fish and wildlife purposes.

Response: This comment has not been accommodated in the final regulations. However, if the transfer only benefits fish and wildlife, then in most cases the transfer would not be considered an additional or supplemental benefit to the district.

Section 426.3(c)

Comment: The new paragraph in the standard contract article is not required or authorized by the RRA. However, if it should be retained, then it should include the rest of the language that was used in the Central Valley Project interim renewal contracts.

Response: Reclamation has accepted part of the commenters' suggested change. The accepted language assures Reclamation's contractors that Reclamation will make deliberative decisions.

Comment: Since the terms of Federal reclamation law include rules and regulations adopted pursuant to the Administrative Procedure Act, it is unnecessary to add reference to the rules and regulations within the first paragraph of the standard contract article.

Response: This comment has not been accommodated in the final regulations. The subject language may be unnecessary, but it has been retained for the benefit of those who may not be aware that the terms of Federal reclamation law encompass the regulations.

Comment: The reference to ''implied provisions'' in the new clause should be removed.

Response: Reclamation agrees that the standard contract article may not be clear. Reclamation has revised the standard contract article to ensure that all contract provisions may be

administered by replacing ''expressed and implied'' with ''all.''

Section 426.3(e)

Comment: Landholders are supposed to conform automatically to the discretionary provisions when a district conforms.

Response: In general, this is a true statement. However, the 1987 rules allowed indirect landholders in discretionary districts to choose between being subject to the discretionary or prior law provisions. This provision has been clearly stated on the cover of the RRA forms booklet and is continued under these final regulations.

Section 426.4 Attribution of Land

Section 426.4 in the prior regulations, *Definitions,* is renumbered as § 426.2. A new § 426.4, entitled *Attribution of land,* is intended to clarify how Reclamation attributes land to direct and indirect landholders. It does not change existing policy regarding how land is attributed for entitlement purposes, but sets forth a concise summary. No significant changes were made from the proposed rule.

Paragraph (a) establishes the general rule that individuals and entities cannot enhance their entitlements or eligibility through the creation or acquisition of legal entities. For example, a prior law recipient could not increase his or her 160-acre ownership entitlement (see § 426.5) by creating or acquiring an interest in a qualified recipient legal entity. Such a prior law recipient will need to conform to the discretionary provisions (through district contract action or individual irrevocable election) in order to realize an increase in his or her entitlements.

Paragraph (b) establishes that, for purposes of acreage limitation entitlements, owned land is attributed to each indirect landholder proportionally based on that landholder's interest.

Paragraph (c) establishes that leased land counts against the entitlements of both the owner and the lessee.

Paragraph (d) establishes that if a series of legal entities has ownership relationships with each other, Reclamation will attribute proportionately the land to each such entity. Paragraph (e) addresses how land that is owned by a landholder and then is indirectly leased by the same landholder will be counted by that landholder.

Paragraph (f) acknowledges that irrigation water cannot be delivered to a legal entity without benefiting all indirect owners of undivided interests in that entity; therefore, all such indirect owners must be eligible in order for the entity to be eligible.

If the interests of the entity's indirect owners are divided, however, then the district could deliver irrigation water to the entity without necessarily benefiting all such owners. In this situation, it may be possible to deliver irrigation water to a portion of the entity's landholding even if one or more of the entity's indirect owners is not eligible.

The following examples illustrate the application of § 426.4:

Example (1). Corporation A is a limited recipient that did not receive water on or before October 1, 1981, and therefore, is not entitled to receive irrigation water at a nonfull-cost rate (see § 426.6). Such an entity may not gain entitlement to receive irrigation water at a nonfull-cost rate by acquiring Corporation B, an entity that received water on or before that date. If the latter entity were so acquired, irrigation water could be delivered to the entities' landholding only at the appropriate full-cost rate.

If the entities' roles in the preceding example were reversed (that is, if Corporation B acquired Corporation A), the landholding of Corporation A could be irrigated only at the appropriate full-cost rate as long as Corporation A continued to exist. In this case, it should be noted that Corporation B, which is eligible to receive irrigation water at a nonfull-cost rate on up to 320 acres, could potentially receive nonfull-cost irrigation water on other land in its holding that is not held through Corporation A. However, any land held by or through Corporation A could be irrigated only at the full-cost rate.

If Corporation A were to go out of existence, then the land formerly held by Corporation A would be directly held by Corporation B and could be irrigated at the nonfull-cost rate on up to 320 acres, if so selected by Corporation B.

Example (2). Corporation C is a qualified recipient which owns and irrigates 500 acres. Corporation C is subsequently acquired by Corporation D, a limited recipient which received irrigation water on or before October 1, 1981, but which currently has no landholdings other than Corporation C's 500 acres. On the date of acquisition, Corporation C becomes a limited recipient because it benefits all the stockholders of Corporation D. Since Corporation C becomes a wholly owned subsidiary of Corporation D, all of its direct and indirect landholdings will be attributed against Corporation D's 640-acre ownership entitlement (see § 426.5) and 320-acre nonfull-cost entitlement (see § 426.6). Therefore, if all 500 acres are irrigated, the full-cost water rate must be paid for water delivered to 180 of those acres (500 acres − 320 acres).

Example (3). The trustees of five irrevocable trusts, each of which have six natural persons as beneficiaries, form a partnership that holds land subject to the acreage limitation provisions in a discretionary district. In order to determine if that partnership is a limited or qualified recipient, it is necessary to ascertain how many natural persons will benefit from the partnership. In this case, 30 natural persons will benefit (none of the trust beneficiaries benefit from more than one trust) and, therefore, the partnership has the acreage limitation status of limited recipient. Although the five trusts are not limited in the amount of land they can hold and receive irrigation water at the nonfull-cost rate (other than through the entitlements and holdings of their beneficiaries), the acreage limitation status of the partnership will limit how much land can be held through that entity by the trusts and receive such water.

Example (4). Assume Trust A has two beneficiaries, beneficiary A and beneficiary B. Beneficiary A has a 60 percent interest in the trust, and beneficiary B has a 40 percent interest. Trust A owns 800 acres of nonexempt land. Beneficiary A must attribute 480 acres toward her ownership entitlement, and beneficiary B must attribute 320 acres toward his ownership entitlement.

Example (5). Assume Corporation C wholly owns Corporation D, and that Corporation D owns a 60 percent interest in Corporation E. Corporation E leases 500 acres of irrigation land. Reclamation will attribute to Corporation E all 500 acres toward the company's nonfull-cost entitlement, and Corporations C and D must each attribute 300 acres toward their nonfull-cost entitlements.

Example (6). Attribution to both owner and lessee is demonstrated by Farmer A who owns 400 acres of irrigation land which she leases to Farmer B. Farmer A must count all 400 acres towards her ownership and nonfull-cost entitlements, and Farmer B must count all 400 acres towards his nonfull-cost entitlement.

Example (7). Farmer A owns 60 acres and leases that land to Corporation XYZ that leases a total of 200 acres. Farmer A also owns 50 percent of Corporation XYZ. Farmer A would claim his 60 owned acres, but would not have to claim the entire 200 acres leased by Corporation XYZ. Instead, Farmer A would claim 70 acres leased by Corporation XYZ (200 acres minus the 60 owned acres, times the 50 percent ownership interest). Accordingly, Farmer A would claim a total landholding of 130 acres. If Farmer B was the other part owner of Corporation XYZ and leased his 140 owned acres to that entity, his total claimed landholding would be 170 acres, which includes 30 acres leased by Corporation XYZ (200 acres minus the 140 owned acres, times the 50 percent ownership interest).

Example (8). Assume two qualified recipients, Farmer A and Farmer B, form a qualified recipient partnership with equal, undivided interests. Farmer A has no landholding outside the partnership, but Farmer B owns 960 acres of nonexempt and nonexcess land outside the partnership, and has therefore completed his ownership entitlement. The partnership has no remaining ownership entitlement, because any land irrigated by the partnership would cause Farmer B to exceed his ownership entitlement.

If, however, the partnership agreement in this example provided that the partners' interests were separable and alienable, the

partnership could receive irrigation water on that land attributable to Farmer A. It would need to be shown that Farmer B does not benefit from the receipt of irrigation water by the partnership.

Comments Concerning § 426.4—Attribution of Land

Section 426.4(b)

Comment: Change § 426.4(b)(2) of the proposed rule to read, ''Indirect landowners in proportion to the indirect beneficial interest they own in the entity that directly or indirectly owns the land.''

Response: This comment has not been accommodated in the final regulations. While Reclamation understands the addition of the word ''indirectly'' Reclamation does not believe it is necessary, because indirect landholders have beneficial interest in the direct landholder even if there are one or more intermediate entities in existence. It is the proportion of interest held in the direct landholder by the indirect landholder that determines attribution.

Section 426.4(c)

Comment: The provision in § 426.4 to attribute all direct and indirect interest in land to a landholder's nonfull-cost entitlement is supported. However, a fundamental flaw exists because the burden of proof is on Reclamation to show that a farm larger than 960 acres must pay full cost on the acreage above 960 acres. It is inappropriate to place this burden on the government. Rather the recipients should be required to show that they qualify using tax returns and other documentation as appropriate. Reclamation should operate under the assumption that any farm or operation larger than 960 acres must pay full cost on acreage above 960 until any entitlement to nonfull-cost water is clearly proven in writing.

Response: In fact, the burden of proof is with the landholder under both the final and prior rules. All landholders must submit RRA forms. If the forms indicate that a nonfull-cost entitlement is exceeded then full cost is applied. Farming operations that do not meet the definition of landholder are not required to submit RRA forms, because the statute does not support applying the acreage entitlements to them. Reclamation performs audits on all farming arrangements that exceed entitlements to ensure they are in fact not landholders. If any questions arise, the farm operators are required to submit documentation to prove they are not landholders.

Section 426.4(f)

Comment: The rules should not provide that if one part owner is ineligible to receive irrigation water, the entire landholding is ineligible.

Response: If one part owner is ineligible to receive irrigation water in an entity in which the interests of the part owners are not divided, then to allow the delivery of irrigation water to land held by that entity would result in the ineligible part owner receiving benefits to which that part owner is not entitled.

Section 426.5 Ownership Entitlement

Section 426.5 in the prior regulations, *Contracts,* is renamed ''Conformance to the discretionary provisions'' and renumbered § 426.3. The new § 426.5, *Ownership entitlement,* replaces § 426.6 of the prior regulations. This section summarizes the ownership entitlements of individuals and most types of entities, and has been rewritten for conciseness. This section makes no substantive change in the prior regulations.

All descriptions of what constitutes qualified, limited, and prior law recipients are deleted because they are redundant with the definitions found in § 426.2. The trust discussion has been placed in a new § 426.7. A new § 426.8 has been created to address acreage limitation entitlements for nonresident aliens and legal entities not established under State or Federal law. The only significant change between the proposed rule and this final rule is to paragraph (d) as explained below.

Paragraph (a) has been rewritten from the prior rules to achieve better organization and clarity. Included is language clearly stating that land leased from a public entity counts against the lessee's ownership entitlement. Moreover, the reference in the prior language to the regulation on Class 1 equivalency is deleted because that topic is addressed in the discussion of qualified and limited recipient entitlement.

Paragraph (b) discusses the ownership entitlement for qualified recipients, while paragraph (c) discusses the ownership entitlement for limited recipients.

Paragraph (d) discusses the ownership entitlement for prior law recipients. As in the proposed rule, this discussion is much more detailed than in the prior rules; specifically, the entitlements for surviving spouses and children are provided. The final rule includes a new paragraph (d)(3) that discusses how ownership entitlements for certain entities are calculated if the part owners interests are not equal.

The following table summarizes the ownership entitlements specified in this section:

If the landowner is a:	The size of his or her ownership entitlement is:	Basis of computation
Qualified recipient	960 acres or Class 1 equivalent	Westwide.
Limited recipient	640 acres or Class 1 equivalent	Westwide.
Prior law recipient and is a(n):		
Individual	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Husband and wife who jointly own equal interest.	320 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Surviving spouse	Up to 320 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Child	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Joint tenancy or tenancy-in-common, if interests are equal.	160 acres per tenant	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.

If the landowner is a:	The size of his or her ownership entitlement is:	Basis of computation
Partnership if interests are: alienable, separable, and equal.	160 acres per partner	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Partnership if interests are: not alienable or not separable.	160 acres total	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Corporation	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.

The following examples illustrate the application of § 426.5:

Example (1). Farmer A receives irrigation water on 160 acres owned directly in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. Farmer A automatically becomes a qualified recipient by virtue of the district's decision and is entitled to receive irrigation water on a maximum of 960 acres of nonexempt land in his ownership.

Example (2). Farmer B and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of nonexempt land. As a qualified recipient, they may irrigate the entire 960-acre landholding. However, they have completed their ownership entitlement.

Example (3). Farmer C and Farmer D are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer C and Farmer D as a married couple have reached the limits of their ownership entitlement as a qualified recipient.

Example (4). ABC Farms is a general partnership comprised of four individuals who are qualified recipients and who own equal interests in the partnership's 960-acre landownership. The land is located in District Z, which is subject to the discretionary provisions. Therefore, ABC Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership, as qualified recipients, may each receive irrigation water on a maximum of 720 acres in some ownership or ownerships other than ABC Farms.

Example (5). Corporation A is a qualified recipient receiving irrigation water on a landownership of 960 acres. Farmer Brown is also a qualified recipient who owns 25 percent of Corporation A and farms 800 acres of owned land using irrigation water. In this instance, Farmer Brown exceeds his individual ownership entitlement by 80 acres and must either divest an appropriate share of his ownership in Corporation A or designate 80 acres of his directly owned land as excess.

Example (6). Corporation B and Corporation C, wholly owned subsidiaries of Corporation D, each own 500 acres in District Z which has amended its contract to conform to the discretionary provisions. All three corporations are qualified recipients. The landholdings of Corporations B and C are counted against the entitlement of the parent corporation, Corporation D. Therefore, Corporation D has exceeded its 960-acre ownership entitlement by 40 acres, and 40 acres must be declared excess.

Example (7). AAA Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District Y. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions. Thereby AAA Land Company becomes a limited recipient and is entitled to receive irrigation water on 640 acres or less owned westwide.

Example (8). BBB Fertilizer Company is a corporation registered in Nebraska and directly owns 160 acres of nonexcess and 480 acres of excess land in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. BBB Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient with a 640-acre ownership entitlement. BBB Fertilizer Company may therefore redesignate the 480 excess acres as nonexcess utilizing the process highlighted in § 426.12(b).

Example (9). Farmer G, a prior law recipient, owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer G owns land has amended its contract to conform to the discretionary provisions, and Farmer G held title to the land prior to December 6, 1979. Thus, Farmer G remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

Note: If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land, assuming the new landholder is a prior law recipient.

Example (10). Farmer H owns 160 acres in each of two prior law districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer H owned the land prior to December 6, 1979. On January 1, 1983, Farmer H purchased another 160 acres of nonexcess land which is located in a third prior law district. The land newly purchased in this district must be declared excess, except as provided for in § 426.12(d).

Example (11). Farmer I and spouse own 320 acres of irrigation land in each of two prior law districts, for a total of 640 acres. The couple purchased both parcels of land in 1976. They have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, they are entitled to receive irrigation water on all 640 acres. The couple has reached the limit of their ownership entitlement.

Example (12). EFG Farms, a partnership composed of four individuals who hold equal, separable, and alienable interests in the partnership, owns 960 acres of nonexempt land located in District Y. District Y has not amended its contract to become subject to the discretionary provisions. EFG Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither EFG Farms nor any of the partners owns irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of the EFG Farms' 960 acres are entitled to receive irrigation water; the remaining 320 acres must be declared excess. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

Example (13). Farmer N and Farmer O form a corporation in which Farmer N owns a 60 percent interest and Farmer O owns a 40 percent interest. Neither individual owns land outside the corporation. Farmer N and the corporation are qualified recipients, but Farmer O remains subject to prior law. The maximum nonexempt acreage that the corporation can own as nonexcess is 400 acres (160 divided by 40 percent). If the corporation owned more than 400 nonexempt acres, this would cause Farmer O to exceed his ownership entitlement.

Example (14). Farmer P, a qualified recipient, owns 1,400 nonexempt acres and has designated 960 acres as nonexcess and eligible to receive irrigation water. In 1995, Farmer P irrigates only 800 acres; however, the entire 960 nonexcess acres are still counted against his ownership entitlement.

Example (15). Farmer Q, a qualified recipient, owns 640 acres receiving irrigation water. Farmer Q also owns 320 acres which are not in a district, but Farmer Q has individually entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres receiving irrigation water must be counted for purposes of determining ownership entitlement.

Example (16). Farmer R, a prior law recipient, owns 160 nonexempt acres. However, only 120 acres were deemed irrigable and eligible to receive irrigation

water. Some years subsequent to this determination, Farmer R installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of ownership entitlement under the RRA, all 160 acres must be counted.

Comments Concerning § 426.5—Ownership Entitlement

General

Comment: Why is the government trying to get farmers to reduce their landholdings down to 960 acres?

Response: The acreage limitations place no restrictions on how much land a farmer owns or leases. Rather, it limits how much owned land may receive irrigation water and how much leased land may receive such water at subsidized rates. The concept of limiting owned land that can receive irrigation water has been in existence since 1902. Originally that provision was intended to restrict land speculation at Reclamation irrigation projects. The concept of limiting the amount of leased land that can receive irrigation water at a subsidized rate was enacted in 1982. These regulations do not provide for any new limitations on owned or leased land.

Comment: If ownership entitlements are not violated, the landowner can receive irrigation water, but at the full-cost rate, plus administrative fee which is the actual cost of delivering the water, including the cost of constructing project facilities and interest on those expenditures.

Response: This commenter appears to suggest that landowners are entitled to or willing to receive Reclamation irrigation water on eligible land provided they pay the full-cost rates. Only limited recipients have ownership entitlements that are higher than nonfull-cost entitlements. In the case of limited recipients, they may receive water at the full-cost rate if they exceed their nonfull-cost entitlement, but that does not include the administrative fee (see § 426.20). What the respondent believes is part of the administrative fee is in actuality part of the full-cost rate.

Section 426.5(a)

Comment: Prior law partnerships where the partners have unequal interests, but which are separate and alienable, have an entitlement determined by the relative interest held by the partners. The partner with the largest percentage interest in the partnership is entitled to hold 160 acres through the partnership. Partners with lesser percentage interests are entitled to hold a proportional amount of land through the partnership. It may clarify the intent here to simply delete the reference to equal interest, leaving the requirement that the partnership interest be separable and alienable.

Response: Reclamation wants to make it clear that the only prior law partnerships that may benefit from 160 acre entitlement per part owner are those that have separable, alienable, and equal interests. If Reclamation allowed partnerships with unequal interest to benefit from the 160-acre per part owner arrangement, some part owners could receive benefits to which they are not entitled. Section 426.5(d)(3) was added to explain what will happen if the interests are not equal.

Section 426.6 Leasing and Full-Cost Pricing

Section 426.6 in the prior regulations, *Ownership entitlement,* is renumbered as § 426.5. The new § 426.6, *Leasing and full-cost pricing,* replaces § 426.7 of the prior regulations. This section describes the conditions under which full-cost charges are applied and describes how full-cost rates are determined. No substantive change to these provisions is intended.

The paragraph in the prior regulation on what constitutes a lease has been deleted because it more properly belongs in the definition section. As in the proposed rules, the term *irrigation land* is used more extensively in the discussion of nonfull-cost entitlements, as compared to the prior rules. The reference to exempt land that was included in the prior rules is deleted since use of the term *irrigation land* automatically excludes exempt land.

Under the discussion of nonfull-cost entitlements of qualified, limited, and prior law recipients, the sentences found in the prior rules describing various types of land not subject to full-cost pricing have been deleted to eliminate redundancy with other sections. As in the proposed rules, land subject to recordable contracts is no longer addressed in this section, but is solely discussed in § 426.12; exempt land is no longer discussed in this section because it has been excluded through use of the term *irrigation land;* and involuntarily acquired land is no longer discussed in this section, but is solely addressed in § 426.14.

The paragraph found in the prior rules on multidistrict landholdings is deleted because it is redundant with the discussion of this topic in § 426.3.

Paragraph (a) details what requirements a lease must meet. If a lease does not meet one or more requirements of a lease, then the land is ineligible to receive irrigation water. As such, the district may not deliver irrigation water to the land and the landholder(s) may not accept delivery of such water. Reclamation, however, will attribute that land to the would-be lessee's nonfull-cost entitlement. The proposed rule added to the requirements found in the prior rules. These additional requirements include: a legal description of the land; the lease must be signed by all parties to the lease; and the lease must include the dates of signatures. The final rules do not include the signature date requirement, and specify that the legal description need not be any more specific than that required to be included on the RRA forms. The final rules also specify that leases in effect on the effective date of these regulations do not have to meet these two new requirements until such leases are renewed.

Paragraph (b) details the nonfull-cost entitlements for qualified, limited, and prior law recipients. Paragraph (c) details how the nonfull-cost entitlement will be applied, while paragraph (d) details what types of land will be counted in determining if a landholder has exceeded a nonfull-cost entitlement.

Paragraph (e) examines what land may be included in selecting nonfull-cost and full-cost land. A revision to what had been included in (e)(2) of the proposed rules was made to explain that the selection of full-cost and nonfull-cost land is binding after irrigation water is received on a parcel until the landholder has completed receiving irrigation water westwide for the water year. This language replaces the proposed version that made the selection binding for the remainder of the water year.

Paragraph (f) states that if land is selected as full-cost, that selection is binding on all landholders. Paragraph (g) discusses how land that is subleased is treated.

Paragraph (h) provides how full-cost charges are calculated, while paragraph (i) discusses how full-cost rates are levied on a per-acre basis and a per acre-foot basis.

Paragraph (j) provides for the disposition of revenues obtained through full-cost pricing. This paragraph has been changed from the proposed version to provide in (j)(1)(iii) that any capital component of full-cost revenues will be credited to project repayment where applicable. In addition, (j)(2) has been revised in the final version to state that certain charges assessed by the district will not have to be turned over to Reclamation, when such assessments were made through an illegal delivery of irrigation water.

The following examples illustrate the application of § 426.6:

Example (1). Farmer A, a qualified recipient, receives irrigation water on 900 of the 960 acres of nonexempt land in his ownership in District X. Farmer A leases and receives irrigation water on another 320 acres in District Y. Since Farmer A receives water on 260 acres over and above his nonfull-cost entitlement, he must select 260 acres of owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

Example (2). Farmer B, a qualified recipient, owns and receives irrigation water on 960 acres in District X. Farmer B decides to lease all 960 acres to another qualified recipient, Farmer C. Farmer C, however, already farms 960 acres receiving irrigation water. Therefore, Farmer C would be eligible for nonfull-cost rate irrigation water on only 960 acres of the 1,920 acres he is farming.

Example (3). Farmer D has made an irrevocable election and owns and receives irrigation water on 960 acres. Farmer E is subject to prior law and owns and receives water on 160 acres. Farmer D hires Farmer E to operate Farmer D's equipment in performance of all the physical farm work on Farmer D's 960 acres. Farmer E receives compensation for such services, which does not consist of a share of the crop and is not based, in advance, on the degree of economic success or failure of the production or marketing of the crop. This arrangement between Farmer D and Farmer E does not constitute a lease because Farmer D has retained the economic risk. Accordingly, Farmer E does not have to count Farmer D's 960 acres against his nonfull-cost entitlement.

Example (4). Assume the same facts as in example 3 of this section, except that Farmer E receives a portion of the crop for her services. This arrangement between Farmer D and Farmer E constitutes a lease because it constitutes sharecropping, and all sharecropping arrangements are considered to be leases. Therefore, Farmer E has exceeded her nonfull-cost entitlement by 960 acres and must pay full cost for water delivered to 960 acres of her landholding.

Example (5). Landholder F, a qualified recipient, receives irrigation water on 960 acres of owned land in District X and 800 acres leased in District Y. At the beginning of the water year, Landholder F selects 360 owned acres plus 600 leased acres to receive irrigation water at the nonfull-cost rate. He pays the full-cost rate for water delivered to the remaining 800 acres. In July, Landholder F terminates the lease on the 600 acres of leased land which are part of his nonfull-cost entitlement. However, since nonfull-cost acreage is counted against one's entitlement on a cumulative basis during any 1 water year, Landholder F has already reached the limits of his nonfull-cost entitlement for this water year. Therefore, Landholder F may not replace in that water year those 600 nonfull-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder F also must pay the full-cost rate for irrigation water delivered to any new land he irrigates during that water year.

Example (6). Mr. and Mrs. G own 320 acres of eligible land in each of two districts and 160 acres in a third district. All three districts remain subject to prior laws as do Mr. and Mrs. G. All of this land was purchased prior to December 6, 1979. In addition, Mr. and Mrs. G lease 100 acres from another party. All 800 acres of owned land is eligible to receive irrigation water at the regular contract rate, because it is within the couple's 320-acre per district entitlement for land purchased before December 6, 1979. However, the 100 leased acres can receive irrigation water only at the full-cost rate, because it exceeds the couple's maximum nonfull-cost entitlement of 320 acres. The fact that the couple's owned land was acquired prior to December 6, 1979, has no bearing on their nonfull-cost entitlement computation.

Example (7). ABC Farms, an entity benefitting more than 25 natural persons, remains under prior law. It owns and was receiving irrigation water on 160 acres in District X prior to October 1, 1981. ABC Farms also owns and irrigates 480 acres in another prior law district which are subject to a recordable contract. ABC Farms may continue to receive irrigation water at the nonfull-cost rate on its entire landholding until the end of the recordable contract period. At that time, if ABC Farms remains under prior law, only 160 acres in District X may continue to receive irrigation water. If ABC Farms makes an irrevocable election prior to the maturity of the recordable contract, it may amend the recordable contract to allow it to own and receive irrigation water on all 640 acres owned. Upon electing, ABC Farms may receive irrigation water at the nonfull-cost rate on 320 acres, but it must pay the full-cost rate on the 320 acres by which it has exceeded its nonfull-cost entitlement.

Example (8). CDE Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and CDE Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for CDE Farms to receive irrigation water for any nonexempt land, it must pay the full-cost rate for that water.

Example (9). The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the nonfull-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another landholder, the full-cost rate would still apply.

Example (10). Farmer I and his wife lease 640 acres of irrigation land in District X and another 640 acres of irrigation land in District Y. Districts X and Y have not amended their contracts to become subject to the discretionary provisions and Farmer I and his wife have not made an irrevocable election. Since the couple has exceeded their 320-acre nonfull-cost entitlement by 960 acres, Farmer I and his wife must select 960 acres in their landholding and pay the full-cost rate for water delivered to that land.

Example (11). Four brothers hold equal, separable, and alienable interests in a partnership they formed. The partnership owns 160 acres of irrigation land in District X and also leases another 320 acres from another party in District Y. The partnership and both districts remain subject to prior law. Since the partnership's landholding is within its 640-acre nonfull-cost entitlement (160 times 4), no full-cost charges will be assessed to water delivered to any land in the holding.

Example (12). Farmer J, a prior law recipient, owns 5,000 acres of irrigation land in District X, 4,900 of which are under recordable contract. He also receives irrigation water on another 320 acres which he leases in this same district. Thus, Farmer J is receiving irrigation water on 5,160 acres (5,320 minus 160) in excess of his nonfull-cost entitlement. However, his recordable contract land is not subject to full-cost pricing; therefore, Farmer J must select 260 acres (5,160 minus 4,900) for full-cost pricing. Although his recordable contract land is not subject to full-cost pricing, Farmer J may, at his option, select part or all of the 260 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

Example (13). Farmer K, a qualified recipient, owns 960 acres receiving irrigation water in Alpha Irrigation District. Farmer K also leases 100 acres receiving irrigation water in Alpha Irrigation District from another party. Alpha Irrigation District's repayment contract specifies an annual assessment of $5 per irrigable acre. Alpha Irrigation District's annual full-cost rate is calculated to be $15 per irrigable acre. Therefore, Farmer K's total water charge for that year is (960 acres times $5) plus (100 acres times $15), for a total of $6,300.

Comments Concerning § 426.6—Leasing and Full-Cost Pricing

General

Comment: Family farm ownerships should generally be excluded from full-cost pricing.

Response: The RRA does not include an exemption from application of the nonfull-cost entitlements for family farms. However, most family farms do not exceed the nonfull-cost entitlement level; therefore, the majority do not face application of full-cost pricing.

Comment: The definition of leasing should be coordinated with that used by the Farm Service Agency (FSA). FSA will not allow 10-year leases.

Response: Reclamation works with other Federal agencies to the greatest extent possible to facilitate consistent program administration and enforcement. However, the purposes of Reclamation's and FSA's programs are different. The acreage limitation program is intended to limit the distribution of benefits (irrigation water) that is otherwise generally available. The programs provided by the Department of Agriculture generally

provide farmers, in the form of crop payments, benefits that are not otherwise available. As for the length of the lease, the RRA specifically allows for long term leases (up to 10 years, except for perennial crops that can be for up to 25 years depending on the crop), but does not require any minimum term.

Comment: The annual reports of acreage owned and/or leased should be made available for public review. That is the only way it can be determined if lessees are within the limitations.

Response: Reclamation does not prepare an annual report of acreage owned or leased. The preparation of such a report would be expensive and there has been no interest in such a report generally expressed by the public.

Comment: Any increase in full-cost revenues should be used for rural community development where the proposed rules have an impact on the community.

Response: Reclamation does not have the authority to expend funds for purposes that are not authorized or appropriated by the Congress. Generally, all monies received are credited to the Reclamation Fund.

Section 426.6(a)

Comment: The proposed rules enumerate seven conditions or requirements for a lease. The requirements are very specific and rigid and seem to go beyond Reclamation's legitimate interest in being able to establish the existence of a bona-fide lease. It may be more practical and realistic to view these factors as what may be considered in the review of a lease instrument. Reclamation should allow itself and the landholder some flexibility in this area.

Response: The RRA provides that leases must be in writing and must not exceed certain time limitations. In addition, Section 206 of the RRA requires lessees to tell Reclamation about their lease, including the term of the lease, the number of acres leased and whether the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. Reclamation needs to establish the effective date, legal description, people involved in the lease, and values, in order to verify the information required by the statute and to effectively administer the program.

Comment: Several commenters requested that Reclamation delete or amend certain of the requirements a lease must meet. These included the deletion of the signature dates requirement, clarification of what would be an acceptable legal description, and changes to the requirement concerning dates when rent is due.

Response: The requirement for signature dates has been deleted. The other suggested changes have been accommodated with some minor modifications, since the changes can be made without affecting Reclamation's ability to administer and enforce the program.

Comment: The RRA and § 426.7 require a lease to be in writing even if it is not for more than 1 year. This requirement contravenes State law that allows oral leases provided they do not exceed 1 year in length.

Response: Section 227 of the RRA specifically states that all leases must be in writing. No exceptions are made for leases that have a term of less than 1 year. Therefore, if a lessee wants to receive irrigation water from Reclamation, then the lease must be in writing.

Comment: This provision should specify whether leases currently in effect prior to the effective date of these regulations must conform to the conditions set for them in § 426.6(a). Will the new requirements be applied retroactively?

Response: Most of the conditions listed have not changed from the prior rules and, therefore, Reclamation has provided no grace period for those conditions. However, Reclamation has added § 426.6(a)(8) that exempts leases in existence on the effective date of these regulations from meeting two of the conditions until such leases are renewed. These conditions are the signature and legal description requirements.

Comment: What happens if a lease is not in writing? What if some of the other lease requirements are not met?

Response: The lease would not be a valid lease for acreage limitation purposes. Typically, Reclamation would provide an opportunity for the problem to be corrected. If the problem is not rectified, then the land would be ineligible to receive irrigation water. In addition, the compensation rate would be applied to any irrigation water previously delivered under the lease to the land in question because the land was not eligible to receive irrigation water.

Comment: So long as there is no attempt to defraud, any parties to a lease should be given 30 days to amend a lease that fails to fully comply with these requirements.

Response: Reclamation's policy is to provide a 30-day opportunity to correct leases that do not meet certain requirements.

Section 426.6(e)

Comment: Section 426.6(e)(2) creates a problem due to the difference between ''crop year'' and ''water year.'' The proposed rule would limit redesignation to a particular water year and would appear to preclude or impede lease changes at any time of the year other than the end of the water year. This should be changed to provide that a redesignation is permitted once a year, without limitation to a crop year, water year, or calendar year.

Response: In order to be sure the readers of this Preamble are not confused, the term redesignation applies to excess land. Redesignations are not permitted unless the criteria provided in § 426.12–Excess Land-are met. Reclamation believes the commenter is in fact referring to the reselection of nonfull-cost and full-cost land. Reclamation has retained the term ''water year,'' as that is the term used in the prior rules. However, Reclamation has defined that term in the definitions section (§ 426.2), and made it clear in § 426.6(e)(2) that once a landholder has completed receiving irrigation water westwide for a water year, the selection of nonfull-cost land can be changed.

To allow reselections of land any time during the year, after the landholder has started to receive irrigation water on the land, and at a time chosen by each landholder would make the program extremely hard to administer both by the districts and Reclamation. Such a change would allow each landholder to define his or her own water year for purposes of application of the nonfull-cost entitlement. Thus, Reclamation and districts would have to track each landholder's ''year'' to ensure a landholder did not receive benefits to which he or she is not entitled.

Comment: Some commenters noted that a farmer should be able to irrigate two crops in any 1 calendar year, receiving water on the same land. In fact, the rules should take into consideration cumulative counting of acres where 2 crop years overlap in a calendar year.

Response: Reclamation's regulations do not address the number of crops which may be raised in 1 year. Acreage limitations apply to the landholding, not to the amount of irrigation water a landholder may receive. The acreage limitation provisions do not restrict the delivery of irrigation water to any acreage that is eligible land, regardless of the number of crops planted in any 1 year.

Section 426.6(h)

Comment: A full-cost rate with no interest subsidy should be developed

and applied to all foreign investors and corporations.

Response: The full-cost rate is defined by the RRA. Reclamation lacks authority to develop additional full-cost rates to be applied to select groups of landholders.

Section 426.6(j)

Comment: This section of the regulations should be clarified that for revenues collected through full-cost pricing, the capital component of any such rate should be credited to project repayment if applicable and not recovered to the Reclamation Fund.

Response: This suggestion is consistent with Reclamation practice. Reclamation added to § 426.6(j)(1)(iii) to make it clear that the capital component is to be credited to project repayment if consistent with contract, statute, and regulation.

Section 426.7 Trusts

Section 426.7 of the prior regulations, *Leasing and full-cost pricing*, is renumbered as § 426.6. Section 426.7, *Trusts*, is a new section devoted to describing the requirements for trusts and how land held in trust will be attributed for acreage limitation purposes. Generally, this new section does not alter existing Reclamation policy regarding trusts, but includes some existing policies that are not referenced in the prior regulations; specifically, attribution of land held in trust if the trust does not meet requirements specified in the regulations. Any changes between the proposed and final regulations are noted below. In addition, Reclamation is publishing an advance notice of proposed rulemaking to solicit comments on future changes to rules regarding trusts.

During this rulemaking, Reclamation received a number of comments regarding the compliance of large trusts with the acreage limitation provisions of the RRA. Comments expressed a variety of viewpoints, including the assertion that some trusts with landholdings in excess of 960 acres may circumvent the requirements of Federal reclamation laws. Through the advance notice of proposed rulemaking, the Department will invite comments and suggestions on: (1) Whether to limit nonfull-cost water deliveries to large trust arrangements that exceed 960 acres; (2) the criteria used to determine whether landholdings (owned and leased land) in excess of 960 acres total, operated under a trust agreement, should be eligible to receive non-full cost water deliveries; (3) whether Reclamation project non-full cost water deliveries to such large scale trusts are consistent with the principles of Federal reclamation law; (4) the appropriate criteria and standards to be applied to such trusts, implementation of the criteria and standards; and (5) the extent of the Department's statutory authority to address this issue. For example, what is the extent of the Department's legal authority to regulate: (a) future trusts, (b) trusts established from 1982 to the present, and (c) trusts established prior to 1982. See today's notice in the Federal Register.

Paragraph (a) defines the three categories of trusts: irrevocable; grantor revocable; and otherwise revocable. The final rules add to the definition of *irrevocable trust* to make clear that if, upon termination of the trust, the lands held by trust will return to the grantor, then the trust must be considered to be a grantor revocable trust for acreage limitation purposes. The definition of *grantor revocable trust* has also been revised in the final rules to make it consistent with the other definitions in this paragraph.

The effects of inclusion or absence of required elements of each category of trust are described in paragraph (b).

Paragraph (b)(1) establishes that land held by an irrevocable trust will be attributed to the trust's beneficiaries, provided that the trust agreement is in writing, and the beneficiaries and their interests are identified. Otherwise, the land will be attributed to the trustee.

Paragraph (b)(2) describes attribution of land held in a revocable trust that provides for reversion of the trust land to the grantor upon revocation. Land held by such trusts are attributed to the grantor(s) of the trust in proportion to the grantor's contribution to the trust. Such attribution assumes the trust agreement is in writing and the following have been identified in the trust document: the beneficiaries and their interests; the grantor(s) of all land held by the trust; the conditions under which the trust may be revoked or terminated; and the identity of the recipients of the trust land upon revocation or termination. If any of these requirements are not met, the land will be ineligible to receive irrigation water, unless the land has already been attributed to the grantor(s) on the RRA forms.

Paragraph (b)(3) describes attribution of land held in revocable trusts other than those covered under paragraph (b)(2). If the otherwise revocable trust does not specify its grantors, the conditions under which it may be revoked, or to whom the land will revert upon revocation, the land held in trust will be ineligible to receive irrigation water until these issues are resolved. If the otherwise revocable trust includes all of the criteria listed in the preceding sentence, the land held in trust will be attributed to the beneficiaries. The only exception is if the otherwise revocable trust is not in writing or does not identify the beneficiaries or the beneficiaries' interests. Under such circumstances, the land will be attributed to the trustee.

Paragraph (c) was included in the final rules to address the concept of a ''class'' of beneficiaries. If the trust document is specific as to the beneficial interest to which each member of the class will be entitled and the members of the class are identifiable, then attribution will be made to members of the class who are natural persons or established legal entities.

Paragraph (d) describes how full-cost rates will be assessed to certain grantor revocable trusts.

The following examples illustrate the application of § 426.7:

Example (1). Bank X is the trustee for five irrevocable trusts, each of which has more than one beneficiary. The irrevocable trusts contain 1,280, 960, 640, 800, and 400 acres, respectively, and all meet the criteria set forth in § 426.7(b)(1). All trust beneficiaries are qualified recipients, and none has any landholdings outside of the trusts. Since all the trusts' land is attributable to the trust beneficiaries, and Reclamation determines all the beneficiaries are within their ownership and nonfull-cost entitlements, all 4,080 acres in the five irrevocable trusts are eligible to receive irrigation water.

Example (2). Farmer A, a qualified recipient, provides in his will for the establishment of a trust and the conveyance of 640 acres of his land receiving irrigation water into that trust for his daughter upon his death. The trust meets the criteria set forth in § 426.7(b)(1). The land is located in a district which has amended its contract to conform to the discretionary provisions. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer A dies, and the testamentary trust he has established is activated. The trust's land is attributable to the daughter as the sole trust beneficiary. Therefore, the trust's land is eligible to receive irrigation water at the nonfull-cost rate, assuming the daughter has not exceeded her acreage limitation entitlements.

Example (3). Farmer B, a qualified recipient, owns 960 acres eligible to receive irrigation water in a district subject to the discretionary provisions. He decides to place 160 acres of his land in an irrevocable trust with his daughter as the beneficiary. The trust agreement satisfies the criteria of § 426.7(b)(1). The 160 acres of trust land will be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land will be attributed to Farmer B as her parent or to the person who is acting as her guardian.

Example (4). ABC Corporation, a prior law recipient, establishes a grantor revocable trust and places 160 acres of land receiving irrigation water in the trust for the benefit of J. Jones. The trust agreement satisfies all criteria of § 426.7(b)(2). Under the terms of the revocable trust, the trust will terminate and title to the 160 acres will revert back to ABC Corporation in 10 years. All 160 acres of the land in trust are attributed both to the corporation and to the corporation's stockholders in proportion to the stockholders' percent of stock held in the corporation.

Example (5). Assume the same facts as in Example 4 above, except that Charity X, a legal entity fully independent of ABC Corporation, will receive the land held in trust upon termination. In this example, the trust is an ''otherwise revocable trust'' rather than a ''grantor revocable trust.'' The 160 acres are attributed to the beneficiary of the trust, J. Jones.

Example (6). Farmer C, a qualified recipient, places 960 acres of land receiving irrigation water in a trust for his son. The trust agreement satisfies all criteria of § 426.7(b)(2). It provides that the trust shall expire in 20 years, and ownership of the trust land shall be vested in Corporation Y, of which Farmer C is a part owner with 5 percent interest. Because title to 5 percent of the trust land will revert indirectly to Farmer C upon termination of the trust, 48 acres (960 times 5 percent) of the trust land are attributed to Farmer C. The remaining 912 acres of trust land is attributable to the beneficiary of the trust. If Farmer C's interest in Corporation Y changes during the term of the trust, the amount of trust land attributed to Farmer C will change accordingly.

Comments Concerning § 426.7—Trusts

General

Comment: Trusts should be treated as a legal entity subject to the limits of the RRA.

Response: Reclamation has not accommodated this comment in the final regulations at this time. Section 214 of the RRA expressly addresses trusts and exempts from the ownership and nonfull-cost pricing limitations of the Federal reclamation law lands held by certain trustees acting in a fiduciary capacity. Reclamation intends to address this issue, along with related Trust issues in a separate rulemaking. In this section of the Federal Register, Reclamation has published an advance notice of proposed rulemaking which solicits comments on how to address problems associated with certain trusts.

Comment: The draft regulations do not provide guidelines to determine whether a minor child is actually independent. To allow income from a trust to be used as the basis for determining if a child is independent eviscerates RRA Section 202(4)'s definition of individual as a family unit. Reclamation should adopt mechanisms that determine whether a minor child is actually independent, including affidavits as to each minor's independent status, the minor's status during previous tax years, and copies of tax returns.

Response: The definition of the term ''dependent'' is based on the Internal Revenue Code of 1954 (see § 426.2), and the interpretation of this term by the Internal Revenue Service will govern Reclamation's application. Reclamation does require the submittal of tax returns to prove the independent status of minor children.

Comment: Class gifts should be allowed to be beneficiaries.

Response: This comment has been accommodated. A new § 426.7(c) has been inserted in the rules that provides for such attribution under certain circumstances.

Section 426.7(a)

Comment: The definition of an irrevocable trust as non-revocable is circular and useless.

Response: Reclamation has examined the definition of irrevocable trust and revised it to remove the term ''nonrevocable'' and to specify that an irrevocable trust is a trust that does not allow any individual, including the grantor or beneficiaries, the discretion to decide when or under what conditions the trust terminates. For the purposes of the acreage limitation provisions, land held in irrevocable trusts cannot revert to the grantor.

Comment: The definition of ''otherwise revocable trust'' has the land reverting directly or indirectly to someone other than the grantor. Since that person or persons never owned the land it cannot revert to them, rather the land is transferred to them upon termination.

Response: Reclamation has revised the definition to accommodate this comment.

Section 426.7(b)

Comment: Trusts should not have to be submitted to Reclamation for review and approval.

Response: As under the prior rules, trusts do not have to be submitted to Reclamation for review, unless the land held in the trust will be receiving irrigation water. The approval of trusts by Reclamation is limited to ensuring that the RRA trust criteria have been met. Reclamation is not interested in any other legal aspects associated with trusts. The information included in a trust is protected by the Privacy Act of 1974.

Comment: The prior regulations do not attribute property held by a trust to the trustee. The new regulations should not do so either.

Response: The commenters are correct in their reading of the prior regulations, in that the prior regulations did not address attribution of land held by a trust that does not meet Reclamation's trust criteria. However, Reclamation policy has been to attribute land to the trustee, the nominal holder of title, if the trust does not meet the established criteria. If a trust does not exist for Reclamation purposes, then the trustee is not covered by RRA Section 214. Thus, the land held by the trust is counted against the trustee's acreage limitation entitlements.

Comment: Any attempt by Reclamation to attribute land to the trustee will impose the trustee's limitation on acreage and pricing on the beneficiaries for whom the trustee is the fiduciary. This will deprive the beneficiaries of their personal entitlement to nonfull-cost project water and pricing. This is contrary to the common law of trusts.

Response: The treatment of lands held in trust is dictated by Section 214 of the RRA, not by the common law of trusts. Section 214 established criteria for treatment of certain kinds of trusts. Trusts that do not meet those requirements must be treated as required by the RRA. Accordingly, the nominal owner of the land is attributed the entire landholding for acreage limitation purposes.

Comment: If the trustee serves as the operator or farm manager of trust property, the acreage limitations should be applied to the trustee.

Response: The RRA does not impose acreage limitations on farm operations or management arrangements, unless they constitute leases. If a trustee was found to have leased the land held in trust from the trust, then the acreage limitation would apply to that landholder just as they would apply to any other lessee.

Comment: Does the use of a formula for identifying beneficiaries' interests, rather than identifying a specific beneficial interest in acreage, meet the requirement that beneficiaries' interests be identified?

Response: For trusts where attribution is to the beneficiaries, if the trust document uses a formula for identifying beneficial interests, Reclamation will also use that formula to attribute acreage, so long as at any point in time the percentage of beneficial interest attributable to any specific beneficiary can be readily determined.

Comment: In practice, trusts are provisionally approved when submitted to Reclamation. If Reclamation

discovers minor discrepancies the grantors or trustees are provided a reasonable opportunity to amend or restate the trust. This existing practice should be reflected in § 426.7.

Response: Although these practices were not placed within the rule, Reclamation intends to continue them.

Section 426.8 Nonresident Aliens and Foreign Entities

Section 426.8 of the prior regulations, *Operation and maintenance (O&M) charges*, is renamed *Recovery of operation and maintenance (O&M) charges* and renumbered as § 426.23. Section 426.8, *Nonresident aliens and foreign entities*, is a new section that was not included in the proposed regulations. This section describes the acreage limitation entitlements of nonresident aliens and entities not established under State or Federal law.

Paragraph (a) defines *domestic entity* and *foreign entity*, since those terms are used in this section.

Paragraph (b) states that nonresident aliens and foreign entities may not receive irrigation water on land held directly in discretionary districts. It also states that such landholders may hold eligible land directly in prior law districts, if the landholders have not already elected to conform to the discretionary provisions.

Paragraph (c) provides the general entitlement for nonresident aliens and foreign entities, namely, the prior law entitlements. Paragraph (d) provides to the prior law entitlement applicable to certain nonresident aliens and foreign entities. If the nonresident alien is a citizen of, or the entity has been established in a country that has treaty or other international agreements with the United States Government that provide for treatment of foreign citizens or entities like United States citizens or domestic entities, then they will be treated as a United States citizen or a domestic entity with regard to the acreage limitations. Proof of citizenship or the establishment of the entity will be required.

Paragraphs (d)(3)(i) through (iv) specify how nonresident aliens and foreign entities from countries with such agreements with the United States can become subject to the discretionary provisions and when irrevocable elections submitted by nonresident aliens and foreign entities will not be approved.

The following examples illustrate the application of § 426.8:

Example (1). Farmer F is a citizen and resident of Switzerland. Farmer F directly owns 160 acres of irrigation land in District X, a district subject to prior law. Subsequently, District X amends its contract to conform to the discretionary provisions. Farmer F, as a nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient. For that reason, and because he owned the irrigation land prior to the district's contract amendment, Farmer F may, as set forth in § 426.12(e), place the land under recordable contract and receive irrigation water at the nonfull-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer F not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold or otherwise transferred to an eligible recipient or Farmer F qualifies as a resident alien in the United States.)

Example (2). Six siblings who are citizens and residents of Canada form a family corporation registered in the State of Montana with each sibling holding equal shares in the corporation. The corporation makes an irrevocable election and is therefore a qualified recipient entitled to receive irrigation water on 960 acres or less of owned land. The brothers cannot meet the requirements to be qualified recipients since none are citizens of the United States or residents aliens thereof. However, since Canada has certain treaty commitments with the United States and the six siblings hold the land indirectly, the six siblings will be treated as United States citizens for purposes of applying the acreage limitation provisions. Therefore, each sibling may make an irrevocable election and indirectly own up to 800 additional acres through other entities that would be eligible to receive irrigation water. In a district subject to the discretionary provisions, nonresident aliens may receive irrigation water only on lands held through legal entities (i.e., indirectly) and may not receive irrigation water on land they hold directly.

Example (3). CDE Development Company is a corporation, incorporated in the Greater Antilles, with more than 25 shareholders. CDE Development Company buys 160 acres in a district which has amended its contract to conform to the discretionary provisions. However, unless and until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, it cannot meet the requirements to become a limited recipient, and none of its land held directly in discretionary districts is eligible to receive irrigation water.

Example (4). FGH Corporation is owned by more than 25 stockholders and was established in Mexico. IJK Corporation is registered in California and is a wholly-owned subsidiary of FGH Corporation. IJK owns 640 acres in a district subject to the discretionary provisions. IJK is a limited recipient that would normally be eligible to receive irrigation water on 640 acres. Since Mexico has a treaty with the United States whose terms require treatment of its citizens like United States citizens, and FGH Corporation holds the land indirectly, FGH Corporation will be treated as a legal entity established under State or Federal law for purposes of applying the acreage limitation provisions. Therefore, FGH may make an irrevocable election to become a limited recipient with an ownership entitlement of 640 acres. If FGH does not make an irrevocable election, FGH will only have the 160-acre ownership entitlement of a prior law recipient corporation and only 160 acres of IJK's owned land would be eligible to receive irrigation water; the remaining 480 acres would have to be declared excess.

Comments Concerning § 426.8—Nonresident Aliens and Foreign Entities

Comment: Entitlements for nonresident aliens should be in its own section.

Response: Reclamation has adopted this suggestion.

Comment: Since the settlement contract did not include a review of the nonresident alien provisions, the current regulations do not need to be changed.

Response: Reclamation is not restricted by the settlement contract as to what provisions may be revised. The prior regulations did not address foreign entities entitlements and the lack of clarity has led to confusion. Some interpretations could place foreign entities in a better position than United States citizens or entities established under State or Federal law. That would not be consistent with United States policy.

Comment: Some commenters suggested that the congressional intent was to provide nonresident aliens with no federally subsidized water on land held directly or indirectly. Another commenter supported the application of prior law entitlements to nonresident aliens and foreign entities as provided in the proposed rules.

Response: Under prior law, there is no distinction between nonresident aliens, foreign entities, United States citizens, resident aliens, or domestic entities. Accordingly, a nonresident alien or foreign entity may hold land as a prior law recipient and receive irrigation water. The United States Government treats citizens and entities from other countries that have certain treaties or other international agreements with the United States in the same manner as United States citizens or domestic entities. Reclamation has incorporated both of these concepts in the final regulations.

Comment: Many commenters suggested foreign ownership is not restricted in the RRA and there is no statutory authority for placing a restriction on the amount of land a nonresident alien or foreign entity can own through a domestic legal entity.

Response: The RRA strictly addresses the amount of land that may receive irrigation water and what rate must be paid for such deliveries. While the RRA

does not address land ownership itself, it does not provide for land directly held by nonresident aliens or entities not established under State or Federal law in a discretionary district is ineligible to receive irrigation water. This is because nonresident aliens and entities not established under State or Federal law are not included in the definitions of qualified and limited recipients. If no limitation was placed on the amount of land nonresident aliens or foreign entities could hold and receive irrigation water, United States citizens, resident aliens, and domestic entities would be placed at a disadvantage in their own country. Reclamation simply does not believe that is the intent of the RRA.

One of the goals of Reclamation's reexamination of the ability of nonresident aliens and foreign entities to receive water in discretionary districts is to treat all recipients in the same manner, unless prohibited by statute. Section 426.8 accomplishes that goal.

Comment: Congress expressly repealed the 160-acre limitation.

Response: This statement is not supported by the statute. Section 203(b) provides that districts and, thus, landholders who do not conform to the discretionary provisions remain subject to reclamation law in effect prior to the enactment of the RRA. The prior law entitlements remain available.

Comment: One commenter suggested that because Congress used the term ''natural persons'' instead of ''individuals'' in the definition of qualified and limited recipients, their intent was not to discriminate against nonresident aliens.

Response: Reclamation disagrees with this interpretation.. Reclamation believes the Congress used the term ''natural persons'' to clarify which parties should be counted in determining if an entity is a qualified or limited recipient.

Comment: An alternative resolution may be to limit the ownership entitlement of foreign corporations that hold land indirectly to that allowed under prior law, because foreign corporations do not meet the definition of ''natural persons'' who may have an ownership interest in a qualified or limited recipient.

Response: Essentially, this is how the proposed regulations addressed foreign entities with respect to acreage limitation status. The final regulations include recognition of the requirement that the United States treat citizens of nations that have certain treaties and other international agreements with the United States like United States citizens.

Comment: Changing the treatment of nonresident aliens is unnecessary, violates the RRA, and discriminates against non-U.S. citizens in violation of the North American Free Trade Agreement (NAFTA) and the Canada-U.S. Free Trade Agreement (CUSFTA).

Response: The RRA does not provide for eligibility of any land held directly in a discretionary district by a nonresident alien or foreign entity. In addition, the RRA does not allow nonresident aliens or foreign entities to become qualified or limited recipients under any circumstance.

However, in recognition of United States treaties and other international agreements, Reclamation has made provisions for nations that have certain treaties and other international agreements with the United States. Specifically, citizens of such nations or entities established in such nations will be treated as U.S. citizens or domestic entities in discretionary districts for indirectly held land.

Comment: Congress rejected a bill in 1990 that would have prevented the delivery of Reclamation water to U.S. corporations with foreign shareholders (passed House, not voted on in the Senate). In 1991, a similar bill was introduced. The Commissioner of Reclamation objected to the provision pertaining to the RRA. The House passed the bill, the Senate passed another version, and the bill itself never came out of conference committee.

Response: The interpretation of the RRA adopted by this rulemaking is consistent with the congressional directives set forth in the RRA and the United States' international obligations.

Comment: A 1984 Solicitor's opinion states that corporations with foreign ownership may elect to conform to the discretionary provisions.

Response: The regulations do not contradict that opinion. The Solicitor's opinion and the regulations require that the electing entity is a domestic entity if it directly holds land.

Comment: Some commenters suggested that Reclamation should look-through to the ultimate owner of the U.S. entity and ignore the intermediate entities, if any, or simply ignore foreign part owners.

Response: The RRA does not provide exceptions for intermediate entities or any part owners of entities. Reclamation looks at intermediate entities and part owners to ensure that they do not exceed their acreage limitation entitlements.

Comment: At the very least, the new restrictions should only be applied prospectively to corporations that have existing water rights that would be curtailed.

Response: Since the final regulations include an exception recognizing certain treaties and other international agreements, Reclamation believes that many of the foreign entities and nonresident aliens who hold land will not be adversely affected by this provision. For those few that may be affected, they are given a 5-year grace period to address the situation, provided the land was purchased before December 18, 1996 [see § 426.12(e)(4)]. The grace period will not begin prior to the effective date of these rules. During and after the grace period expires, the sale price of land that becomes excess because of this rulemaking will not be restricted.

Comment: Five years is simply too short a period of time in which to divest landholdings that have been accumulated since the enactment of the RRA in reliance on the RRA and the current regulations. At a minimum, these persons should be allowed 10 years to make plans to divest themselves of their excess landholdings.

Response: This comment has not been accommodated in the final regulations. The recordable contract provision, including the 5-year limitation, has been historically used to address instances where changes to the rules or district actions to conform to the discretionary provisions results in land becoming ineligible. Reclamation has encountered few situations where the 5-year limitation has caused problems. Reclamation believes it is fair to treat nonresident aliens and foreign entities in the same manner it has historically treated United States citizens, resident aliens, and domestic entities.

Comment: The 5-year grace period and provision to sell the land at fair market value does not address the situation where the nonresident alien does not control the domestic legal entity. In many situations the nonresident alien or foreign entity may not be able to ensure the sale of lands.

Response: Such land will be treated in the same manner as any other land that becomes ineligible as a result of these regulations. As with any legal entity, if a part owner's acreage limitation status or holdings outside the entity results in the part owner exceeding an entitlement because of attribution of the entity's land, then the entity may not be able to realize its full entitlement. Reclamation believes it is fair to treat part ownership by a nonresident alien or foreign entity in the same manner as all other part owners.

Comment: A commenter requested that special consideration be provided to nonresident aliens who hold land in the Central Arizona Project on this issue. Specifically, the commenter suggested that if a nonresident alien's entitlement is reduced, then in the Central Arizona Project the nonresident alien whose land becomes ineligible should be eligible for a 10-year recordable contract. The commenter proposed this special treatment because a possible consequence of the proposed rules may be the drilling of new wells and acceleration of the depletion of the underground water reserves.

Response: Section 218 of the RRA provides for recordable contracts, ''* * * for a period of time not to exceed 10 years from the date such lands are capable of being served with irrigation water, as determined by the Secretary.'' Accordingly, land held by nonresident aliens that becomes ineligible because of the changes to the entitlement for nonresident aliens or foreign entities will be eligible to enter into recordable contracts as provided for in § 426.12(e)(4) for 5 years or the difference between 10 years and the number of years irrigation water has been available to the land in question, whichever is greater.

Comment: What evidence is needed by a district to confirm that a corporation is owned by more than one foreign person?

Response: Under § 426.18, it is the responsibility of each landholder to complete the RRA forms completely and accurately. The district may reasonably rely on the information presented on the forms.

Comment: A number of additional specific examples were presented to Reclamation to be addressed. These are addressed as follows:

Example from comment: What is the entitlement of a domestic corporation which is wholly owned by a foreign corporation which in turn is wholly owned by a foreign family, e.g., mother, father, daughter, and son?

Response: In addressing this example three factors must be known: (1) What is the acreage limitation status of the domestic corporation? (2) Was the foreign entity established in a nation that meets the exceptions included in § 426.8(d)? (3) Are the family members citizens of a nation that meets the criteria included in § 426.8(d)? If the foreign corporation does not meet the criteria, then it would be a prior law recipient with acreage limitation entitlements of 160 acres. Whether or not this status affects the ability of the domestic entity to realize its full entitlement would depend on the domestic entity's acreage limitation status. If the foreign entity was established in a nation that met the criteria and it made an irrevocable election, then it would be a qualified recipient. Its ability to realize its full entitlement would depend on whether its part owners also met the criteria.

Example from comment: What is the entitlement of a domestic corporation that is wholly owned by a foreign corporation and the shares of the foreign corporation are publicly traded? Reclamation should address the fact that such shares are commonly ''bearer'' shares and are not registered to individuals or entities.

Response: Reclamation has addressed the issue of bearer shares in the past. If an entity cannot identify its part owners, as required on the RRA forms, the entity is ineligible to receive irrigation water.

Example from comment: What is the entitlement of a domestic corporation whose shares are publicly traded, some portion of which are held in ''street name?''

Response: This would be treated in the same manner as Reclamation treats any domestic corporation. For example, if that corporation is a limited recipient and is required to submit RRA forms, the entity is only required to disclose the names of persons whose acreage attributed through the corporation exceeds 40 acres. Generally, corporations are aware of such part owners. Districts are not required to take any special actions to determine if an entity is held by nonresident aliens or foreign entities.

Example from comment: What is the effect on a domestic corporation's ownership entitlement if a foreign shareholder becomes a U.S. resident?

Response: The domestic entity's entitlement is determined by its own acreage limitation status. However, its ability to receive irrigation water up to its full entitlement may be affected by part owners.

Section 426.9 Religious or Charitable Organizations

Section 426.9 of the prior regulations, *Class 1 equivalency*, is renumbered as § 426.11. The new § 426.9, *Religious or charitable organizations*, replaces § 426.15 of the prior regulations. This section describes the acreage limitation entitlements of these types of organizations. The few changes that have been made from the proposed rules are highlighted below.

Paragraph (a) includes a new definition for purposes of this section of *central organization*, in addition to the definition of *religious or charitable organizations* found in the proposed rule.

As in the proposed rule, the titles of paragraphs (b) and (c) have been modified in the final rule to reflect their application to both the ownership and nonfull-cost entitlements of religious or charitable organizations. This change eliminates the need for paragraph (d) that addressed leasing in the prior regulation.

Both the proposed and final versions of paragraph (b) include a more significant modification that changes the consequences of failure by a subdivision of a religious or charitable organization to satisfy the three criteria established by the RRA. Under the prior rules, the entire religious or charitable organization would be treated as a single limited recipient for purposes of application of the acreage limitation provisions, if one of its subdivisions failed to meet one of the established criteria. Under the proposed and final rules, only the subdivision that does not meet one or more of the criteria and any subdivisions of it are affected; the central organization and other subdivisions are unaffected.

The new language also establishes that the qualified or limited recipient status of a subdivision which fails to meet the three criteria is determined by counting the subdivision's members. Thus, most, but not all, subdivisions that fail to meet the criteria will be treated as limited recipients.

Paragraph (c) addresses the acreage limitation status of religious or charitable organizations that remain under prior law.

Paragraph (d) on affiliated farm management replaces paragraph (c) in the previous regulation.

The following examples illustrate the application of § 426.9:

Example (1). A charitable organization has subdivisions in each of five different districts. Each of these districts amends its contract to conform to the discretionary provisions. Therefore, each subdivision is entitled to own and farm 960 acres of irrigation land as long as they meet the criteria specified in § 426.9(b)(1).

Example (2). A religious organization has subdivisions in each of Districts A, B, C, and D. Each subdivision operates 800 acres of irrigation land. Districts A and B amend their respective contracts to conform to the discretionary provisions; therefore, the subdivisions in Districts A and B are each entitled to own or operate 960 acres of irrigation land as long as they meet the criteria specified in § 426.9(b)(1). Districts C and D do not amend their contracts to conform to the discretionary provisions and remain subject to the acreage restrictions specified under prior law. The subdivisions in Districts C and D, however, make individual elections to conform to the

discretionary provisions and are therefore entitled to own or operate 960 acres of irrigation land as long as they too meet the criteria specified in § 426.9(b)(1).

Example (3). Subdivision Z of the ABC Charity leases out the land it holds in a discretionary provision district. Accordingly, Subdivision Z and any subdivision of it will be treated as a single entity for acreage limitation purposes. Whether Subdivision Z is a qualified recipient or a limited recipient will be determined by the total number of members of Subdivision Z and its subdivisions. The acreage limitation status of ABC Charity and any other subdivisions of that central organization will not be affected because of the actions taken by Subdivision Z.

Comments Concerning § 426.9—Religious or Charitable Organizations

General

Comment: The proposed changes to provisions applying to religious or charitable organizations are an improvement over the current regulations.

Response: Reclamation believes the changes in the proposed rules, all of which were retained in the final regulations, will resolve many questions associated with this topic.

Comment: Religious and charitable organizations should be charged full-cost if they lease their land to another party.

Response: Land held by such organizations will be subject to application of the full-cost rate if they or their lessees exceed their entitlements, just like any other landholder.

Section 426.9(c)

Comment: Under this section would a local unit be allowed to become a limited recipient with respect to particular tracts of land that it must lease if the lessee will use the property in ways that are not within the exemption provided for in § 426.8(b)(1) and the central organization remains subject to prior law?

(Note: The referenced section is 426.9(b)(1) in the final rules.)

Response: A local unit may make an election to conform to the discretionary provisions and not affect the prior law status of the central organization. If the local unit then became a limited recipient for any reason, the associated entitlements would apply to the entire landholding of that unit and any of its subdivisions, not just to a particular tract of land.

Section 426.10 Public Entities

Section 426.10 in the prior regulations, *Information requirements,* is replaced by §§ 426.18, *Landholder information requirements,* 426.19, *District responsibilities,* and 426.25 *Reclamation audits.* The new § 426.10, *Public entities,* replaces § 426.17 of the prior regulations. This section describes the application of acreage limitation provisions to public entities and has been rewritten for clarity and organization. No substantive change is intended.

Paragraph (a) in the proposed rule has been deleted because the definition of the term *Public Entities* was a duplication of what is included in the definitions section (§ 426.2). What follows reflects the numbering of the final regulation.

Paragraph (a) has been rewritten to show that public entities are exempt from certain acreage limitation provisions rather than the land. The rephrasing more accurately states Reclamation policy. In particular, the land can become subject to ownership limitations through leasing. It also clarifies that public entities must meet certain RRA forms requirements.

Paragraph (b) states that public entities are not subject to excess land provisions in that land may be sold without price approval.

The wording of paragraph (c) is changed to state that land leased from a public entity will count toward the lessee's ownership entitlement, rather than being worded as a prohibition of leasing in excess of ownership entitlements.

The following examples illustrate the application of § 426.10:

Example (1). Farmer X is a qualified recipient who owns and irrigates 160 acres of land with irrigation water. The State of Colorado may lease Farmer X an additional 800 acres of State-owned land which will make up the balance of Farmer X's ownership entitlement. Farmer X is still entitled, however, to lease additional acreage which may be irrigated at the full-cost rate provided that additional acreage is not owned by a public entity.

Example (2). In 1976, Farmer X purchased 100 acres of irrigation land in District A and 100 acres in District B. Districts A and B remain subject to prior law and Farmer X has not made an irrevocable election. Since Farmer X purchased the land prior to December 6, 1979, all 200 acres are eligible to receive irrigation water. In addition, Farmer X wants to lease 60 acres of irrigation land from the State of Wyoming. If he does so, the leased land will be ineligible to receive irrigation water because Farmer X already owns in excess of the 160-acre ownership entitlement for prior law recipients. However, if Farmer X becomes a qualified recipient through either a contract amendment by a district in which he is a direct landholder or an irrevocable election, he will be entitled to receive irrigation water on not only the 60 acres he wishes to lease from the State, but also on another 700 acres of irrigation land, whether in his ownership or leased from another party, including a public entity.

Comments Concerning § 426.10—Public Entities

Section 426.10(a)

Comment: The use of the term ''acreage limitation'' in this section rather than ''acreage limitation and full-cost pricing'' will apply the nonfull-cost entitlement to public entities.

Response: The definitions of ''acreage limitation provisions'' and ''acreage limitation entitlement'' includes both the ownership and pricing restrictions of Federal reclamation law. Reclamation calls the attention of the commenter to the definitions section (§ 426.2).

Section 426.11 Class 1 Equivalency

Section 426.11 in the prior regulations, *Excess land,* is renumbered as § 426.12. The new § 426.11, *Class 1 equivalency,* replaces § 426.9 of the prior regulations. This section presents the concept of Class 1 equivalency, its relationship to land classification, and how it is used with regard to acreage limitation entitlements. Substantial editorial and organizational changes are made throughout this section but these are not intended to have substantive effect.

The proposed rule included a provision to prohibit the application of Class 1 equivalency in cases where irrigation of land contributes to hazardous or toxic return flows. The final rule does not include this provision and retains the provisions of the prior rule. The rest of this section includes no significant changes from the proposed and prior rule, unless otherwise noted below.

Paragraph (a) provides the general application of the Class 1 equivalency provision. Two changes were made to this paragraph from the proposed regulation. The first is in paragraph (a)(3) where the reference to Class 4 land has been removed. Since paragraph (a)(2) states that all land, including Class 4 and special use land, will be classified as 1, 2, or 3 for equivalency purposes, the rule was confusing without the change. Paragraph (e)(4) that addresses scheduling by Reclamation of requests for Class 1 equivalency determinations was moved to (a)(5).

The wording of paragraph (b) is changed to make clear that only districts, and not individual landholders, can make requests to Reclamation for Class 1 equivalency determinations. Individual landholders

must work through their districts to obtain Class 1 equivalency.

Paragraph (c) provides the definition of Class 1 land, while paragraph (d) explains how land classes are determined. Paragraph (e) addresses what additional studies are required for Class 1 equivalency determinations.

Paragraph (f) addresses how Class 1 equivalency determinations are used with respect to the acreage limitation provisions. Finally, paragraph (g) makes it clear that equivalency determinations that were a provision of project authorization will be honored as originally calculated.

The following examples illustrate the application of § 426.11:

Example (1). Farmer X owns a total of 1,300 acres in District A. That acreage includes 800 acres of Class 1 land, 300 acres of Class 2 land, and 200 acres of Class 3 land. The equivalency factors for the district have been determined to be: Class 1 equals 1.0, Class 2 equals 1.20, and Class 3 equals 1.50. Using these equivalency factors, the following landholding in terms of Class 1 equivalency would apply:

- Class 1: 800 acres divided by 1.0 equals 800 acres Class 1 equivalent.
- Class 2: 300 acres divided by 1.2 equals 250 acres Class 1 equivalent.
- Class 3: 200 acres divided by 1.5 equals 133 acres Class 1 equivalent.

Thus, Farmer X's total landownership of 1,300 acres is equal to 1,183 acres of Class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of Class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any combination of Class 1, 2, and 3 land that achieves the necessary result.

Example (2). A district with an existing contract decides not to amend its contract to conform to the discretionary provisions. However, an individual landholder within the district makes an irrevocable election to conform to these provisions. The landholder requests equivalency through the district, and the district requests Reclamation to make the equivalency determination for the entire district. Under such conditions, the district would be required to pay the United States for the cost of making the equivalency determination. Any arrangement regarding the payment of the costs between the landholder and the district would be a district matter. The application of Class 1 equivalency would be available only to landholders who have exercised an irrevocable election.

Example (3). A district decides to amend its contract to conform to the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to Class 1 equivalency.

Example (4). Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested Class 1 equivalency. The land leased is a mix of Class 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus her 960-acre nonfull-cost entitlement) if she continued to receive irrigation water on that land. Once the equivalency determinations had been completed, Landholder X would be entitled to lease the equivalent of 960 acres of Class 1 land at the nonfull-cost rate (something greater than 960 acres). Reclamation will reimburse the district for certain full-cost payments made for land which became nonfull-cost as a result of the equivalency determination and the district will reimburse Landholder X.

Example (5). Corporation Y is a limited recipient that owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received a Class 1 equivalency determination. However, Corporation Y was not receiving irrigation water on or before October 1, 1981. Thus, even with equivalency, Corporation Y would be required to pay the full-cost rate for all land served in its landholding. (If Corporation Y had been receiving irrigation water on or before October 1, 1981, it would have been entitled to receive irrigation water on the equivalent of 320 acres of Class 1 land at the nonfull-cost rate. Deliveries on the remaining 440 acres or less, depending on application of Class 1 equivalency, would be at the full-cost rate.)

Example (6). Farmer Jones is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A, requests and receives a Class 1 equivalency determination. From the equivalency determination, Farmer Jones is shown to own the equivalent of 240 acres of Class 1 land in District A. Farmer Jones is therefore entitled to purchase and receive irrigation water on an additional 80 acres of irrigation land (or the Class 1 equivalent thereof in District A) in any district. He could also lease 80 acres (Class 1 equivalent thereof in District A) in any district and receive irrigation water on that land at the nonfull-cost rate.

Example (7). Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and 400 acres in District A as excess. She has placed the 400 acres of excess land under recordable contract so that it can be irrigated while still in her ownership. Subsequent to this nonexcess land designation, District A requests and receives a Class 1 equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract and redesignate it as nonexcess to take advantage of District A's equivalency determination, as provided in §§ 426.12(b) and (j)(5), if an appraisal of the excess land has not already been performed. The maturity date as determined in the original recordable contract, however, would not change.

Comments Concerning § 426.11—Class 1 Equivalency

General

Comment: Assurances should be in the rule or preamble that existing equivalency rights should not be impaired where Reclamation has not completed and is not operating required water and drainage service.

Response: The final rule does not address this issue. Existing equivalency determinations will not be changed without the district's request. Once requested, Reclamation will examine any incomplete facilities, although no general exemption will be provided.

Comment: The rules should address the incidental irrigation of Class 6 land.

Response: Reclamation considered addressing this issue in a July 1994 policy in a manner that would have allowed such land to permanently receive irrigation water for acreage limitation purposes. However, the policy was withdrawn in September 1994.

Section 426.11(a)

Comment: Class 1 equivalency should be applied on a westwide basis.

Response: The RRA provides for Class 1 equivalency on a district-wide basis. As an administrative matter, where the agricultural setting with respect to land quality, climate and other productive factors is similar, nearby districts can be combined into one equivalency study. However, there is too much variation in conditions to apply equivalency on a westwide basis.

Comment: Class 4 land should be considered as Class 3 land rather than making a determination on a case-by-case basis.

Response: Class 4 lands typically include special characteristics. These lands are not necessarily Class 3 lands when those characteristics are not considered, but may have the productive potential of Class 1 or 2 lands.

Section 426.11(d)

Comment: Reclamation has no authority to reclassify lands.

Response: While it is true that Reclamation may not reclassify land for equivalency purposes without the district's request, Reclamation has authority under the Reclamation Act of 1939 and other statutes to reclassify lands.

Comment: Contract amendments or renewals should not automatically trigger reclassification.

Response: No provision in these regulations requires automatic reclassification because of a contract amendment or renewal.

Comment: Proposed § 426.10(d)(1)(i) goes beyond what the Congress provided. If nothing else it should not be used to remove Class 1 equivalency already provided.

Response: RRA Section 207 requires that soil characteristics be taken into account when determining Class 1 equivalency factors. Reclamation has always considered soil characteristics when classifying or reclassifying land.

Comment: The government should pay for reclassifications.

Response: For projects authorized after 1924, Reclamation pays for the initial classification. Reclassifications are only done upon request and the benefits of that action will accrue to identifiable landholders and districts. In some instances, contracts between districts and Reclamation may provide for cost sharing with Reclamation.

Section 426.11(g) (of the Proposed Rule)

Comment: Several commenters wanted Reclamation to explain under which provision of the RRA it claims authority to deny equivalency for lands which have the potential to contribute to hazardous or toxic return flows. The commenters believed that the proposal is purely punitive. Since it would result in some landholdings that will be economically less productive than if they had equivalency, the farmer may not be able to bear the costs of managing return flows and compete with farmers on Class 1 soils.

Response: While Reclamation has authority under the RRA to consider toxic return flows, a provision has not been included in the final rules to limit Class 1 equivalency as a result of toxic and hazardous return flows. Instead, Reclamation will address this problem through other measures, and take appropriate steps under other authority. The problem of toxic drainage is a serious one and the equivalency provisions do not provide a mechanism for addressing toxic drainage from already classified lands.

Comment: The hazardous/toxic study for Class 1 equivalency should only apply if State agencies are not already addressing that issue.

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of a study of toxic and hazardous return flows. Reclamation will address this problem through other authorities.

Comment: Several commenters requested definitions for: (1) ''hazardous and toxic return flows;'' (2) ''contribute to;'' and (3) ''irrigation return flows.'' Others expressed their dislike of the use of the word ''could'' in reference to return flows and toxicity. Some thought it could be interpreted too broadly and noted that the preamble for the proposed rules states ''would'' and the rule should be changed to be the same. Others expressed support for substituting ''but for causation'' or ''substantial factor causation'' for the word ''contribute.'' Some commenters recommended that Reclamation should explain what criteria it proposes to use to evaluate whether the return flows from irrigated land are hazardous and toxic.

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of toxic and hazardous return flows.

Comment: The analysis of hazardous or toxic irrigation return flows is an unfunded mandate.

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of toxic and hazardous return flows. Accordingly, the question of whether the analysis of hazardous or toxic irrigation return flows is an unfunded mandate is no longer applicable.

Comment: Reclamation should make it clear that if a contractor requests that a portion of its land be classified or reclassified, Reclamation will not classify or reclassify any other land in the district, including reclassification of the entire district.

Response: When a district requests a Class 1 equivalency determination, Reclamation will examine all of the land in the district.

Comment: The proposed rules ignore the fact that most of the Class 1 equivalency arrangements have already been put into place. Therefore, instead of the prospective approach, the trace element analysis should also be initiated wherever equivalency is already in place.

Response: In fact, many districts have yet to request Class 1 equivalency determinations. Less than 7 percent of the districts subject to acreage limitation have Class 1 equivalency factors in place. However, relatively few districts request equivalency. Thus, in order to effectively address toxic and hazardous drainage, Reclamation will identify other approaches to solving this problem.

Comment: Section 426.11(g)(2) should be changed to read: ''Increased acreage entitlements as a result of Class 1 equivalency will not be permitted on land whose irrigation Reclamation finds to contribute to hazardous or toxic drainage irrigation return flows or where drainage or return flows degrade the waters of the United States or otherwise contribute to water pollution.''

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of toxic and hazardous return flows. In the environmental commitments section of the final EIS, Reclamation recognizes that water quality impacts may be associated with toxic constituents in some irrigation return flows from project waters applied to district lands. Reclamation will review its internal policies and procedures, including those concerning land classification, and determine what approaches are available to assist in reduction of toxic constituents in irrigation return flows from agricultural lands receiving Reclamation water.

Section 426.12 Excess Land

Section 426.12 in the prior regulations, *Excess land appraisals,* is renumbered as § 426.13. The new § 426.12, *Excess land,* replaces § 426.11 of the prior regulations. This section has been rewritten for conciseness. It addresses the eligibility of land that exceeds landholders ownership entitlements.

The *In general* section found in the prior rules has been deleted because the first sentence contained a definition of *excess land* that is redundant with that found in the definitions section, § 426.2. Paragraphs (g) and (i) of the prior rules have been deleted. These paragraphs apply to only a very small number of landholders who have pre-1982 recordable contracts. Reclamation did not retain paragraphs in the final regulations that currently apply to only a few landholders and are likely to become completely obsolete in the next few years. Reclamation will continue to administer the program with respect to these landholder as it has under paragraphs (g) and (i) of the prior rules.

Paragraph (a) provides the process for designating excess and nonexcess land. Paragraph (b) discusses when and how designations of excess and nonexcess land can be changed. Paragraph (c) addresses issues such as whether land that becomes excess when a district first contracts with Reclamation may be placed under a recordable contract, must be sold at an approved price in order for it to become eligible, etc. It should be noted that the proposed rule did not consistently use the phrase ''sells or transfers'' throughout this and similar paragraphs. That has been corrected in this final version.

Paragraph (d) specifies what happens to land that is acquired into excess status after the district has contracted with Reclamation. Paragraph (d)(3) of the prior regulation has been merged with paragraph (d)(2) of these final regulations.

Paragraph (e) specifies what happens to land that has its status changed by operation of law or regulations. Included in the proposed and final

version of this paragraph is provision (e)(4) that addresses what happens to land held by nonresident aliens and foreign entities that becomes excess because of this rulemaking. The provision allows such land to be placed under recordable contract and sold or transferred without price approval regardless of whether the land is placed under recordable contract. The proposed rule stated that the indirectly owned land had to have been purchased by the nonresident alien or foreign entity before July 1, 1995, in order to take advantage of this provision. The final rule changes that date to December 18, 1996.

Paragraph (f) discusses how Reclamation will treat excess land that is acquired without price approval. The proposed rule included paragraph (f)(2) that was redundant with paragraph (d)(1)(i). Accordingly, the final rule does not include the paragraph and paragraph (f) has been reformatted.

The proposed and final rules add a new paragraph (g). This paragraph promotes the intent of the statute concerning the disposal of excess land by prohibiting sellers of excess land from receiving irrigation water if they lease back or reacquire that land either voluntarily or involuntarily. Land held under such lease back or reacquisition arrangements, however, will be permitted to receive irrigation water if the transaction transferring the land back to the seller of excess land takes place prior to December 18, 1996. This is a change from the proposed regulation that permitted the receipt of irrigation water on such land only if the transaction occurred prior to July 1, 1995. The final rule also modifies the proposed rule by including language that states the prohibition against receiving irrigation water on lease backs and reacquisition of land by the seller of the excess land is effective only until the deed covenant terminates, and that the prohibition is waived if the landholder pays the full-cost rate for the irrigation water delivered to the leased back or reacquired land that is otherwise eligible.

As in the proposed rule, the final regulation adds a new paragraph (h) which provides for assessment of the compensation rate (see § 426.2), and an administrative fee (see § 426.20) if ineligible excess land is irrigated in violation of Federal reclamation law and regulations. The assessment of the compensation rate when irrigation water is delivered to ineligible excess land has been Reclamation policy and was incorporated in the proposed and final rules for clarity.

Paragraph (i) of the proposed and final regulations, which corresponds to § 426.11(h) of the prior rules, adds a new paragraph to the deed covenant language. In general, the deed covenant governs the resale of lands that had been sold from excess status, unless specifically exempted. The new language provides that certain covenant terms, which permit removal of the covenant and eliminate the requirement for sale price approval, will not apply if the acquiring party is the party who originally sold the land from excess status. The final rules make an additional modification providing for an exception to this new language if the reacquiring party is a financial institution. It should be noted that the provisions of the deed covenant are triggered only when title to the land is to be transferred. Thus, the deed covenant applies only to direct landowners, and does not apply to the sale or purchase of an indirect interest in a legal entity that holds the land directly.

Paragraph (j) provides information on recordable contracts, such as: who may request a recordable contract; what clauses must be included; what water rates Reclamation will charge for land held under a recordable contract; etc. As in the proposed rules, paragraph (j)(4)(i) makes clear that land subject to a recordable contract can receive irrigation water at less than the O&M rate only if both the owner and the lessee are subject to prior law. The sentence from the prior rules [paragraph (e)], allowing recordable contract land to be selected as full-cost land, was deleted because that issue is addressed in § 426.6. Paragraph (j)(5) was amended in the final rules to clarify the language of the proposed rules that provides landholders must receive Reclamation's permission to amend recordable contracts, and if so approved, the length of time before the landholder must sell the remaining land held under recordable contract will not change. Moreover, any requirement for application of a deed covenant will no longer be applicable to land removed from the recordable contract.

The following examples illustrate the application of § 426.12:

Example (1). Landowner A owns 1,200 acres of irrigable land in District S. He purchased this land before the district entered its first repayment contract with the United States after October 12, 1982. Landowner A, as a qualified recipient, designates 960 of his 1,200 acres as nonexcess. With Reclamation approval, Landowner A may designate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

Example (2). Landowner B is a qualified recipient by virtue of District T's contract amendment to conform to the discretionary provisions. Landowner B purchased 1,400 acres of irrigable land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's contract amendment, Landowner B designates 960 acres of his land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner B's land is Class 3 land, and in District T, 1 acre of Class 1 land is equal to 1.4 acres of Class 3 land. With equivalency, Landowner B may irrigate 1,344 acres of Class 3 land in District T. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner B sells some of this 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

Example (3). Farmer C, who owns irrigable land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer D, a qualified recipient, at a Reclamation-approved price. Farmer D owns no other irrigable land and designates the 960 acres as nonexcess and eligible to receive irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer D sells the 960 acres at fair market value and purchases another 960 acres of irrigable land located in yet another district. Farmer D purchases the latter parcel at a Reclamation-approved price because the land was excess in the seller's holding. However, since Farmer D has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Reclamation-approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Reclamation-approved price. After Farmer D sells that land at a Reclamation-approved price, he may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

Example (4). Landowner E is a resident alien and owns 480 acres of irrigable land in District X, which is subject to prior law. Landowner E has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District X amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner E satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

Example (5). Landowner G is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. Landowner G purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner G has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner G makes an irrevocable election. Since he meets the requirements of a qualified recipient and

since he has become subject to the discretionary provisions, Landowner G may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

Example (6). In 1986, Landowner H bought 160 acres of irrigable land from excess status in District Z. Landowner H, however, failed to get sale price approval from Reclamation. This land is ineligible for service in his holding unless the sale is reformed at a Reclamation-approved price. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Reclamation-approved price in order to become eligible to receive irrigation water.

Example (7). ABC Corporation, which was established under the laws of Switzerland, is owned by two stockholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District X and has designated 160 acres as nonexcess and eligible to receive irrigation water, and the remaining 320 acres as excess and ineligible. District X subsequently amends its contract to conform to the discretionary provisions. Thereby, ABC Corporation becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under a recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

Example (8). Landholder O, a citizen and resident of Atlantis, is the sole stockholder in Corporation P, a qualified recipient legal entity registered in Idaho. Atlantis is a country which does not have a treaty with the United States calling for treatment of Atlantis corporations like U.S. corporations. In 1990, Corporation P purchased 960 acres of nonexempt land in District B. This land was all designated nonexcess under the then-current regulations. However, on the effective date of these regulations, Landholder O's ownership entitlement decreases to 160 acres, even for indirectly held land. The remaining 800 acres that become excess can continue to receive irrigation water if Corporation P places the land under recordable contract, and the land can be sold at fair market value and remain eligible if sold to an eligible buyer.

Comments Concerning § 426.12—Excess Land

General

Comment: Some commenters suggested that the approved sales price for excess land should be changed. Specifically, one suggestion was that the sales price approval process itself was a disincentive to selling excess land. Another commenter suggested excess land should be sold at the full-market price, with the difference between what would have been the approved price and the market price going as a tail-end credit to project costs.

Response: These comments have not been accommodated in the final regulations. Consistent with current policy, Reclamation sets the sales prices of excess land within a project at a price that reflects the value of the land without irrigation water service provided by the Federal project. Sale of the land at the lower price allows for a wider distribution of Reclamation benefits and greater fostering of family farming opportunities than would be possible if the land was sold at the full-market price.

Section 426.12(g)

Comment: Reclamation should explain what abuse, if any, is addressed by preventing a farmer from ever leasing land that the farmer previously sold from excess status. Some commenters suggested that if a prohibition was necessary, it should be limited to the term of the deed covenant.

Response: Reclamation agrees with the proposition that to prohibit the former owner of excess land from ever receiving irrigation water on that land was more limiting than necessary. Reclamation has modified the provision, as suggested, to restrict any limitation on receiving irrigation water to the period of the deed convenant associated with the sale. Once the deed covenant has expired, there will be no limitation on the ability of the former owner of the land to receive irrigation water.

Comment: If the landowner leases formerly excess land after it is sold and he or she exceeds his or her nonfull-cost entitlement, the former landowner must pay the full-cost rate for water delivered to that land. There is no difference between leasing previously owned excess land and leasing any other land either at the nonfull-cost rate or at the full-cost rate.

Response: Reclamation does believe there is a difference between leasing previously owned excess land and other land. The purpose of the regulation is to ensure that the anti-speculation provisions of Federal reclamation law are not evaded and to distribute the benefits of the program as widely as possible. However, Reclamation agrees that if the former owner is paying the full-cost rate for irrigation water delivered to the land in question, then the purposes of the law have been met. Accordingly, Reclamation has included a provision that allows a former owner of land that was excess in his or her holding, and who leases or otherwise acquires such land before the deed covenant expires, to receive irrigation water if the full-cost rate is paid and the land is otherwise eligible to receive irrigation water. Once the deed covenant expires, the requirement for full-cost payment will also terminate, unless the land would be otherwise subject to full-cost pricing.

Comment: This section overly restricts lenders.

Response: Reclamation has added an exception in the final regulations for financial institutions as defined in § 426.14 (Involuntary acquisition of land).

Comment: The regulations must also address the situation in which a landholder holds only a partial interest in an entity which leases land previously sold by the landholder.

Response: Reclamation has addressed this in § 426.12(g)(3). The full-cost rate will be applied to the proportional share of irrigation water delivered that corresponds to a part owner's interest in the entity.

Comment: Entities that sell excess land to individual part owners who are now farming separately appear to be barred by this proposed rule.

Response: Such former part owners face a number of restrictions if they should purchase land subject to a deed covenant. In fact, they would be able to receive irrigation water on the land, but until the deed covenant expires, they would have to pay the full-cost rate on an acreage that is equal to the amount of excess land that was attributed to them as part owners of the entity.

Comment: The intended application of the exception for a landholder who ''became or contracted to become a direct or indirect landholder of that land prior to July 1, 1995'' is extremely unclear. Administratively, this provision will be very hard to enforce and would put the districts into a position of policing leases on an annual basis.

Response: The July 1, 1995, date has been replaced with December 18, 1996.

Comment: What kinds of pre-July 1, 1995, contracts to become a direct or indirect landholder of formerly excess land meet the test of proposed rule § 426.12(g)(1)?

Response: Any contract that results in a person or entity becoming a landholder as that term is defined (see § 426.2).

Comment: The proposal to allow individuals to continue to evade the acreage limitations until July 1995 is unjustified and could erase much of the benefit of this reform. Such arrangements should not be allowed after 1982, or at the latest, 1987.

Response: This comment has not been accommodated in the final regulations.

Reclamation believes that it is appropriate to apply this provision prospectively only. Retroactive application would cause unnecessary hardship and potential legal problems.

Section 426.12(i)

Comment: The new clause (v) of the deed covenant should be revised to read: ''Upon the completion of an Involuntary Conveyance, the Secretary shall reconvey or otherwise terminate this covenant of record, except that during the original term of this covenant, it shall not be reconveyed for the benefit of an excess landowner who sold this land from excess status or for the benefit of a landholder who was previously subject to this covenant and who reacquired this land by an Involuntary Conveyance.''

Response: Reclamation has modified clause (v) of the deed covenant to reflect this suggestion. Additional modifications have also been made to reflect the revisions to § 426.12(g) and the exception for financial institutions found in § 426.14 (Involuntary acquisition of land).

Comment: There is no authority to restrict landholders from selling more than 960 acres in a lifetime (formerly excess land that was purchased at an approved price and sold at full market value). Also, why does this only apply to individuals and not to entities? There is apparently no restriction on the purchase and sale of nonexcess land which was not acquired from excess status [§ 426.12(i)(3)].

Response: Reclamation has retained the limitation on the sale of formerly excess land from the prior rules. The provisions are intended to ensure that the benefits of the Reclamation program are widely distributed by ensuring excess land is not used as a speculative investment. These provisions are not restricted to individuals, but is applicable to all landowners. Finally, the respondent is correct in that there is no restriction on the purchase and the sale of eligible land that was not acquired from excess status. In such cases, the excess land has not been used as a speculative investment based on the value added by the Reclamation project.

Section 426.13 Excess Land Appraisals

Section 426.13 in the prior regulations, *Exemptions*, is renamed *Exemptions and exclusions* and renumbered as § 426.16. The new § 426.13, *Excess land appraisals*, replaces § 426.12 of the prior regulations. Generally, only editorial changes have been made to the prior regulation. These changes are for clarity and without substantive effect. This section addresses how the approved price required for the sale or transfer of excess land, or land burdened by a deed covenant will be determined by Reclamation, if that land is to become eligible to receive irrigation water in the ownership of an eligible buyer.

The only significant change between the proposed and final versions was made to paragraph (e)(2), where it is now specified that the landowner requesting the appraisal is responsible for associated costs.

Paragraph (a) details when Reclamation appraises the value of land. Paragraph (b) provides the procedures used by Reclamation to perform appraisals. Paragraph (c) discusses the factors that may be considered and how information may be obtained for the appraisal of nonproject water supplies.

Paragraph (d) provides what will be considered to be the date of the appraisal. Paragraph (e) specifies who will pay for appraisals. Paragraph (f) discusses who will select the appraiser, while paragraph (g) provides the process that will be used to resolve appraisal disputes. Finally, paragraph (h) states that Reclamation will review all appraisals of excess land or land burdened by a deed covenant and provides what will be used in that process.

Comments Concerning § 426.13—Excess Land Appraisals

Section 426.13(c)

Comment: This section should not include an obligation to conserve the groundwater supplies supporting farms in Federal projects.

Response: This particular section of the rules provides a partial list of the factors that will be considered when appraising the value of excess land and how that information will be obtained. No other requirements are or should be implied.

Section 426.13(e)

Comment: Appraisal costs should be uniform throughout the West and should be kept as low as possible.

Response: A number of factors determine the costs of appraisal and these factors vary throughout the West. For example, in certain regions, data has been gathered over decades of processing excess land appraisals. The existence of this data results in lower costs as compared to other regions where the data must be developed for each excess land appraisal. Reclamation believes the costs of appraisals should be borne by the party who is benefitting from the ability to purchase excess land at below market values.

Section 426.14 Involuntary Acquisition of Land

Section 426.14 in the prior regulation, *Residency*, is deleted because residency has not been a provision of acreage limitation provisions since it was repealed by the RRA in 1982. The new § 426.14, *Involuntary acquisition of land*, replaces § 426.16 of the prior regulations. This section addresses how the acreage limitation provisions apply to land that is involuntarily acquired.

Paragraph (a) adds a definition that was not in the proposed rules, *financial institution*. This new definition accompanies the definition of *involuntarily acquired land* that was included in the proposed rule.

Paragraph (b) provides the conditions under which ineligible excess land that is involuntarily acquired may become eligible. Paragraph (c) provides the same information for land that was held under a recordable contract and that is involuntarily acquired. Paragraph (d) discusses how mortgaged land that is involuntarily acquired would be eligible to receive irrigation water.

A change from the prior rules was made in paragraph (e) of the proposed rules and is retained in the final rules with modifications. This paragraph discusses how acreage limitations apply to nonexcess land that becomes excess when it is involuntarily acquired. Like the proposed rules, paragraph (e) provides that land involuntarily acquired by a landowner, who held the land previously as excess or under recordable contract, is not eligible for application of the involuntary acquisition provision to receive water for 5 years. However, an exception is made to this prohibition in the final rules for financial institutions.

An additional change to paragraph (e) in the final rules reflects the changes discussed in § 426.12 regarding the reacquisition of formerly excess land by the party that originally held the land as excess. Incorporating the provisions of § 426.12(g), if a landholder involuntarily acquires nonexcess land that he or she had held as excess, and designates that land as excess upon the reacquisition, the landholder cannot use the involuntary acquisition provisions to receive water on that land for 5 years, unless one of the exceptions provided in § 426.12(g) applies or the landholder is a financial institution.

Paragraph (e)(iv) of the proposed rules has become a new paragraph (f) in the final rules. This paragraph explains that a landowner is not permitted to redesignate involuntarily acquired land as nonexcess, if the land was designated as excess when it was involuntarily

acquired, and if a higher water rate would have been owed because if the land had been designated as nonexcess in the first place. The only exception is if the landholder remits the difference in the rates to Reclamation.

What had been paragraph (f) in the proposed rules is paragraph (g) in the final rules. This paragraph describes the effect of involuntarily acquiring land that had been subject to the discretionary provisions if the acquiring party is subject to prior law. Unlike the prior and proposed rules, the final version highlights the situation in which a landholder would become subject to the discretionary provisions upon involuntarily acquiring land.

Finally, paragraph (h) provides when the 5-year eligibility period commences for land that is acquired by inheritance or devise.

The following examples illustrate the application of § 426.14:

Example (1). Farmer X owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Farmer X inherits another 480 acres of irrigation land in District B. District B has amended its contract to become subject to the discretionary provisions. Farmer X never previously held the inherited land as ineligible excess land or under a recordable contract. Even though Farmer X has reached the limits of his individual ownership entitlement under prior law, since the 480 inherited acres had been designated nonexcess and eligible in its prior ownership, the land continues to be eligible to receive irrigation water for a period of 5 years in Farmer X's ownership. However, since this land is located in a district subject to the discretionary provisions, the price of water delivered to this land must include at least full O&M costs and, if the land is leased to another landholder, the full-cost rate may apply, depending on whether the lessee has exceeded his nonfull-cost entitlement. Farmer X also has the option of selling the 480 acres at any time at full market value. As explained in paragraph (g) of this section, Farmer X would not become subject to the discretionary provisions by virtue of the fact that he involuntarily acquired land from a landowner subject to the discretionary provisions. However, Farmer X has the option of becoming subject to the discretionary provisions through an irrevocable election. In addition, if Farmer X was to request and receive approval for a redesignation of his nonexcess and excess land, and thereby some of the involuntarily acquired land became nonexcess, Farmer X would automatically become subject to the discretionary provisions. If he chooses either of these options, he can then include the 480 acres as part of his 960-acre ownership entitlement as a qualified recipient.

Example (2). Farmer A, a qualified recipient who owns 500 acres of irrigation land, purchases 160 acres of excess land from Bank ABC. Farmer A designates this 160 acres as nonexcess, eligible to receive irrigation water. The deed transferring the land contains the 10-year deed covenant requiring Reclamation sale price approval. Farmer A finances this purchase through Bank ABC. Subsequently, Bank ABC forecloses on Farmer A's 160 acres. Since the bank is a financial institution, it may receive irrigation water on this land for a period of 5 years at the same price which was paid by Farmer A, unless the land becomes subject to full-cost pricing through leasing. In addition, the bank may sell the land at fair market value without affecting the land's eligibility to receive irrigation water. The deed covenant shall be removed by Reclamation at the bank's request.

Example (3). Farmer Z owns 160 acres of ineligible excess irrigation land in District W. He decides to sell this land to his neighbor, Farmer Y, an eligible buyer. Farmer Z provides Farmer Y with the financing necessary for the purchase. The deed transferring the land to Farmer Y contains the 10-year covenant requiring sale price approval. The 160 acres of land burdened by a deed covenant becomes eligible to receive irrigation water in Farmer Y's ownership. During 1999, Farmer Y fails to meet his financial obligation to Farmer Z. Consequently, the land once again becomes part of Farm Z's ownership by foreclosure. Since Farmer Z is not a financial institution, he may not receive irrigation water on this land through the involuntary acquisition provisions, unless the land becomes exempt from the acreage limitation provisions, Farmer Z pays the full-cost rate for water delivered to the land, or the deed covenant expires. In addition, Reclamation will not remove the deed covenant requiring Reclamation price approval for the sale of the land.

Example (4). Landowner L, a qualified recipient, owns 800 acres of irrigation land in District M. Landowner L inherits 640 acres of land in District N from his grandfather. The inherited land was placed under a 5-year recordable contract by his grandfather 3 years ago. Landowner L signs an agreement to assume his grandfather's recordable contract to the 480 acres that remain excess in his landholding. However, even though the original recordable contract term expires in 2 years, since the excess land was involuntarily acquired, it remains eligible to receive irrigation water for 5 years from the date Landowner L involuntarily acquired the land. Within that 5-year period, however, Landowner L must sell the excess land at a Reclamation approved price.

Comments Concerning § 426.14—Involuntary Acquisition of Land

General

Comment: Reclamation should designate all land acquired involuntarily as excess unless the acquiring party deems otherwise; the acquiring party should not be forced to make that decision.

Response: This comment was not accommodated in the final regulations. Because of the consequences associated with land being designated as excess, it is the landholder's responsibility to make such designations. Reclamation will only make such designations if the landholder and district do not do so as provided for in § 426.12 (Excess land). In the case of involuntarily acquired land, if the landholder or district does not designate the land as excess and the landholder's holding has not exceeded the applicable ownership entitlement, such land up to the landholder's ownership entitlement will be assumed to be nonexcess by Reclamation if irrigation water is delivered to that land. Only when the landholder's ownership entitlement would be exceeded, will Reclamation designate the involuntarily acquired land as excess when the landholder and district do not make such a designation. For land involuntarily acquired, the land will remain ineligible to receive irrigation water until the land is designated.

Comment: A qualified recipient who sells to a limited recipient should not be restricted to 960 acres in the case of foreclosure.

Response: There are no general exceptions to the acreage limitation restrictions that have been established by statute. However, in many cases the qualified recipient could receive water on the land for at least 5 years, even if the ownership entitlement is exceeded. Relevant factors include: if any nonexcess eligibility remains in the foreclosing party's ownership entitlement; if the foreclosing party sold the involuntarily acquired land from excess status or held it under recordable contract; if the entity is a financial institution; if any of the exceptions provided in § 426.12(g) apply; and if the status of the land was nonexcess immediately prior to foreclosure.

Comment: Foreign ownerships should be able to take full advantage of the involuntary acquisition rules, as the current interpretation in the Central Arizona Project.

Response: Reclamation believes the respondent is commenting on the practice that land that is held indirectly and was acquired involuntarily does not have to be considered in determining if an RRA form must be completed. This practice has been codified in § 426.18(g). This provision is applicable regardless of the nationality of the involuntarily acquiring party. Foreign entities or nonresident aliens who involuntarily acquire land are treated no differently from citizens of the United States and domestic entities.

Section 426.14(a)

Comment: Would an acquisition of a deed in lieu of foreclosure fit the ''sale

from the previous landowner is canceled'' situations described in § 426.12?

Response: A deed in lieu of foreclosure is considered to be an involuntary acquisition by the lender, but may not be a canceled sale from a previous land owner.

Section 426.14(b)

Comment: A commenter stated that there is no justification to require a deed covenant on land that is declared as nonexcess by the landholder as specified in § 426.14(b), since it was originally sold in accordance with RRA requirements and the acquiring landholder had no control over the land's status until it was involuntarily acquired.

Response: This comment was not accommodated in the final regulations. The respondent is assuming that all land involuntarily acquired was never excess or it was sold at an approved price. That is not always the case. Section 426.14(b) addresses situations where the land was excess in the previous landholding and is involuntarily acquired. If the acquiring party declares it as nonexcess, it is appropriate to require a deed covenant and restrict the sales price for 10 years, just as Reclamation does for any excess land that is designated as nonexcess.

Comment: Involuntarily acquired excess land should be eligible as long as the new landowner is within his acreage limitations.

Response: Reclamation agrees. As in the prior and proposed rules, this paragraph of the final rules provides a method for the new landholder to make such land eligible.

Section 426.14(d)

Comment: Deed covenant restrictions should be removed from § 426.14(d).

Response: There are no requirements to include deed covenants in § 426.14(d). In fact, that section is clear that deed covenants will not apply [§§ 426.14(d)(1)(iii) and 426.14(d)(2)].

Comment: Any nonexcess land a seller involuntarily acquires should not require a deed covenant to be considered nonexcess, even if the buyer designates the land as excess after the mortgage is recorded.

Response: The rules provide for this interpretation if the land was involuntarily acquired.

Section 426.14(e)

Comment: All farmers in the West receiving water through Reclamation should not be denied broad access as intended by Congress because Reclamation failed to pursue a few non bona fide transactions concerning the reacquisition of excess land.

Response: Congress was very specific as to what involuntarily acquired land would be eligible to receive water. Reclamation has for many years interpreted this provision to not allow the delivery of water to land that was excess when it was involuntarily acquired, unless the new landowner declares it as nonexcess and includes the required covenant in the deed. The only exception is for certain mortgaged land. The proposed rules refined this limitation by stating that if the involuntarily acquiring party had sold the land from excess status, whether or not it was under a deed covenant, the same prohibition on receiving irrigation water would apply.

The final rule provides exceptions to this restriction for financial institutions. The final rule also limits the application of the restriction to the period of the deed covenant and provides an additional exception if the full-cost water rate is paid. The final rule version fully implements the law, ensuring that excess land is fully disposed of by the landowner if it is to become eligible.

Comment: Some commenters noted that they believe Reclamation has had difficulty determining whether financing and/or foreclosure were bona fide. They asked that these difficulties be described along with an explanation of why they justify a flat prohibition on receiving water for 5 years and not being able to remove the deed covenant.

Response: It is sometimes difficult to determine whether a foreclosure occurred at arms length when the parties have prior or ongoing business relationships. Reclamation has excepted financial institutions from the restrictions on receiving water and removing the deed covenant. Reclamation understands that such organizations often lend to farmers based on the market value of the land rather than on the purchase price that has been approved by Reclamation. Such institutions are less likely to be motivated by the chance to foreclose on such property in the future to obtain a windfall profit than are other less well regulated entities and individuals.

Reclamation does not believe individual lenders necessarily are driven by the same motives as financial institutions. Accordingly, lenders that are not financial institutions have been provided notice that Reclamation will not allow them to reacquire their formerly excess land and then sell it at full market value in the future. Thus, such lenders cannot sell the land at full market value until the deed covenant expires. In addition, such former owners will not be given the 5-year grace period for receiving irrigation water on involuntarily acquired land declared as excess in their holdings.

Comment: Rules concerning involuntary acquisition could affect lending institutions to the degree of not being able to loan money to farmers if those institutions have no entitlement available.

Response: Reclamation has included an exception for financial institutions that involuntarily acquire land they formerly held as excess from the restriction on receiving irrigation water on the land or selling such land at full market value.

Comment: The regulations could stop farmers from helping employees start farms by loaning money to buy excess land.

Response: If the excess land was sold by the farmer at an approved price, the farmer who is helping his employee to buy the land would be able to recoup the loan amount as long as the farmer involuntarily acquired that land, even if the farmer was the owner of the land when it was excess. This is because the farmer could, again, sell the land at the approved price.

Comment: Landholders who reacquire land that was previously excess in the landholders' holding prior to its sale should not be allowed to receive irrigation water following reacquisition, because the landholder is no worse-off as a result of the involuntary acquisition.

Response: In general, Reclamation agrees with this comment. In the proposed rule, Reclamation applied this interpretation to all involuntary acquisitions. As discussed above, in the final rule, financial institutions, as defined, have been exempted from this application.

Comment: Parties that involuntarily acquire land should be able to designate such land as excess, receive water on such land for 5 years, and then be able to redesignate such land as nonexcess. The current rules allow these actions.

Response: Reclamation has adjusted the final rule by adding a new § 426.14(f) to allow such actions with two conditions: (1) the landowner must follow the normal redesignation procedures; and (2) if a higher water rate would have been paid if the land had been designated as nonexcess upon involuntary acquisition, then the landowner must remit to the Federal Government the difference between the rate paid and the rate that would have been paid if the land had been designated as nonexcess rather than excess upon the involuntary acquisition.

Comment: This section and other appropriate sections should be modified to allow an extension of the 5-year disposal period, if certain criteria are met.

Response: This comment has not been accommodated in the final regulations. The commenter may be confusing the 5-year period for receiving irrigation water on involuntarily acquired land designated as excess with the 5-year period typically found in recordable contracts. The 5-year period for receiving water on involuntarily acquired land only addresses the period of time the excess land may receive irrigation water. After that period of time, the land becomes ineligible excess land. Whether the landowner wants to sell the land at that point is up to the landowner, since there is no requirement to sell the land.

Section 426.15 Commingling

Section 426.15 in the prior regulations, *Religious and charitable organizations*, is renamed Religious or charitable organizations and renumbered as § 426.9. The new § 426.15, *Commingling*, replaces § 426.18 of the prior regulations. This section describes how the acreage limitation provisions apply if water from project and nonproject sources are commingled before delivery to landholders.

Editorial changes have been made to the prior and proposed regulation. Except as noted, no substantive changes are intended. In addition, as in the proposed rule, *commingled water* is defined in paragraph (a), but the definition of *nonproject water* that was found in this paragraph has been deleted. Instead, the definition of *nonproject water* may be found in the definitions section since that term is used outside of this section.

Paragraph (b) discusses the application of Federal reclamation law and these regulations to commingling provisions already included in contracts. Paragraph (c) provides how new commingling provisions may be established in contracts and how Federal reclamation law and these regulations will be applied. Finally, paragraph (d) discusses when Federal reclamation law and these regulations do not apply.

The following examples illustrate the application of § 426.15:

Example (1). District A has a distribution system constructed without funds made available pursuant to Federal reclamation law and irrigates land therein with nonproject surface supplies and ground water distributed to users within the district through its distribution system. The district enters into a contract with the United States for a supplemental irrigation water supply and intends to distribute that supplemental water through its distribution system. Only the landholders within the district who are eligible to receive a supply of irrigation water as specified in § 426.15(c)(1) are subject to reclamation law. The district is not restricted in its use of the nonproject surface water or ground water, and will be in compliance with the provisions of its contract so long as there is sufficient eligible land to receive the Reclamation irrigation water supply.

Example (2). District A has a contract with Reclamation for a supply of irrigation water. Within the boundary of the district there are several parcels of ineligible excess lands which are not supplied with irrigation water. Those lands are irrigated from the ground-water resources under them. If irrigation water furnished to the district pursuant to the contract reaches the underground strata of these ineligible lands as an unavoidable result of the furnishing of the irrigation water by the district to eligible lands, the continued irrigation of the ineligible excess lands with that ground water shall not be deemed to be in violation of reclamation law.

Note: Example 2 also is applicable to the issue of unavoidable ground-water recharge.

Example (3). A district has nonproject water available to deliver to lands considered ineligible for irrigation water under provisions of Federal reclamation law and these regulations. To eliminate the need to build a duplicate private conveyance system to transport nonproject water, the district would like to transport such water through facilities funded with monies made available pursuant to Federal reclamation law without the nonproject water being subject to Federal reclamation law and these regulations. If the district agrees, with prior Reclamation approval, the nonproject water may be commingled in federally financed facilities and delivered to ineligible lands if the district pays the incremental fee, as determined by Reclamation, for the use of the federally financed facilities required to deliver the nonproject water. The fee will be in addition to the capital, operation, maintenance, and replacement costs the district is obligated to pay and will be based on a methodology designed to reasonably reflect an appropriate share of the cost to the Federal Government, including interest, of providing the service.

Example (4). The State of Euphoria has a water supply it wishes to transport in the same direction and elevation as planned in the Federal reclamation project. If Reclamation and the State each finance their share of the costs to construct and operate the project, the water supply of the State will not be subject to Federal reclamation law and these regulations.

Example (5). District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility, District B. District B is located immediately adjacent to the river but several miles from the Federal facility. District B contracts with the United States for a supply of irrigation water, but rather than construct several miles of conveyance facility, District B, with the approval of the United States, contracts with District A to allow District A's water rights water to flow down the river for use by District B, and the irrigation water is in turn delivered to District A. District A is not subject to Federal reclamation law and these regulations by virtue of this exchange, provided it does not materially benefit from that exchange. District B, however, is subject to Federal reclamation law and these regulations since it is the beneficiary of the exchange, i.e., a water supply.

Comments Concerning § 426.15—Commingling

General

Comment: The proposed rules should recognize that commingling is a fact of life and that often the Reclamation supply is only a minor part of the overall irrigation water supply.

Response: Reclamation recognizes that often the supply from a Reclamation project is only a supplemental supply. The rules recognize the existence of commingling in contracts.

Comment: The proposed commingling provision does not give any consideration for allocating evaporation, shrinkage, and other administrative losses between primary water and project water.

Response: This comment has not been accommodated in the final regulations. Neither the RRA nor the acreage limitation provisions of these regulations address the amount of water received by any individual landholder. Rather, these provisions address what land may receive any irrigation water delivered from or through a Federal facility and the price charged for this water.

Section 426.15(a)

Comment: Reclamation should not define as project water all water that is commingled and then impose acreage limitations on any land commingled water irrigates.

Response: Whether or not nonproject water is subject to the acreage limitation provisions depends primarily on the terms of the contract with the district. This section of the rules only provides the parameters that must be met if nonproject water is not to be subject to the acreage limitation provisions.

Section 426.15(b)

Comment: The proposed rules seem to change the application of this section so that it may apply only to contracts renewed at some earlier time and not to all renewals.

Response: Reclamation has adjusted the provision to make it clear that it applies for the term of existing contracts

and any renewals. However, the provision does not apply to contracts that are no longer in effect.

Comment: This section should be amended to include existing contracts which contain commingling provisions separate and apart from repayment contracts.

Response: This paragraph applies to repayment, water service, and other types of contracts and any renewals of those contracts.

Section 426.15(c)

Comment: The proposed commingling provisions do not address the situation where the distribution system is entirely privately owned and operated and Reclamation water can only be delivered through that system.

Response: In fact, the prior, proposed, and final rules address such situations. See § 426.15(c)(1) of the final regulations.

Comment: What authority does Reclamation have to impose a limit upon the amount of water a landowner could use on his lands [§ 426.15(c)(1)(ii)]? Such may interfere with landowner's property rights.

Response: The provision in question does not limit the amount of water a landowner may use. Rather, it is used strictly to determine if Federal reclamation law will apply to all landholders in a district or only those landholders who receive project irrigation water, as opposed to nonproject water. If facilities used to commingle water were built without Federal funds and the district is to receive more irrigation water than is equal to the quantity necessary to irrigate eligible lands, all landholders in the district will still be able to receive water. But all landholders will then be subject to Federal reclamation law and these regulations. Reclamation included this provision pursuant to Reclamation's authority to implement the RRA and its authority to make water available for irrigation purposes.

Comment: Section 426.15(c)(2) is illegal, in that it exempts lands from Reclamation law if the water users pay for only a portion of the facility that they use that was built at Federal expense.

Response: Reclamation disagrees with the commenter. Reclamation law, and the RRA give Reclamation in some instances discretion to negotiate contracts to provide for the use of facilities instead of a repayment or water service contract.

Comment: Additional charges should not be imposed for the handling of waters which are or become commingled with project water. To do so is outside the scope of the RRA.

Response: Reclamation believes this comment is in reference to § 426.15(c)(2). This provision was included in the prior rules because a method was requested to allow districts using federally funded facilities and commingled water not to have acreage limitation apply to nonproject water. If the district chooses to not include this provision in its contract or not to pay the incremental fee, then the nonproject water will be subject to acreage limitation. Reclamation does not impose the fee; the decision on how commingled water will be treated with respect to the acreage limitation provisions under these circumstances rests with the district.

Section 426.16 Exemptions and Exclusions

Section 426.16 in the prior regulation, *Involuntary acquisition of land*, is renumbered as § 426.14. The new § 426.16, *Exemptions and exclusions*, replaces § 426.13 of the prior regulation. This section provides the general exemptions and exclusions from application of the acreage limitation provisions.

This section has been rewritten mainly for editorial changes and clarification. Other than paragraph (f), no substantive change is intended. Additional editorial changes were made in the final version from the proposed rule.

Paragraph (a) provides an exemption for land that receives its agricultural water from an Army Corps of Engineers project. Paragraph (b) discusses how districts or individuals can repay their construction obligations and what effect such action has on application of the acreage limitation provisions.

Paragraph (c) discusses how Reclamation treats Rehabilitation and Betterment loans with respect to application of the acreage limitation provisions. It should be noted that a given contract action could be considered an additional or supplemental benefit pursuant to § 426.3 of these final regulations even though it neither invokes nor extends the application of acreage limitation provisions in general. For example, Rehabilitation and Betterment Act contracts are considered additional and supplemental benefits under § 426.3 even though they would neither extend nor reinstate the application of acreage limitations, as provided in § 426.16.

Paragraph (d) provides how the acreage limitation provisions will be applied to deliveries of temporary supplies of water if they result from an unusually large water supply or are otherwise unmanageable flood flows of short duration.

Paragraph (e) addresses the issue of isolated tracts and how the acreage limitation provisions apply if a landowner requests an isolated tract determination and Reclamation approves the request. This paragraph was adjusted in the final rule to eliminate redundancy in the proposed rule.

Paragraph (f) was added to the proposed rule and is retained in the final rule to make it clear that the acreage limitation provisions are not applicable to Indian trust or restricted lands. This provision was adjusted in the final rule to address both the acreage limitation provisions and water conservation provisions of the RRA.

Comments Concerning § 426.16—Exemptions and Exclusions

General

Comment: All eligible projects in Arizona (CAP, Wellton-Mohawk, and the Salt River Project) should be included in exemptions from the RRA and conservation mandates.

Response: This comment has not been accommodated in the final regulations. There is no authority to exempt a district from application of acreage limitation requirements before the district repays its contract obligations. Even upon payout, districts generally remain subject to certain RRA requirements, such as the water conservation provisions.

Comment: The rules should declare that any change in use of water for purposes other than the use(s) originally specified in the contract shall require the participation of the United States in sharing any of the windfall profits which might result. Moreover, any proposed change in irrigable acreage in a paid out project should require the approval of the United States if only for reasons of water quality protection.

Response: These issues are contractual issues, not acreage limitation issues. There is no authority for restricting a district's payout exemption from the acreage limitation provisions to satisfy non-acreage limitation goals.

Section 426.16(b)

Comment: How does the term ''subsidized Reclamation project water'' apply to paid out districts that pay the actual O&M charges assessed by Reclamation each year?

Response: Section 426.16(b) exempts land in districts that have repaid applicable construction costs. Thus, that

term has no application with regard to the acreage limitation provisions in such districts.

Comment: Reclamation should notify both individuals and the district when a landowner repays his contract so the information can be verified and included in the district's records [§ 426.16(b)(3)(i)].

Response: This comment has been accommodated in the final regulations.

Comment: Landholders should be given a certificate of repayment in a timely manner [§ 426.17(b)(3)(iii)].

Response: Once a final payment has been received, a process is initiated by Reclamation to ensure the landholder is paid out and all requirements have been met. Often this is a time consuming process, but once completed, certificates are immediately made available upon request.

Section 426.16(c)

Comment: Sections 426.16 (b) and (c) with regard to rehabilitation and betterment loans should be retained in the final regulations.

Response: Section 426.16 (b) and (c) have been retained in the final rules with some minor editorial changes.

Section 426.16(d)

Comment: Reclamation should establish reasonable criteria for determining when a Section 215 flood event occurs and incorporate those criteria into the final regulations.

Response: Reclamation has adopted the statutory criteria for determining a temporary supply of water. Specifically, a flood event occurs when Reclamation determines the existence of an unusually large water supply not otherwise storable for project purposes or infrequent or otherwise unmanaged flood flows of short duration. The unusual hydrologic conditions, the wide range of physical constraints possessed by project facilities, and variations in State law make it unwise to attempt to further refine the statutory criteria.

Comment: Several comments expressed a wide range of opinions on the conditions under which Reclamation should declare a temporary supply of water. Some commenters wanted Reclamation to make a declaration if it captures an unusable amount of water during a drought. Others wanted a definition that maximizes groundwater recharge for the purpose of overdraft protection. Still others suggested a definition that would limit declarations to those instances where releases were needed to prevent exceeding the dedicated flood control space of a reservoir or similar genuine flood conditions.

Response: The declaration of a temporary supply of water is based on site specific hydrologic conditions and State law. While drought and groundwater recharge may at times contribute to these conditions, Reclamation evaluates the physical limitations of facilities in the context of the specific hydrologic conditions before making a declaration of the availability of temporary water supplies. Similarly, Reclamation will not limit itself to making a declaration only at a time when it is confronting a flood situation.

Section 426.16(f)

Comment: Commenters submitted opposing views concerning the proposed exclusion of Indian trust or restricted lands from application of the acreage limitation provisions. Some stated that Indian trust land should not be treated any differently than any other land. On the other hand, others not only supported the proposed version but wanted the exclusion expanded to include Indian irrigation projects.

Response: Indian trust and restricted lands are owned by the United States for the benefit of the tribes. These lands are not meant to be subject to the acreage limitation provisions of Reclamation law. As for Indian irrigation projects, they will be excluded if they are delivering water to Indian trust or restricted lands or are not considered to be Reclamation project facilities.

Comment: If a district or legal entity buys or leases water from a tribe that is exempted under § 426.15(f) [426.16(f) in the final rules], would the district or entity be bound by the acreage limitation provisions?

Response: Section 426.16(f) excludes Indian trust or restricted lands from application of the acreage limitation provisions. It does not exclude land held in districts by entities or individuals that may purchase Indian water. If the water in question is delivered to a district that is subject to the acreage limitation provisions, then that district will remain subject to those provisions. This is due to the contract provisions the district has with Reclamation. The purchase of water from a tribe does not discharge the district's contract obligations with Reclamation.

If the irrigation water in question was subject to the acreage limitation provisions, but such provisions are not applicable when the water is delivered to Indian trust or restricted lands, the delivery of such water to nonexempt lands will include the application of those provisions.

If the water is sold to a district that is not subject to the acreage limitation provisions, then the purchase of the water from a tribe that is also not subject to those provisions would not in itself require application of the acreage limitation provisions.

Section 426.17 Small Reclamation Projects

Section 426.17 in the prior regulation, *Land held by governmental agencies,* is renamed *Public entities* and renumbered as § 426.10. The new § 426.17, *Small reclamation projects,* replaces § 426.21 of the prior regulation. This section discusses the effect of the RRA on Small Reclamation Projects Act (SRPA) projects and the effect of SRPA contracts on application of the acreage limitation provisions.

The only substantive changes that are made to this section are in paragraphs (a) and (b). Paragraph (a) address the effect the RRA has on contracts made under the SRPA. Specifically, districts with such contracts were entitled to take advantage of the higher entitlements of the RRA. The proposed rule incorporated the fact that Pub. L. 99–546 closed this opportunity on October 27, 1986. The final rules note the provision included in that public law that provides for a 320-acre entitlement instead of the original 160-acre entitlement.

Paragraph (b) addresses how other provisions of these regulations apply to SRPA loans. A phrase has been added to the final version to reflect the fact that SRPA loans are considered additional and supplemental benefits as provided in § 426.3 of the final regulation.

Paragraph (c) discusses the effect of SRPA loans in determining whether a district has repaid its water service or repayment contract construction obligations. Paragraph (d) addresses instances in which districts have both an SRPA loan contract and another contract as that term is defined in the regulations.

The following example illustrates the application of § 426.17:

Example. District A has entered into both a repayment contract and an SRPA loan contract. In 1983, District A amended its SRPA loan contract pursuant to Section 223 of the RRA in order to increase the interest threshold for its owners to 960 acres for a qualified recipient and 320 acres for a limited recipient. However, District A has not amended its repayment contract to become subject to the discretionary provisions, and is, therefore, still subject to the acreage limitations of prior law. Even though this SRPA contract permits an increased threshold for interest payments, until District A becomes subject to the discretionary

provisions it may not deliver irrigation water to land owned in excess of the prior law entitlements (160 acres or 320 acres for a married couple), except in those cases where such land is under recordable contract, is owned by an individual who has made an irrevocable election, or commingling provisions in the district's contract allow nonproject water to be delivered to excess land, see § 426.15.

Comments Concerning § 426.17—Small Reclamation Projects

No comments were received concerning this section.

Section 426.18 Landholder Information Requirements

Section 426.18 in the prior regulation, *Commingling,* is renumbered as § 426.15. The new § 426.18, *Landholder information requirements,* replaces, in part, § 426.10 of the prior regulation. This section provides the requirements to submit information to Reclamation, how that action is normally accomplished through the submittal of RRA forms provided by Reclamation, and exceptions to the RRA forms requirements.

This section has been rewritten to address only the certification and reporting requirements of landholders. Accordingly, a new definition paragraph and section regarding district responsibilities (§ 426.19) have been added. In addition, a new section concerning Reclamation audits (§ 426.25) has been added.

This section clarifies district certification and reporting requirements. References found in the prior rules to the contents of the certification and reporting forms have been deleted because a comprehensive list of these contents is unnecessary and unwieldy for these regulations, and a partial list is inappropriate.

Also deleted is the provision in the prior rules that specified that limited recipients had to identify all part owners who own more than 4 percent of the limited recipient and whose ownership interest would constitute an attribution of 40 acres. Reclamation has found that information is generally not available to verify the 4 percent requirement. Therefore, in the future, limited recipients will only have to include the names of those part owners whose ownership in the entity results in an attribution of more than 40 acres.

Paragraph (a) provides a definition of *irrigation season* because that term is used in this section. The final rules do not include the definition of *standard certification or reporting forms* because that term is already defined in § 426.2.

Paragraph (b) specifies who must provide information to Reclamation, while paragraph (c) details who must submit RRA forms. The final version of paragraph (c) makes it clear that such forms must be submitted annually.

Paragraph (d) provides what information is required to be provided on the RRA forms. Paragraph (e) specifies that the RRA forms must be submitted to each district where the landholder directly or indirectly holds land.

Wholly-owned subsidiaries are specifically exempted from forms requirements in paragraph (f), provided the ultimate parent legal entity has met its forms requirement.

The 40-acre certification and reporting exemption threshold found in the prior rules is replaced in paragraph (g) with a new system which permits higher exemption thresholds for qualified recipients. Unlike the proposed rules which included 5-acre thresholds for certain limited recipients, 80-acre thresholds for other limited recipients, and ceilings, but no fixed thresholds for qualified recipients, the final rules retain the 40-acre threshold for all prior law and limited recipients.

As for qualified recipients, if a district has conformed by contract with the discretionary provisions and the district's financial obligations to Reclamation are not delinquent, the district will be granted Category 1 status. Category 1 status provides an RRA forms threshold for qualified recipients of 240 acres. Districts that do not meet the two criteria, will be called Category 2. Qualified recipients in such districts will have an 80-acre RRA forms exemption threshold. As in the proposed rules, paragraph (g) also provides that: wholly-owned subsidiaries do not have to file; Class 1 equivalency factors cannot be used in determining if a RRA forms threshold has been exceeded; and indirect landholders need not count involuntarily acquired land that has been designated as excess by the direct landholder in determining if their holdings exceed the applicable RRA forms threshold.

Paragraph (h) provides the criteria listed in the preceding paragraph for determining if a district is a Category 1 or 2 district for purposes of establishing the RRA forms threshold for qualified recipients. This provision has changed from the proposed rule in that the requirement for having entered into a partnership agreement with Reclamation to be considered a Category 1 district has been revised. Instead of the requirement for financial obligations to the United States not being delinquent, the final rule has been modified so that Category 1 districts have no delinquent financial obligations to Reclamation. This paragraph also specifies what will be considered in determining if a district's financial obligations with Reclamation are current.

Paragraph (i) describes how Category 1 status will be applied. Since the thresholds are now fixed, the provision in the proposed rule that established the actual thresholds in partnership agreements has been deleted. In addition, this paragraph has been revised to state that the Category 1 status will be withdrawn.

Under the proposed rule, the actual application of the RRA forms threshold to landholders who hold land in Category 1 and 2 districts, in effect, required the districts to be aware of the RRA forms status of all districts. The final rule simplifies this process in paragraph (j) in that the RRA thresholds that are applicable to any particular district will be applicable to all landholders in that district regardless of where they may hold land westwide.

Paragraph (k) provides the requirements for notification of landholding changes if the changes occur after the landholder has submitted the annual forms. The final rules adjust the time frames for reporting landholding changes from 15 to 30 days for notifying the district and from 30 to 60 days for submitting new RRA forms. Paragraph (l) provides an opportunity to submit verification forms if a landholding has not changed from the previous year.

Paragraph (m) was added in the proposed rule to state that landholders that have not filed the required forms are not eligible to receive irrigation water. In the final rule, the phrase ''the district must not deliver,'' was added to the previously included phrase ''the landholder is not eligible to receive and must not accept delivery of irrigation water'' to make it clear that the district as well as the landholder is responsible for water deliveries in the absence of the required forms.

Paragraph (n) provides the actions Reclamation may take if false statements are made on the RRA forms. Included in this paragraph is the paragraph contained on the RRA forms providing for the possibility of criminal penalties for fraudulent statements. Paragraph (o) provides the Office of Management and Budget information requirements, while paragraph (p) provides information on the Privacy Act of 1974.

The following examples illustrate the application of § 426.18:

Example (1). Landholder A failed to submit the required certification forms to District X

in 1994 and 1995. District X delivered, and Landholder A accepted delivery of, irrigation water in those years. Landholder A submitted certification forms for 1996; however, Landholder A's landholding is not eligible to receive irrigation water until he submits the necessary forms for 1994 and 1995.

Example (2). Corporation A, which is registered in Venezuela, owns 100 percent of the stock of Corporation B, which is registered in Iowa. Corporation B, in turn, owns 100 percent of the stock in Corporations C and D, each of which are registered in Arizona and own and irrigate nonexempt land in two different Arizona irrigation districts. The landholdings exceed applicable certification and reporting exemption thresholds. Corporation A, the parent legal entity, must submit RRA forms to both Arizona districts. The forms must describe the corporate structure and Corporation A's entire landholding, including those of its subsidiaries. Furthermore, any stockholders of Corporation A that exceed applicable RRA forms thresholds must submit the necessary forms in order for the landholding to be eligible. Corporations B, C, and D are not required to file RRA forms provided that Corporation A files RRA forms and includes the holdings of its wholly owned subsidiaries on those forms.

Example (3). In August 1997, District A amends its contract to conform to the discretionary provisions. Since District A is not delinquent in its financial obligations, the regional director determines that District A is a Category 1 district. Accordingly, qualified recipients in the district will have a 240-acre RRA forms threshold, starting with the 1998 water year. Limited recipients and prior law recipients will continue to have the 40-acre RRA forms threshold applied.

Example (4). Landholder A is a qualified recipient who leases 120 acres in District X and 40 acres in District Y. For 1998, District X achieves Category 1 status, but District Y does not. Landholder A must therefore submit RRA forms in District Y, because he exceeds the RRA forms threshold for qualified recipients of 80 acres held westwide for that district, but he does not have to submit RRA forms in District X, because he does not exceed the RRA forms threshold of 240 acres held westwide for that district.

Example (5). Bank Y is a limited recipient and has 12,000 acres of involuntarily acquired excess landholdings. Bank Y has also designated 640 acres as nonexcess. Stockholder A, a qualified recipient, owns a 15 percent interest in Bank Y. Thus, Stockholder A is attributed with 1,800 acres of involuntarily acquired excess land and 96 acres of nonexcess land. The fact that most of its landholdings are involuntarily acquired does not afford Bank Y with any exemption with respect to RRA forms thresholds, because the bank is the direct landholder. Therefore, Bank Y must file certification forms. Since Stockholder A is an indirect landholder, she need not consider the bank's involuntarily acquired excess land in determining whether she is required to certify. However, she must consider the 96 acres of attributed nonexcess land. If Stockholder A exceeds an RRA forms threshold, she would be required to include all land attributed to her, including that land involuntarily acquired, on her RRA form(s).

Example (6). Corporation E leases 640 acres in a Category 1 district. Corporation E is 90 percent owned by Corporation F, 5 percent owned by Corporation G, and 5 percent owned by Farmer B. Corporations E and F are limited recipients that did not receive irrigation water on or before October 1, 1981. Corporation G is a limited recipient that received irrigation water on or before October 1, 1981, and currently has no landholding outside of Corporation E. Farmer B is a qualified recipient who also directly owns 320 nonexempt acres in the same district. Corporations E and F must both file because both have exceeded the applicable 40-acre threshold, and because Corporation E is not wholly owned by Corporation F. Corporation G need not file, because it is subject to a 40-acre threshold and its indirect holdings westwide total only 32 acres. Farmer B must file because he has exceeded the applicable 240-acre threshold.

Example (7). Farmer C owns 440 acres in a Category 1 district. After the district's last delivery in 1996, Farmer C buys another 40-acre parcel in the same district. Farmer C need not submit new RRA forms until the start of the next irrigation season.

Comments Concerning § 426.18—Landholder Information Requirements

General

Comment: The forms requirements have become very time consuming and districts are faced with huge fines for what are often inadvertent errors.

Response: The RRA requires certification. Moreover, Reclamation has never issued a compensation bill for minor problems associated with errors and omissions on RRA forms. Such bills were issued only in instances where irrigation water was delivered without any attempt to file appropriate forms. Reclamation does not consider refusal to file to be minor, inadvertent, or insignificant. Since March 27, 1995, compliance problems with the RRA forms requirements have been addressed through the administrative costs section (see § 426.20 of the final regulations).

Comment: Some commenters believed that Reclamation should consider a waiver of paperwork for districts in which only a small portion of the total water supply is from a Reclamation project or base the threshold on conditions found within the district, such as the average size of the landholdings.

Response: The RRA forms requirements must be applied consistently in order to ensure that no landholder exceeds his westwide entitlement.

Comment: The forms for land held by a bank or managed by a farm management corporation should be able to be signed by those entities without a signature authorization form.

Response: If the land in question is owned or leased by a bank, then a bank officer may sign the form without a signature authorization card. A farm manager may not sign the forms unless he or she directly or indirectly is the landholder of the land in question or the landholder has provided the farm manager the power of attorney to sign the forms. The completed forms report westwide landholdings so that the district and Reclamation will be able to determine if the landholder, not the farm manager, is eligible to receive benefits associated with the delivery of irrigation water. Thus, the certifying official must be able to attest to the entire westwide landholding of the entity included on the form.

Comment: The annual changes to the forms' requirements are not making it easier, but more confusing and results in errors.

Response: Reclamation has strived to minimize annual changes to the RRA forms. However, whenever changes are made to the regulations, as was the case in 1987, or the RRA is amended, as was the case in 1988, significant changes to the forms are often required. During 1996, Reclamation studied the RRA forms in-depth and made adjustments to facilitate their use and ease the filing requirements starting with the 1997 water year. Public input was part of this process. Reclamation will also have to make some adjustments as a result of this rulemaking starting with the 1998 water year. Once the 1998 water year forms are finalized, Reclamation does not plan to make any further major adjustments to the RRA forms.

Section 426.18(b)

Comment: The filing requirements are hard to decipher. Who is supposed to file forms?

Response: All landholders, as defined, must annually file an RRA form prior to receiving irrigation water, except as set forth in § 426.18(g).

Comment: Define ''other parties'' as used in to whom information about nonexempt land can be required. Also, provide who is being referenced in ''involved in the * * * operation of nonexempt land.''

Response: Other parties can be any entity or person who is involved in the operation of land subject to the acreage limitation provisions. Because of the great variety of farming arrangements, ''other parties'' may change on a case-by-case basis. However, other parties may include among others: farm managers, custom service providers,

lenders, employees, electrical companies, ditch riders, farm supply companies, etc.

Section 426.18(c)

Comment: We would like a simplified RRA form for landholders who hold up to 150 acres.

Response: In response to earlier comments, Reclamation developed ''EZ'' forms that may be used by landholders who meet certain requirements. The ''EZ'' forms are relatively simple and should take very little time to complete. In addition, if a landholding does not change from year to year, a verification form may be submitted by the landholder, which should take less than 15 minutes to complete. Unfortunately, the more complicated a landholder's holdings, the more complicated are the forms that must be completed, regardless of how many acres are held. For example, if a landholder owns 100 acres and leases 50 more, with some land owned directly and other land owned through an entity in multiple districts, it will take that landholder more time to complete a form than a landholder who directly holds 150 acres in one district.

Comment: What does a district do if the farm manager does not know who owns a corporation's shares and does not know how to find out?

Response: The responsibility for completing RRA forms rests with the landholders, not with farm managers, district staff, or any other person. If a landholder does not submit RRA forms, the land in question is not eligible to receive irrigation water, and the district may not deliver irrigation water to the landholding.

Comment: Districts are not equipped to find water users who do not have project water allotments. If Reclamation insists that such landholders must report, they must provide districts with methods to locate such individuals. Maybe a one time certification for such landholders should be developed.

Response: If no irrigation water from a Federal project is delivered to a landholder, then there is no problem if the landholder does not submit a form. However, if the landholder is interested in receiving irrigation water on land within the district, then all required forms must be submitted by the landholder before the land would be eligible to receive such water. In that way, the burden is actually on the landholder to submit forms. However, the district is responsible for ensuring that landholders who do not submit RRA forms do not receive Federal project water.

Section 426.18(d)

Comment: This rulemaking should be used to require landholders to provide information on where water is being delivered. Thus, information on water spreading could be obtained.

Response: The RRA forms do require landholders to identify all land on which irrigation water is received.

Section 426.18(e)

Comment: The Federal Government should collect the RRA forms, not the district.

Response: Generally districts have the contractual relationship with and control the delivery of water to landholders. Therefore, it is appropriate for districts to collect the RRA forms. The Federal Government does not have a direct relationship with water users. In addition, the RRA specifically requires that landholders submit forms to Districts.

Section 426.18(g)

Comment: Several commenters believed that the proposed multiple thresholds for RRA forms submittal significantly complicates the system rather than simplifying it. Some of the commenters further stated that there is no policy or legal basis for treating prior law recipients differently than qualified recipients.

Response: Reclamation has reduced the number of RRA thresholds to three in the final rules. All landholders will have a 40-acre threshold unless they are a qualified recipient. If the landholder is a qualified recipient in a Category 1 district, the threshold is set at 240 acres westwide in the final rules. A qualified recipient in a Category 2 district is provided with an 80-acre westwide threshold. As for the basis for treating prior law recipients differently from qualified recipients, that is established by the acreage limitation provisions in that qualified recipients have 960-acre entitlements, while prior law recipients have 160-acre entitlements. The threshold is set at 25 percent of the maximum acreage entitlement to assure Reclamation that it will be able to verify eligibility. Category 2 districts have a lower threshold in order to encourage those districts to confirm their contracts and to ensure compliance with the requirements of the RRA.

Comment: The threshold incentive should be at least double the Category 2 threshold and that should be fixed, not ''up to.''

Response: Reclamation has incorporated this comment in the final regulations. The final regulations provide for a forms threshold for qualified recipients that is 200 percent higher in a Category 1 district than in a Category 2 district and 500 percent higher than the 40-acre threshold applicable to qualified recipients in the prior regulations.

Comment: Reducing the RRA forms threshold for limited recipients to 5 acres could substantially increase the amount of paperwork that districts have to process. The provision should be changed back to 40 acres.

Response: This comment has been accommodated in the final regulations.

Comment: Many commenters provided various suggestions on the general forms threshold. The suggestions included that the forms threshold should be raised to, for example, 80 acres, 160 acres, 240 acres, 260 acres, 320 acres, 640 acres, 960 acres, or as high as possible. Other commenters believed that the forms threshold should be retained at 40 acres. In addition, some commenters felt the form threshold should be simply set with no strings attached. On the other hand, some commenters believed that no forms threshold was authorized by the Congress and that enforcement of the acreage limitation provisions is effectively being repealed through the existence of any forms threshold. They believed that annual reporting is a reasonable requirement for all landholders.

Response: Reclamation does not believe that increasing the exemption threshold would decrease compliance with the RRA. The final rule will raise the threshold at most to 25 percent of a qualified recipient's ownership entitlement. Reclamation has experienced high compliance rates from prior law recipients who are presently exempted from having to submit forms if they hold less than 25 percent of their maximum ownership entitlement (40 acres is 25 percent of a prior law recipient entitlement of 160 acres). In addition, raising the threshold for qualified recipients should allow Reclamation to shift its enforcement resources from reviewing the paperwork of many small operations to ensuring compliance by larger operations.

Reclamation is tasked with ensuring that the acreage limitations are administered and complied with on a westwide basis. Reclamation would not be meeting its responsibilities if Reclamation provided prior law recipients with a 320-acre forms threshold, for example, or all recipients with a 960-acre threshold. With regard to limited recipients, Reclamation acknowledges that a 40-acre threshold will allow some limited recipients to receive irrigation water without paying

the required full-cost rate. Reclamation does not want to further exacerbate this problem by raising the current threshold for limited recipients.

Districts that elect to conform to the discretionary provisions and that are not delinquent on their financial obligations will receive a higher threshold for their qualified recipients than districts that remain under prior law or do not pay their bills in a timely manner. This provision is intended to encourage districts to conform to the discretionary provisions and to pay their bills. In the long term such actions will reduce RRA program costs for districts, landholders, and Reclamation.

Comment: If an individual has less than 40 acres of land that receives project water, but the individual also owns additional acreage that has been classified as irrigable, but has no allotment of project water, is this landholder required to file the certification forms?

Response: Yes, unless the individual is a qualified recipient, in which case the forms threshold is 240 acres in a Category 1 district or 80 acres in a Category 2 district. All irrigable land and irrigation land is considered in determining if a forms threshold has been exceeded requiring the landholder to submit RRA forms. The only exception is if the land in question is held indirectly and was involuntarily acquired. In addition, if the landholder receives no irrigation water on land westwide, Reclamation will take no action to require the submittal of forms, until such time as that landholder wants to receive irrigation water. At that time, the landholder is required to provide all required forms to ensure no excess land was sold without price approval. Accordingly, it may be in the best interest of the landholder to submit forms annually.

Section 426.18(h)

Comment: There is no support in the RRA for Category 1 and 2 districts.

Response: To make the system administratively efficient, the RRA forms threshold concept was incorporated in the first set of Acreage Limitation Rules and Regulations. Reclamation has the discretion to establish a forms threshold that will ensure enforcement of, and compliance with, the acreage limitation provisions while reducing the administrative burden where possible. The categories of districts are intended to assist Reclamation at ensuring compliance with its statutory requirements.

Comment: Any changes with respect to encouraging districts by regulation to adopt the discretionary provision of the RRA are not appropriate.

Response: It is up to the district, its board members, and its membership to decide whether to conform to the discretionary provisions. Reclamation is not prohibited from encouraging such actions.

Comment: Several commenters wondered what the partnership agreement concept had to do with ensuring acreage limitation compliance through a forms requirement? Conversely, other commenters thought the partnership with Reclamation concept was a good idea.

Response: The concept of Reclamation and districts entering into partnership for water resource management is a forward looking initiative. However, upon reanalysis, Reclamation has chosen not to include this concept as a requirement in order to obtain increased RRA forms thresholds.

Section 426.18(k)

Comment: It is a burden for landholders to have to report landholding changes in 15 or 30 days.

Response: Reclamation has provided additional time for reporting landholding changes. The final rules change the verbal notification requirement from 15 days to 30 days. The requirement to submit new forms when a landholding change occurs before the landholder has finished receiving irrigation water for the water year was changed from 30 days to 60 days.

Section 426.18(m)

Comment: The requirement to submit RRA forms by January 1 is not logical. Lands are often leased in March and April, since planting is done as late as June. Reporting by January 1 would cause a lot of paperwork to be done and redone, thereby increasing the paperwork burden.

Response: The requirement for RRA form submittal is that RRA forms must be submitted before irrigation water is delivered. This requirement is not tied to a specific date.

Comment: Why is a landholder who did not file in previous years not able to receive water until the missing forms have been filed? What if the landholder did not receive any water, was under the forms threshold, etc.?

Response: Until the required forms are on file, Reclamation does not know if the land in question is excess, and therefore, not eligible to receive water, if the full-cost rate is applicable, etc. If the landholder did not exceed a forms threshold, then there are no missing forms.

Section 426.18(o)

Comment: Districts should be allowed to draft their own tabulation forms for summary forms.

Response: Reclamation must obtain approval from the Office of Management and Budget (OMB) for the RRA forms. This precludes Reclamation's ability to allow districts to draft their own tabulation sheets. In addition, Reclamation requires consistency in how data is provided to facilitate use of that data.

Section 426.19 District Responsibilities

Section 426.19 of the prior regulation, *Water conservation,* has been moved to 43 CFR part 427. The new § 426.19, *District responsibilities,* replaces, in part, § 426.10 of the prior regulation.

This new section is added to clarify the role of irrigation contracting entities in RRA administration and enforcement. Because this issue has caused some confusion and controversy in the past, it is considered desirable to establish district responsibilities in these final regulations.

The changes to provisions of this section that were included in § 426.10 of the prior rules are not substantive. Some existing Reclamation policy not contained in the prior rules, however, is included. The section is included to help prevent future misunderstandings about districts' roles in RRA administration.

The acreage limitation responsibilities include the requirements that districts: (a) Provide information to landholders; (b) provide Reclamation records as requested; (c) be responsible to Reclamation for acreage limitation charges and to collect such from the appropriate landholders if possible; (d) distribute, collect, and review the RRA forms; (e) file and retain the RRA forms as specified; (f) comply with the requirements of the Privacy Act of 1974; (g) complete and submit to Reclamation summary forms; (h) withhold deliveries of irrigation water to ineligible landholders; and (i) return to Reclamation all revenues received from delivering water to ineligible land.

The final version includes one substantive change. With regard to the revenues received for illegal deliveries of irrigation water, districts will be allowed in these final rules to retain that portion of such revenues that are attributable to any district charges assessed to cover district operation, maintenance, and administrative expenses arising from such deliveries.

The following examples illustrate the application of § 426.19:

Example (1). Landholder A submitted to District X a standard certification form in 1988, then filed verification forms each year through 1993. He then filed a new certification form in March 1994. District X must retain Landholder A's 1988 certification form through 1998; thereafter, it may be destroyed by the district.

Example (2). Same facts as Example 1, except that in October 1995 a Reclamation audit team requests that Landholder A's 1988 certification form be retained until January 2001. The district must retain the form until that date.

Example (3). Landholder B submitted to District X a standard certification form in 1985, and has submitted verification forms each year thereafter. District X must retain Landholder B's 1985 certification form as long as he continues to verify each year and, if he submits a new standard certification form, for 6 years from the date the last verification form of the 1985 standard certification form was submitted.

Example (4). District Y delivers 2,000 acre-feet of irrigation water to Farmer C in 1996 at the contract rate of $10 per acre-foot. It is subsequently found that Farmer C used 100 acre-feet of that water to irrigate ineligible excess land. Therefore, the payments made by District Y to the United States for the water used to irrigate the excess land ($1,000), and any further billings that result from this illegal delivery, other than for the district's operation, maintenance, and administrative expenses, must be deposited into the Reclamation fund or to the United States Treasury, as applicable, and not credited toward any obligation of District Y to the United States.

Comments Concerning § 426.19—District Responsibilities

General

Comment: Districts should not have to be policing entities. Districts do not have the funds to administer the regulations.

Response: In general, districts agree in their contracts that the delivery of irrigation water is subject to Federal reclamation law. Districts have working relationships with the landholders and control the delivery of irrigation water. Therefore, districts must take on the responsibility of ensuring the land is eligible to receive such water.

Section 426.19(b)

Comment: Reclamation should ask landholders directly if additional information is required, rather than asking districts to collect the information.

Response: Because of the contractual relationship between Reclamation and districts, Reclamation initially works with districts to gather information.

Section 426.19(c)

Comment: Any provision that would transfer uncollected individual assessments under the RRA to a district obligation should be deleted.

Response: Reclamation's contract is with the district and the district must collect monies due Reclamation. When a landholder submits a form that indicates irrigation water will be delivered to full-cost land, Reclamation suggests that the district collect the full-cost charges before such water is delivered. To do otherwise places the district at risk if the landholder should not be available to pay the bill after the water is delivered.

Comment: Which district is responsible for full-cost charges if the landholder holds land in more than one district?

Response: In such cases, the bills would be issued to the district(s) where the full-cost land is held. If the landholder's RRA forms indicate full-cost land is held in multiple districts, the bills would be issued accordingly.

Section 426.19(e)

Comment: The 3-year retention period for RRA forms should not be increased to 6 years.

Response: This comment has not been accommodated in the final regulations. Reclamation has considered this comment and determined that for statute of limitations purposes the RRA forms retention requirement should be increased to 6 years.

Section 426.19(i)

Comment: This section should be clarified so that it does not apply to revenues received by the district to cover district operations, maintenance, and administrative expenses.

Response: This comment has been accommodated in the final regulations.

Section 426.20 Assessment of Administrative Costs

Section 426.20 of the prior regulation, *Public participation,* is renumbered as § 426.22. The new § 426.20, *Assessment of administrative costs,* replaces § 426.24 of the prior regulation. This section addresses when and how Reclamation will assess administrative costs.

The only substantive change from the prior regulation is the addition of irrigation of ineligible excess land as a violation subject to assessment of an administrative fee. This provision is provided as part of paragraph (a), which also provides for the assessment of the fee for deliveries to land without the landholder filing an RRA form with the district. No significant changes were made between the proposed and final version of this section. It should be noted that § 426.12(h) requires the application of the compensation rate for the delivery of water to ineligible excess land.

Paragraph (b) provides for the assessment of the administrative costs if corrections are not made to RRA forms within 60-calendar days of Reclamation's written request for such corrections.

Paragraph (c) states that the districts are responsible for payment to Reclamation of the administrative costs, while paragraph (d) provides that administrative costs received by Reclamation will be deposited to the general fund of the United States Treasury.

Finally, paragraph (e) sets the initial amount of the administrative fee at $260, and discusses when Reclamation will review the data to determine if adjustments to this amount are needed and notify the public. Reclamation bases any changes to the assessment amount on Reclamation's costs for: field observation; information analysis; communication with district representatives and landholders regarding possible cases of irrigation of ineligible excess land, or obtaining missing or corrected forms; assistance to landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements; performance of onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms or that irrigated ineligible excess land; and performance of other activities necessary to address form and excess land violations.

The following examples illustrate the application of § 426.20:

Example (1). ABC Corporation holds irrigable land in District Y and in District Z and has three shareholders (Farmers A, B, and C). In both 1996 and 1997, ABC Corporation and each shareholder filed certification forms prior to receiving irrigation water in these districts. However, in each year, Reclamation found several errors on the forms the three shareholders had submitted in each district. The districts were given 60-calendar days in which to have the forms corrected and returned to Reclamation. All the corrected forms were returned by the designated due date, except for Farmer C's. Districts Y and Z will each be assessed a fee of $520 ($260 for each of the 1996 and 1997 water years) because Farmer C's forms were not corrected and returned within the specified time period.

Example (2). Farmer X owns 560 acres and leases 400 acres in District A. Each year, Farmer X submitted certification forms to the district prior to receipt of irrigation water. However, Reclamation found that in 1996

and 1997, Farmer X had reported all of his owned land on his form but only 150 of his 400 leased acres. Reclamation determines that this omission of information is not an attempt to defraud the Federal Government. Accordingly, the district will be required to obtain a corrected form, and if this is not accomplished in 60-calendar days, it will be assessed a fee of $520 ($260 for 1996, and $260 for 1997.)

Example (3). Farmer X and spouse, who are prior law recipients, own 480 acres in District A. None of the 160 acres in excess of the couple's 320-acre ownership entitlement was under recordable contract, as set forth in § 426.12, or otherwise eligible to receive irrigation water. However, Reclamation found that irrigation water had been delivered to the 160 excess acres in both 1998 and 1999. For the irrigation water delivered in these 2 years, District A will be assessed the compensation rate as set forth in § 426.12(h). An additional fee of $520 will also be assessed to the district ($260 each for 1998 and 1999).

Comments Concerning § 426.20—Assessment of Administrative Costs

General

Comment: Several commenters supported the assessment of administrative fees in place of the compensation rate to address RRA forms problems.

Response: Reclamation believes the assessment provides an equitable method for addressing RRA forms problems, while recovering costs incurred to address such problems.

Comment: Reclamation does not have the authority to impose penalties or fines in the guise of assessments for administrative costs without specific direction from Congress.

Response: Reclamation is authorized to promulgate regulations and to collect all data necessary to carry out the mission of Reclamation. 43 U.S.C. 373; 43 U.S.C. 390ww(c); 31 U.S.C. 9701.

Reclamation determines eligibility to receive water, in large part, based on the information provided on RRA certification and reporting forms. Section 426.18(m) of these final regulations require that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive water.

In issuing § 426.20 of the Acreage Limitation Rules and Regulations, Reclamation has properly exercised its authority to promulgate regulations for ensuring the delivery of irrigation water only to eligible landholders. The fee is intended to improve compliance with RRA certification requirements and ensure that irrigation water is delivered only to those landholders eligible under the RRA by recovering certain administrative costs Reclamation incurs due to noncompliance with RRA forms requirements and deliveries of irrigation water to ineligible excess land. Reclamation, as a Federal agency, also may impose remedial measures. The $260 charge provided for in this rule is remedial in nature rather than punitive.

In addition, Reclamation possesses authority to ''* * * prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' 31 U.S.C. 9701. As discussed above, under reclamation law, any landholder who received irrigation water prior to submitting the requisite RRA forms failed to meet the criteria which Congress established for eligibility. When Reclamation becomes aware of the violation and undertakes a variety of additional activities to obtain the forms and the necessary information or terminate the delivery of irrigation water on ineligible excess land, Reclamation is helping that landholder establish eligibility for receiving the ''service or thing of value''—irrigation water. These additional activities are valuable services Reclamation provides districts and landholders who would otherwise not be in compliance with applicable Federal laws, regulations, and contracts.

Comment: Reclamation's assessment of administrative costs should be the sole penalty for a violation of the certification and reporting requirements.

Response: The assessment of administrative fees is not a penalty. The fee recovers the costs incurred by Reclamation to correct forms violations in administering the RRA forms requirements. Reclamation reserves the right to terminate the delivery of irrigation water if Reclamation cannot determine the eligibility of landholders to receive such water because of noncompliance with the RRA forms requirements.

Comment: The proposed rule apparently treats all certification and reporting violations equally. The final rules should consider the relative severity of a particular violation. Otherwise, simple typographical errors will be treated identically to the failure to file a form at all.

Response: Section 426.20(b), includes a 60-calendar day grace period in which RRA forms may be corrected without imposition of administrative costs. This differs significantly from § 426.20(a), where addresses the nonsubmittal of RRA forms. No grace period is provided for failure to file RRA forms.

Comment: Some commenters stated that administrative costs should be assessed prospectively only and should not be applied to certification or reporting violations which occurred prior to the formal adoption of the rule. Other commenters proposed that the administrative fee should be applied to previous compensation bills issued for forms violations.

Response: The administrative cost provision will be applied prospectively from the date each provision first becomes effective. With regard to forms violations, it will be applied as of March 27, 1995, the date the administrative fee provision first became effective.

With regard to the delivery of irrigation water to ineligible excess land, it will not be applied to any such deliveries that occurred prior to the effective date of these regulations.

Comment: Will both the district and landholder be assessed the administrative fee for the same violations? It would be unreasonable to assess the fee to both.

Response: The administrative fee will be assessed only once for each violation.

Section 426.20(a)

Comment: Reclamation should clearly state that it will assess the compensation rate only in instances of irrigation water being delivered to ineligible excess land.

Response: Reclamation will not self-impose limits on the use of the compensation rate. The compensation rate will not be used to address noncompliance with RRA forms requirements. However, it may be used to address deliveries to other ineligible land in addition to ineligible excess land.

Section 426.20(b)

Comment: No fines should be assessed for errors.

Response: The assessment of administrative costs is not a fine. Rather, Reclamation is collecting the average cost associated with correcting forms problems. If there were no problems associated with the submittal of RRA forms, Reclamation would not have to incur these additional costs. In addition, Reclamation provides 60-calendar days to correct forms without the assessment of the administrative fee. Thus, the districts and landholders have a great deal of control over whether the $260 administrative fee will be applied.

Section 426.20(c)

Comment: The proposed rule is defective in that it requires the collection of administrative costs from the district rather than from the landholder.

Response: Reclamation's contract is with the district. The districts are also responsible for collecting RRA forms. Districts are not to deliver water to land

for which an RRA form has not been filed or to land that is ineligible excess land. The districts can minimize any assessment of administrative costs by reviewing RRA forms upon submittal to ensure they have been completed correctly. In addition, 60 calendar days are provided to obtain forms corrections. Again, districts can minimize any assessment of administrative costs by having the RRA forms corrected in a timely manner.

Section 426.20(e)

Comment: The administrative fee amount is based on an arbitrary number.

Response: The $260 assessment is based on the average costs Reclamation incurred to address RRA forms violations in 1991, 1992, and 1993. The same type of costs were incurred during those years to address instances of irrigation water being delivered to ineligible excess land.

Comment: The administrative fee is based on costs associated with the audits of landholders.

Response: This is incorrect. However, if a forms problem is discovered during the audit of a landholder, the costs associated with correcting that problem have been and will be considered in determining the average costs associated with correcting forms problems. The same is true with respect to addressing the delivery of irrigation water to ineligible excess land.

Section 426.21 Interest on Underpayments

Section 426.21 of prior regulation, *Small reclamation projects*, is renumbered as § 426.17. The new § 426.21, *Interest on underpayments*, replaces § 426.23 of the prior regulation. This section discusses application of underpayment interest as required by Section 224(i) of the RRA, as amended (43 U.S.C. 390ww).

As in the proposed rule, a definition of underpayment is included as paragraph (a). Other editorial changes from the prior regulation have been made for clarity and organization. No significant changes were made between the proposed and final rule.

Paragraph (b) discusses how interest accrues on underpayments and provides that Reclamation will collect the underpayment with interest from the appropriate district. Paragraph (c) specifies how the underpayment interest rate is determined.

Comments Concerning § 426.21—Interest on Underpayments

Section 426.21(b)

Comment: Requiring the district to pay the underpayment exceeds Reclamation's authority under the law.

Response: Reclamation contracts with districts and the contracts include the requirement to administer and comply with the acreage limitation provisions. These provisions include paying Reclamation for water delivered. If the district delivers water that is subject to application of the full-cost or compensation rates, then the district is responsible for promptly collecting those rates from the landholders and for promptly remitting those funds to Reclamation.

Comment: Will both the district and landholder be assessed the underpayment interest for the same violation? It would be unreasonable to assess the interest to both.

Response: Underpayment interest will be assessed only once.

Section 426.22 Public Participation

Section 426.22 of the prior regulation, *Decisions and appeals*, is renamed *Reclamation decisions and appeals* and renumbered as § 426.24. The new § 426.22, *Public participation*, replaces § 426.20 of the prior regulation. This section addresses the opportunities Reclamation will provide the public to become involved in pending contract actions.

The only substantive change between the prior rules and the proposed rules is in paragraph (8) of the prior rule. This paragraph is replaced by paragraph (b) of this final regulation and deletes reference to a *60-day* public comment period. The prior provision reduces Reclamation's flexibility to base the comment period on specific circumstances and is not a statutory requirement. No significant changes were made between the proposed and final version of this section.

Paragraph (a) provides the general methods Reclamation will use to notify the public about pending contract actions, which includes a requirement to provide such 60-calendar days prior to contract execution. Paragraph (b) provides the steps Reclamation will use to notify the public about any modification to a proposed contract. Paragraph (c) specifies what information Reclamation will include in published announcements concerning contract actions.

Paragraph (d) specifies that anyone may obtain copies of proposed contracts and from where, while paragraph (e) provides the opportunities for public participation. Paragraph (f) specifies which individuals are authorized to negotiate the terms of contract proposals.

Finally, paragraph (g) specifies how Reclamation will use comments submitted during the comment period or made at hearings.

Comments Concerning § 426.22—Public Participation

No comments were received concerning this section.

Section 426.23 Recovery of Operation and Maintenance (O&M) Costs

Section 426.23 of the prior regulation, *Interest on underpayments*, is renumbered as § 426.21. The new § 426.23, *Recovery of operation and maintenance (O&M) costs*, replaces § 426.8 of the prior regulation. This section addresses when districts, and in some cases individual landholders, will be required to pay all O&M costs, if they are not paying such currently.

This section has been rewritten for clarity. The proposed and final language contains no significant changes to prior regulations.

Paragraph (a) provides a general statement that all new, renewed, or amended contracts will provide for payment of O&M costs as specified in this section.

Paragraph (b) states that a district must pay all of the O&M costs that Reclamation allocates to irrigation if a district executes a new or renewed contract after the enactment date of the RRA. For a district that had a contract in existence on the date of enactment of the RRA and then amends that contract to conform to the discretionary provisions, paragraph (c) provides that the district must pay all of the O&M costs allocated to irrigation. This paragraph goes on to discuss other aspects of what will be part of the district's contract rate after the contract amendment. Paragraph (d) provides the same information for a district that amends a contract to provide supplemental or additional benefits.

Paragraph (e) discusses the amount of O&M a district pays under a contract that was in place on the enactment date of the RRA and has not been amended.

Paragraph (f) states that an irrevocable elector must pay his or her proportionate share of all O&M costs allocated to the district for irrigation and provides details on the application. Finally, paragraph (g) explains that if a prior law landholder is subject to full-cost pricing, then all O&M costs must be factored into any full-cost assessment and submitted to the United States by the district.

The following examples illustrate the application of § 426.23:

Example (1). A district amends its water service contract to conform to the discretionary provisions. Prior to its amendment, the water service contract obligated the district to pay a fixed rate of $3.50 per acre-foot of water for the remaining 10 years of its 30-year contract term. At the time of contract amendment, $3.00 of the contract rate are needed to pay current O&M costs. If the district's O&M costs increase by $0.50 per acre-foot from $3.00 to $3.50 per acre-foot in the year after the district's amendment, then the current $3.50 rate will be adjusted to $4.00 to reflect the $0.50 increase in O&M costs. If the district's O&M costs increase by $0.25 per acre-foot the following year, the district's rate would be $4.25 per acre-foot. Similar adjustments to O&M costs would continue throughout the remaining term of the district's contract. One effect of these adjustments is that, subsequent to amendment and continuing throughout the remaining contract term, the district's annual payments will be $0.50 per acre-foot higher than its actual O&M costs.

Example (2). A district amends its water service contract to conform to the discretionary provision. Prior to its amendment, the district's contract obligated it to pay a rate of $3.00 per acre-foot of water for the remaining 10 years of its 30-year contract. At the time of the contract amendment, the district's actual O&M costs are $6.50 per acre-foot. Since the current contract rate of $3.00 does not cover these O&M costs, the district's rate will be increased to $6.50. If the district's O&M costs increase by $.50 per acre-foot the following year, the district's rate would then be adjusted to $7.00 per acre-foot.

Example (3). A district's repayment contract obligates it to pay $4.00 per acre for the remaining 5 years of its 40-year contract. It is also obligated under the terms of its contract to pay the full O&M costs due the United States on an annual basis in addition to its repayment obligation. If the district were to amend its contract to conform to the discretionary provisions, no change in its present repayment arrangement with the United States would be necessary since under the terms of its contract is it already paying its full O&M costs on an annual basis.

Comments Concerning § 426.23—Recovery of Operation and Maintenance (O&M) Costs

Section 426.23(c)

Comment: It was congressional intent that farmers pay the full cost of service, including capital, full O&M, and interest on O&M deficits, as soon as possible. The rules should require such when a district amends its contract to conform to the discretionary provisions.

Response: Section 208(a) of the RRA states that when a district is subject to the discretionary provisions, the price of water will be at least sufficient to recover all O&M costs that the district is obligated to pay the United States. Section 208(b) of the RRA requires Reclamation to adjust the contract rate for discretionary provision districts annually to reflect any changes to O&M costs. Section 208(c) of the RRA states that the other two sections do not apply to districts which operate and maintain project facilities and finance such operations from non-Federal funds.

While Reclamation has the authority in Section 208 to charge more than the O&M rate, with one option being the cost of service rate, Reclamation is not required to do so. Reclamation prefers to review each district individually to determine the repayment capability. Reclamation will charge the cost of service rate where appropriate. To provide a higher rate in these regulations than is statutorily required would limit Reclamation's flexibility to address differences between districts.

Section 426.24 Reclamation Decisions and Appeals

Section 426.24 of the prior regulation, *Assessment of administrative costs*, is renumbered as § 426.20. The new § 426.24, *Reclamation decisions and appeals*, replaces § 426.22 of the prior regulation. This section provides the right to appeal RRA final determinations made by regional directors, and specifies the process to be used.

The proposed rules made significant changes to the final determination and appeals processes for RRA decisions. The proposed rules were prepared in response to Reclamation charging the compensation rate to districts for delivering irrigation water to landholders without an RRA form on file, and the resulting difficulties Reclamation was experiencing due to the volume of appeals. With the advent of the administrative fee provision, Reclamation believes the appeals process found in the prior rules would be more appropriate, and Reclamation has included that version in these final rules with changes for clarity and organization and a few significant adjustments.

Paragraph (a) discusses who will make final RRA determinations for Reclamation. A significant change is that the regional director's decision will not take effect during the period in which an appeal to the Commissioner may be filed (i.e., 30 days). If an adversely affected party files a petition for a stay, the regional director's decision will not take effect until either the Commissioner acts on the petition or the Commissioner does not take action within 30 days after receiving the petition.

In addition, the regulations clarify that if the final determination involves more than one region, the Commissioner will decide who makes the final determination. Because the final rule provides that decisions will not go into effect until adversely affected parties have had an opportunity to appeal, the shortened filing period ensures expedited implementation while allowing petitioners reasonable time to file an appeal.

Paragraph (b) provides the general appeal rights concerning RRA final determinations and the effect of a final determination during an appeal. The final rule also reduces from 60 days to 30 days the time in which an adversely affected party may file a notice of appeal and reduces from 90 days to 60 days the time to submit documents in support of the appeal. Similar to paragraph (a), the shortened filing period coupled with the delayed effective date of the regional director's decision ensures that Reclamation can make and implement timely decisions.

Paragraph (c) provides that the rules governing the procedures of the Ad Hoc Board of Appeals of the Office of Hearings and Appeals apply to appeals from the Commissioner's decision.

Paragraph (d) discusses the effective date of an appealed decision and states the compensation rate may be applicable if irrigation water is delivered to land found to be ineligible. Paragraph (e) provides for the accrual of underpayment interest, if applicable, while an appeal is pending.

Paragraph (f) addresses what happens to appeals made prior to the effective date of these regulations by stating pending appeals will be processed under the rules in effect prior to these final regulations.

Paragraph (g) provides the addresses for requests for appeals, stays, etc. Unlike the prior rules where regional addresses were included, which often lead to confusion as to where to send an appeal, this list only includes the address for the Commissioner and the Office of Hearings and Appeals.

Comments Concerning § 426.24—Reclamation Decisions and Appeals

General

Comment: The proposed revisions would create too much paperwork and other activities for $260 forms bills. The cost of protesting a forms bill may exceed the bill itself.

Response: Reclamation has decided not to implement the proposed appeals regulations. The prior appeals process as modified by these final rules is expected to efficiently manage disputes arising under these rules. The process is not expected to generate more

paperwork, and an appeal from a regional director's decision is expected to be completed in less time than under the prior rules. If in the future further changes to the appeals section are warranted, Reclamation will initiate a special rulemaking activity to address those changes.

Comment: The appeals section is long and confusing. As written the ability of the Agency head to determine if field offices are making the correct decisions is removed.

Response: See the response to the preceding comment. The appeals process under the final rules is substantially similar to prior rule provisions, although certain time periods have been shortened. The Commissioner, under the final rules, retains authority to correct decisions of the regional directors.

Comment: The changes to this section improve the appeals process because the authority will be with the regional director and not with the politicians.

Response: Although Reclamation is not retaining the proposed version of the appeals provisions, all final RRA determinations have been and will remain with the regional director. The appeals section only specifies a process that may be used if a party disagrees with that final determination.

Comment: The rule should provide some specific time periods for response by Reclamation to appeals so that appellants know when the process may be considered completed, even in the absence of a response.

Response: This comment has been accommodated with respect to stays in the final regulations. Variable workloads and resources make imposition of a specific time period for other petitions unwise. Reclamation will contact appellants to inform them that appeals have been received and when the Commissioner's decision has been made. Alternatively, the appellants may contact Reclamation to determine the status of their appeals.

Comment: It is assumed the appeals section does not affect the waiver of sovereign immunity.

Response: That is a correct assumption.

Section 426.24(b)

Comment: Stays should be a matter of right, not at the discretion of the regional director. In addition, stays should be through the entire process, including any action brought to Federal Court.

Response: If an appellant shows good cause for granting a stay, the request for stay is submitted in a timely manner, and the harm to the petitioner outweighs the interest to Reclamation, then the Commissioner will stay the decision of the regional director. Thus, for example Reclamation would not grant a blanket approval to deliver irrigation water to ineligible land simply because a party appeals a decision to terminate such water deliveries.

Section 426.24(f)

Comment: Any pending appeals should be decided under the proposed regulations.

Response: This comment has not been accommodated in the final regulations. Any changes between the prior rules and the final rules will be applied prospectively.

Section 426.25 Reclamation Audits

Section 426.25 of the prior regulation, *Severability*, is renumbered as § 426.26. The new § 426.25, *Reclamation audits*, replaces § 426.10(i) of the prior regulation.

This section states that Reclamation will conduct reviews of district administration and enforcement of the RRA and these regulations, and landholder compliance. The prior rules discussed field audits that would be conducted. The proposed and final rule simply include the names of the activities associated with Reclamation's RRA field audits. The final rule changes the phrase ''has the authority to conduct'' to ''will conduct'' to reflect the intent of the statutory requirement and the wording in the prior rule.

Comments Concerning § 426.25—Reclamation Audits

Comment: Reclamation should retain the language of the prior rules that states Reclamation will conduct field audits, rather than the proposed language that states Reclamation is authorized to conduct field audits.

Response: This section has been revised to state that Reclamation will conduct reviews of districts and landholders.

Comment: Field audits would be welcome to determine if perceived violations or abuses of the law or regulations do actually exist. To the extent that audits disclose violations, appropriate action should be taken.

Response: Reclamation has and will continue the RRA Program Evaluation effort, which includes the review of districts' administration and enforcement of the acreage limitation provisions and landholders' compliance with those provisions. This section specifies the three major components of the RRA Program Evaluation effort.

Comment: Reclamation should not unnecessarily investigate and harass farmers as a result of the rules. Probing into structures of family farm operations is unnecessary if most of the irrigators are under the 960-acre limit.

Response: Reclamation's audit activities are limited for landholders who do not exceed acreage limitation entitlements. However, Reclamation must ensure all entitlements are enforced, not just the 960-acre limitations applicable to qualified recipients.

Section 426.26 Severability

The new § 426.26, *Severability*, replaces § 426.25 of the prior regulations. This section simply states that if any provision of these regulations or the application of such is held invalid, the sections of the rules or their applications that are not held invalid will not be affected.

The final language contains no substantive changes to proposed or prior rules.

Comments Concerning § 426.26—Severability

No comments were received concerning this section.

Part 427 (Water Conservation)—Summary of Changes; Public Comments and Responses

The RRA requires those who contract for Federal project water supplies to develop water conservation plans and challenges both Reclamation and the districts to evaluate water management strategies and implement appropriate water conservation measures. A thoughtfully developed water conservation plan represents an opportunity for every district to identify water management problems, evaluate opportunities, highlight accomplishments, and plan for improvements.

Water conservation rules implementing Section 210 of the RRA were previously part of the Rules and Regulations for Projects Governed by Federal Reclamation Law found in Part 426 (43 CFR 426.19). As part of this rulemaking, the water conservation rules have been removed from part 426 and placed in a new part 427. Reclamation intends no changes to the prior water conservation rule. However, Reclamation remains committed to actively encouraging and facilitating water conservation planning and implementation by water districts and landholders.

Reclamation intends to encourage and assist districts in the development of quality water conservation plans, the demonstration of innovative conservation technologies, and the

implementation of effective water efficiency measures. As part of this effort, Reclamation will prepare advisory guidance that will contain recommendations for a sound water conservation planning process. Reclamation also recognizes the importance of cooperation and coordination with other State and Federal water conservation programs.

The following comments were received on the proposed rules and were considered in developing these final rules.

Authorities

Comments: A variety of comments were received regarding Reclamation's authorities to implement certain aspects of the proposed water conservation rules. Concern was expressed that the proposed rules would attempt to expand on the authorities provided by law. It was suggested that Reclamation should document prior authorities and seek additional legislative authority where such authority is lacking. Authorities were questioned in the following specific areas:

- Approval of water conservation plans,
- Withholding discretionary benefits, and
- Modifying signed contracts

Response: The final rules do not alter the prior rules. Reclamation has reviewed its authorities with Interior's Office of the Solicitor. The Office of the Solicitor agrees that Reclamation has authority to implement the provisions contained in both the proposed rules and the final rules.

Incorporation by Reference

Comments: Comments suggested that the proposed rules, by incorporating the Guidelines and Criteria, are in violation of the Administrative Procedure Act.

Response: There is an established Federal Register process including specific language, for incorporation of materials by reference. Reclamation did not use this process or language because the proposed rules did not incorporate the draft Guidelines and Criteria by reference. However, there was a definite link between the rules and draft Guidelines and Criteria, because the rules proposed to use the Guidelines and Criteria as the standard upon which Reclamation would base its approval of water conservation plans. The final rules do not include a provision for Reclamation plan approval. Advisory guidance will be contained in independent advisory documents and is not incorporated by reference into the final rules as regulatory requirements.

Approval Process

Comments: Comments regarding the water conservation plan approval process described in the proposed rules focused on the following issues and concerns:

- Triggering of NEPA compliance requirements.
- Public and tribal review of plans.
- Lack of penalties on Reclamation for delaying approval.
- Insufficient Reclamation resources to accomplish reviews and approval.

Response: The proposed provision that Reclamation would approve water conservation plans is not included in the final rules. Reclamation will continue to make available its expertise and guidance, as resources permit, to encourage and assist districts in the development and implementation of effective water conservation plans. Although Reclamation will not approve plans, Reclamation will in the future appropriately address Federal responsibilities under NEPA, ESA and Native American trust responsibilities where major Federal actions may be involved regarding site specific implementation of plan measures. For example, Reclamation will comply with NEPA as appropriate, when undertaking future site specific Federal actions, such as financial assistance for implementation of a specific conservation measure related to this rulemaking. Native American trust responsibility will also be addressed.

Applicability

Comments: Concerns were expressed regarding who should prepare water conservation plans. Comments indicated that the proposed rules should not apply to these groups:

- Indian tribes.
- Contractors for water for municipal and industrial purposes.
- Paid-out districts.
- Users where only a fraction of the total supply is Reclamation project water.
- Irrigation districts as opposed to irrigation projects.
- Canal companies.
- Small entities as defined in the Regulatory Flexibility Act (populations less than 50,000 versus 3,300 in the proposed rule).

Response: Section 426.16(f) has been revised to clarify Indian tribes and tribal entities operating on tribal trust or restricted lands need not prepare water conservation plans. These tribal entities or others operating on trust lands are typically subject to BIA regulations which protect the resource. The RRA requires plans of each district that ''has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended.'' This includes irrigation districts, canal companies, and municipal and industrial contractors receiving water from a Reclamation project. No additional exclusions are provided in the final rules; however, Reclamation will maintain present policy that excludes districts with contracts that are not developed pursuant to Federal reclamation law, small and temporary contractors and districts already complying with comparable State or other comparable Federal water conservation programs.

Comment: If a tribe wishes to sell or lease water to a district which is not exempt under § 427.2(a), would that district be required to have an approved water conservation plan in accordance with the regulations before Reclamation facilitates the purchase or lease?

Response: The district would be required to prepare a water conservation plan in accordance with provisions contained in the final regulations. Reclamation could consider a district's compliance with the regulations before facilitating a purchase or lease of water; however, nothing in the regulations requires that to occur. Section 426.16(f) contains an exception from the preparation of water conservation plans for Indian tribes and tribal entities operating on tribal trust or restricted lands; however, this exception does not extend to districts purchasing or leasing water from a tribe.

Definitions

Comment: Regarding the definition of a district, commenters stated that the RRA defines the term ''district'' to be limited to those entities which have entered into contract with the Secretary for irrigation water. The proposed rules define ''districts'' to include anyone that has entered into a contract with the United States pursuant to Reclamation law (with a few exceptions). The rules have expanded on the RRA definition to include municipal and industrial (M&I) water users.

Response: The RRA defines the term ''district'' as any individual or any legal entity established under State law which has entered into a contract *or is eligible to contract with the Secretary* for irrigation water. If a project is authorized to provide irrigation water, then a water district, including a district that currently supplies only municipal and industrial water, is eligible to contract for irrigation water unless it is prevented from doing so by another State or Federal statute. The intent of

Congress to require municipal and industrial water districts to prepare water conservation plans is substantiated by the reference to the Water Supply Act of 1958 in Section 210(b) of the RRA.

Comment: One commenter stated that ''the language of the RRA refers only to entities that are parties to water supply contracts or repayment contracts. It does not require our irrigation ditch company to prepare water conservation plans.''

Response: This comment and letter refers to a contract between the irrigation ditch company and Reclamation for the sale of land and replacement of storage space. This type of contract does not fall within the definition of contract given in the RRA.

Exemptions

Comments: Commenters indicated that entities subject to additional specific State laws or Federal project authorizations with water conservation requirements should also be exempted from the rules. Entities subject to the Arizona's Groundwater Management Act and those within the Central Arizona Project and the Central Utah Project were mentioned. At least one commenter also indicated that there should be specific methodology identified in the rules for an entity to qualify for an exemption.

Response: Specific exemptions such as these are not listed in the final rules. However, Reclamation's policy is to treat compliance with such comparable water conservation requirements of the Central Utah Project or Arizona Groundwater Act or comparable laws as satisfying the requirements of this regulation. Reclamation recognizes the importance of coordination with other State and Federal water conservation programs. Reclamation will describe compliance with comparable State or Federal water conservation through policy statements.

Limited District Influence

Comments: Concern was expressed that some districts' ability to implement the requirements of the proposed rules would be limited because the district has no authority to require compliance by water users within the district.

Response: In situations such as this, Reclamation would expect a district to develop a conservation plan that focuses on those elements within the district's control, including ways to encourage water users to undertake water conservation measures. In addition, many water service and repayment contracts contain assignment clauses which would allow requirements of a contractor to be assigned to a subcontractor.

Burdensome Nature

Comments: Respondents expressed concern about what they view as the burdensome nature of the proposed rules. Some indicated that water conservation plans and measures would be a serious financial burden on some districts. Some indicated that the burden would result in time being spent by the districts on administrative exercises and law suits, rather than on water conservation. Others indicated that some Districts are already conserving water and that plans would be unnecessary.

Response: The purpose of the Water Conservation Rules is to implement Section 210 of the RRA. Section 210 requires districts to prepare water conservation plans. The final rules neither include a provision for Reclamation to approve plans, nor do they contain requirements for specific conservation measures. Districts which are already conserving water will have the opportunity to identify such activities in their water conservation plans. Reclamation will assist districts in their water conservation planning efforts to facilitate improved water conservation planning.

Economic Feasibility

Comments: Comments addressing the area of economic feasibility indicated that Section 210 of the RRA requires that water conservation measures should be economically feasible. The point was made that the costs of measures should not outweigh the value of the water conserved.

Response: The RRA includes the provision that the Secretary should encourage prudent and responsible water conservation measures, where such measures are shown to be economically feasible. The final rules do not alter this provision. The final rules fully allow a district to examine the economic feasibility of water conservation objectives or a particular measure as part of its conservation planning process.

Increase Requirements

Comments: Some commenters expressed the view that the proposed rules should go further in requiring water conservation activities. It was suggested that the proposed rules should, in addition, include minimum performance standards. The view was also expressed that the rules should allow consideration of all water resources, including groundwater.

Response: The RRA requires districts to develop water conservation plans that address goals, economically feasible objectives, appropriate measures and a time schedule. It also requires Reclamation to encourage prudent and responsible water conservation measures on Federal projects. The final rules do not alter these provisions, but rather adopts an approach that evaluates opportunities for water conservation site-specifically through effective water management planning. This approach recognizes the widely ranging economic, social, institutional and environmental circumstances confronting districts westwide. Reclamation will actively encourage and assist districts, as resources permit, in the development and implementation of effective plans through the provision of advisory guidance and technical assistance.

Plan Updates

Comments: Concerns were expressed regarding the requirement for plan updates every 5 years. Alternative periods of 10 and 15 years were suggested. It was also suggested that there should be an end to the update process, once several updates had been provided.

Response: Effective water management and conservation planning is an ongoing process. Water conservation plans should be revisited and updated on a regular basis to assure the continuing relevancy of goals, objectives, measures and time schedules identified. The final rules do not specify an update schedule. However, Reclamation will maintain present policy that calls for 5-year updates of plans by districts.

Incentives

Comments: Some comments on the incentive provisions in the proposed rules indicated that discretionary benefits should not be tied to compliance with water conservation plan requirements. Some used terms as ''punitive'' or ''blackmail'' to characterize such provisions. Other commenters indicated that sanctions such as monetary penalties or withholding of water deliveries should be imposed for noncompliance.

Response: The final rules do not contain a provision that ties discretionary benefits to compliance with the water conservation rules. Reclamation will make its expertise and guidance available to districts regarding the development and implementation of effective water conservation plans. Reclamation will direct its available resources to support cooperative efforts

that address water management problems and opportunities.

Environmental Compliance

Comments: The environmental compliance discussion in the preamble to the proposed rules generated considerable concerns. Most commenters opposed the requirement that water conservation plans would be subject to review under the NEPA. Some felt that it was the responsibility of the Federal Government, and would be an economic hardship on irrigation districts. It was pointed out that the requirement for NEPA compliance would be triggered by the Federal action of approving water conservation plans. At least one commenter supported the view that environmental compliance should be addressed at the individual water conservation plan development stage with a public participation process included.

Response: Reclamation has not included a provision for the approval of plans in the final rule. NEPA compliance would no longer be triggered by plan preparation since the Federal action of ''approval'' has been removed. Reclamation will comply with NEPA as appropriate, when undertaking any future site specific Federal actions, such as financial assistance for implementation of a specific conservation measure related to this rulemaking. Reclamation anticipates that the resources which would have been devoted to environmental reviews can be better used for improved water conservation plan and implementation.

Federal Versus State and Local Jurisdictions

Comments: Concern was expressed that the proposed rules are an intrusion into State authorities for managing water. It was indicated that States rather than the Federal Government should provide oversight for water conservation planning. Some also expressed the view that districts should have authority to make final decisions in water conservation planning.

Response: With respect to the appropriation and distribution of water, Reclamation is subject to State water law and has a responsibility to see that its project water is used efficiently and in a manner consistent with State law. Opportunities exist for State/Federal cooperation in achieving efficient water use. It is Reclamation's intent to coordinate fully with State conservation programs and to allow compliance with comparable State conservation programs to serve as compliance with the rules. In addition, districts make final decisions through the plan preparation process, subject to State and Federal law, regarding the development and implementation of water conservation measures.

Comment: Executive Order No. 12612 requires Federal agencies undertaking policies with federalism implications, whenever possible, to ''defer to the States to establish standards.'' Respondents communicated that prior State and district programs are already requiring and accomplishing water conservation. Concern was expressed that the proposed rules would duplicate such programs.

Response: Reclamation recognizes that some States have established conservation standards or programs that meet the goals and intent of the water conservation requirements of the RRA. Through policy, Reclamation intends to recognize compliance with comparable State or Federal water conservation requirements as fulfilling the intent of Section 210 of the RRA.

Critical Practice—Water Measurement

Comments: Commenters offered views regarding the water measurement provision in the proposed rules. The predominant view expressed was that meters on each turnout would be an unreasonable and unnecessary expense. It was further expressed that developing quantitative inventories of nonproject water sources is unnecessary. Some commenters expressed support for volumetric measurement at each agricultural turnout or service connection and indicated that Reclamation should require a minimum accuracy in accounting for water use and conservation. The view was also expressed that minimum measurement requirements should include documentation of amounts of water used on specific parcels of land. At lease one commenter suggested that the rules list water measurement devices which are acceptable. Questions were also asked regarding Reclamation's intent with respect to the following:

- Would M&I suppliers need to meter at each household or only at the wholesale connection for raw water deliveries?
- What does proven accuracy mean?
- Do agricultural districts include M&I conservation practices as part of their water conservation plans when they wholesale untreated water to M&I suppliers?

Response: The final rules do not require a district to include any specific water measurement and accounting system as a required conservation measure in the district's water conservation plan. Reclamation will provide advisory guidance on the recommended content of water conservation plans, and will continue to promote the importance of water measurement and accounting as a fundamental measure that all districts should evaluate in developing their conservation programs. This approach will allow a district more flexibility in evaluating its existing water measurement and accounting system and in developing and implementing an effective water measurement and accounting system appropriate to the particular district.

Critical Practice—Water Pricing

Comments: Commenters expressed concern about the water pricing provision in the proposed rules. Some indicated that tiered pricing could lead to an increase in consumption of groundwater, and would especially be a problem in States with aggressive programs to shift from reliance on groundwater. The view was also expressed that the water pricing provisions would be in violation of laws or contracts in some instances. Some indicated that pricing decisions should be made on a local level since issues vary greatly from area to area.

Other commenters favored the pricing provisions and suggested that the rules should require districts to consider a conservation rate structure to encourage water conservation. Other supporters indicated that charges should reflect the full cost of supplying water and that the rules should mandate tiered pricing. Some stated that water pricing structures designed to increase efficiency of use are acceptable as long as they do not include tiered pricing.

Response: The final rules do not require a district to include incentive pricing or any specific water pricing structure as a required conservation measure in the district's water conservation plan. Reclamation will provide advisory guidance on the recommended content of water conservation plans, and will continue to promote the importance of water pricing as a fundamental measure that all districts should evaluate in developing their conservation programs. This will allow a district more flexibility in evaluating its existing pricing structure and in developing and implementing an effective water pricing structure appropriate to the particular district and its customers. This approach will also ensure that water pricing is consistent with contract provisions and applicable State laws.

Critical Practice—Educational Programs

Comments: Commenters stated that Reclamation should provide assistance

in education and that the assistance program should apply directly to local water management circumstances.

Response: The final rules do not require a district to include an educational program as a required conservation measure in the district's water conservation plan. Through policy, Reclamation will provide advisory guidance on the recommended content of water conservation plans, and will continue to promote the importance of an education program as a fundamental measure that all districts should evaluate in developing their conservation programs. This will allow a district more flexibility in evaluating its existing educational activities and in developing and implementing an effective water conservation education program appropriate to the particular district and its customers.

Critical Practice—Conservation Coordinator

Comments: Commenters offered the view that a requirement for each district to appoint a water conservation coordinator would have an adverse financial impact on smaller districts.

Response: The final rules do not require a district to identify a water conservation coordinator in the district's water conservation plan. However, Reclamation encourages each district to identify a water conservation coordinator who is responsible for development and implementation of the district's conservation plan.

Use of Conserved Water

Comments: Commenters offered views concerning the use of conserved water. Some indicated that decisions on the use of conserved water should remain with each district or with the State. Some also indicated that the use of conserved water is restricted by certain State laws. The view was offered that conserved water should belong to the district and landowners. Some commenters were concerned that conserved water would flow out of a basin rather than being made available for recharging local groundwater or satisfying local M&I demands.

Support was expressed for Reclamation's facilitation of water transfers between willing parties. Support was expressed by some for the making of conserved water available to fish and wildlife and the environment. Some indicated that Reclamation should encourage and facilitate the transfer of conserved water for fish and wildlife and other environmental needs where allowed under State law. Others indicated that Reclamation should require transfers for such purposes.

Response: Reclamation supports the view that decisions on the use of conserved water in a specific situation are subject to State law, contract requirements, and conditions of the water right, as well as a variety of other site-specific factors. Reclamation will actively encourage and facilitate individual water transfers of Reclamation-supplied conserved water between willing parties as appropriate. Reclamation will also work closely with States, other Federal agencies, tribal entities, local entities, and water users to identify environmental and other current needs for conserved water at the watershed level that may be satisfied by facilitating transfers between willing parties, subject to State law.

Technical Assistance

Comments: Commenters offered views regarding Reclamation's providing of technical assistance in water conservation planning. Some commenters indicated that increased technical and financial support could lessen the burden of preparing water conservation plans. Others suggested that Reclamation sponsor educational meetings on the rules for districts when they are finalized. The view was also offered that Reclamation should assist the States in satisfying EPA water quality regulations. Concern was expressed by some that technical assistance from Reclamation is unlikely due to Reclamation's downsizing. Some even indicated that Reclamation's prices for technical assistance are inflated and personnel have a lack of expertise.

Response: Reclamation will make available, as resources permit, its expertise and guidance to encourage and assist districts in the development and implementation of effective water conservation plans. Reclamation will provide technical and financial assistance through an incentive-based field services program, in cooperation with States, to the extent resources are available.

Consultation With Indian Tribes

Comments: At least three commenters expressed concerns about consultation with Indian tribes. One comment indicated that tribes were not identified as being involved in the NEPA process addressed in the proposed rules. Another expressed concern that Reclamation is not adhering to the intent of Secretarial Order 3175.

Response: It is Reclamation's intent to engage Indian tribes in the NEPA process for future site-specific Federal actions related to conservation, whenever the tribes are identified as affected parties and to ensure that any anticipated effects on Indian trust resources are explicitly addressed. Reclamation intends to fulfill its tribal trust obligations, including protecting tribal trust resources whenever undertaking future Federal actions related to this rulemaking.

Environmental Compliance

The environmental impact statement (EIS) and related coordination activities described below provide full environmental compliance for the promulgation of these final rules and regulations. Reclamation will comply with NEPA and other environmental statutes as appropriate, prior to undertaking any future site-specific Federal actions related to this rulemaking.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (NEPA), an EIS has been prepared which analyzes the impacts of these proposed rules and regulations and alternatives thereto. The EIS provides a complete assessment of the impacts of promulgating and implementing the rules and regulations. The EIS includes a no action alternative, a proposed rule alternative, a preferred alternative, and three additional alternatives. A notice of availability of the final EIS was published in the Federal Register (60 FR 4677, Feb. 7, 1996), and the final EIS was distributed to interested parties. The final EIS contains a list of seven programmatic environmental commitments that complement the preferred alternative. A formal Record of Decision on the final EIS, generally naming the preferred alternative, was signed by the Assistant Secretary '' Water and Science on December 10, 1996.

Fish and Wildlife Coordination Act

In meetings and correspondence between Reclamation and the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies, it was agreed that a formal Fish and Wildlife Coordination Act (FWCA) report would not be required for this rulemaking. As part of coordination efforts, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies provided technical assistance to Reclamation, which has been appropriately documented. If additional Federal actions are taken pursuant to these rules and regulations, FWCA coordination and formal reports will be accomplished, as appropriate to the future actions.

Endangered Species Act

Section 7 of the Endangered Species Act (ESA) establishes the interagency cooperation program under which Federal agencies have their primary compliance responsibilities. Reclamation, the U.S. Fish and Wildlife Service (FWS), and the U.S. National Marine Fisheries Service (NMFS) conducted a review under section 7(a)(1) of the ESA of the potential effects of this rulemaking. The FWS and NMFS concurred by separate letter that the action as proposed is not likely to adversely affect listed or proposed species, or designated or proposed critical habitats. Reclamation requested a list of federally proposed or listed threatened, endangered, and candidate species from the FWS and NMFS, and prepared information required to conduct a programmatic review under section 7(a)(1). The FWS and NMFS provided guidance on how these proposed rules could be used to afford overall conservation for listed species. Reclamation will consult and/or confer as specified in sections 7(a)(2) and 7(a)(4) with appropriate FWS and NMFS office prior to undertaking future site-specific Federal actions related to the implementation of this rulemaking, as appropriate, that ''may affect'' proposed or listed species or their proposed or designated critical habitat. As part of its obligations under the ESA, Reclamation intends to provide internal policy guidance to its area managers on section 7 and section 10 ESA procedures, and to assist districts in complying with section 10 procedures where required.

National Historic Preservation Act

Informal consultation was conducted with the Advisory Council on Historic Preservation to apprise them of this rulemaking. The draft EIS was sent to the Council and the 17 Western State Historic Preservation Offices for official comment. For future Federal actions taken pursuant to these rules that trigger compliance under the National Historic Preservation Act, procedures prescribed in 36 CFR 800 will be followed.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. E.O. 12866 defines a ''significant regulatory action'' as a regulatory action meeting any 1 of 4 criteria specified in the Executive Order. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that a regulatory flexibility analysis, describing the impact of regulations on small entities be prepared and published if the regulations will have a significant economic effect on a substantial number of small entities. The final rules generally reduce the economic burden on small entities by increasing the RRA forms threshold and modifying other provisions such as the application of the RRA to religious and charitable organizations. Other major provisions of the rules, such as leasing, trusts, and preparation of water conservation plans remain substantively unchanged. None of these provisions will have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

Acreage Limitation Rules and Regulations

Sections 206, 224(c), and 228 of the RRA (43 U.S.C. 390ff, 390ww(c), and 390zz) require, among other things, that (1) as a condition to the receipt of Reclamation irrigation water, each landholder must certify, in a form suitable to the Secretary, that they are in compliance with the provisions of the Act, and (2) districts must annually submit to Reclamation, in a form suitable to the Secretary, records and information necessary to implement the RRA. These mandatory requirements are addressed in § 426.18. To comply with these requirements, Reclamation provides forms for the landholders' and districts' use. The landholder forms have been approved by the OMB under control number 10006–0005. The district summary forms have been approved under control number 10006–0006. Both clearances expire on August 31, 1999.

The final rules contain a change, which will become effective on January 1, 1997, that will reduce the reporting burden by raising the acreage threshold for which RRA forms are required. Reclamation estimates that the reporting burden will be reduced by 3,300 hours by increasing the RRA forms threshold for qualified recipients. All districts subject to the acreage limitation provisions will be notified of their new RRA forms threshold for qualified recipients shortly after the publication of these final rules in the Federal Register.

Reclamation will initiate a full public process to revise its RRA forms to implement other changes to the Acreage Limitation Rules and Regulations that will become effective on January 1, 1998. This process will start early in 1997 and be completed in time to make such changes to the RRA forms for the 1998 water year.

Water Conservation Rules and Regulations

Section 210(b) of the RRA (43 U.S.C. 390jj(b)) requires that each district that has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended, develop a water conservation plan that includes specific features. Section 427.1(b) of the Water Conservation Rules and Regulations require that such plans be submitted to Reclamation.

In accordance with the Paperwork Reduction Act of 1995, Reclamation is announcing its intention to require the preparation of water conservation plans and the submittal of those plans to Reclamation for review. The respondents to this information collection will be all districts that meet the statutory requirement to prepare water conservation plans. However, it is estimated that several districts may be exempted from the requirement to prepare water conservation plans based principally on size of the district or through meeting the requirements of other State or Federal programs. Overall, no less than an estimated 340 districts would actually be required to prepare water conservation plans and submit them to Reclamation. It should be noted that water conservation plans have been a requirement of the RRA since 1982. Accordingly, the initial water conservation plan development work for most districts has already been accomplished and future efforts will be in updating the district plan every 5 years.

Executive Order 12612, Federalism

These final rules modify prior provisions for administering the RRA. The rules do not significantly change the relationship or relative roles of the Federal and State Government. They do not lead to Federal control over traditional State responsibilities, or decrease the ability of the States to make policy decisions with respect to their own functions. These rules do not affect the distribution of power and responsibilities among the various levels of government and do not preempt State law. In summary, these

rules do not have a significant impact on Federalism as described by E.O. 12612.

Executive Order 12630, Takings

These rules do not result in imposition of undue additional fiscal burdens on the public. These rules do not result in physical invasion or occupancy of private property or substantially affect its value or use. Specifically, these rules do not result in the taking of contractual rights to storage water in Reclamation reservoirs or water rights established under State law. In summary, these final rules do not have significant takings implications.

Unfunded Mandates Reform Act of 1995

This statute directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, when those actions may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any 1 year. These final rules will not result in the expenditure of $100,000,000 as described by this statute. These rules do not constitute an unfunded mandate within the meaning of the Unfunded Mandates Reform Act of 1995.

Authorship: These final regulations were written by RRA and water conservation staff under the administrative direction of the Director, Program Analysis Office, Denver, Colorado; and the policy direction of the Director, Office of Policy and External Affairs, Washington D.C.

List of Subjects in 43 CFR Parts 426 and 427

Administrative practice and procedure, Irrigation, Reclamation, Reporting and record keeping requirements.

Dated December 11, 1996.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons set forth in the preamble, 43 CFR chapter I is amended as follows:

Amendments Effective January 1, 1998

1. Part 426 is revised to read as follows:

PART 426—ACREAGE LIMITATION RULES AND REGULATIONS

Sec.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz–1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

§ 426.1 Purpose.

These rules and regulations implement certain provisions of Federal reclamation law that address the ownership and leasing of land on Federal Reclamation irrigation projects and the pricing of Federal Reclamation project irrigation water, and establish terms and conditions for the delivery of Federal Reclamation project irrigation water.

§ 426.2 Definitions.

As used in these rules:

Acreage limitation entitlements mean the ownership and nonfull-cost entitlements.

Acreage limitation provisions mean the ownership limitations and pricing restrictions specified in Federal reclamation law, including but not limited to, Sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

Acreage limitation status means whether a landholder is a qualified recipient, limited recipient, or prior law recipient.

Commissioner means the Commissioner of the Bureau of Reclamation, U.S. Department of the Interior.

Compensation rate means a water rate applied, in certain situations, to water delivery to ineligible land that is not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would apply to the landholder if the landholder was to receive irrigation water on land that exceeded a nonfull-cost entitlement.

Contract means any repayment or water service contract or agreement between the United States and a district providing for the payment to the United States of construction charges and normal operation, maintenance, and replacement costs under Federal reclamation law, even if the contract does not specifically identify the portion of the payment that is to be attributed to operation and maintenance and that portion that is to be attributed to construction. This definition includes contracts made in accordance with the Distribution System Loans Act, as amended (43 U.S.C. 421).

Contract rate means the assessment, as set forth in a contract, that is to be paid by a district to the United States, and recomputed if necessary on a per acre or per acre foot basis.

Dependent means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) and any subsequent amendments.

Direct when used in connection with the terms landholder, landowner, lessee, lessor, or owner, means that the party is the owner of record or holder of title, or the lessee of a land parcel, as appropriate. However, landholdings of joint tenants and tenants-in-common will not be considered direct under these regulations.

Discretionary provisions refer to Sections 390cc through 390hh, except for 390cc(b), of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

District means any individual or any legal entity established under State law that has entered into a contract or can potentially enter into a contract with the United States for irrigation water service through federally developed or improved water storage and/or distribution facilities.

Eligible, except where otherwise provided, means permitted to receive an irrigation water supply from a Reclamation project under applicable Federal reclamation law.

Entity, see definition of *legal entity*.

Excess land means nonexempt land that is in excess of a landowner's maximum ownership entitlement under the applicable provisions of Federal reclamation law.

Exempt, except where otherwise provided, means not subject to the acreage limitation provisions.

Extended recordable contract means a recordable contract whose term was extended due to moratoriums

established in 1976 and 1977 on the sale of excess land.

Full cost or *full-cost rate* means an annual rate established by Reclamation that amortizes the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded operation and maintenance deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. The full-cost rate includes actual operation, maintenance, and replacement costs required under Federal reclamation law.

Full-cost charge means the full-cost rate less the actual operation, maintenance, and replacement costs required under Federal reclamation law.

Indirect, when used in connection with the terms landholder, landowner, lessee, lessor or owner, means that such party is not the owner of record or holder of title, or the lessee of a land parcel, but that such party has a beneficial interest in the legal entity that is the owner of record or holder of title, or the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under these regulations. A security interest held by lenders, who are not otherwise considered a landholder of the land in question, in a legal entity or in a land parcel will not be considered an indirect interest or a beneficial interest for purposes of these regulations.

Individual means any natural person, including his or her spouse, and including other dependents; provided that, under prior law, the term individual does not include a natural person's spouse or dependents.

Ineligible, except where otherwise provided, means not permitted to receive an irrigation water supply under applicable Federal reclamation law regardless of the rate paid for such water.

Intermediate entity means an entity that is a part owner of another entity and in turn is owned by others, either another entity or individuals.

Involuntary acquisition means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

Irrevocable election means the execution of the legal instrument that a landholder subject to prior law provisions submits to become subject to the discretionary provisions of Federal reclamation law.

Irrevocable elector means a landholder who makes an irrevocable election to conform to the discretionary provisions of Federal reclamation law.

Irrigable land means land so classified by Reclamation under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided.

Irrigation land means any land receiving water from a Reclamation project facility for irrigation purposes in a given water year, except for land that has been specifically exempted by statute or administrative action from the acreage limitation provisions of Federal reclamation law.

Irrigation water means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with Reclamation.

Landholder means a party that directly or indirectly owns or leases nonexempt land.

Landholding means the total acreage of nonexempt land directly or indirectly owned or leased by a landholder.

Lease means any arrangement between a landholder (the lessor) and another party (the lessee) under which the economic risk and the use or possession of the lessor's land is partially or wholly transferred to the lessee. If a management arrangement or consulting agreement is one in which the manager or consultant performs a service for the landholder for a fee, but does not assume the economic risk in the farming operation, and the landholder retains the right to the use and possession of the land, is responsible for payment of the operating expenses, and is entitled to receive the profits from the farming operation, then the agreement or arrangement will not be considered to be a lease.

Legal entity or entity for the purpose of establishing application of the acreage limitation entitlements means, but is not limited to, corporations, partnerships, organizations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common. For purposes of the information requirements specified in § 426.18 only, trusts will be considered to be legal entities.

Limited recipient means any legal entity established under State or Federal law benefiting more than 25 natural persons. In order to become limited recipients, legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Nondiscretionary provisions means sections 390cc(b) and 390ii through 390zz–1 of the RRA.

Nonexempt land means either irrigation land or irrigable land that is subject to the acreage limitation provisions. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the nonexempt acreage. Areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public are excluded from nonexempt acreage.

Nonfull-cost entitlement means the maximum acreage a landholder may irrigate with irrigation water at a nonfull-cost rate.

Nonfull-cost rate means any water rate other than the full-cost rate. Nonfull-cost rates are paid for irrigation water made available to land in a landholder's nonfull-cost entitlement.

Nonproject water means water from sources other than Reclamation project facilities.

Nonresident alien means any natural person who is neither a citizen nor a resident alien of the United States.

Operation and maintenance costs or *O&M costs* mean all direct charges and overhead costs incurred by the United States after the date that Reclamation has declared a project, or a part thereof, substantially complete to operate, maintain, provide replacements of, administer, manage, and oversee project facilities and lands.

Ownership entitlement means the maximum acreage a landholder may directly or indirectly own and irrigate with irrigation water.

Part owner means an individual or legal entity that has a beneficial interest in a legal entity, but does not own 100 percent of that legal entity. A lender, who is not otherwise considered a landholder of the land in question, with a security interest in a legal entity or land owned by a legal entity shall not be considered a part owner under these regulations.

Prior law means the Reclamation Act of 1902, and acts amendatory and supplementary thereto (43 U.S.C. 371 *et seq.*) that were in effect prior to the enactment of the RRA, and as amended by the RRA.

Prior law recipient means an individual or legal entity that has not become subject to the discretionary provisions.

Project means any irrigation project authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the United States through Reclamation for the reclamation of lands. The term project includes any incidental features of an irrigation project.

Public entity means States, political subdivisions or agencies thereof, and agencies of the Federal Government.

Qualified recipient means an individual who is a citizen or a resident alien of the United States or any legal entity established under State or Federal law that benefits 25 natural persons or less. A married couple may become a qualified recipient if either spouse is a United States citizen or resident alien. In order to become qualified recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Reclamation means the Bureau of Reclamation, U.S. Department of the Interior.

Reclamation fund means a special fund established by the Congress under the Reclamation Act of 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues.

Recordable contract means a written contract between Reclamation and a landowner capable of being recorded under State law, providing for the disposition of land held by that landowner in excess of the ownership limitations of Federal reclamation law.

Resident alien means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.

RRA means the Reclamation Reform Act of 1982, Public Law 97–293, Title II, 96 Stat. 1263, (43 U.S.C. 390aa *et seq.*) as amended.

Secretary means Secretary of the U.S. Department of the Interior.

Standard certification or reporting forms mean forms on which landholders provide complete information about the directly and indirectly owned and leased nonexempt lands in their landholdings.

Water year means a 365-day period (or 366 days during leap years) whose start date is specified within a contract between Reclamation and the district or through some other agreement between Reclamation and the district.

Westwide means the 17 Western States where Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

§ 426.3 Conformance to the discretionary provisions.

(a) *Districts that are subject to the discretionary provisions.* Unless an exemption in § 426.16 applies, a district is subject to the discretionary provisions if:

(1) The district executes a new or renewed contract with Reclamation after October 12, 1982. The discretionary provisions apply as of the execution date of the new or renewed contract;

(2) The district amends its contract to conform to the discretionary provisions:

(i) A district may ask Reclamation to amend its contract to conform to the discretionary provisions;

(ii) The district's request to Reclamation must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, actions required by applicable State law to amend its contract; and

(iii) If the requirements of paragraphs (a)(2)(i) and (ii) of this section are met, then Reclamation will amend the contract, and the district becomes subject to the discretionary provisions from the date the district's request was submitted to Reclamation;

(iv) If the district only wants to amend its contracts to become subject to the discretionary provisions, the amendments need only be to the extent required to conform to the discretionary provisions; or

(3) The district amends its contract after October 12, 1982, to provide the district with additional or supplemental benefits. The amendment must also include the district's conformance to the discretionary provisions:

(i) The discretionary provisions apply as of the date that Reclamation executes the contract amendment;

(ii) For purposes of application of the acreage limitation provisions Reclamation considers a contract amendment as providing additional or supplemental benefits if that amendment:

(A) Requires the United States to expend significant funds;

(B) Requires the United States to commit significant additional water supplies; or

(C) Substantially modifies contract payments due the United States; and

(iii) For purposes of application of the acreage limitation provisions Reclamation does not consider the following contract actions as providing additional or supplemental benefits:

(A) The construction of facilities for conveyance of irrigation water for which districts contracted on or before October 12, 1982;

(B) Minor drainage and construction work contracted under a prior repayment or water service contract;

(C) Operation and maintenance (O&M) amendments;

(D) The deferral of payments provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.16(d);

(F) The transfer of water on an annual basis from one district to another, provided that:

(*1*) Both districts have contracts with the United States;

(*2*) The rate paid by the district receiving the transferred water:

(*i*) Is the higher of the applicable water rate for either district;

(*ii*) Does not result in any increased operating losses to the United States above those that would have existed in the absence of the transfer; and

(*iii*) Does not result in any decrease in capital repayment to the United States below what would have existed in the absence of the transfer; and

(*3*) The recipients of the transferred water pay a rate for the water that is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water;

(G) Contract actions pursuant to the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506); or

(H) Other contract actions that Reclamation determines do not provide additional or supplemental benefits.

(b) *Districts that are subject to prior law.* Any district which had a contract in force on October 12, 1982, that required landholders to comply with the ownership limitations of Federal reclamation law remains subject to prior law unless and until the district:

(1) Enters into a new or renewed contract requiring it to conform to the discretionary provisions, as provided in paragraph (a)(1) of this section;

(2) Makes a contract action requiring conformance to the discretionary provisions, as provided in paragraphs (a)(2) or (3) of this section; or

(3) Becomes exempt, as provided in § 426.16.

(c) *Standard RRA contract article.* (1) New or renewed contracts executed after October 12, 1982, or contracts that are amended to conform to the discretionary provisions before or on the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

(2) New or renewed contracts executed after the effective date of these rules, or contracts that are amended to conform to the discretionary provisions after the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(d) *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions.* If a district provides irrigation water to other districts through subcontracts and the master contracting district is subject to:

(1) The discretionary provisions, then all subcontracting districts who are entitled to receive irrigation water must also conform to the discretionary provisions; or

(2) Prior law, then the subcontracting district can amend its subcontract to conform to the discretionary provisions without subjecting the master contractor or any other subcontractor of the master contractor to the discretionary provisions. If a subcontract that does not include the United States as a party is amended to conform to the discretionary provisions, or the subcontract is a new or renewed contract executed after October 12, 1982, then the amended, new, or renewed subcontract must include the United States as a party.

(e) *The effect on a landholder's status when a district becomes subject to the discretionary provisions.* If a district conforms to the discretionary provisions and the landholder is:

(1) Other than a nonresident alien or a legal entity that is not established under State or Federal law, and is:

(i) A direct landholder in that district, then the landholder becomes subject to the discretionary provisions and the associated acreage limitation status will apply in any district in which the landholder holds land; or

(ii) Only an indirect landholder in that and all other discretionary provisions districts, then the landholder's acreage limitation status is not affected. Such a landholder can receive irrigation water as a prior law recipient on indirectly held lands in districts that conform to the discretionary provisions.

(2) A nonresident alien, or legal entity not established under State or Federal law, and the landholder is:

(i) A direct landholder, then since such a landholder cannot become subject to, and has no eligibility under the discretionary provisions:

(A) All direct landholdings in districts that conform to the discretionary provisions become ineligible; and

(B) Directly held land that becomes ineligible as a result of the district's action to conform to the discretionary provisions may be placed under recordable contract as subject to the conditions specified in § 426.12; or

(ii) An indirect landholder, then such a landholder may receive irrigation water on land indirectly held in districts conforming to the discretionary provisions, with the entitlements for such landholder determined as specified in § 426.8.

(f) *Landholder actions to conform to the discretionary provisions.* (1) In the absence of a district's action to conform to the discretionary provisions, United States citizens, resident aliens, or legal entities established under State or Federal law, can elect to conform to the discretionary provisions by executing an irrevocable election. Upon execution of an irrevocable election:

(i) The elector's entire landholding in all districts shall be subject to the discretionary provisions;

(ii) The election shall be binding on the elector and his or her landholding, but will not be binding on subsequent landholders of that land;

(iii) An irrevocable election by a legal entity is binding only upon that entity and not on the part owners of that entity;

(iv) An irrevocable election by a part owner of a legal entity binds only the part owner making the election and not the entity or other part owners of the entity; and

(v) An irrevocable election by a lessor does not affect the status of a lessee, and vice versa. However, the eligibility and entitlement of neither a lessor nor a lessee may be enhanced through leasing.

(2) A landholder makes an irrevocable election by completing a Reclamation issued irrevocable election form:

(i) The elector's original irrevocable election form must be filed by the district with Reclamation and must be accompanied by a completed certification form, as specified in § 426.18;

(ii) The elector must file copies of the irrevocable election and certification forms concurrently with each district where the elector holds nonexempt land;

(iii) Reclamation will prepare a letter advising the recipient of the approval or disapproval of the election. Reclamation will base approval upon whether the election form and the accompanying certification form(s) indicate the elector's satisfaction of the various requirements of Federal reclamation law and these regulations;

(iv) If the election is approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent by Reclamation to each district where the elector holds land;

(v) The district(s) shall retain the forms; and

(vi) If the irrevocable election is disapproved, the landholder and the district will be advised by letter along with the reasons for disapproval.

(3) A landholder that only holds land indirectly in a district that has conformed to the discretionary provisions, other than a nonresident alien or a legal entity not established under State or Federal law, may make an irrevocable election also by simply submitting certification forms to all districts where the landholder holds land subject to the acreage limitation provisions. An election made in this manner is binding in all districts in which such elector holds land.

(g) *District reliance on irrevocable election form information.* The district is entitled to rely on the information contained in the irrevocable election form. The district does not need to make an independent investigation of the information.

(h) *Time limits for amendments or elections to conform to the discretionary provisions.* Reclamation will allow at anytime a landholder to elect or a district to amend its contract to conform to the discretionary provisions. An irrevocable election that was made after April 12, 1987, but on or before May 13, 1987, shall be considered effective as of April 12, 1987.

§ 426.4 Attribution of land.

(a) *Prohibition on increasing acreage limitation entitlements.* Except as specifically provided in these rules, a landholder cannot increase acreage limitation entitlements or eligibility by

acquiring or holding a beneficial interest in a legal entity. Similarly, the acreage limitation status of an individual or legal entity that holds or has acquired a beneficial interest in another legal entity will not be permitted to enlarge the latter legal entity's acreage limitation entitlements or eligibility.

(b) *Attribution of owned land.* For purposes of determining acreage to be counted against acreage limitation entitlements, acreage will be attributed to all:

(1) Direct landowners in proportion to the direct beneficial interest the landowners own in the land; and

(2) Indirect landowners in proportion to the indirect beneficial interest they own in the land.

(c) *Attribution of leased land.* Leased land will be attributed to the direct and indirect landowners as well as to the direct and indirect lessees in the same manner as described in paragraphs (b) and (d) of this section.

(d) *Attribution of land held through intermediate entities.* If land is held by a direct landholder and a series of indirect landholders, Reclamation will attribute that land to the acreage limitation entitlements of the direct landholder and each indirect landholder in proportion to each landholder's beneficial interest in the entity that directly holds the land.

(e) *Leasebacks.* Any land a landholder directly or indirectly owns and that is directly or indirectly leased back will only count once against that particular landholder's nonfull-cost entitlement.

(f) *Effect on an entity of attribution to part owners.* For purposes of determining eligibility, the entire landholding will be attributed to all the direct and indirect landholders. If the interests in a legal entity are:

(1) Undivided, then all of the indirect part owners must be eligible in order for the entity to be eligible; or

(2) Divided, in such a manner that specific parcels are attributable to each indirect landholder, then the entity may qualify for eligibility on those portions of the landholding not attributable to any part owner who is ineligible.

§ 426.5 Ownership entitlement.

(a) *General.* Except as provided in §§ 426.12 and 426.14, all nonexempt land directly or indirectly owned by a landholder counts against that landholder's ownership entitlement. In addition, land owned or controlled by a public entity that is leased to another party counts against the lessee's ownership entitlement, as specified in § 426.10.

(b) *Qualified recipient ownership entitlement.* A qualified recipient is entitled to receive irrigation water on a maximum of 960 acres of owned nonexempt land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.

(c) *Limited recipient ownership entitlement.* A limited recipient is entitled to receive irrigation water on a maximum of 640 acres of owned nonexempt land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.

(d) *Prior law recipient ownership entitlement.* (1) Ownership entitlements for prior law recipients are determined by whether the recipient is one individual or a married couple, and for entities by the type of entity, as follows:

(i) An individual subject to prior law is entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land;

(ii) Married couples who hold equal interests are entitled to receive irrigation water on a maximum of 320 acres of jointly owned nonexempt land;

(iii) Surviving spouses until remarriage are entitled to receive irrigation water on that land owned jointly in marriage up to a maximum of 320 acres of owned nonexempt land. If any of that land should be sold, the applicable ownership entitlement would be reduced accordingly, but not to less than 160 acres of owned nonexempt land;

(iv) Children are each entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land, regardless of whether they are independent or dependent;

(v) Joint tenancies and tenancies-in-common subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per tenant, provided each tenant holds an equal interest in the tenancy;

(vi) Partnerships subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per partner if the partners have separable and equal interests in the partnership and the right to alienate that interest. Partnerships where each partner does not have a separable interest and the right to alienate that interest are entitled to receive irrigation water on a maximum of 160 acres of nonexempt land owned by the partnership; and

(vii) All corporations subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land.

(2) Prior law recipient ownership entitlements specified in this section apply on a westwide basis unless the land was acquired by the current owner on or before December 6, 1979. For land acquired by the current owner on or before that date, prior law ownership entitlements apply on a district-by-district basis.

(3) For those entities where an equal interest held by the part owners would result in a 160-acre per part owner entitlement for the entity, if the part owners interests are not equal then the entitlement of the entity will be determined by the relative interest held in the entity by each part owner.

§ 426.6 Leasing and full-cost pricing.

(a) *Conditions that a lease must meet.* Districts can make irrigation water available to leased land only if the lease meets the following requirements. Land that is leased under a lease instrument that does not meet the following requirements will be ineligible to receive irrigation water until the lease agreement is terminated or modified to satisfy these requirements.

(1) The lease is in writing;

(2) The lease includes the effective date and term of the lease, the length of which must be:

(i) 10 years or less, including any exercisable options; however, for perennial crops with an average life longer than 10 years, the term may be equal to the average life of the crop as determined by Reclamation, and

(ii) In no case may the term of a lease exceed 25 years, including any exercisable options;

(3) The lease includes a legal description, that is at least as detailed as what is required on the standard certification and reporting forms, of the land subject to the lease;

(4) Signatures of all parties to the lease are included;

(5) The lease includes the date(s) or conditions when lease payments are due and the amounts or the method of computing the payments due;

(6) The lease is available for Reclamation's inspection and Reclamation reviews and approves all leases for terms longer than 10 years; and

(7) If either the lessor or the lessee is subject to the discretionary provisions, the lease provides for agreed upon payments that reflect the reasonable value of the irrigation water to the productivity of the land; except

(8) Leases in effect as of the effective date of these regulations do not need to meet the criteria specified under paragraphs (a) (3) and (4) of this section, unless and until such leases are renewed.

(b) *Nonfull-cost entitlements.* (1) The nonfull-cost entitlement for qualified recipients is 960 acres, or the Class 1 equivalent thereof.

(2) The nonfull-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the Class 1 equivalent thereof. The nonfull-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero.

(3) The nonfull-cost entitlement for prior law recipients is equal to the recipient's maximum ownership entitlement as set forth in § 426.5(d). However, for the purpose of computing the acreage subject to full cost, all owned and leased irrigation land westwide must be included in the computation.

(c) *Application of the nonfull-cost and full-cost rates.* (1) A landholder may irrigate at the nonfull-cost rate directly and indirectly held acreage equal to his or her nonfull-cost entitlement.

(2) If a landholding exceeds the landholder's nonfull-cost entitlement, the landholder must pay the appropriate full-cost rate for irrigation water delivered to acreage that equals the amount of leased land that exceeds that entitlement.

(3) In the case of limited recipients, a landholder does not have to lease land to exceed a nonfull-cost entitlement, since the nonfull-cost entitlement is less than the ownership entitlement. Therefore, limited recipients must pay the appropriate full-cost rate for irrigation water delivered to any acreage that exceeds their nonfull-cost entitlement.

(d) *Types of lands that count against the nonfull-cost entitlement.* (1) All directly and indirectly owned irrigation land and irrigation land directly or indirectly leased for any period of time during 1-water year counts towards a landholder's nonfull-cost entitlement, except:

(i) Involuntarily acquired land, as provided in §§ 426.12 and 426.14; and

(ii) Land that is leased for incidental grazing or similar purposes during periods when the land is not receiving irrigation water.

(2) Reclamation's process for determining if a nonfull-cost entitlement has been exceeded is as follows:

(i) All land counted toward a landholder's nonfull-cost entitlement will be counted on a cumulative basis during any 1-water year;

(ii) Once a landholder's nonfull-cost entitlement is met in a given water year, any additional eligible land may be irrigated only at the full-cost rate; and

(iii) Irrigation land will be counted towards nonfull-cost entitlements on a westwide basis, even for prior law recipients, regardless of the date of acquisition.

(e) *Selection of nonfull-cost land.* (1) A landholder that has exceeded his or her nonfull-cost entitlement may select in each water year, from his or her directly held irrigation land, the land that can be irrigated at a nonfull-cost rate and the land that can be irrigated only at the full-cost rate. Selections for full-cost or nonfull-cost land may include:

(i) Leased land;

(ii) Nonexcess owned land;

(iii) Land under recordable contract, unless that land is already subject to application of the full-cost rate under an extended recordable contract; or

(iv) A combination of all three.

(2) Once a landholder has received irrigation water on a given land parcel during a water year, the selection of that parcel as full cost or nonfull-cost is binding until the landholder has completed receiving irrigation water westwide for that water year.

(f) *Applicability of a full-cost selection to an owner or lessee.* If a landowner or lessee should select land as subject to full-cost pricing, then that land can receive irrigation water only at the full-cost rate, regardless of eligibility of the other party to receive the irrigation water at the nonfull-cost rate.

(g) *Subleased land.* Land that is subleased (the lessee transfers possession of the land to a sublessee) will be attributed to the landholding of the sublessee and not to the lessee.

(h) *Calculating full-cost charges.* Reclamation will calculate a district's full-cost charge using accepted accounting procedures and under the following conditions.

(1) The full-cost charge does not recover interest retroactively before October 12, 1982. But, interest on the unpaid balance does accrue from October 12, 1982, where the unpaid balance equals the irrigation allocated construction costs for facilities in service plus cumulative federally funded O&M deficits, less payments.

(2) The full-cost charge will be determined:

(i) As of October 12, 1982, for contracts entered into before that date regardless of amendments to conform to the discretionary provisions; and

(ii) At the time of contract execution for new and renewed contracts entered into on or after October 12, 1982.

(3) For repayment contracts, the full-cost charge will fix equal annual payments over the amortization period. For water service contracts, the full-cost charge will fix equal payments per acre-foot of projected water deliveries over the amortization period.

(4) If there are additional construction expenditures, or if the cost allocated to irrigation changes, then a new full-cost charge will be determined.

(5) Reclamation will notify the respective districts of changes in the full-cost charge at the time the district is notified of other payments due the United States.

(6) In determining full-cost charges, the following factors will be considered:

(i) *Amortization period.* The amortization period for calculating the full-cost charge is the remaining balance of:

(A) For contracts entered into before October 12, 1982, the contract repayment period as of October 12, 1982;

(B) For contracts entered into on or after October 12, 1982, the contract repayment period;

(C) For water service contracts, the period from October 12, 1982, or the execution date of the contract, whichever is later, to the anticipated date of project repayment; and

(D) In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures; but, in no case will the amortization period exceed the project payback period authorized by the Congress;

(ii) *Construction costs.* For determining full cost, construction costs properly allocable to irrigation are those Federal project costs for facilities in service that have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as:

(A) Planning;

(B) Design;

(C) Land;

(D) Rights-of-way;

(E) Water-rights acquisitions;

(F) Construction expenditures;

(G) Interest during construction; and

(H) When appropriate, transfer costs associated with services provided from other projects;

(iii) *Facilities in service.* Facilities in service are those facilities that are in operation and providing irrigation services;

(iv) *Operation and maintenance (O&M) deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation that have been federally funded and that have not been paid by the district;

(v) *Payments received.* In calculating the payments that have been received,

all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Federal reclamation law, policy, and applicable contract provisions will be considered. These may include:

(A) Direct repayment contract revenues;

(B) Net water service contract income;

(C) Contributions;

(D) Ad valorem taxes; and

(E) Other miscellaneous revenues and credits excluding power and municipal and industrial (M&I) revenues;

(vi) *Interest rates*. Interest rates to be used in calculating full-cost charges will be determined by the Secretary of the Treasury as follows:

(A) For irrigation water delivered to qualified recipients, limited recipients receiving water on or before October 1, 1981, and extended recordable contract land owned by prior law recipients, the interest rate for expenditures made on or before October 12, 1982, will be the greater of 7.5 percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year when the expenditures were made by the United States. The interest rate for expenditures made after October 12, 1982, will be the arithmetic average of:

(*1*) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year when the expenditures are made; and

(*2*) The weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year the expenditures are made;

(B) For irrigation water delivered to limited recipients not receiving irrigation water on or before October 1, 1981, and prior law recipients, except for land owned subject to extended recordable contract, the interest rate will be determined as of the fiscal year preceding the fiscal year the expenditures are made, except that the interest rate for expenditures made before October 12, 1982, will be determined as of October 12, 1982. The interest rate will be based on the arithmetic average of:

(*1*) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance; and

(*2*) The weighted average yield on all interest-bearing marketable issues sold by the Treasury.

(C) Landholders who were prior law recipients and become subject to the discretionary provisions after April 12, 1987, are eligible for the full-cost interest rate specified in paragraph (h)(6)(vi)(A) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981, in that case they remain subject to the full-cost interest rate specified in paragraph (h)(6)(vi)(B) of this section.

(i) *Direct and proportional charges for full-cost water.* In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost assessments will be made on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to make full-cost assessments:

(1) Assessments will be based on the actual amounts of water used in situations where measuring devices are in use, to the satisfaction of Reclamation, to reasonably determine the amounts of irrigation water being delivered to full-cost and nonfull-cost land; or

(2) In situations where, as determined by Reclamation, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and nonfull-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.

(j) *Disposition of revenues obtained through full-cost water pricing.*

(1) *Legal deliveries*. If irrigation water has been delivered in compliance with Federal reclamation law and these regulations, then:

(i) That portion of the full-cost rate that would have been collected if the land had not been subject to full cost will be credited to the annual payments due under the district's contractual obligation;

(ii) Any O&M revenues collected over and above those required under the district's contract will be credited to the project O&M account; and

(iii) The remaining full-cost revenues will be credited to the Reclamation fund unless otherwise provided by law, with any capital component of the full-cost rate credited to project repayment, if applicable.

(2) *Illegal deliveries*. Revenues resulting from the assessment of compensation charges for illegal deliveries of irrigation water will be deposited into the Reclamation fund in their entirety, and will not be credited toward any contractual obligation, or O&M or repayment account of the district or project. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

§ 426.7 Trusts.

(a) *Definitions for purposes of this section:*

Grantor revocable trust means a trust that holds irrigable land or irrigation land that may be revoked at the discretion of the grantor(s), or terminated by the terms of the trust, and revocation or termination results in title to the land held in trust reverting either directly or indirectly to the grantor(s).

Irrevocable trust means a trust that holds irrigable land or irrigation land and does not allow any individual, including the grantor or beneficiaries, the discretion to decide when or under what conditions the trust terminates, and that upon termination the title to the land held in trust transfers either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

Otherwise revocable trust means a trust that holds irrigable land or irrigation land and that may be revoked at the discretion of the grantor(s) or other parties, or terminated by the terms of the trust, and revocation or termination results in the title to the land held in trust transferring either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

(b) *Attribution of land held by a trust.* The acreage limitation entitlements of a trust are only limited by the acreage limitation entitlements of the trustees, grantors, or beneficiaries to whom land held by the trust must be attributed as provided for in § 426.4. The entitlements of the parties to whom trusted land is attributed are determined according to §§ 426.5, 426.6, and 426.8, and other applicable provisions of Federal reclamation law and these regulations. Reclamation attributes nonexempt land held by a trust to the following parties:

(1) For land held in an *irrevocable trust*, the land is attributed to the beneficiaries in proportion to their beneficial interest in the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(1) (i) and (ii) of this section are met. If the trust fails to meet any portion of these criteria, Reclamation attributes the land held in the trust to the trustee.

(i) The trust is in written form and approved by Reclamation; and

(ii) The beneficiaries of the trust and the beneficiaries' respective interests are identified within the trust document.

(2) For land held in a *grantor revocable trust*, the land is attributed to the grantor according to the grantor's acreage limitation status and the land's eligibility immediately prior to its transfer to the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section are met. If the trust fails to meet any portion of these criteria, the land held in trust will be ineligible to receive irrigation water until all of the criteria are met. The only exception is if the trust's and grantor's standard certification or reporting forms indicate that the land held by the trust has been attributed to the trust's grantor(s).

(i) The trust meets the criteria specified in paragraph (b)(1) of this section;

(ii) The grantor(s) of all land held by the trust is (are) identified within the trust document;

(iii) The conditions under which the trust may be revoked or terminated are identified within the trust document; and

(iv) The recipient(s) of the trust land upon revocation or termination is (are) identified within the trust document.

(3) For land held in an *otherwise revocable trust*, the land is attributed to the beneficiaries in proportion to their beneficial interests in the trust. However, this attribution is only made if the trust meets the criteria specified in paragraph (b)(1) of this section and the trust meets the additional criteria specified in paragraph (b)(2) of this section.

(i) If Reclamation cannot determine who will hold the land in trust upon termination or revocation of the trust, or who is the grantor(s) of the land held in trust, then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in paragraph (b)(2) of this section.

(ii) If the trust fails to meet the criteria listed in paragraph (b)(1) of this section, but does meet the additional criteria listed in paragraphs (b)(2) (ii) through (iv) of this section, then the land is attributed to the trustee.

(c) *Class beneficiaries.* For purposes of identifying beneficiaries, a class of beneficiaries specified within the trust document will be acceptable, as long as the trust document is specific as to the beneficial interest to which each member of the class will be entitled and the members of the class are identifiable.

(1) Attribution during any given water year will be provided only to class beneficiaries that are natural persons and established legal entities. For purposes of administering the acreage limitation provisions, attribution to unborn or deceased persons, or entities not yet established, will not be allowed.

(2) If a trust includes a class of beneficiaries to which land subject to the acreage limitation provisions will be attributed, the trustee and each of the beneficiaries will be required to submit standard certification or reporting forms annually. The submittal of verification forms, as provided in § 426.18(l), will not be applicable to such trusts.

(d) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revocable trust that meets the criteria specified in paragraph (b)(2) of this section is revised by the grantor in a manner that precludes attribution of the land held in trust to the grantor:

(1) Before April 20, 1988, Reclamation will not assess full-cost rates for the land held by the revised trust for the period before it was revised; or

(2) On or after April 20, 1988, Reclamation will charge the full-cost rate for irrigation water delivered to any land held by the trust that exceeds the grantor's nonfull-cost entitlement, commencing December 23, 1987, until the trust agreement is revised to make it an irrevocable trust or an otherwise revocable trust.

§ 426.8 Nonresident aliens and foreign entities.

(a) *Definitions for purposes of this section:*

Domestic entity means a legal entity established under State or Federal law.

Foreign entity means a legal entity not established under State or Federal law.

(b) *Restriction on receiving irrigation water.* Notwithstanding any other provision of Federal reclamation law or these regulations, a nonresident alien or foreign entity that directly holds land in a district that is subject to the discretionary provisions is not eligible to receive irrigation water on such land. Nonresident aliens and foreign entities may hold land indirectly in discretionary districts and both directly and indirectly in prior law districts and receive irrigation water on such land, subject to their acreage limitation entitlements.

(c) *Entitlements for nonresident aliens and foreign entities.* Except as provided in paragraph (d) of this section, all nonresident aliens and foreign entities will be considered prior law recipients, and shall have entitlements and eligibility only as prior law recipients as specified in §§ 426.5(d) and 426.6(b)(3).

(d) Exception to prior law entitlement application. (1) If a nonresident alien is a citizen of or a foreign entity is established in a country that has one of the following treaties with the United States or is a member of the listed organization, then that nonresident alien or foreign entity will not be restricted to prior law entitlements, provided the eligible landholding subject to the acreage limitation provisions is held indirectly:

(i) Friendship, Commerce and Navigation Treaty;

(ii) Bilateral Investment Treaty;

(iii) North American Free Trade Agreement;

(iv) Canada—United States Free Trade Agreement; or

(v) Organization for Economic Cooperation and Development.

(2) Nonresident aliens and foreign entities that meet the criteria listed in paragraph (d)(1) of this section will be required to provide proof of citizenship or documentation certifying the country in which the entity in question was established. Districts will retain such documentation in the landholder's file.

(3) If a nonresident alien or foreign entity meets the criteria listed in paragraph (d)(1) of this section, and only holds eligible land subject to the acreage limitation provisions indirectly, then the nonresident alien may be treated as a United States citizen or the foreign entity may be treated as a domestic entity for purposes of application of the acreage limitation provisions for the land held indirectly.

(i) The nonresident alien or foreign entity may submit an irrevocable election to conform to the discretionary provisions as provided for in § 426.3(f). Conformance to the discretionary provisions through the submittal of a certification form will not be allowed as specified in § 426.3(f)(3).

(ii) Upon Reclamation's approval of the irrevocable election, a nonresident alien will be treated as having the ownership entitlement of a qualified recipient as described in § 426.5(b), for any land held indirectly. A foreign entity will be treated as a qualified recipient or a limited recipient as determined by the number of natural persons who are beneficiaries of the entity as specified by the definitions found in § 426.2, and the subsequent entitlement as provided in § 426.5(b) or (c), for any land held indirectly. The applicable nonfull-cost entitlements will be determined as described in § 426.6(b).

(iii) Reclamation will not approve irrevocable elections submitted by a nonresident alien or a foreign entity that

holds any land directly in any prior law district.

(iv) Reclamation will not approve irrevocable elections submitted by a nonresident alien that is not a citizen of or foreign entity that has not been established in a country that has a treaty or international membership as specified in paragraph (d)(1) of this section.

§ 426.9 Religious or charitable organizations.

(a) *Definitions for purposes of this section:*

Central organization means the organization to which all subdivisions, such as parishes, congregations, chapters, etc., ultimately report.

Religious or charitable organization means an organization or each congregation, chapter, parish, school, ward, or similar subdivision of a religious or charitable organization that is exempt from paying Federal taxes under § 501 of the Internal Revenue Code of 1954, as amended.

(b) *Acreage limitation status of religious or charitable organizations that are subject to the discretionary provisions.* (1) Religious or charitable organizations or their subdivisions that are subject to the discretionary provisions have qualified recipient status, if:

(i) The organization's or subdivision's agricultural produce and proceeds from the sales of such produce are used only for charitable purposes;

(ii) The organization or subdivision, itself, operates the land; and

(iii) No part of the net earnings of the organization or subdivision accrues to the benefit of any private shareholder or individual.

(2) If Reclamation determines that a religious or charitable organization or any of its subdivisions does not meet the criteria listed in paragraph (b)(1) of this section, then:

(i) If the central organization has not met the criteria, Reclamation will treat the entire organization, including all subdivisions, as a single entity; or

(ii) If a subdivision has not met the criteria, only that subdivision and any subdivisions of it will be treated as a single entity and not the central organization or other subdivisions of the central organization; and

(iii) In order to ascertain the acreage limitation status, Reclamation determines the total number of members in both the organization that has not met the criteria and in any subdivisions that are under that organization. If Reclamation determines that total number equals:

(A) More than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a limited recipient status; or

(B) 25 members or less, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a qualified recipient status.

(c) *Acreage limitation status of prior law religious or charitable organizations or subdivisions.* (1) Religious or charitable organizations and each of their subdivisions are treated as separate prior law corporations, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.

(2) Reclamation will treat the entire organization, including all subdivisions, as a single prior law corporation, if the central organization or any subdivisions do not meet the criteria specified in paragraph (b)(1) of this section.

(d) *Affiliated farm management between a religious or charitable organization and a more central organization of the same affiliation.* Reclamation permits a subdivision of a religious or charitable organization to retain its status as an individual entity while cooperating with a more central organization of the same affiliation in farm operation and management. Reclamation permits affiliated farm management regardless of whether the subdivision is the owner of the land being operated.

§ 426.10 Public entities.

(a) *Application of the acreage limitation provisions to public entities.* Reclamation does not subject public entities to the acreage limitation provisions of Federal reclamation law with respect to land that Reclamation determines public entities farm primarily for nonrevenue producing functions. However, public entities are required to meet certification and reporting requirements as specified in § 426.18.

(b) *Sale of public land.* Reclamation does not require public entities to seek price approval before they sell nonexempt lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.

(c) *Leasing of public land.* Public entities can lease irrigation land that they own or control to eligible landholders. Land leased from a public entity counts towards the lessee's ownership and nonfull-cost entitlement.

§ 426.11 Class 1 equivalency.

(a) *General application.* Class 1 equivalency determinations will establish, on a district-wide basis, the acreage of land with lower productive potential (Classes 2, 3, and 4) that would be equivalent in productive potential to the most suitable land (Class 1) in the local agricultural economic setting.

(1) Reclamation establishes equivalency factors by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on Class 1 land.

(2) For equivalency purposes, Reclamation will classify all irrigable land as Class 1, 2, or 3; no other classifications are permissible for irrigable land. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(3) Once the Class 1 equivalency determinations have been made, individual landowners with land classified as 2 or 3 for equivalency purposes will have the right to adjust their actual landholding acreage to its Class 1 equivalent acreage.

(4) In a district subject to prior law, Class 1 equivalency can be applied only to landholders who are subject to the discretionary provisions.

(5) Requests for equivalency determinations will be scheduled by region, with the regional director of each Reclamation region having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(b) *Who may request a Class 1 equivalency determination?* Only districts may request Class 1 equivalency determinations. Upon the request of any district subject to the acreage limitation provisions, Reclamation will make a Class 1 equivalency determination for that district. Equivalency determinations can be made only on a district-wide basis.

(c) *Definition of Class 1 land.* (1) Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting that:

(i) Most completely meets the various parameters and specifications established by Reclamation for irrigable land classes;

(ii) Has the relatively highest level of suitability for continuous, successful irrigation farming; and

(iii) Is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The equivalency

analysis will establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of Class 1 land.

(2) All land that Reclamation has not classified, or for which Reclamation has not yet performed the necessary economic studies, will be considered Class 1 land for the purposes of determining entitlements under these rules until such time as the necessary classifications or studies have been completed.

(d) *Determination of land classes.* The extent and location of Class 1 land and land in lower land classes in a district have been, or will be, determined by Reclamation.

(1) Reclamation will take into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors will include, but are not limited to the following and their effect on agricultural practices:

(i) The physical and chemical characteristics of the soil;

(ii) Topography;

(iii) Drainage status;

(iv) Costs of production;

(v) Land development costs;

(vi) Water quality and adequacy;

(vii) Elevation;

(viii) Crop adaptability; and

(ix) Length of growing season.

(2) Acceptable levels of detail for land classification studies to be utilized in making Class 1 equivalency determinations for a given district will be evaluated on the basis of the physical and agricultural economic characteristics of the area. For districts where the sole purpose of the land classification study is for a Class 1 equivalency determination, the level of detail of the land classification to be made will never be greater than that required to make a Class 1 equivalency determination.

(3) Reclamation will pay for at least a portion of the costs associated with the land classification study. The amount to be paid by Reclamation will be determined as follows:

(i) Reclamation has provided basic land classification data as part of the project development process since 1924. Accordingly, if Reclamation determines that acceptable land classification data are not available for making requested Class 1 equivalency determinations and if the project was authorized for construction since 1924, such data will be made available at Reclamation's expense; or

(ii) For each district located in projects authorized for construction prior to 1924, Reclamation will pay 50 percent of the costs and the district must pay 50 percent of the costs of new land classification studies required to make accurate Class 1 equivalency determinations.

(4) When basic land classification data are available for a district, but the district does not agree with the accuracy or asserts that the data have become outdated, the district may request, and Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (43 U.S.C. 485), with the following conditions:

(i) The requesting district will pay 50 percent of the costs of performing such reclassifications and 100 percent of the costs of all other studies involved in the equivalency process; and

(ii) The results of such reclassifications will be binding upon the requesting district and Reclamation.

(e) *Additional studies required for Class 1 equivalency determinations.* Economic studies related to Class 1 equivalency determinations will measure net farm income by land classes within the district.

(1) Net farm income will be determined by considering the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land, after all fixed and variable costs of production, including costs of irrigation service, are accounted for.

(2) Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of Class 1 land.

(3) The cost of performing new or additional economic studies and computations inherent in the equivalency process will be the responsibility of the requesting district.

(f) *Use of Class 1 equivalency with the acreage limitation provisions.* Class 1 land and land in lower classes will be identified on a district basis by Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors will then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they will be developed as specified in paragraph (d) of this section using standard procedures established by Reclamation.

(1) For purposes of ownership entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation concerning the district's request for equivalency.

(i) Reclamation will protect excess landowners' property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district requests an equivalency determination at least 6 months prior to the maturity of the recordable contract, the district fulfills its obligations under this section, and the district notifies Reclamation 6 months in advance of the maturity dates for the need for an expedited review.

(ii) Once the determination has been made, owners of land subject to recordable contracts may withdraw land from such recordable contracts in order to reach their ownership entitlement in Class 1 equivalent acreage.

(iii) The requirement that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.

(iv) In cases of equivalency determination disputes, Reclamation will not undertake the sale of the reasonable increment of the excess land under a matured recordable contract which could be affected by a reclassification, provided the dispute is determined by Reclamation not to be an attempt to thwart the sale of excess land.

(2) For purposes of nonfull-cost entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation on a district's request for equivalency.

(i) During the time when such determinations are pending, the full-cost rate will be assessed based on a landholder's nonfull-cost entitlement as determined in the absence of Class 1 equivalency.

(ii) Following Reclamation's final determination, Reclamation will reimburse the district for any full-cost charges that would not have been assessed had Class 1 equivalency been in place from the date of the district's request. Districts will return such reimbursements to the appropriate landholders.

(3) A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as Class 1 land for purposes of overall entitlement.

(g) *Prior equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

§ 426.12 Excess land.

(a) *The process of designating excess and nonexcess land.* If a landowner owns more land than the landowner's ownership entitlement, all of the landowner's nonexempt land must be designated as excess and nonexcess as follows:

(1) The landowner designates which land is excess and which is nonexcess in accordance with the instructions on the appropriate certification or reporting forms; or

(2) If a landowner fails to designate his or her land as excess or nonexcess on the appropriate certification or reporting forms:

(i) And all of the landowner's nonexempt land is in only one district:

(A) If the district's contract with Reclamation includes designation procedures, then the land is designated according to those procedures; or

(B) If the district's contract with Reclamation does not include designation procedures, then:

(*1*) Reclamation will notify the landowner and the district that the landowner must designate the land as excess and nonexcess on the appropriate certification or reporting forms within 30-calendar days of the notification;

(*2*) If the landowner fails to make the designation within 30-calendar days of notification, the district will make the designation within 30-calendar days thereafter; or

(*3*) If the district does not make the designation within its 30-calendar days, Reclamation will make the designation; or

(ii) If the landowner owns nonexempt land in more than one district, then Reclamation will notify the landowner and the districts that the landowner has 60-calendar days from the date of notification to make the designation. If the landowner does not make the designation in the 60-calendar days, Reclamation will make the designation.

(b) *Changing excess and nonexcess land designations.* (1) Landowners must file with the district(s) in which the land is located and with Reclamation the designation of excess and nonexcess land. The designation of land as excess is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval if:

(i) The excess land becomes eligible to receive irrigation water because the landowner becomes subject to the discretionary provisions as provided in § 426.3;

(ii) A recordable contract is amended to remove excess land when the landowner's entitlement increases because the landowner becomes subject to the discretionary provisions as provided in paragraph (j)(5) of this section; or

(iii) The excess land becomes eligible to receive irrigation water as a result of Class 1 equivalency determinations, as provided in § 426.11.

(2) No other redesignation of excess land is allowable without the approval of Reclamation in accordance with established Reclamation procedures. Reclamation will not approve a redesignation request if:

(i) The purpose of the redesignation is for achieving, through repeated redesignation, an effective farm size in excess of that permitted by Federal reclamation law; or

(ii) The landowner sells some or all of his or her land that is currently classified as nonexcess.

(3) When a redesignation involves an exchange of nonexcess land for excess land, a landowner must make an equal exchange of acreage (or Class 1 equivalent acreage) through the redesignation.

(c) *Land that becomes excess when a district first contracts with Reclamation.* (1) If a landowner owned irrigable land on the execution date of the district's first water service or repayment contract, and the execution date was on or before October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(ii) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(iii) Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iv) Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(2) If the landowner owned irrigable land on the execution date of the district's first water service or repayment contract and the execution date is after October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(ii) Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iii) Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(d) *Land acquired into excess after the district has already contracted with Reclamation.* (1) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed on or before October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquires such land, then the land is ineligible to receive such water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(B) The landowner sells or transfers such land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is canceled; or

(D) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(ii) Irrigation water was not physically available when the landowner acquired the land, then the land is ineligible to receive water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(B) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is canceled;

(D) The landowner places the land under recordable contract when water becomes available; or

(E) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(2) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water

service contract was executed after October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquired such land, then the land is ineligible until:

(A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is canceled; or

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(ii) Irrigation water was not physically available when the landowner acquired such land, then the land is ineligible to receive water until:

(A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is canceled;

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(D) The landowner places the land under recordable contract when water becomes available.

(e) *If the status of land is changed by law or regulations.* (1) If the district had a contract with Reclamation on or before October 12, 1982, and eligible land became excess because the landowner's entitlement changed from being based on a district-by-district basis to a westwide basis, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(2) If the district had a contract with Reclamation on or before October 12, 1982, and the landowner was a nonresident alien or a legal entity not established under State or Federal law, who directly held eligible land and such land is no longer eligible to receive water, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(3) If the district first entered a contract with Reclamation after October 12, 1982, and land would have been eligible before October 12, 1982, but is now ineligible because the landowner is a direct landholder and either a nonresident alien or a legal entity not established under State or Federal law, then such land that would have been eligible remains ineligible until:

(i) If the landowner acquired such land before the date of the district's contract:

(A) The landowner places such land under a recordable contract requiring Reclamation sales price approval; or

(B) Sells or transfers the land to an eligible buyer subject to Reclamation sales price approval; or

(ii) If the landowner acquired such land after the date of the district's contract, the landowner sells or transfers such land to an eligible buyer subject to Reclamation sales price approval.

(4) Eligible nonexcess land that is indirectly owned on or before December 18, 1996 by a nonresident alien or a legal entity not established under State or Federal law, and that becomes ineligible because of § 426.8 is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(f) *Excess land that is acquired without price approval.* If a landowner acquires land that is subject to Reclamation price approval, without obtaining such approval, the land is ineligible to receive water until:

(1) The sales price is reformed to conform to the price approved by Reclamation and is eligible to receive irrigation water in the landowner's ownership entitlement; or

(2) Such landowner sells or transfers the land to an eligible buyer at a price approved by Reclamation.

(g) *Excess land that is disposed of and subsequently reacquired.* Districts may not make available irrigation water to excess land disposed of by a landholder at a price approved by Reclamation, whether or not under a recordable contract, if the landholder subsequently becomes a direct or indirect landholder of that land through either a voluntary or involuntary action, unless:

(1) The landholder became or contracted to become a direct or indirect landholder of that land prior to December 18, 1996, and the land in question is otherwise eligible to receive irrigation water;

(2) Such land becomes exempt from the acreage limitations of Federal reclamation law;

(3) The landholder pays the full-cost rate for any irrigation water delivered to the landholder's formerly excess land that is otherwise eligible to receive irrigation water. If a landholder is a part owner of a legal entity that becomes the direct or indirect landholder of the land in question, then the full-cost rate will be applicable to the proportional share of irrigation water delivered to the land that reflects the part owner's interest in that legal entity; or

(4) The deed covenant associated with the sale has expired as provided for in paragraph (i) of this section.

(h) *Application of the compensation rate for irrigating ineligible excess land with irrigation water.* Reclamation will charge the following for irrigation water delivered to ineligible excess land in violation of Federal reclamation law and these regulations:

(1) The appropriate compensation rate for irrigation water delivered; and

(2) any other applicable fees as specified in § 426.20.

(i) *Deed covenants.* (1) All land that is acquired from excess status after October 12, 1982, must have the following covenant (that runs with the land) placed in the deed transferring the land to the acquiring party in order for the land to be eligible to receive irrigation water except as otherwise specified in these regulations. The covenant must be in the deed regardless of whether or not the land was under recordable contract.

This covenant is to satisfy the requirements in 209(f)(2) of Pub. L. 97–293 (43 U.S.C 390, *et seq.*). This covenant expires on (date) . Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, provided however:

(i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a bona fide involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise (hereinafter Involuntary Conveyance). Thereafter, this land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 enacted on

October 12, 1982, (43 U.S.C. 390aa *et seq.*), or to Section 46 of the Act entitled ''an Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes,'' enacted May 25, 1926 (43 U.S.C. 423e);

(ii) If the status of this land changes from nonexcess into excess after a mortgage or deed of trust in favor of a lender is recorded and the land is subsequently acquired by a bona fide Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;

(iii) The terms of this covenant requiring price approval shall not apply to the sales price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;

(iv) Upon the completion of an Involuntary Conveyance, Reclamation shall reconvey or otherwise terminate this covenant of record;

(v) However, the deed covenant shall not be reconveyed or otherwise terminated if the involuntarily acquiring landowner is the landowner who sold this land from excess status, unless that landowner is a financial institution as defined in § 426.14(a) of the Acreage Limitation Rules and Regulations (43 CFR Part 426); and

(vi) The party whose excess ownership originally required the placement of this covenant may not receive Federal reclamation project irrigation water on the land subject to this covenant as a direct or indirect landowner or lessee, unless an exception provided for in § 426.12(g) is met.

Note: 1. Clauses (v) and (vi) of this covenant shall only be required on those covenants placed in deeds transferring land after January 1, 1998.

Note: 2. The date that the covenant expires shall be 10 years from the date the land was first transferred from excess to nonexcess status.

(2) A landholder may purchase or otherwise voluntarily acquire into nonexcess status, land subject to a deed covenant, at a price approved by Reclamation if the land is within the landholder's ownership entitlement.

(3) Upon expiration of the terms of the deed covenant, a landowner may resell such land at fair market value. A landowner may not sell more of such land in his or her lifetime than an amount equal to his or her ownership entitlement. Once the landowner reaches this limit, any additional excess land or land subject to a deed covenant the landowner acquires is ineligible to receive irrigation water, until such land is sold to an eligible buyer at a price approved by Reclamation.

(4) If a landholder acquires land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt, including, but not limited to, a mortgage, real estate contract, or deed of trust, inheritance, or devise, and is not the party whose excess ownership originally required placement of the deed covenant, then Reclamation must terminate the deed covenant upon the landholder's request. The provisions in paragraph (i)(1)(v) of this section and § 426.14(e) address termination of deed covenants for landholders whose excess ownership originally required placement of the deed covenant.

(j) *Recordable contracts.* (1) *Qualifications for recordable contracts.* A landowner can make excess land eligible to receive irrigation water by entering into a recordable contract with the United States if the landowner qualifies under applicable provisions of:

(i) The district's contract with Reclamation;

(ii) Federal reclamation law; and

(iii) These regulations.

(2) *Clauses to be included in recordable contracts.* A recordable contract must include:

(i) A clause whereby the landowner agrees to dispose of the excess land to an eligible buyer, excluding mineral rights and easements, under terms and conditions of the sale, in accordance with § 426.13; and within the period allowed for the disposition of excess land, that must be within 5 years from the date that the recordable contract is executed by Reclamation (except for the Central Arizona Project wherein the time period is 10 years from the date water becomes available to the land); and

(ii) A clause granting power of attorney to Reclamation to sell the land held under the recordable contract, if the landholder has not already sold the land by the recordable contract's maturation.

(3) *Date Reclamation can make irrigation water available.* Reclamation can make available irrigation water to land that the landowner plans to place under a recordable contract on the day that Reclamation receives the landowner's written request to execute a recordable contract. The landowner has 20-working days in which to execute the recordable contract from the date Reclamation sends the recordable contract to the landowner. Reclamation, in its discretion, may extend this period upon the landowner's request.

(4) *Water rate.* The rate for irrigation water delivered to land placed under recordable contract will be determined as follows:

(i) If both the landowner and any lessee are prior law recipients, land placed under a recordable contract can receive irrigation water at a contract rate that does not cover full operation and maintenance (O&M) costs;

(ii) If either landowner or any lessee is subject to the discretionary provisions, the water rate applicable to the recordable contract must cover, at a minimum, all O&M costs; or

(iii) If a landholder leases land subject to a recordable contract and is in excess of his or her nonfull-cost entitlement, the lessee may select such land as the land on which the full-cost rate will be charged for the delivery of irrigation water, unless the land is already subject to the full-cost rate because of an extended recordable contract.

(5) *Amending a recordable contract to include less acreage.* (i) Reclamation permits a landowner to amend a recordable contract to transfer land out of a recordable contract to nonexcess status, if:

(A) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or

(B) Land becomes eligible by implementation of Class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.

(ii) Landholders must receive Reclamation's approval to amend recordable contracts.

(A) The disposition period for any land remaining under a recordable contract will not change because of an amendment to remove some land.

(B) For land removed from a recordable contract based on paragraph (j)(5)(i) of this section, any requirement for application of a deed covenant will no longer be applicable.

(6) *Sale of land by Reclamation.* If the landowner does not dispose of the excess land held under recordable contract within the period specified in the recordable contract, Reclamation will sell that land. Reclamation will not sell the land if the landowner complies with all requirements for sale of excess land under these rules within the period specified, regardless if Reclamation gives final approval of the sale within that period or after.

(7) *Delivery of water when a recordable contract has matured.* Reclamation can make available irrigation water at the current applicable rate, pursuant to paragraph (j)(4) of this section, to excess land held under a matured recordable contract until Reclamation sells the land.

(8) *Procedures Reclamation follows in selling excess land.* If Reclamation must sell excess land, the following procedures will be used:

(i) If Reclamation determines it to be necessary, a qualified surveyor will

make a land survey. The United States will pay for the survey initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land;

(ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.13, to determine the appropriate sales price. The United States will pay for the appraisal initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land; and

(iii) Reclamation will advertise the sale of the property in farm journals and in newspapers within the county in which the land lies, and by other public notices as deemed advisable. The United States will pay for the advertisements and notices initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land. The notices must state:

(A) The minimum acceptable sales price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising);

(B) That Reclamation will sell the land by auction for cash, or on terms acceptable to the landowner, to the highest eligible bidder whose bid equals or exceeds the minimum acceptable sales price; and

(C) The date of the sale (which must not exceed 90 calendar days from the date of the advertisement and notices);

(iv) The proceeds from the sale of the land will be paid:

(A) First, to the landowner in the amount of the appraised value;

(B) Second, to the United States for costs of the survey, appraisal, advertising, etc.; and

(C) Third, any remaining proceeds will be credited to the Reclamation fund or other funds as prescribed by law; and

(v) Reclamation will close the sale of the excess land when parties complete all sales arrangements. Reclamation will execute a deed conveying the land to the purchaser. Reclamation will not require the purchaser to include a covenant in the deed, as specified in paragraph (i) of this section, that restricts any further resale of the land.

§ 426.13 Excess land appraisals.

(a) *When does Reclamation appraise the value of a landowner's land?* Reclamation appraises excess land or land burdened by a deed covenant upon a landowner's request or when required by Reclamation. If a landowner does not request an appraisal within 6 months of the maturity date of a recordable contract, Reclamation, in its discretion, can initiate the appraisal.

(b) *Procedures Reclamation uses to determine the sale price of excess land or land burdened by a deed covenant.* Reclamation complies with the following procedures to determine the sale price of excess land and land burdened by a deed covenant, except if a landholder owns land subject to a recordable contract that was in force on October 12, 1982, or other pertinent contract that was in force on that date, and these regulations would be inconsistent with provisions in such a contract:

(1) *Appraisals of land.* Reclamation will base all appraisals of land on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Reclamation must use standard appraisal procedures including: the income, comparable sales, and cost methods, as applicable. Reclamation will consider nonproject water supply factors as provided in paragraph (c)(1) of this section as appropriate; and

(2) *Appraisal of improvements to land.* Reclamation will assess the contributory fair market value of improvements to land, as of the date of appraisal, using standard appraisal procedures.

(c) *Appraisals of nonproject water supplies.* (1) The appraiser will consider nonproject water supply factors, where appropriate, including:

(i) Ground water pumping lift;

(ii) Surface water supply;

(iii) Water quality; and

(iv) Trends associated with paragraphs (c)(1) (i) through (iii) of this section, where appropriate.

(2) Reclamation will develop the nonproject water supply and trend information with the assistance of:

(i) The district in which the land is located, if the district desires to participate;

(ii) Landowners of excess land or land burdened by a deed covenant and prospective buyers who submit information either to the district or Reclamation; and

(iii) Public meetings and forums, at the discretion of Reclamation.

(3) Data submitted may include:

(i) Historic geologic data;

(ii) Changing crops and cropping patterns; and

(iii) Other factors associated with the nonproject water supply.

(4) If Reclamation and the district cannot reach agreement on the nonproject water supply information within 60-calendar days, Reclamation will review and update the trend information as it deems necessary and make all final determinations considering the data provided by Reclamation and the district. Reclamation will provide these data to the appraisers who must consider the data in the appraisal process, and clearly explain how they used the data in the valuation of the land.

(d) *The date of the appraisal.* The date of the appraisal will be the date of last inspection by the appraiser(s) unless there is a prior signed instrument, such as an option, contract for sale, agreement for sale, etc., affecting the property. In those cases, the date of appraisal will be the date of such instrument.

(e) *Cost of appraisal.* If the appraisal is:

(1) The land's first appraisal, the United States will initially pay the costs of appraising the value of the land, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land;

(2) Not the land's first appraisal, the landowner requesting the appraisal must pay any costs associated with the reappraisal, unless the value set by the reappraisal differs by more than 10 percent, in which case the United States will pay for the reappraisal; or

(3) Associated with a sales price reformation as specified in § 426.12(f)(1), the landowner requesting the appraisal must pay any costs associated with the appraisal.

(f) *Appraiser selection.* Reclamation will select a qualified appraiser to appraise the excess land or land burdened by a deed covenant, except as specified within paragraph (g) of this section.

(g) *Appraisal dispute resolution.* The landowner who requested the appraisal may request that the United States conduct a second appraisal of the excess land or land burdened by a deed covenant if the landowner disagrees with the first appraisal. The second appraisal will be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. The appraisal made by the panel will fix the maximum value of the excess land and will be binding on both parties after review and approval as provided in paragraph (h) of this section.

(h) *Review of appraisals of excess land or land burdened by a deed covenant.* Reclamation will review all appraisals of excess land or land burdened by a deed covenant for:

(1) Technical accuracy and compliance with these rules and regulations;

(2) Applicable portions of the ''Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973,'' as revised in 1992;

(3) Reclamation policy; and

(4) Any detailed instructions provided by Reclamation setting conditions applicable to an individual appraisal.

§ 426.14 Involuntary acquisition of land.

(a) *Definitions for purposes of this section.*

Financial institution means a commercial bank or trust company, a private bank, an agency or branch of a foreign bank in the United States, a thrift institution, an insurance company, a loan or finance company, or the Farm Credit System.

Involuntarily acquired land means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

(b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:

(1) The land becomes nonexcess in the new landowner's ownership; and

(2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, and that deed commences when the land becomes eligible to receive irrigation water.

(3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.12(i), in the deed transferring title to the land to the buyer.

(c) *Land that was held under a recordable contract and is acquired involuntarily.* Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract to the extent the land continues to be excess in his or her landholding, if the landowner:

(1) assumes the recordable contract; and

(2) executes an assumption agreement provided by Reclamation.

(3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by Reclamation.

(d) *Mortgaged land.* Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a lender through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:

(1) If the new landowner designates the land as excess in his or her holding, then:

(i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;

(ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and

(iii) The land is eligible for sale at its fair market value without a deed covenant restricting its future sales price; or

(2) If the new landowner is eligible to designate the land as nonexcess and he or she designates the land as nonexcess, the land will be treated in the same manner as any other nonexcess land and will be eligible for sale at its fair market value without a deed covenant restricting its future sales price.

(e) *Nonexcess land that becomes excess when acquired involuntarily.* (1) Reclamation can make irrigation water available for a period of 5 years to a landowner who involuntarily acquires land that becomes excess in the involuntarily acquiring landowner's holding provided the land was nonexcess to the previous owner and:

(i) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract;

(ii) The acquiring landholder is a financial institution; or

(iii) The acquiring landowner previously held the land as ineligible excess or under a recordable contract and §§ 426.12(g)(1), (3), or (4) applies.

(2) The following will be applicable in situations that meet the criteria specified under paragraph (e)(1) of this section:

(i) Reclamation will charge a rate for irrigation water delivered to such land equal to the rate paid by the former owner, except Reclamation will charge the full-cost rate if:

(A) The land becomes subject to full-cost pricing through leasing; or

(B) If the involuntarily acquired land is eligible to receive irrigation water only because § 426.12(g)(3) applies and the deed covenant has not expired;

(ii) The new landowner may not place such land under a recordable contract;

(iii) The new landowner may request that Reclamation remove a deed covenant as provided in § 426.12(i)(4), and may sell such land at any time without price approval and without the deed covenant. However, the deed covenant will not be removed and the terms of the deed covenant will be fully applied if the new landowner is the landowner who sold the land in question from excess status, except for:

(A) Financial institutions; or

(B) Landowners for which §§ 426.12(g) (1) or (2) apply; and

(iv) Such land will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until sold to an eligible buyer or redesignated as provided for in paragraph (f) of this section.

(f) *Redesignation of excess land to nonexcess.* Landholders who designate involuntarily acquired land as excess as provided for in paragraphs (d)(1) and (e)(1) of this section and want to redesignate the land as nonexcess, must utilize the redesignation process specified under § 426.12(b)(2).

(1) However, such redesignations will not be approved if the water rate specified in paragraphs (d)(1)(ii) or (e)(2)(i) of this section is less than what would have been charged for water deliveries to the land in question if the landholder that involuntarily acquired the land had originally designated the land as nonexcess.

(2) Such landholders may utilize the redesignation process, if they remit to Reclamation the difference between the rate paid and the rate that would have been paid, if the land had been designated as nonexcess when involuntarily acquired, for all irrigation water delivered to the land in question while the land was designated as excess.

(g) *Effect of involuntarily acquiring land subject to the discretionary provisions.* A landowner does not automatically become subject to the discretionary provisions if the landowner acquires irrigation land involuntarily which was formerly subject to the discretionary provisions. However, a landholder that is subject to the prior law provisions will become subject to the discretionary provisions upon involuntarily acquiring land if:

(1) The land is located in a district that is subject to the discretionary provisions;

(2) The landholder in question will be the direct landowner of the land; and

(3) The landholder in question declares the land as nonexcess.

(h) *Land acquired by inheritance or devise.* If a landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per paragraphs (c)(3) and (e) of this section begins on the date of the previous landowner's death.

§ 426.15 Commingling.

(a) *Definition for purposes of this section*:

Commingled water means irrigation water and nonproject water that use the same facilities.

(b) *Application of Federal reclamation law and these regulations to prior commingling provisions in contracts.* If a district entered into a contract with Reclamation prior to October 1, 1981, and that contract has provisions addressing commingled water situations, those provisions stay in effect for the term of that contract and any renewals of it.

(c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:

(1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of Federal reclamation law and these regulations will apply only to the landholders who receive irrigation water, provided:

(i) That the water requirements for eligible lands can be established; and

(ii) The quantity of irrigation water to be used is less than or equal to the quantity necessary to irrigate eligible lands.

(2) If the facilities used for commingling irrigation water and nonproject water are funded with monies made available pursuant to Federal reclamation law, landholders who receive nonproject water will be subject to Federal reclamation law and these regulations unless:

(i) The district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing or delivering the nonproject water; and

(ii) The fee will be established by Reclamation and will be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service.

(3) If paragraphs (c)(2) (i) and (ii) of this section are met, the provisions of Federal reclamation law and these regulations will be applicable to only those landholders who receive irrigation water. Accordingly, the provisions of Federal reclamation law and these regulations will not be applicable to landholders who receive nonproject water delivered through facilities funded with monies made available pursuant to Federal reclamation law if those paragraphs are met.

(d) *When Federal reclamation law and these regulations do not apply.* Federal reclamation law and these regulations do not apply to landholders receiving irrigation water from federally financed facilities if the irrigation water is acquired by an exchange and that exchange results in no material benefit to the recipient of the irrigation water.

§ 426.16 Exemptions and exclusions.

(a) *Army Corps of Engineers (Corps) projects.* (1) If Reclamation determines that land receives its agricultural water from a Corps project, Reclamation will exempt that land from specific provisions of Federal reclamation law, including the RRA, unless:

(i) Federal law explicitly designates, integrates, or incorporates that land into a Federal Reclamation project; or

(ii) Reclamation provides project works for the control or conveyance of the agricultural water supply from the Corps project to that land.

(2) Upon such determination, Reclamation will:

(i) Notify the district of its exemption status;

(ii) Require the district's agricultural water users to continue, under contracts made with Reclamation, to repay their share of construction, operation and maintenance, and contract administration costs of the Corps project allocated to conservation or irrigation storage; and

(iii) At the request of the district delete provisions of the district's repayment or water service contract that imposes acreage limitation for those lands served by Corps projects.

(b) *Repayment of construction obligations.* The acreage limitation provisions do not apply to land in a district after the district has repaid, in accordance with the district's contract with Reclamation, all obligated construction costs for project facilities.

(1) Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payments, if allowed by the district's contract with Reclamation, will qualify the district to become exempt.

(2) If a district has a contract with the United States providing for individual landowner repayment of construction charges allocated to land, and the landowner has repaid all obligated construction costs allocated for that landowner's land, that landowner will become exempt from the acreage limitation provisions.

(3) Upon payout Reclamation will:

(i) Notify the district, and individual landowner in cases of individual landowner payout, of the exemption from the acreage limitation provisions;

(ii) Notify the district or individual landowner that the exemption does not relieve the district or individual landowner of the obligation to continue to pay, on an annual basis, O&M costs applicable to the district or landowner;

(iii) Upon request by the owner of land for which repayment has occurred, provide a certificate from Reclamation acknowledging that the land is free of the acreage limitation provisions of Federal reclamation law;

(iv) Except as provided for in § 426.19(e), no longer apply the certification and reporting requirements to the district, if the entire district is exempt, or to exempt landowners as specified in paragraph (b)(2) of this section; and

(v) Consider on a case-by-case basis continuation of the exemption if additional construction funds for the project are requested.

(c) *Rehabilitation and Betterment loans.* If Reclamation makes a Rehabilitation and Betterment loan (pursuant to the Rehabilitation and Betterment Act of October 7, 1949, as amended, 43 U.S.C. 504) to a project that was authorized under Federal reclamation law prior to the submittal of the loan request, by or for the district, Reclamation:

(1) Considers the loan as a loan for maintenance, including replacements that cannot be financed currently;

(2) Does not consider the loan in determining whether the district has discharged its obligation to repay the construction cost of project facilities used to make irrigation water available for delivery to land in the district; and

(3) Will not allow such a loan to serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligation, nor serve as the basis for increasing the construction obligation of the district and thereby extending the period during which acreage limitation provisions will apply.

(d) *Temporary supplies of water.* If Reclamation announces availability of temporary supplies of water resulting from an unusually large water supply,

not otherwise storable for project purposes, or from infrequent and otherwise unmanaged floodflows of short duration a district may request that Reclamation make such supplies available to excess land. However, such water deliveries must not have an adverse effect on other authorized project purposes. Upon approval of the district's request, Reclamation will notify the requesting district of the availability of the temporary supply of water under the following conditions:

(1) The contract for the temporary supply of water will be for 1 year or less in accordance with prior policies and practices;

(2) The acreage limitation provisions will not be applicable to the temporary supply of water;

(3) An applicable price for the water, if any, will be established; and

(4) Such other conditions as Reclamation may include.

(e) *Isolated tracts.* If a landowner requests that Reclamation determine that portions of his or her owned land are isolated tracts that can be farmed economically only if included in a farming operation that already exceeds the landowners ownership entitlement, and Reclamation makes such a determination, then Reclamation:

(1) Will exempt such land from the ownership limitations of Federal reclamation law; and

(2) Will assess the full-cost rate for any irrigation water delivered to the isolated tract that exceeds the landowner's nonfull-cost entitlement.

(f) *Indian trust or restricted lands.*

(1) Indian trust or restricted lands are excluded from application of the acreage limitation provisions.

(2) Indian tribes and tribal entities operating on Indian trust or restricted lands are excluded from application of the water conservation provisions.

§ 426.17 Small Reclamation projects.

(a) *Effect of the RRA on loan contracts made under the Small Reclamation Projects Act.* (1) If a district entered into a loan contract under the Small Reclamation Projects Act of 1956 (43 U.S.C. 422) (SRPA) on or after October 12, 1982, the contract is subject to the provisions of the SRPA, as amended by Section 223 of the RRA and as amended by Title III of Pub. L. 99–546.

(2) If a district entered into an SRPA loan contract prior to October 12, 1982, and the district:

(i) Did not amend the loan contract to conform to the SRPA, as amended by Section 223 of the RRA, prior to October 27, 1986, then the acreage provisions of the contract continue in effect, unless the contract is amended to conform to the SRPA as amended by section 307 of Pub. L. 99–546.

(ii) Amended the loan contract to conform to the SRPA, as amended by Section 223 of the RRA, prior to October 27, 1986, the contract is subject to the increased acreage provisions provided in Section 223 of the RRA. Reclamation cannot alter, modify or amend any other provision of the SRPA loan contract without the consent of the non-Federal party.

(b) *Other sections of these regulations that apply to SRPA loans.* No other sections of these regulations apply to SRPA loans, except as specified in § 426.3(a)(3)(ii) and paragraph (d) of this section.

(c) *Effect of SRPA loans in determining whether a district has repaid its construction obligations on a water service or repayment contract.* If a district has a water service or repayment contract in addition to an SRPA contract, Reclamation does not consider the SRPA loan:

(1) In determining whether the district has discharged its construction cost obligation for the project facilities;

(2) As a basis for reinstating acreage limitation provisions in a district that has completed payment of its construction cost obligation(s); or

(3) As a basis for increasing the construction obligation of the district and extending the period during which acreage limitation provisions will apply to that district.

(d) *Districts that have an SRPA loan contract and a contract as defined in § 426.2.* If a district has an SRPA loan contract and a contract as defined in § 426.2, the SRPA contract does not supersede the RRA requirements applicable to such contracts.

§ 426.18 Landholder information requirements.

(a) *Definition for purposes of this section:*

Irrigation season means the period of time between the district's first and last water delivery in any water year.

(b) *Who must provide information to Reclamation?* All landholders and other parties involved in the ownership or operation of nonexempt land must provide Reclamation, as required by these regulations or upon request, any records or information, in a form suitable to Reclamation, deemed reasonably necessary to implement the RRA or other provisions of Federal reclamation law.

(c) *Required form submissions.* (1) Landholders who are subject to the discretionary provisions must annually submit standard certification forms, except as provided in paragraph (l) of this section.

(2) Landholders who make an irrevocable election must submit the standard certification forms with their irrevocable election in the year that they make the election.

(3) Landholders who are subject to prior law must annually submit standard reporting forms, except as provided in paragraph (l) of this section.

(4) Landholders who qualify under an exemption as specified in paragraph (g) of this section need not submit any forms.

(d) *Required information.* Landholders must declare on the appropriate certification or reporting forms all nonexempt land that they hold directly or indirectly westwide and other information pertinent to their compliance with Federal reclamation law.

(e) *District receipt of forms and information.* Landholders must submit the appropriate, completed form(s) to each district in which they directly or indirectly hold irrigation land.

(f) *Certification or reporting forms for wholly owned subsidiaries.* The ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries must file the required certification or reporting forms. The ultimate parent legal entity must disclose all direct and indirect landholdings of its subsidiaries as required on such forms.

(g) *Exemptions from submitting certification and reporting forms.* (1) A landholder is exempt from submitting the certification and reporting forms only if:

(i) The landholder's district has Category 1 status, as specified in paragraph (h) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 240 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(ii) The landholder's district has Category 2 status, as specified in paragraph (h) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 80 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(2) A wholly owned subsidiary is exempted from submitting certification or reporting forms, if its ultimate parent legal entity has properly filed such forms disclosing the landholdings of each of its subsidiaries.

(3) In determining whether certification or reporting is required for purposes of this section:

(i) Class 1 equivalency factors as determined in § 426.11 shall not be used; and

(ii) Indirect landholders need not count involuntarily acquired acreage designated as excess by the direct landowner.

(h) *District categorization.* (1) For purposes of this section each district has Category 2 status, unless the following criteria have been met. If the district has met both criteria, it will be granted Category 1 status.

(i) The district has conformed by contract to the discretionary provisions; and

(ii) The district is current in its financial obligations to Reclamation.

(2) Reclamation considers a district current in its financial obligation if as of September 30, the district is current in its:

(i) Financial obligations specified in its contract(s) with Reclamation; and

(ii) Payment obligations established by the RRA, and these rules.

(i) *Application of Category 1 status.* Once a district achieves Category 1 status, it will only be withdrawn if the Regional Director determines the district is not current in its financial obligations as specified in paragraph (h)(2) of this section. The withdrawal of Category 1 status will be effective at the end of the current water year and can be restored only as provided under paragraph (h) of this section. With the withdrawal of Category 1 status, the district will have a Category 2 status.

(j) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a qualified recipient holds land in a Category 1 district, then the 240-acre forms threshold will be applicable in determining if the landholder must submit a certification form to that Category 1 district. If the same qualified recipient also holds land in a Category 2 district, then the 80-acre forms threshold will be applicable in determining if the landholder must submit a certification form to the Category 2 district.

(k) *Notification requirements for landholders whose ownership or leasing arrangements change after submitting forms.* If a landholder's ownership or leasing arrangements change in any way:

(1) During the irrigation season, the landholder must:

(i) Notify the district office, either verbally or in writing within 30-calendar days of the change; and

(ii) Submit new forms to all districts in which the landholder holds nonexempt land, within 60-calendar days of the change.

(2) Outside of the irrigation season, then the landholder must submit new standard certification or reporting forms to all districts in which nonexempt land is held prior to any irrigation water deliveries following such changes.

(l) *Notification requirements for landholders whose ownership or leasing arrangements have not changed.* If a landholder's ownership or leasing arrangements have not changed since last submitting a standard certification or reporting form, the landholder can satisfy the annual certification or reporting requirements by submitting a verification form instead of a standard form. On that form the landholder must verify that the information contained on the last submitted standard certification or reporting form remains accurate and complete.

(m) *Actions taken if required submission(s) is not made.*

(1) If a landholder does not submit required certification or reporting form(s), then:

(i) The district must not deliver, and the landholder is not eligible to receive and must not accept delivery of, irrigation water in any water year prior to submission of the required certification or reporting form(s) for that water year; and

(ii) Eligibility will be regained only after all required certification or reporting forms are submitted by the landholder to the district.

(2) If one or more part owners of a legal entity do not submit certification or reporting forms as required:

(i) The entire entity will be ineligible to receive irrigation water until such forms are submitted; or

(ii) If the documents forming the entity provide for the part owners' interest to be separable and alienable, then only that portion of the land attributable to the noncomplying part owners will be ineligible to receive irrigation water.

(n) *Actions taken by Reclamation if a landholder makes false statements on the appropriate certification or reporting forms.* If a landholder makes a false statement on the appropriate certification or reporting form(s) Reclamation can prosecute the landholder pursuant to the following statement which is included in all certification and reporting forms:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the landowner or lessee will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

(o) *Information requirements and Office of Management and Budget approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control numbers 1006–0005 and 1006–0006. The information is being collected to comply with Sections 206, 224(c), and 228 of the RRA. These sections require that, as a condition to the receipt of irrigation water, each landholder in a district which is subject to the acreage limitation provisions of Federal reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Federal reclamation law. Completion of these forms is required to obtain the benefit of irrigation water. The information collected on each landholding will be summarized by the district and submitted to Reclamation in a form prescribed by Reclamation.

(p) *Protection of forms pursuant to the Privacy Act of 1974.* The Privacy Act of 1974 (5 U.S.C. 552) protects the information submitted in accordance with certification and reporting requirements. As a condition to execution of a contract, Reclamation requires the inclusion of a standard contract article which provides for district compliance with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

§ 426.19 District responsibilities.

A district that delivers irrigation water to nonexempt land under a contract with the United States must:

(a) Provide information to landholders concerning the requirements of Federal reclamation law and these regulations;

(b) Provide Reclamation, as required by these regulations or upon request, and in a form suitable to Reclamation, records and information as Reclamation may deem reasonably necessary to implement the RRA and other provisions of Federal reclamation law;

(c) Be responsible for payments to Reclamation of all appropriate charges specified in these regulations. Districts must collect the appropriate charges from each landholder based on the landholder's acreage limitation status, landholdings, and entitlements, and

must not average the costs over the entire district, unless the charges prove uncollectible from the responsible landholders;

(d) Distribute, collect, and review landholder certification and reporting forms;

(e) File and retain landholder certification and reporting forms. Districts must retain superseded landholder certification and reporting forms for 6 years; thereafter, districts may destroy such superseded forms, except:

(1) Districts must keep on file the last fully completed standard certification or reporting form, in addition to the current verification form; or

(2) If Reclamation specifically requests a district to retain superseded forms beyond 6 years.

(f) Comply with the requirements of the Privacy Act of 1974, with respect to landholder certification and reporting forms;

(g) Annually summarize information provided on landholder certification and reporting forms on separate summary forms provided by Reclamation and submit these forms to Reclamation on or before the date established by the appropriate regional director;

(h) Withhold deliveries of irrigation water to any landholder not eligible to receive irrigation water under the certification or reporting requirements or any other provision of Federal reclamation law and these regulations; and

(i) Return to Reclamation, for deposit as a general credit to the Reclamation fund, all revenues received from the delivery of water to ineligible land. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

§ 426.20 Assessment of administrative costs.

(a) *Assessment of administrative costs for delivery of water to ineligible land.* Reclamation will assess a district administrative costs as described in paragraph (e) of this section if the district delivers irrigation water to land that was ineligible because the landholders did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.18; or to ineligible excess land as provided in § 426.12.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.18, or for each landholder that received irrigation water on ineligible land as specified above.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (a) of this section will be applied independently of the assessment specified in paragraph (b) of this section.

(b) *Assessment of administrative costs when form corrections are not made.* Reclamation will assess a district for the administrative costs described in paragraph (e) of this section, unless the district provides Reclamation with requested reporting or certification form corrections within 60-calendar days of the date of Reclamation's written request. If Reclamation receives the required corrections within this 60-calendar day time period, Reclamation will consider the requirements of § 426.18 satisfied.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water and for whom the district does not provide corrected forms within the applicable 60-calendar day time period.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (b) of this section will be applied independently of the assessment specified in paragraph (a) of this section.

(c) *Party responsible for paying assessments.* Districts are responsible for payment of Reclamation assessments described under paragraphs (a) and (b) of this section.

(d) *Disposition of assessments.* Reclamation will deposit to the general fund of the United States Treasury, as miscellaneous receipts, administrative costs assessed and collected under paragraphs (a) and (b) of this section.

(e) *Amount of the assessment.* The administrative costs assessment required under paragraphs (a) and (b) of this section is set at $260. Reclamation will review the associated costs at least once every 5 years, and will adjust the assessment amount, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the Federal Register in December of the year the data are reviewed.

§ 426.21 Interest on underpayments.

(a) *Definition of underpayment.* For the purposes of this section *underpayment* means the difference between what a landholder owed for the delivery of irrigation water under Federal reclamation law and what that landholder paid.

(b) *Collection of interest on underpayments.* If a landholder has incurred an underpayment, Reclamation will collect from the appropriate district such underpayment with interest. Interest accrues from the original payment due date until the district pays the amount due. The original payment due date is the date the district should have paid the United States for water delivered to the landholder.

(c) *Underpayment interest rate.* The Secretary of the Treasury determines the interest rate charged the district based on the weighted average yield of all interest-bearing marketable issues sold by the Department of the Treasury during the period of underpayment.

§ 426.22 Public participation.

(a) *Notification of contract actions.* Except for proposed contracts having a duration of 1 year or less for the sale of surplus water or interim irrigation water, Reclamation will:

(1) Provide notice of proposed irrigation or amendatory irrigation contract actions 60-calendar days prior to contract execution by publishing announcements in general circulation newspapers in the affected area;

(2) Issue announcements in the form of news releases, legal notices, official letters, memoranda, or other forms of written material; and

(3) Directly notify individuals and entities who made a timely written request for such notice to the appropriate Reclamation regional or local office.

(b) *Notification of modification of a proposed contract.* In the event that modifications are made to a proposed contract the regional director must:

(1) Provide copies of revised proposed contracts to all parties who requested copies of the proposed contract in response to the initial notice; and

(2) Determine whether or not to republish the notice or to extend the comment period. The regional director must consider, among other factors:

(i) The significance of the impact(s) of the modification to possible affected parties; and

(ii) The interest expressed by the public over the course of contract negotiations.

(c) *Information that Reclamation will include in published announcements.* Each published announcement will include, as appropriate:

(1) A brief description of the proposed contract terms and conditions being negotiated;

(2) Date, time, and place of meetings, workshops, or hearings;

(3) The address and telephone number to which inquiries and comments may be addressed to Reclamation; and

(4) The period of time during which Reclamation will accept comments.

(d) *Public availability of proposed contracts.* Anyone can get copies of a proposed contract from the appropriate regional director or his or her designated public contact when the proposed contracts become available for review and comment, as specified in the published announcement.

(e) *Opportunities for public participation.* (1) Reclamation can provide, as appropriate: meetings, workshops, or hearings to provide local information. Advance notice of meetings, workshops, or hearings will be provided to those parties who make timely written request for such notice. Request for notice of meetings, workshops, or hearings should be sent to the appropriate Reclamation regional or local office.

(2) Reclamation or the district can invite the public to observe any contract proceedings.

(3) All public participation procedures will be coordinated with those involved with National Environmental Policy Act compliance, if Reclamation determines that the contract action may or will have ''significant'' environmental effects.

(f) *Individuals authorized to negotiate the terms of contract proposals.* Only persons authorized to act on behalf of the district may negotiate the terms and conditions of a specific contract proposal.

(g) *Agency use of comments submitted during the period provided for comment or made at hearings.* (1) Reclamation will review and summarize for use by the contract approving authority, testimony presented at any public hearing or any written comments submitted to the appropriate Reclamation officials at locations and within the comment period, as specified in the advance published announcement.

(2) Reclamation will make available to the public all written correspondence regarding proposed contracts under the terms and procedures of the Freedom of Information Act (5 U.S.C. 552), as amended.

§ 426.23 Recovery of operation and maintenance (O&M) costs.

(a) *General.* All new, amended, and renewed contracts shall provide for payment of O&M costs as specified in this section.

(b) *Amount of O&M costs a district must pay if it executes a new or renewed contract.* If a district executes a new or renewed contract after October 12, 1982, then that district must pay all of the O&M costs that Reclamation allocates to irrigation.

(c) *Amount of O&M costs a district must pay if it amends its contract to conform to the discretionary provisions.* If a district has a contract executed prior to October 12, 1982, and the district amends the contract after October 12, 1982, as provided for in § 426.3(a)(2) to conform to the discretionary provisions, then the following applies:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (c)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district will not be required to pay an increased amount toward the construction costs of a project as a condition of the district's agreeing to a contract amendment pursuant to paragraph (c) of this section.

(d) *Amount of O&M cost a district must pay if it amends its contract to provide supplemental or additional benefits.* If a district amends its contract after October 12, 1982, to provide supplemental or additional benefits, as provided for in § 426.3(a)(3), then the following must be complied with:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (d)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district must pay any increases in the amount paid annually toward the construction costs of a project that the United States requires the district to pay as a condition of agreeing to provide the district with supplemental and additional benefits.

(e) *Amount of O&M a district pays under a prior contract.* For a district whose prior contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless the contract specifically provides contrary terms.

(f) *Amount of O&M that Reclamation charges an irrevocable elector.* (1) Regardless of any terms to the contrary within a prior contract with a district, a landholder who makes an irrevocable election, as provided for in § 426.3(f) must pay, annually, his or her proportionate share of all O&M costs allocated by Reclamation to irrigation. The irrevocable elector's proportionate share is based upon the ratio of:

(i) The amount of land in the district held by the irrevocable elector that received irrigation water to the total amount of land in the district that received irrigation water; or

(ii) The amount of irrigation water in the district received by the irrevocable elector to the total amount of irrigation water that the district delivered.

(2) The district(s) where the irrevocable elector's landholding is located must collect from the irrevocable elector an amount equal to the irrevocable elector's proportionate share of all O&M costs allocated by Reclamation to irrigation and the following apply:

(i) If in the year the election is executed, the district's contract rate was more than the O&M costs allocated to the district in that year, then that positive difference at the time of the contract amendment must continue to be factored into the contract rate. This would be in addition to any adjusted O&M cost that results from paragraph (f)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(ii) Such collections must be forwarded annually to the United States.

(g) *Amount of O&M that Reclamation charges if a landholder is subject to full-cost pricing.* In a district subject to prior law, if a landholder is subject to full-cost pricing the district must ensure that all O&M costs are included in any full-cost assessment, regardless of whether the landholder is subject to the discretionary provisions. The revenues from such full-cost assessments must be collected and submitted to the United States.

§ 426.24 Reclamation decisions and appeals.

(a) *Reclamation decisions.* (1) *Decisionmaker for Reclamation's final determinations.* The appropriate regional director makes any final determination that these regulations require or authorize. If Reclamation's final determination is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that final determination.

(2) *Notice to affected parties.* The appropriate regional director will transmit any final determination to any district and landholder, as appropriate, whose rights and interests are directly affected.

(3) *Effective date for regional director's final determinations.* A regional director's decisions will take effect the day after the expiration of the period during which a person adversely affected may file a notice of appeal unless a petition for stay is filed together with a timely notice of appeal.

(b) *Appeal of final determinations.* (1) *Appeal Submittal.* Any district or landholder whose rights and interests are directly affected by a regional director's final determination can submit a written notice of appeal. Such notice of appeal must be submitted to the Commissioner of Reclamation within 30-calendar days from the date of the regional director's final determination.

(2) *Submittal of supporting information.* The affected party will have 60-calendar days from the date that the regional director issues a final determination to submit a supporting brief or memorandum to the Commissioner. The Commissioner may extend the time for submitting a supporting brief or memorandum, if:

(i) the affected party submits a request to the Commissioner in a timely manner;

(ii) the request includes the reason why additional time is needed; and

(iii) the Commissioner determines the appellant has shown good cause for such an extension and the extension would not prejudice Reclamation.

(3) *Requests for stay of the final determination pending appeal.* (i) The Commissioner will determine whether to stay a regional director's final determination within 30 days after receiving a properly filed petition for stay if the requesting party:

(A) submits a request for stay in writing to the Commissioner, with, or in advance of, the notice of appeal, and states the grounds upon which the party requests the stay; and

(B) Demonstrates that the harm that a district or landholder would suffer if the Commissioner does not grant the stay outweighs the interest of the United States in having the final determination take effect pending appeal.

(ii) A decision, or that portion of the decision, for which a stay is not granted will become effective immediately after the Commissioner denies or partially denies the petition for stay, or fails to act within 30 days after receiving the request.

(iii) A Commissioner's decision on a petition for a stay or any other Commissioner decision is appealable.

(c) *Appeal of Commissioner's decision.* (1) *Appeal to the Office of Hearing and Appeals.* A party can appeal the Commissioner's decision to the Secretary by writing to the Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior. For an appeal to be timely, OHA must receive the appeal within 30-calendar days from the date of mailing of the Commissioner's decision.

(2) *Rules that govern appeals to OHA.* 43 CFR Part 4, Subpart G, and other provisions of 43 CFR Part 4, where applicable, govern the OHA appeal process, except for the accrual of underpayment interest as specified in paragraph (e) of this section.

(d) *Effective date of an appeal decision.* Reclamation will apply decisions made by the Commissioner or by OHA under paragraphs (b) and (c) of this section as of the date of the violation or other problem that was addressed in the regional director's final determination. If, during the appeal process, irrigation water has been delivered to land subsequently found to be ineligible, for other than RRA forms submittal violations, the compensation rate may be applied to such deliveries retroactively.

(e) *Accrual of interest on underpayments during appeal.* Interest on any underpayments, as provided in § 426.21, continues to accrue during an appeal of a regional director's final determination, an appeal of the Commissioner's decision, or judicial review of final agency action. Underpayment interest accrual will continue even during a stay under paragraphs (b)(4) or (c)(3) of this section.

(f) *Status of appeals made prior to the effective date of these regulations.* (1) Appeals to the Commissioner of a regional director's final determination which were decided by the Commissioner or his or her delegate prior to the effective date of these regulations are hereby validated.

(2) Appeals to the Commissioner of final determinations made by a regional director and appeals to OHA, which are pending on appeal as of the effective date of these regulations will be processed and decided in accordance with the regulations in effect immediately prior to the effective date of these regulations.

(g) *Addresses.* All requests for stays, appeals, or other communications to the United States under this section must be addressed as follows:

(1) *Commissioner,* Bureau of Reclamation, 1849 C Street N.W., MS–7060–MIB, Washington, D.C. 20240, telephone (202) 208–4157.

(2) *Director, Office of Hearings and Appeals,* Department of the Interior; 4015 Wilson Boulevard, Room 1103; Ballston Tower No. 3; Arlington, VA 22203.

§ 426.25 Reclamation audits.

Reclamation will conduct reviews of a district's administration and enforcement of and landholder compliance with Federal reclamation law and these regulations. These reviews may include, but are not limited to:

(a) Water district reviews;

(b) In-depth reviews; and

(c) Audits.

§ 426.26 Severability.

If any provision of these regulations or the application of these rules to any person or circumstance is held invalid, then the sections of these rules or their applications which are not held invalid will not be affected.

2. Part 427 is added as follows:

PART 427—WATER CONSERVATION RULES AND REGULATIONS

§ 427.1 Water conservation.

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and municipal and industrial (M&I) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water under the authority of the

Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590y *et seq.*; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390b, 43 U.S.C. 390jj, 43 U.S.C. 422a *et seq.*, and 43 U.S.C. 523.

Amendments Effective January 1, 1997

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for part 426 continues to read as follows:

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, title II, 96 Stat. 1263; as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; and the Reclamation Act of 1902, as amended and supplemented 32 Stat. 388, (43 U.S.C. 371 *et seq.*).

2. Effective January 1, 1997, § 426.10 is amended by removing and reserving paragraph (g) and adding paragraphs (n) through (q) to read as follows:

§ 426.10 Information requirements.

* * * * *

(n) *Exemptions from submitting certification and reporting forms.* (1) A landholder is exempt from submitting the certification and reporting forms only if:

(i) The landholder's district has Category 1 status, as specified in paragraph (o) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 240 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(ii) The landholder's district has Category 2 status, as specified in paragraph (o) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 80 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total or 40 acres westwide or less.

(2) A wholly owned subsidiary is exempted from submitting certification or reporting forms, if its ultimate parent legal entity has properly filed such forms disclosing the landholdings of each of its subsidiaries.

(3) In determining whether certification or reporting is required for purposes of this section:

(i) Class 1 equivalency factors as determined in § 426.11 shall not be used; and

(ii) Indirect landholders need not count involuntarily acquired acreage designated as excess by the direct landowner.

(o) *District categorization.* For purposes of this section each district has Category 2 status, unless the following criteria have been met. If the district has met both criteria, it will be granted Category 1 status.

(i) The district has conformed by contract to the discretionary provisions; and

(ii) The district is current in its financial obligations to Reclamation.

(2) Reclamation considers a district current in its financial obligation if as of September 30, the district is current in its:

(i) Financial obligations specified in its contract(s) with Reclamation; and

(ii) Payment obligations established by the RRA, and these rules.

(p) *Application of Category 1 status.* Once a district achieves Category 1 status, it will not be withdrawn unless the Regional Director determines the district is not current in its financial obligations as specified in paragraph (o)(2) of this section. The withdrawal of Category 1 status will be effective at the end of the current water year and can be restored only as provided under paragraph (o) of this section. With the withdrawal of Category 1 status, the district will have a Category 2 status with the associated 80-acre RRA forms submittal exemption for qualified recipients.

(q) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a qualified recipient holds land in a Category 1 district, then the 240-acre forms threshold will be applicable in determining if the landholder must submit a certification form to that Category 1 district. If the same qualified recipient also holds land in a Category 2 district, then the 80-acre forms threshold will be applicable in determining if the landholder must submit a certification form to the Category 2 district.

§ 426.10 [Amended]

3. Effective January 1, 1997, in § 426.10(e), the reference to ''paragraphs (f) and (g) of this section'' is revised to read ''paragraphs (f) and (n) of this section.''

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