

Dated: February 6, 1995.

Bob Armstrong

Assistant Secretary of the Interior.

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Office of the Secretary

43 CFR Part 2

Records and Testimony; Freedom of Information Act

CFR Correction

In title 43 of the Code of Federal Regulations, parts 1 to 999, revised as of October 1, 1994, the text for appendix B to part 2 was inadvertently omitted.

On page 35, following the text of appendix A, appendix B should read as follows:

Appendix B to Part 2—Bureaus and Offices of the Department of the Interior

1. *Bureaus and Offices of the Department of the Interior.* (The address for all bureaus and offices, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)

Secretary of the Interior, Office of the Secretary
Office of Administrative Services (for Office of the Secretary components)
Assistant Secretary, Territorial and International Affairs
Commissioner, Bureau of Indian Affairs
Director, U.S. Fish and Wildlife Service
Director, National Park Service, P.O. Box 37127, Washington, DC, 20013-7127
Commissioner, Bureau of Reclamation
Director, Bureau of Land Management
Director, Minerals Management Service
Director, Bureau of Mines, Columbia Plaza, 2401 E Street NW., Washington, DC 20241
Director, Geological Survey, The National Center, Reston, VA 22092
Director, Office of Surface Mining Reclamation and Enforcement
Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203
Inspector General, Office of Inspector General
Solicitor, Office of the Solicitor

2. *Freedom of Information Officers of the Department of the Interior.* (The address for all Freedom of Information Officers, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)

Director, Office of Administrative Services (for Office of the Secretary components), U.S. Department of the Interior
Director, Office of Administration, Bureau of Indian Affairs
Freedom of Information Act Officer, Bureau of Land Management
Assistant Director, Finance and Management, Bureau of Mines, Columbia Plaza, 2401 E Street NW., Washington, DC 20241
Freedom of Information Act Officer, Bureau of Reclamation
Chief, Division of Media Information, National Park Service

Chief, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement
Chief, Directives Management Branch, Policy and Directives Management, U.S. Fish and Wildlife Service,
Chief, Paperwork Management Unit, U.S. Geological Survey, The National Center, Reston, VA 22092
Freedom of Information Act Officer, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091
Information Officer, Office of Inspector General

3. *Office of Hearings and Appeals*—Field Offices:

Administrative Law Judge, 710 Locust St., Federal Building, Suite 116, Knoxville, TN 37902
Administrative Law Judges, 6432 Federal Bldg., Salt Lake City, UT 84138
Administrative Law Judge, 2901 N. Central Ave., Suite 955, Phoenix, AZ 85012-2739
Administrative Law Judge, 2020 Hurley Way, Suite 150, Sacramento, CA 95825
Administrative Law Judges, Bishop Henry Whipple Federal Building, 1 Federal Drive, rooms 674 and 688, Fort Snelling, MN 55111
Administrative Law Judge, 1700 Louisiana N.E., Suite 220, Albuquerque, NM 87110
Administrative Law Judge, 215 Dean A. McGee Ave., room 507, Oklahoma City, OK 73102
Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, 515 9th St., Suite 201, Rapid City, SD 57701
Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, Rm. 3329, 316 N. 26th St., Billings, MT 59101

4. *Office of the Solicitor*—Field Offices.

Regional Solicitors

Regional Solicitor, U.S. Department of the Interior, 701 C Street, Anchorage, AK 99513
Regional Solicitor, U.S. Department of the Interior, Room E-2753, 2800 Cottage Way, Sacramento, CA 95825
Regional Solicitor, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225
Regional Solicitor, U.S. Department of the Interior, Richard B. Russell Federal Building, 75 Spring Street, SW., Suite 1328, Atlanta, GA 30303
Regional Solicitor, U.S. Department of the Interior, Suite 612, One Gateway Center, Newton Corner, MA 02158
Regional Solicitor, U.S. Department of the Interior, Room 3068, Page Belcher Federal Building, 333 West 4th Street, Tulsa, OK 74103
Regional Solicitor, U.S. Department of the Interior, Lloyd 500 Building, Suite 607, 500 N.E. Multnomah, Portland, OR 97232
Regional Solicitor, U.S. Department of the Interior, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, UT 84138

Field Solicitors

Field Solicitor, U.S. Department of the Interior, Suite 150, 505 North Second St., Phoenix, AZ 85004

Field Solicitor, U.S. Department of the Interior, P.O. Box M, Window Rock, AZ 86515
Field Solicitor, U.S. Department of the Interior, Box 36064, 450 Golden Gate Avenue, Room 14126, San Francisco, CA 94102
Field Solicitor, U.S. Department of the Interior, Box 020, Federal Building, U.S. Courthouse, 550 West Fort Street, Boise, ID 83724
Field Solicitor, U.S. Department of the Interior, 686 Federal Building, Twin Cities, MN 55111
Field Solicitor, U.S. Department of the Interior, Room 5431, Federal Building, 316 N. 26th Street, Billings, MT 59101
Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, NM 87504
Field Solicitor, U.S. Department of the Interior, Osage Agency, Grandview Avenue, Pawhuska, OK 74056
Field Solicitor, U.S. Department of the Interior, Suite 502J, U.S. Post Office and Courthouse, Pittsburgh, PA 15219
Field Solicitor, U.S. Department of the Interior, P.O. Box 15006, Knoxville, TN 37901
Field Solicitor, U.S. Department of the Interior, 1100 South Fillmore, Amarillo, TX 79101
Field Solicitor, U.S. Department of the Interior, 603 Morris Street, 2nd Floor, Charleston, WV 25301.

[52 FR 45593, Nov. 30, 1987, as amended at 53 FR 16128, May 5, 1988; 58 FR 48973, Sept. 21, 1993]

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Bureau of Reclamation

43 CFR Part 426

[RIN 1006-AA33]

Administrative Fee Provision of the Acreage Limitation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: The purposes of this rule are to improve compliance with the form submission requirements of the Reclamation Reform Act of 1982 (RRA) and the Acreage Limitation Rules and Regulations in order to ensure that irrigation water is delivered only to eligible landholders (landowners and lessees), and to recoup administrative costs that the Bureau of Reclamation (Reclamation) incurs due to noncompliance with the RRA reporting requirements. The rule adds a section that imposes fees on districts when they do not meet statutory and regulatory requirements for submitting RRA forms.
EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D-5200, PO Box 25007, Denver, CO 80225, Telephone: (303) 236-1061, extension 224.

SUPPLEMENTARY INFORMATION: The RRA limits the amount of owned land on which a landholder can receive irrigation water and places a limit on the amount of leased land that can receive such water at a subsidized water rate. In order to ensure compliance with the ownership limitations and the limitations on subsidies, certain statutory and regulatory requirements must be met.

One of these requirements applies to all landholders whose landholdings in districts subject to the acreage limitation provisions total more than 40 acres. These landholders must complete RRA certification or reporting forms before receiving irrigation water. The forms must be completed annually and submitted to each district in which the landholder receives irrigation water. Landholders must disclose on the forms all the land they own and lease directly or indirectly in Reclamation projects that are subject to the acreage limitation provisions. The forms must be resubmitted whenever a landholding change occurs. If a landholding does not change, a verification form to that effect must be submitted each year.

While the RRA and the Acreage Limitation Rules and Regulations (43 CFR Part 426) set limits on the receipt of irrigation water and establish requirements that must be met in order to receive such water, the current rules do not address situations in which water has been delivered to landholders who failed to meet all the requirements and thus, were ineligible to receive the water. These situations were not addressed because the RRA does not contemplate such deliveries.

Districts, rather than Reclamation, generally control the deliveries of irrigation water to landholders. Under their contracts with the United States, districts are legally obligated not to deliver irrigation water to landholders who do not meet the eligibility requirements of the RRA.

With respect to the form requirements discussed previously, § 426.10(k) specifically states that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive irrigation water. However, during its water district reviews, Reclamation has found that in some instances, districts have delivered irrigation water to

landholders who had failed to meet the form requirements and other requirements of the law and rules.

In 1988, Reclamation adopted a compensation policy whereby full-cost charges were assessed for irrigation water that had been delivered to ineligible landholders. This policy is based on the legal theory of conversion in that when irrigation water is delivered to ineligible recipients, it is an unlawful conversion of the Government's property interest in the water, and the Government is therefore entitled to be compensated for the conversion. Since Reclamation cannot recover the water that was delivered to the ineligible recipients, it has been Reclamation's position that it is entitled to recover the value of its property interest in that water and that the full-cost water rate prescribed in the RRA is an appropriate measure of the water's value.

In 1993, Reclamation decided to review certain agency policies, one of which was the full-cost compensation policy for RRA form violations. The Commissioner of Reclamation asked the Department of the Interior's Office of the Solicitor whether Reclamation is permitted to impose charges other than full-cost compensation charges for such violations. In a July 23, 1993, memorandum, the Associate Solicitor, Division of Energy and Resources, advised the Commissioner that several laws "* * * authorize Reclamation to promulgate regulations necessary to carry out its mission, including those which would assess fees. This means that Reclamation may, by regulation, impose administrative fees or other charges designed to recover the costs it incurs for processing improperly submitted forms or for collecting forms from those who have not submitted them." The Associate Solicitor further concluded that "* * * Reclamation has considerable discretion in determining how to calculate those costs, so long as the charges imposed bear a demonstrable relationship to the costs incurred by the agency and have the intended effect of improving compliance with the Act and achieving congressional objectives."

Based on the Associate Solicitor's conclusions, Reclamation decided to amend the Acreage Limitation Rules and Regulations by adding a provision to impose assessments to recover its administrative costs when landholders do not comply with the RRA form requirements. Reclamation notified the public of its intent in the **Federal Register** (see 58 FR 59427) Nov. 9, 1993, and published the proposed rule at 59 FR 33251, June 28, 1994.

Summary of Amendment to the Rules

The amendment to the Acreage Limitation Rules and Regulations provides that Reclamation will assess a district for administrative costs when RRA forms are not submitted before receipt of irrigation water. The assessment will be applied on a yearly basis in each district for each landholder that failed to comply with the form requirements. A district will also be assessed for administrative costs when corrections to RRA forms are not provided within a 60-day grace period. The assessment will be applied on a yearly basis for each landholder for which corrected forms are not provided within the grace period. These assessments for administrative costs will replace the full-cost charges that Reclamation has assessed in the past for form violations under its compensation policy. The administrative cost assessments will not be subject to the underpayment interest component set forth in § 426.23.

The assessment for administrative costs shall be set periodically on the basis of the average costs associated with performing activities to address RRA form violations. The assessment reflects the average direct and indirect costs incurred Reclamation-wide for: (1) Communicating with district representatives or landholders to obtain missing or corrected forms, (2) assisting landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements, (3) performing onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms, and (4) performing other activities necessary to address form violations. Initially the amount of the assessment will be \$260. The amount is based on a review of the costs Reclamation incurred in 1991, 1992, and 1993 performing activities to address RRA form violations. The assessment will be reviewed at least once every 5 years and, if needed, will be adjusted to reflect new cost data.

As with other assessments, districts will be held responsible for payment of the assessments because of their contractual obligation with the United States. Charges collected through the imposition of assessments for administrative costs will be credited to the general fund of the Treasury as miscellaneous receipts.

Payment of the assessments set forth in the proposed rule does not exempt districts and landholders from the form requirements of the RRA or Acreage Limitation Rules and Regulations.

Districts are not permitted to continue water deliveries to ineligible recipients simply because they are willing to pay the assessments. Reclamation will take all necessary actions to prevent the delivery of irrigation water to ineligible land.

Comments About the Proposed Rule

During the public comment period from June 28, 1994, through August 29, 1994, Reclamation received 48 responses on the proposed rule. The responses were submitted by or on behalf of 40 districts, 7 water user associations, 5 landholders, one Federal agency, and one U. S. Congressman.

Approximately 80 percent of the respondents either approved of the proposed rule entirely or in part. Many of these respondents stated that the administrative cost assessment will provide a reasonable and equitable means for addressing RRA form violations and will be a vast improvement over Reclamation's past policy of assessing compensation charges for nonsubmission of RRA forms.

Approximately 20 percent of the respondents were opposed to the rule, mainly because they think the administrative cost assessments are unnecessary or excessive. Several respondents objected to the rule because they do not think Reclamation has the legal authority to impose such assessments.

General Comments

Following are the general comments received about the proposed rule and our response to each:

Comment 1: Two respondents commented that the rule should make it clear that the administrative cost assessment will be the sole economic ramification for RRA form violations.

Response: The respondent's comment has not been accommodated because we think such language would be superfluous. First, the main purpose of the rule is to set forth the charges that will be assessed in cases of RRA form violations, which it does. In addition, it was stated previously in this preamble that the administrative cost assessment will replace the compensation charges Reclamation previously assessed for form violations. This statement clearly sets forth Reclamation's intent with regard to assessments for form violations.

Comment 2: Four respondents commented that the rule should clearly state that the administrative cost assessments will be applied prospectively only.

Response: The rule will be applied prospectively. The rule will be effective March 27, 1995. This date is printed at the beginning of this preamble, under **EFFECTIVE DATE**. We do not think it is necessary to repeat the effective date in the rule itself.

Comment 3: Nineteen respondents commented that the administrative cost assessments should be applied retrospectively to past RRA form violations instead of the compensation rate.

Response: As stated in the response to the preceding comment, the rule will be applied prospectively. However, Reclamation is currently considering a plan whereby issued and pending compensation bills for RRA form violations would be reviewed using the dollar amount in § 426.24(e) as the basis for possible action.

Comment 4: One respondent commented that Reclamation needs to define "\$260 per form violation" and asked how many RRA forms are required of a farmer in a single year.

Response: We assume the phrase the respondent is referring to is from a statement in the preamble of the proposed rule. The complete sentence reads as follows: "The assessment for administrative costs is initially set at \$260 per form violation." The sentence in question is a general statement, the main purpose of which was to make the reader aware of the amount of the administrative cost assessment; i.e., \$260. Sections 426.24(a) and (b) describe how the assessment will be applied to form nonsubmissions and form errors.

Regarding the respondent's question, a landholder generally needs to submit just one RRA form annually; however, in some cases, additional forms may be required. Regardless of the number of forms required, the \$260 assessment for forms nonsubmission will be based on a landholder's entire RRA form effort for the water year in question, for each district in which land is held. For example, if Landholder A held land in District B and received irrigation water in 1995 despite the fact that he/she submitted neither of two RRA forms required for that water year, the assessment would be \$260, not \$520.

Comment 5: One respondent commented that the proposed rule did not adequately comply with the Regulatory Flexibility Act because it did not explain why the rule would not have a significant effect on a substantial number of small entities.

Response: The explanatory language referred to by the respondent has been added to the preamble of this final rule. By doing so, Reclamation believes it is

in full compliance with the requirements of the Regulatory Flexibility Act.

Comment 6: Five respondents questioned Reclamation's authority to impose administrative cost assessments. Several of the respondents commented that the assessments are actually penalties, and since the RRA does not include a penalty provision, the assessments cannot be charged.

Response: Reclamation is authorized to promulgate regulations and to collect all data necessary to carry out its mission. 43 U.S.C. § 373; 43 U.S.C. 390 ww(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 426.10(k) of the regulations requires that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive water.

In issuing the administrative fee rule, 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 and to recoup certain administrative costs Reclamation incurs due to noncompliance with RRA reporting requirements.

Reclamation, as a Federal agency, also may impose remedial measures. Courts have recognized an agency's authority to impose measures if they reasonably relate to the purpose of the enabling statute and further congressional objectives. *Gold Kist, Inc. v.*

Department, 741 F.2d 344, 348 (11th Cir. 1984); *West v. Bergland*, 611 F.2d 710, 725 (8th Cir. 1980); *United States v. Frame*, 885 F.2d 1119 (3d Cir. 1989).

The \$260 charge provided for in this rule is an administrative fee designed to improve compliance with the acreage limitation requirements and to recover Reclamation's costs in helping landholders to meet the eligibility requirements of the Act. As such, the fee 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 certification 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, Reclamation is helping that landholder establish eligibility for receiving the "service or thing of value"—irrigation water. Certainly, these additional Reclamation activities are valuable services the agency provides districts and landholders who would otherwise not be in compliance with applicable Federal laws, regulations and contracts.

Finally, it should be noted that Reclamation's authority to promulgate these regulations was not diminished by the court's decision in *Orange Cove Irrigation District v. United States*, 28 Fed. Cl. 790 (1993). That case did not involve the issue of Reclamation's authority to assess administrative fees or to issue rules. The plaintiff in that case, Orange Cove Irrigation District (OCID), brought suit against the United States to recover money it paid to Reclamation at the time OCID renewed its water service contract in 1988. Reclamation had assessed the district full-cost charges for water delivered in 1987 to certain district landholders before they submitted RRA certification forms. On August 12, 1993, the court rendered its decision in favor of OCID. The case was resolved on the narrow issue of breach of contract and should only be read in light of facts specific to that controversy.

Although not necessary to its holding, the Court also determined that the assessment of full cost constituted an unauthorized penalty under the facts of this case and that the United States had not violated any notice and rulemaking requirements of the Administrative Procedure Act.

Comment 7: Twenty-one respondents commented that the rule should include a provision to increase the 40-acre exemption threshold for RRA form requirements. Ten of the respondents suggested the threshold be increased to 320 acres; six of them suggested a 160-acre threshold. The remainder were not specific as to what the revised threshold should be. Many of the respondents stated that an increased threshold would help to decrease the cost and burden placed on districts and landholders and yet provide adequate means for proper enforcement of the RRA. Several respondents also stated that Reclamation ensured water users in the past that the 40-acre threshold would be increased. One respondent commented that the 40-acre threshold should not be reduced.

Response: As stated in the preamble to the proposed rule, the 40-acre threshold issue is outside the scope of this rulemaking. This rulemaking action

was limited to administrative cost assessments in an effort to expedite the process. Reclamation is currently engaged in a rulemaking action in which we will review the Acreage Limitation Rules and Regulations in their entirety. The exemption threshold will be addressed in that rulemaking. The proposed rule for that rulemaking action is scheduled to be published in February 1995.

Comment 8: One respondent asked why the Government tells landholders the amount of land they may farm in order to make a living.

Response: The RRA does not limit the amount of land landholders may farm. It does, however, limit the amount of owned land on which any one landholder can receive irrigation water from Reclamation projects and the amount of leased land that can receive such water at a rate that is less than the full-cost rate. The reason for this is to ensure that the benefits from the Reclamation program are widely distributed rather than concentrated in the hands of a few landholders.

Specific Comments

The following comments refer to specific provisions within the proposed rule and are followed by Reclamation's response to each.

Section 426.24(a)—Forms Submittal

Comment 1: Eleven respondents commented that the rule needs to define the terms "direct landholder" and "indirect landholder," as used in §§ 426.24(a) and (b). Several of the respondents stated that the words "direct" and "indirect" should be deleted because the term "landholder" is sufficient by itself.

Response: The terms "direct landholder" and "indirect landholder" were included in the proposed rule so readers would be aware that in applying the administrative cost assessment to legal entities, Reclamation will treat compliance by an entity independently from compliance by its part owners or beneficiaries. For example, if three shareholders in a corporation submit their RRA forms, but the entity and the remaining two shareholders do not, the administrative cost assessment would be applied to the entity and each of the two shareholders that were not in compliance, for a total of \$780. Reclamation has decided to clarify §§ 426.24(a) and (b) by deleting the words "direct" and "indirect" and adding a sentence to address application of the administrative cost assessment when legal entities are involved as described above.

Comment 2: One respondent commented that if an entity completes the required RRA form, but one or more of the part owners does not, this should be treated as a form correction and not failure to file a form.

Response: Part owners of legal entities are required to file forms separately from those of the entities in which they have an interest. The reason for this is that the acreage limitation entitlements and other requirements of Reclamation law apply to part owners in the same manner as they apply to any other landholder. Since the part owners may own or lease land in addition to the land that is attributable to them through interest in the entity, it is not sufficient for the entity's form to be submitted in order to determine if all acreage limitation entitlements have been met. Therefore, if a part owner does not submit the required RRA forms, this is not viewed as a correctable error on the part of the entity, but rather as nonsubmission of forms by the part owner. Thus, in the case presented by the respondent, the \$260 administrative cost assessment would be applied for each part owner that received irrigation water without having submitted the required forms. However, an additional assessment would not be applied as a result of the entity's actions, because it was in compliance with the RRA form requirements.

Comment 3: One respondent requested that the following statement in the preamble to the June 28, 1994, proposed rule be clarified: "A district will be assessed for administrative costs when RRA forms are not submitted prior to receipt of irrigation water." The respondent questioned whether this statement referred to the receipt of irrigation water to landowners or to the district.

Response: The statement refers to the receipt of irrigation water by landholders subject to the RRA form requirements. We believe the language in § 426.24(a) is clear on this point; therefore, the rule was not revised to accommodate the comment.

Section 426.24(b)—Forms Corrections

Comment 1: Four respondents commented about the 45-day grace period provided for form corrections. One respondent thought landholders/districts should be given a longer period of time in which to correct RRA forms before imposition of the \$260 assessment. Three of the landholders thought the 45-day grace period was fair.

Response: This section has been revised to increase the length of the grace period from 45 days to 60 days.

The grace period was lengthened to account for any additional time districts and landholders may need for mailing the forms in question. This section was also revised to clarify that the 60-day grace period will be based on calendar days rather than working days.

Comment 2: Three respondents commented that the \$260 assessment for administrative costs is excessive for cases where RRA forms are not corrected.

Response: Reclamation believes the \$260 assessment is reasonable to cover the additional costs it incurs to obtain corrections on RRA forms. In addition, any financial hardships can be avoided because the assessment will not be applied if the corrected forms are submitted within the 60-day grace period.

Comment 3: One respondent understood the provision to mean that \$260 would be assessed for every error Reclamation identified on an RRA form.

Response: The assessment will be applied on a yearly basis for each landholder for which corrected forms are not submitted within the grace period. Therefore, if Landholder A did not submit timely corrections for four errors on his 1995 forms, the assessment would be \$260, not \$1,040. The application of the \$260 assessment for form corrections is explained in § 426.24(b); therefore, no revisions were made to accommodate this comment.

Comment 4: Three respondents commented that mistakes occur on RRA forms because the forms are very complicated and are revised annually. Therefore, they were opposed to assessments for form errors.

Response: The assessment for form corrections will not be applied immediately when Reclamation identifies errors on landholder forms. Landholders/districts have 60 days in which to submit corrected forms before the \$260 assessment will be charged. To the extent possible, Reclamation is also willing to provide assistance if help is needed in completing RRA forms. Because of the preceding, we find the rule to be reasonable, even if the forms are perceived by some to be difficult to complete.

Comment 5: Six respondents commented that the \$260 assessment for RRA form corrections should not be charged for inadvertent errors. Four of the respondents thought the assessment was appropriate only in cases involving fraud.

Response: Reclamation realizes that inadvertent errors will sometimes be made on RRA forms. On the other hand, these errors cannot be overlooked because complete and accurate

information is needed in order to determine if a landholder is within applicable entitlements and meets other requirements of the RRA. Section 426.24(b) resolves both the potential for inadvertent errors and the need for accurate information by providing landholders a 60-day grace period in which to submit corrected forms before imposition of the \$260 assessment. This assessment is not appropriate in cases involving fraud because the consequences for fraudulent actions are set forth in 18 U.S.C. 1001. These consequences, as related to the RRA forms, are discussed in § 426.10(j).

Comment 6: Two respondents did not think the assessment would help reduce the number of RRA form problems. One of the respondents thought the assessment would only cause antagonism. The other respondent stated that the fee would be too high in cases where the errors were inadvertent and too low in cases of fraud.

Response: Reclamation believes the assessment will provide an equitable method for addressing errors on RRA forms while recovering the incremental costs it incurs to address such problems. We also think the assessment is reasonable, and in most cases, will provide an incentive for landholders and districts to complete their forms properly in future water years. The applicability of the administrative cost assessment to fraudulent actions is discussed in the response to the preceding comment.

Comment 7: Three respondents maintained that the assessment for RRA form corrections should not be a flat fee, but should be based on the severity of the error.

Response: All the information landholders are required to disclose on the forms is needed for Reclamation to have adequate information to determine if landholders are in compliance with the acreage limitations and enforce other requirements of the RRA. Therefore, all omissions and errors identified by Reclamation are considered to be of equal severity. It must also be remembered that even in those cases where errors are perceived to be insignificant, the \$260 assessment will not be charged if corrections are made within the grace period.

Comment 8: One respondent asked if the assessment for administrative costs will be applied to RRA form errors as well as to the nonsubmission of such forms.

Response: Section 426.24(a) provides for the imposition of the \$260 administrative cost assessment in cases of form nonsubmission. Section 426.24(b) provides for the assessment in

cases of form errors. However, in the case of errors, the assessment will not be charged if corrected forms are submitted within the grace period. The assessment in § 426.24(a) will be applied independently from the assessment in § 426.24(b). Sections 426.24(a) and (b) were revised to clarify this point.

Comment 9: One respondent commented that the assessment for form corrections should be applied to landholders for whom corrected forms are not provided within the grace period only if irrigation water has been received by the landholder.

Response: Reclamation agrees with this comment and § 426.24(b) has been revised accordingly. However, Reclamation will proceed to prepare the bill for the administrative cost assessment after expiration of the grace period. If the landholder did not in fact receive irrigation water during the year in question, the district will need to provide evidence to this effect before the assessment will be retracted.

Section 426.24(c)—Parties Responsible for Paying Assessments

Comment 1: Twenty respondents disagreed with this provision. For legal reasons and from the standpoint of equity, they think Reclamation should collect the payment of administrative cost assessments from landholders rather than districts.

Response: This comment has not been accommodated. Reclamation contracts almost exclusively with districts rather than individual water users. In general, districts agree in their contracts that the delivery of irrigation water is subject to Reclamation law as amended and supplemented. Based on the preceding, Reclamation will hold districts ultimately responsible for payment of the administrative cost assessments. However, § 426.24(c) does not preclude districts from collecting the assessments from the involved landholders.

Section 426.24(e)—Assessment for Administrative Costs

Comment 1: One respondent thought that it was unfair to impose the same fee on all districts in every instance of noncompliance.

Response: The type of violations for which the assessments will be charged are the same in all districts. Therefore, we believe it is fair to establish Reclamation's average costs and impose the same assessment westwide. In fact, landholders and districts have frequently requested that such a uniform fee be established.

Comment 2: One respondent suggested that the bill for each

landholder be based on an hourly rate that is consistent Reclamationwide.

Response: This comment has not been accommodated. Reclamation analyzed the costs it incurred in the past to address RRA form violations and has determined it is fair and reasonable to charge an average assessment that is uniform in all districts.

Comment 3: Two respondents commented that the \$260 assessment does not accurately reflect Reclamation's costs to bring landholders into compliance because Reclamation only identifies the violations; the district performs all the other work.

Response: Reclamation acknowledges that districts frequently take actions to bring landholders into compliance. However, in most cases, Reclamation also performs additional activities to address noncompliance problems. Examples of such activities were listed previously in this preamble. Districts may not be aware of these activities because they are not always conducted at the site of the district office.

Comment 4: One respondent did not think it was fair that Reclamation can adjust the administrative cost assessment every 5 years without input from the districts.

Response: The basic methodology for determining the assessment was set forth in the proposed rule, which was open for public comment. The methodology was explained again previously in this preamble. Since adjustments will generally only be made to reflect new cost data and a notice of the revised assessment will be published in the **Federal Register**, we do not think another comment period is necessary before the adjustments are made.

Comment 5: One respondent questioned whether the costs will continually increase until they are equal to the compensation rate.

Response: Reclamation's goal is to establish fair and reasonable charges to recover the costs it incurs to address RRA form violations. The process will be reexamined should the assessments ever reach a point where this goal can no longer be achieved.

Comment 6: One respondent commented that the administrative cost assessment should not be based on 1991, 1992, and 1993 costs because Reclamation keeps changing the RRA forms, which is confusing to landholders.

Response: The changes that were made to the RRA forms during 1991, 1992, and 1993 were relatively minor. Reclamation finds no evidence to support a conclusion that the

noncompliance level increased because of form revisions.

Comment 7: One respondent commented that the rule is too vague with regard to the basis for the administrative cost assessment.

Response: Reclamation agrees that the rule does not provide a detailed description of the basis for the administrative cost assessment. However, it would be inappropriate to include the complete cost analysis in either the rule or the preamble. In the final rule, the description has been deleted from § 426.24(e). However, it has been retained in the preamble so readers will be aware of the general basis for the \$260 assessment.

Comment 8: One respondent wanted clarification as to whether the administrative cost assessment is a combination of a penalty and costs incurred by Reclamation.

Response: The assessment is based strictly on Reclamation's costs and is remedial in nature. It does not include a penalty factor.

Comment 9: One respondent commented that overhead costs should not be included in the administrative cost assessment.

Response: Reclamation thinks it is reasonable to recover all additional costs incurred to address RRA form violations. Overhead costs are part of these costs; therefore, they have been included in the assessment.

Comment 10: One respondent commented that the administrative cost assessment should not include the cost of Reclamation's audits, because that is the Government's job.

Response: The assessment does not include costs for reviewing a district's compliance with the RRA or audits of individuals. It includes only those additional costs Reclamation incurs to address RRA form violations after they have been found.

Comment 11: One respondent commented that some districts are not always able to terminate deliveries of irrigation water to just those landholders that have not submitted the required RRA forms. The reason for this is that several landholders, some of whom may be in compliance, are located on the same ditch with the same delivery point.

Response: Despite the circumstances described by the respondent, districts are not permitted to deliver irrigation water to landholders that are not in compliance with the RRA form requirements. In the case described, districts may need to take extra measures to encourage all landholders located on the same ditch to submit the required forms. To the extent possible,

Reclamation will work with districts to help resolve such situations.

Comment 12: Two respondents stated that Reclamation is not permitted to terminate water deliveries in cases where landholders fail to submit the required forms. The respondents maintain that landholders must first be provided with a notice or hearing before such deliveries can be terminated.

Response: These comments were not accommodated. Reclamation believes it is permitted to terminate water deliveries in such cases because: (1) Pursuant to the requirements in §§ 206, 224(c), and 228 of the RRA and § 426.10(e) of the Acreage Limitation Rules and Regulations, landholders are required to submit RRA forms as a condition for receipt of irrigation water. (2) The consequence for noncompliance with this requirement has been clearly set forth in § 426.10(k) since the Acreage Limitation Rules and Regulations were first promulgated in 1983. That is, failure to submit the required forms results in loss of eligibility to receive irrigation water by the landholder.

As stated previously, Reclamation is currently engaged in a rulemaking action in which we will review the Acreage Limitation Rules and Regulations in their entirety. As part of that rulemaking action, we will consider the comment regarding notices or hearings prior to termination of water deliveries.

Executive Order 12866

This rule does not constitute a significant regulatory action under Executive Order 12866, and therefore does not require review by the Office of Management and Budget.

National Environmental Policy Act

Neither an environmental assessment nor an environmental impact statement is required for this rulemaking because, pursuant to 40 CFR 1508.4 and Departmental Manual part 516 DM 6, Appendix 9, § 9.4.A.1, this action is categorically excluded from the provisions of the National Environmental Policy Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as is required by 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1006-0005 and 1006-0006.

Small Entity Flexibility Analysis

Reclamation identified approximately 500 landholders with RRA form violations during the 1990, 1991, and

1992 water years. This represents 1.1 percent of the 45,000 landholders subject to the RRA form requirements and 0.2 percent of the 230,000 landholders in districts subject to the RRA. The violations were found in 60 different districts, which is approximately 20 percent of the districts subject to the ownership and full-cost pricing provisions of the RRA and about 10 percent of the total districts that have entered contracts with the United States for receipt of irrigation water.

The administrative cost assessment of \$260 will in most cases be less than the full-cost charges that Reclamation previously assessed for RRA form violations pursuant to its compensation policy. Therefore, in comparison, the assessment will generally have a positive economic effect on most landholders and districts involved with form violations.

Based on the preceding, Reclamation has certified that the rule will not have a significant economic effect on a substantial number of small entities. Small entities also are able to avoid all negative effects by complying with the form requirements of the RRA and Acreage Limitation Rules and Regulations.

Civil Justice Reform

The Department of the Interior has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Authorship

This proposed rule was prepared by staff in the Reclamation Law, Contracts, and Repayment Office, D-5200, Bureau of Reclamation, Denver, Colorado.

List of Subjects in 43 CFR Part 426

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 43 CFR Part 426 is amended as follows:

Dated: January 11, 1995.

Elizabeth Ann Rieke,
Assistant Secretary—Water and Science.

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for Part 426 is revised to read as follows:

Authority: 43 U.S.C. 371–383; 43 U.S.C. 390aa–390zz–1; 31 U.S.C. 9701.

2. Section 426.24 is redesignated as § 426.25, and new section 426.24 is added to read as follows:

§ 426.24 Assessments of administrative costs.

(a) *Forms submittal.* A district will be assessed for the administrative costs described in paragraph (e) of this section when irrigation water has been delivered to landholders that did not submit certification or reporting forms before receiving irrigation water in accordance with § 426.10(e). The assessment will be applied on a yearly basis in each district for each landholder that received irrigation water but failed to comply with § 426.10(e). In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries. The assessment in this paragraph will be applied independently of the assessment set forth in paragraph (b) of this section.

(b) *Forms corrections.* Where corrections are needed on certification or reporting forms, the requirements of § 426.10(a) will be deemed to have been met so long as the district provides corrected forms to Reclamation within 60 calendar days of the date of Reclamation's written request for corrections. A district will be assessed for the administrative costs described in paragraph (e) of this section when corrected forms are not provided within this 60-day time period. The assessment will be applied on a yearly basis in each district for each landholder that received irrigation water and for whom corrected forms are not provided within the applicable 60-day time period. In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries. The assessment in this paragraph will be applied independently of the assessment set forth in paragraph (a) of this section.

(c) *Parties responsible for paying assessments.* Districts shall be responsible for payment of the assessments described in paragraphs (a) and (b) of this section.

(d) *Disposition of assessments.* The administrative costs assessed and collected under paragraphs (a) and (b) of this section will be deposited to the general fund of the United States Treasury as miscellaneous receipts.

(e) *Amount of assessment.* The assessment for administrative costs shall be set periodically on the basis of the average costs associated with performing activities to address certification and reporting form

violations. Initially the amount shall be \$260. This assessment for administrative costs will be reviewed at least once every 5 years and adjusted, 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 is reviewed.

[FR Doc. 95–4416 Filed 2–22–95; 8:45 am]

BILLING CODE –94–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7611]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard