

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****43 CFR Parts 426 and 427**

RIN 1006-AA32

**Acreage Limitation and Water Conservation Rules and Regulations**

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This proposed rulemaking would retitle and revise the existing Rules and Regulations for Projects Governed by Federal Reclamation Law (Part 426) and add new Water Conservation Rules and Regulations (Part 427). These rules would replace and expand upon existing rules that pertain to the administration of the Reclamation Reform Act of 1982 (RRA) and are in partial fulfillment of the requirements of a Settlement Contract between the Department of the Interior, Department of Justice, and the Natural Resources Defense Council (NRDC).

**DATES:** Written comments on these proposed rules and regulations must be received by June 2, 1995.

**ADDRESSES:** Written comments should be mailed to the Westwide Settlement Manager, Bureau of Reclamation, P.O. Box 25007 (Mail Code D-5010), Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Concerning part 426, contact Richard Rizzi, Bureau of Reclamation, P.O. Box 25007 (Mail Code D-5200), Denver, Colorado 80225, telephone (303) 236-1061 ext. 235; concerning part 427, contact Craig Phillips, Bureau of Reclamation, P.O. Box 25007 (Mail Code D-5300), Denver, Colorado 80225, telephone (303) 236-1061 ext. 265.

**SUPPLEMENTARY INFORMATION:** 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. 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 Bureau of Reclamation (Reclamation) projects.

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, which was 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, non-resident 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 natural 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. The 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 to confirm information from reporting procedures, 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 natural 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. The final rules and regulations were published in the **Federal Register** (53 FR 50535, Dec. 16, 1988) and became effective on January 17, 1989.

**Litigation Concerning the RRA Rules and Regulations**

The 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) and the regulations of the Council of Environmental Quality in preparing the EA and the Findings of No Significant Impact in the promulgation of the 1987 rules and regulations.

Reclamation appealed the District 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 requires 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." The Settlement Contract also requires Interior to prepare an environmental impact statement (EIS) considering the impact of the proposed rules and regulations and alternatives thereto. However, nothing in the contract requires Interior to adopt changes to the rules now in effect.

The required draft EIS has been published separately and notice of its availability will be published in the "notice" section of the **Federal Register**.

**Public Scoping**

A notice of intent regarding the EIS and a notice of intent regarding the rulemaking were both 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.

Public comments generally focused on 5 areas: process, acreage limitations on receipt of project water, water conservation, the Settlement Contract, and EIS alternatives. Each comment was considered in the development of EIS alternatives, the EIS analysis, and these proposed rules and regulations.

**Partnerships for Improved Resources Management**

In December 1994, the Commissioner of Reclamation announced a new initiative to develop formal partnerships between Reclamation and water districts in a collaborative effort to improve the management of water and associated resources throughout the Western

United States. The partnerships will address mutually desirable water resources management objectives and provide for public involvement to consider the broadest range of traditional and emerging societal needs and water resources management solutions.

Under this initiative, partnerships will be formed with one or more districts on a district basis, project basis, or watershed basis. Partnerships will involve agricultural water districts, municipal and industrial water districts, other Reclamation contractors, and other water suppliers and users throughout the 17 Western States. The initiative will also provide for State participation in the partnerships to assure compliance with State water law and consideration of State resources priorities.

These proposed regulations acknowledge this new partnership initiative. Certain requirements are modified if a formal partnership with a district achieves the same objectives through similar or alternative means. One section specifically allows for this type of flexibility: § 426.17 regarding landholder information requirements.

#### Description and Analysis of Part 426

Reclamation has taken advantage of the opportunity afforded by the NRDC settlement to rework part 426 in its entirety. The majority of the changes have been made for the sole purpose of improving the clarity of the regulation. Thus, the bulk of the changes do not represent new Reclamation policy regarding the RRA, but rather an attempt on Reclamation's part to resolve any uncertainty that may have been associated with the interpretation of the existing regulations. In some cases, these proposed regulations include Reclamation policies that have been in effect for some time, but which are not specifically covered in the existing regulations.

However, a number of substantive changes have been proposed. The key topics under which substantive changes have been made is summarized as follows:

- Reduction in certification and reporting burden
- Definition of *lease*
- Nonresident alien and foreign legal entity entitlements
- Types of contracts considered *additional and supplemental benefits*
- Application of the RRA to religious and charitable organizations
- Application of class 1 equivalency
- Involuntary acquisition and future operation of formerly excess land by excess land sellers

- Application of the compensation rate and administrative fees in cases of irrigation of ineligible excess land
- New procedures for administrative appeals of RRA-related determinations.

Also, a new ordering of the sections has been proposed with the objectives of grouping related topics and of attaining a more logical and progressive sequence. For example, §§ 426.4 through 426.6 would address how basic landholding entitlements are determined, followed by §§ 426.7 through 426.9, which would discuss the entitlements of particular types of landholders. Sections 426.10 through 426.14 would be generally categorized as addressing the status of land under acreage limitation laws, and the remaining sections would address administrative and miscellaneous provisions.

Finally, all examples would be deleted from the text of the regulations and would be instead included, if necessary, in the following section-by-section analysis. This change would make the rule more compact, and would promote our effort to improve precision in the text of the regulation.

#### Section-by-Section Analysis

*Section 426.1.* The proposed rule would change the title of this section from *Objectives* to *Purpose*, and the narrative would be rewritten to include a straightforward statement as to the purpose of these regulations.

*Section 426.2.* The existing section on applicability would be removed because it is not possible to write a concise, yet accurate, statement as to the applicability of these regulations. Because the rule's scope of effect is not the same for the various provisions of the regulations, Reclamation proposes that the best approach would be to have each section speak for itself as to its applicability.

The proposed § 426.2 defines terms used in the regulation and would replace § 426.4 from the existing regulation.

Numerous changes would be made to the definition section. The more significant of the proposed changes are discussed as follows in alphabetical order:

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

*Arable land* would be deleted because the term's only use is within the definition of *irrigable land*. The term *arable land* is included in the existing

rules because the definition of *irrigable land* is based on one more useful for formal land classification purposes. It is suggested that a simpler definition of the term *irrigable land* would be appropriate for this regulation, and, therefore, a definition of the term *arable land* would be unnecessary.

*Compensation rate* would be newly defined in these 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.

For conciseness only, the two sentences in the definition of the term *contract* would be 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* would be 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* would mean such a rate on a per acre or per-acre-foot basis.

*Direct and indirect* would be defined in this proposed 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 a legal entity that is a landowner or lessee (such as a stockholder, partner, or trust beneficiary).

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

*District* would be 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* would be included to reflect its common meaning among those familiar with acreage limitation laws: 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* would be replaced with the term *exempt* primarily because that term can be applied to districts and certain types of landholders (e.g.,

trustees and government agencies), as well as to specific land parcels.

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

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

*Indirect* would be added. See the above discussion of the term *direct*.

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

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

*Intermediate entity* would be added to define a term used in these regulations.

*Irrevocable election* would be 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 existing rule.

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

*Irrigation land* would be modified primarily to exclude land exempt from acreage limitation laws. Also, the phrase *in a given water year* would be 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.

*Landholder* would be 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. government agencies, Native American tribes, etc.).

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

*Lease* would be substantially modified. Under the existing regulation, one of the key elements in the definition of *lease* is the assumption of economic risk by the reputed lessee. This definition permits the development of

arrangements under which an individual or legal entity is paid a fixed fee for operating a farming enterprise. Since the operator under these arrangements assumes no economic risk, Reclamation currently does not deem operator to be in a lease relationship. Therefore, under the existing rules, operators are not subject to full-cost irrigation water rates.

The new definition would make *possession* the singular element indicating the existence of a lease. The definition would eliminate economic interest as an essential element of a lease (although economic risk would remain a factor indicating the existence of a lease). Thus, under the proposed regulation, whenever someone other than the landowner has possession of nonexempt land, a lease would exist. Reclamation would consider *fixed-fee* operations leases and would subject the parties to full cost pricing if possession of the land has been transferred, and if nonfull-cost entitlements are exceeded.

The second and third sentences of the definition would address the situation where more than one party has some degree of possession; for example, a landowner may contract with a farm manager but may retain some decisionmaking authority.

Reclamation intends the proposed definition of the term *lease* to exclude arrangements between landholders and custom operators, employees, lenders, and other landholders with whom farm equipment is shared.

*Legal entity* would be broadened to include certain types of landholding arrangements whose status for acreage limitation purposes had been unclear under the existing regulation.

*Nondiscretionary provisions* would be 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 current definition has been eliminated because that concept is covered elsewhere in the regulations.

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

*Nonfull-cost entitlement* would be modified to enhance clarity by

including the defined term *nonfull-cost rate*.

*Nonresident alien entitlement* would be eliminated because, under the proposed rules, nonresident aliens would be treated as prior law recipients, and their entitlements derived accordingly. This fact would be made clear in the definition of *prior law recipient*.

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

*Part owner* would be added to define a term that is used in these regulations.

*Prior law* would be modified primarily to include United States Code citations.

*Prior law recipient* would be modified to include within the definition, nonresident aliens and legal entities not registered in the United States. Under the proposed regulations such persons and entities could only be prior law recipients. This conclusion results from the RRA's definitions of *qualified recipient* and *limited recipient*.

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

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

*Reclamation fund* would be modified to eliminate unnecessary language.

*RRA* would be added. This term would be used throughout the part as it is concise and well understood by most readers.

*Title II* would be eliminated in favor of a definition of the term *RRA* which would be used throughout the part.

*Section 426.3*. The section in the existing regulations, entitled *Authority*, would be removed because it is redundant with the authorities statement that immediately follows the table of contents.

The proposed § 426.3, *Conformance to the discretionary provisions*, would replace the existing § 426.5 and add a more precise description of the section's contents.

The section would be generally rewritten to eliminate redundancy with other sections and paragraphs within the section. Paragraph (a) categorically describes the conditions under which districts remain subject to prior law. These conditions are summarized in the following table:

If a district * * *	then * * *
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.
Amends its contract to conform to the discretionary provisions (following the procedures specified in these regulations) and Reclamation amends the contract.	The district is subject to the discretionary provisions from the date it requests the amendment.
Amends its contract after October 12, 1982 to provide the district with additional or supplemental benefits (as described in these regulations) and the amendment includes the district's conformance to the discretionary provisions.	The discretionary provisions apply as of the date that the Secretary executes the contract amendment.

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 and Reclamation's right to administer contracts.

Another substantial proposed change in the rule would involve specific contract actions that would be considered additional and supplemental benefits. Under this proposed regulation, Rehabilitation and Betterment Act and Small Reclamation Projects Act (SRPA) loans, which are

not currently considered additional and supplemental benefits, would now be considered as such. Any district already subject to the acreage limitation provisions that obtains benefits under these programs would be required to conform to the discretionary provisions. Furthermore, Emergency Fund Act and Distribution Systems Loan Act contracts, whose treatment is not clearly established under the current rules and policy, would be considered additional and supplemental benefits under this proposal. The listing of types of contract amendments requiring district

conformance to the discretionary provisions should not, however, be considered comprehensive.

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

The following statement and table are being considered as an alternative to § 426.3(a)(3)(iv)(F) in the final rules :

(F) Transfer of water on an annual basis from one district to another if the parties to the transfer meet the conditions in the table below:

Party	Condition
Both districts .....	Must have contracts with the United States. Must pay a rate that: —is the higher of the applicable water rate for either district; —does not result in any increased operating losses to the United States above those that would have existed if there had not been a transfer; and —does not decrease the capital repayment to the United States below what it would have been if there had been no transfer.
District receiving transferred water .....	
Recipients of transferred water .....	Must pay a rate that is at least equal to the actual O&M costs or the full-cost rate if the recipients would have been subject to these costs in the absence of a transfer.

Paragraph (d), *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions*, of the proposed 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) is new that would explain the effect of a district's becoming subject to the discretionary provisions on a landholder's status. It would explain how certain indirect landholders in districts with an amended contract can conform to the discretionary provisions by simply submitting a certification form. The provision would also explain how Reclamation would treat direct and indirect landholdings of nonresident aliens and foreign entities in amended districts.

Paragraph (f) would expand on the current rules' discussion of individual elections to address the effects of elections by part owners on entities and vice versa.

*Section 426.4* in the existing regulations, *Definitions*, would be renumbered § 426.2. The proposed new § 426.4, entitled *Attribution of land*, is intended to clarify how Reclamation would attribute land to indirect landholders, and to landholders who are

part owners or are entities not wholly owned by an individual. It would also concisely summarize existing policy regarding on how land is attributed for entitlement purposes.

Paragraph (a) would establish 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 would 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.

*Example (1).* Corporation A, 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.

The converse is also true. 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, could potentially receive nonfull-cost irrigation water on other land in its holding that is not held through Corporation A; but any land held by or through Corporation A could be irrigated only at full cost.

*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. Thus, both Corporations C and D are entitled to own and irrigate 640 acres (see § 426.5), but only 320 acres at the nonfull-cost water rate (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.

*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 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.

Paragraph (b) would establish that, for purposes of acreage limitation entitlements, owned land is attributed to each indirect landholder proportionally based on that landholder's interest. Paragraph (c) would establish that leased land counts against the entitlements of both the owner and the lessee. Paragraph (d) would establish that if a series of legal entities has ownership relationships with each other, Reclamation would proportionately attribute the land to each such entity.

*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. Reclamation attributes 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 toward her ownership and nonfull-cost entitlements, and Farmer B must count all 400 acres toward his nonfull-cost entitlement.

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.

*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 claimed landholding would be 170 acres (140 owned acres, plus 200 acres minus the

140 owned acres times the 50 percent ownership interest).

Paragraph (f) would establish that, for purposes of eligibility, land is attributed in its entirety to all direct and indirect landholders, unless they hold divided interests. The provision 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 the entity even if one or more of the entity's indirect owners is not eligible.

*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.

*Section 426.5* in the existing regulations, *Contracts*, would be renamed and renumbered § 426.3. The proposed new § 426.5, *Ownership entitlement*, would replace § 426.6 of the existing regulations. This section would summarize the ownership entitlements of individuals and most types of entities, and would be generally rewritten for conciseness.

Paragraph (a) would be rewritten to achieve better organization and clarity. Moreover, the reference in the current language to the regulation on class 1 equivalency would be deleted because that topic is addressed in the discussion of qualified and limited recipient entitlement.

All descriptions of what constitutes qualified, limited, and prior law recipients would be deleted because they are redundant with the definitions found in § 426.2.

The trust discussion would be placed in a new § 426.7.

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 westwide 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-
Husband and wife who jointly own	320 acres .....	Westwide for land acquired after 12/6/79. District-by-
equal interest.		Westwide for land acquired after 12/6/79. District-by-
Surviving spouse .....	Up to 320 acres .....	Westwide for land acquired after 12/6/79. District-by-
Child .....	160 acres .....	Westwide for land acquired after 12/6/79. District-by-
Joint tenancy or tenancy-in-common,	160 acres per tenant .....	Westwide for land acquired after 12/6/79. District-by-
if interests are equal.		Westwide for land acquired after 12/6/79. District-by-
Partnership if interests are: alienable,	160 acres per partner .....	Westwide for land acquired after 12/6/79. District-by-
equal, and separable.		Westwide for land acquired after 12/6/79. District-by-
Partnership if interests are: not alien-	160 acres total .....	Westwide for land acquired after 12/6/79. District-by-
able or not separable.		Westwide for land acquired after 12/6/79. District-by-
Corporation .....	160 acres .....	Westwide for land acquired after 12/6/79. District-by-
		Westwide for land acquired on or before 12/6/79.

The following examples illustrate the application of this section:

*Example (1).* Farmer A receives irrigation water on 160 acres owned 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 decision and is entitled to receive irrigation water on a maximum of 960 acres of irrigation 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).* Farmer E is a citizen of Germany, but has taken up permanent residency in the United States. Farmer E owns 160 acres in District Y and desires to purchase an additional 800 acres. District Y has not amended its contract to conform to the discretionary provisions. Farmer E; however, decides to execute an irrevocable election. After the election, Farmer E becomes entitled to receive irrigation water on 960 acres of owned land. This entitlement as a qualified recipient remains in force so long as Farmer E, as a resident alien, maintains permanent residency in the United States. If Farmer E were to become a U.S. citizen, his eligibility as a qualified recipient would, of course, remain in force.

*Example (5).* Farmer F is a citizen and resident of Switzerland. Farmer F 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 § 426.11(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 (6).* 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 (7).* Six brothers who are citizens and residents of Canada form a family corporation registered in the State of Montana with each brother 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. Therefore, each brother has completed his 160-acre ownership entitlement as a prior law recipient. 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 (8).* 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 (9).* 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 (10).* 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 (11).* BBB Fertilizer Company is a corporation registered in Nebraska and 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.

*Example (12).* 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 directly held land is eligible for irrigation water. Had CDE Development Company been receiving irrigation water on the 160 acres prior to the district's amendment, it could have placed the land under recordable contract as set forth in § 426.11(e)(3) and could have continued to receive irrigation water for 5 years.

*Example (13).* FGH Corporation is owned by more than 25 stockholders and is registered in France. 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 entitled to irrigate the entire 640-acre landownership; however, FGH cannot become a limited recipient because it is not registered in the United States. Therefore, FGH has only the 160-acre ownership entitlement of a prior law recipient. As a result, only 160 acres of IJK's owned land is eligible to receive irrigation water. The remaining 480 acres must be declared excess.

*Example (14).* 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 (15).* 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 § 426.11(d).

*Example (16).* Farmer I and his wife 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. Farmer I and his wife have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, Farmer I and his wife are entitled to receive irrigation water on all 640 acres. The couple has reached the limit of their ownership entitlement.

*Example (17).* Farmer J and Farmer K own equal interests in a tenancy-in-common which owns 320 acres of irrigation land in District Y. District Y has not amended its

contract to become subject to the discretionary provisions. Both Farmers J and K own nonexempt land only through their interests in the tenancy; however, Farmer J wishes to purchase additional land in the district so he makes an irrevocable election. Since the tenancy remains subject to prior law, Farmers J and K may each receive irrigation water on a maximum of 160 acres through their interests in the entity. Therefore, the tenancy's 320 acres remain eligible to receive irrigation water, but the tenancy and Farmer K have both reached the limits of their ownership entitlements under prior law. However, as a qualified recipient, Farmer J may receive irrigation water on an additional 800 acres of owned land.

*Example (18).* Mr. and Mrs. L, who purchased all of their owned land prior to December 6, 1979, may receive Reclamation irrigation water on the 320 acres they jointly own as prior law recipients in District A and also on the 100 acres they own in District B. On July 1, 1991, Mr. and Mrs. L purchase an additional 40 acres in District B. Since the 40 acres were acquired after December 6, 1979, all 460 acres in their ownership must be taken into consideration to determine if the newly acquired land is within the couple's ownership entitlement. In this case, the total owned acres westwide (460 acres) exceeds the couple's maximum westwide entitlement as prior law recipients (320 acres). Therefore, the 40 newly acquired acres are considered to be excess land and ineligible to receive Reclamation irrigation water in the couple's landholding.

*Example (19).* 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 (20).* Corporation GHI owns 320 acres in District Y, a prior law district. Corporation GHI's two shareholders, Farmer L and Farmer M, hold equal interests in the corporation. Both District Y and Farmer L are subject to prior law; however, Farmer M is a qualified recipient by virtue of having made an irrevocable election. As a corporation subject to prior law, only 160 of Corporation GHI's 320 acres can be declared nonexcess. Eighty acres of the corporation's nonexcess ownership is attributed toward the ownership entitlement of each shareholder. As a prior law recipient, Farmer L may receive irrigation water on another 80 acres

of irrigation land through ownership arrangements outside the corporation in order to complete his individual 160-acre ownership entitlement. To complete his 960-acre ownership entitlement as a qualified recipient, Farmer M may receive irrigation water on an additional 880 acres outside the corporation.

*Example (21).* 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 (22).* 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 (23).* 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 (24).* 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.

*Example (25).* Farmer S remains under prior law. Farmer S irrigates 160 acres of owned land. Subsequently, Farmer S buys, in another prior law district, a 160-acre farm which is also receiving irrigation water. All the land newly purchased by Farmer S thereby becomes ineligible for service except as provided for in § 426.11(d). If the 160 acres which Farmer S purchased had never received irrigation water and were in an area for which water distribution facilities had not been constructed, Farmer S could, as provided in § 426.11(d)(1)(ii) or (2)(ii), place the 160 acres under recordable contract when the facilities became available to serve the land.

*Section 426.6* in the existing regulations, *Ownership entitlement*, would be renumbered § 426.5. The proposed new § 426.6, *Leasing and full-cost pricing*, would replace § 426.7 of the existing regulations. This section would describe the conditions under which full-cost charges would be applied (see examples 1 through 14), and would describe how full-cost rates

are determined (see examples 15 through 21).

The paragraph in the existing regulation on what constitutes a lease would be deleted because it more properly belongs in the definition section.

Care has been taken to distinguish between the definition of a lease and the requirements of a lease. It is important to note that failure to meet the requirements of a lease does not mean failure to meet the definition of a lease. Thus, for example, it cannot be argued that an agreement does not constitute a lease because it is not in writing. Rather, a lease which is not written would not qualify for treatment as a lease for the purposes of the RRA, and therefore, the land associated with the lease would be ineligible to receive irrigation water.

In the discussion of nonfull-cost entitlements, the term *irrigation land* would be used liberally. The reference to exempt land would be deleted since use of the term *irrigation land* automatically excludes exempt land.

The citation regarding extended recordable contracts would be deleted because the paragraphs on extended recordable contracts are proposed for deletion from § 426.11 of the regulations. (This deletion will be addressed in the discussion of section 11.)

Under the discussion of nonfull-cost entitlements of qualified, limited, and prior law recipients, the sentences describing various types of land not subject to full cost would be deleted to eliminate redundancy with other sections. Land subject to recordable contracts is discussed in § 426.11; exempt land does not need discussion because it has been excluded through use of the term *irrigation land*; and involuntarily acquired land is addressed earlier in the section.

The paragraph on multidistrict landholdings would be deleted because it is redundant with the discussion of these topics in § 426.3.

The following table summarizes the nonfull-cost entitlements specified in this section:

If the landholder is a:	The landholder's nonfull-cost entitlement is computed on a westwide basis and is:
Qualified recipient .....	960 acres.
Limited recipient who acquired the land: Prior to or on October 1, 1981.	320 acres.
After October 1, 1981 ..	0 acres.

If the landholder is a:	The landholder's nonfull-cost entitlement is computed on a westwide basis and is:
Prior law recipient and is a(n):	
Individual .....	160 acres.
Husband and wife who jointly own equal interest.	320 acres.
Surviving spouse .....	Up to 320 acres.
Child .....	160 acres.
Joint tenancy or tenancy-in-common, if interests are equal.	160 acres per tenant.
Partnership if interests are: alienable, equal, and separable.	160 acres per partner.
Partnership if interests are: not alienable or not separable.	160 acres total.
Corporation .....	160 acres.

The application of § 426.6 is illustrated by the following examples:

*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 delivered to only 960 acres.

*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. Farmer D retains at all times the economic risk associated with both crop production and marketing from his 960 acres. Farmer D also makes all major decisions concerning the farming operation, and Farmer E merely carries out Farmer D's instructions. This arrangement between Farmer D and Farmer E does not constitute a lease because Farmer D has not transferred possession of his land to Farmer E.

*Example (4).* Assume the same facts as in example 3 of this section, except that Farmer E makes the major decisions concerning the farming operation. This arrangement between Farmer D and Farmer E constitutes a lease because possession of the land has

transferred from Farmer D to Farmer E. 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).* Landholder G, a qualified recipient, owns and irrigates 1,200 acres, 400 of which are subject to a recordable contract. Landholder G also irrigates 300 acres leased from another party. All of Landholder G's landholding, a total of 1,500 acres, counts against his nonfull-cost entitlement; therefore, he is in excess of his nonfull-cost entitlement by 540 acres. However, the 400 acres under recordable contract are not subject to full-cost pricing, so Landholder G need select only 140 acres for full-cost pricing. The full-cost land may be selected from the nonexcess, recordable contract, or leased land in his holding.

*Example (7).* ABC Farms 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).* FGH Fertilizer Company, a limited recipient, buys 160 acres of land receiving irrigation water in District X. The purchase of the land is made subsequent to October 1, 1981. However, the company was receiving irrigation water on 160 leased acres in District B prior to October 1, 1981. Therefore, the 160 acres recently purchased are eligible to receive irrigation water at the nonfull-cost rate. If FGH Fertilizer Company buys or leases additional land, the company would have to select and pay the full-cost rate for any irrigation water delivered to land in excess of its 320-acre nonfull-cost entitlement.

*Example (10).* 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 (11).* Farmer H and her husband receive irrigation water on 320 owned acres of irrigation land and on 40 leased acres in District X. District X has not amended its contract to become subject to the discretionary provisions and Farmer H and her husband have not made an irrevocable election. Since Farmer H and her husband receive irrigation water on 40 acres in excess of their 320-acre nonfull-cost entitlement, the couple must select 40 acres in their landholding and pay the full-cost rate for water delivered to that land. If Farmer H and her husband make an irrevocable election or if District X amends its contract to become subject to the discretionary provisions, the couple would thereby become a qualified recipient with a nonfull-cost entitlement of 960 acres. Since their landholding is within that entitlement, Farmer H and her husband would be able to receive irrigation water at the nonfull-cost rate on all 360 acres.

*Example (12).* 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 13.* 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 (14).* 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 (15).* District A contains 90,000 irrigable acres. The construction costs allocated to irrigation for the project and to be repaid by District A amount to \$240 million. As of October 12, 1982, the district's accumulated repayments are \$174 million, and 11 years remain on its contract term. The established annual contract rate is \$66.67 per acre. This amount repays the outstanding balance of the contractual obligation (\$66 million, or \$733.33 per acre) in 11 years. The applicable interest rate is determined to be 7.5 percent; therefore, the equal annual payments for full cost would be \$100.24. This payment is calculated using standard amortization procedures and is the annual payment necessary to retire a debt of \$733.33 at a 7.5 percent rate of interest over 11 years. This full-cost charge will apply regardless of when District A amends its contract. Full O&M charges must be added to this charge and included in the assessment for any landholder subject to full-cost rates.

*Example (16).* District B has a water service contract that establishes a rate of \$6.50 per acre-foot for 90,000 acre-feet of water delivered to the district, a rate which is fixed over the remaining 10 years of the contract term. Currently, \$1 of the \$6.50 rate is used to pay annual O&M charges. The remainder is credited to the repayment of irrigation construction costs, although inflation over the next 10 years is expected to leave a \$5 per acre-foot payment to irrigation, averaged over the remaining 10 years. The construction costs to be repaid from irrigation revenues and assignable to be repaid by the land in District B are \$24 million, and the district has paid \$15.5 million of those costs to date.

As of October 12, 1982, the accumulated payments credited to repayment on construction are \$15.5 million. The unpaid balance for full cost is \$8.5 million (\$24 million minus \$15.5 million), and the applicable interest rate is determined to be 7.5 percent. Amortizing the unpaid balance over the remaining contract term of 10 years results in an annual full-cost charge of \$1,384,016, or \$15.38 per acre-foot. Full O&M charges must be added to this charge and included in the assessment for any landholder subject to full-cost rates. Upon expiration of the current contract, the district expects to enter into a subsequent water service contract in order to expand its water deliveries. If District B desires to amortize its unpaid balance for full cost over a longer period than 10 years, it can choose to renegotiate its existing contract before the current contract expires to bring it into conformance with current Reclamation policy. When the district renegotiates its contract, the unpaid balance for full cost

could be reamortized, at the district's option, for any period up to the term of the new water service contract, which cannot exceed the repayment period authorized by Congress. For example, suppose the new water service contract runs for 18 years and is executed immediately. If the district chooses to amortize full cost over the longest permissible repayment period (18 years), then the full-cost charge would be \$10.88 per acre-foot. If the district chooses to amortize over 15 years, the full-cost charge would be \$11.96 per acre-foot, assuming the unpaid costs remain the same.

*Example (17).* District C contains 90,000 irrigable acres, and the construction costs allocated to irrigation for the project and assignable to be repaid amount to \$240 million. As of October 12, 1982, the accumulated repayments of the district are \$174 million. The district's repayment obligation is \$200 million. (The \$40 million difference between construction costs allocated to irrigation and the repayment obligation is scheduled to be paid from other project revenues.) The unpaid obligation on District C's repayment contract is \$26 million, and 11 years remain on its contract term. The annual rate established by the contract is \$26.26 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is \$66 million (allocated cost, less payments) or \$733.33 per acre, and the applicable interest rate is determined to be 7.5 percent. Therefore, the equal annual payment for full cost would be \$100.24 per acre.

*Example (18).* District D has a 40-year water service contract for 90,000 acre-feet of water per year. The District's current contract expires in 1997 and will be renewed for another 40-year term, resulting in an expiration date of 2036. Construction costs assigned to District D are \$24 million, and such costs are to be repaid from irrigation water service revenues. As of October 12, 1982, the accumulated payments credited to construction costs are \$15.5 million. The unpaid balance for full cost is \$8.5 million and the applicable interest rate is determined to be 7.5 percent. Water service rates for this project are designed to completely repay applicable expenditures by the end of the authorized repayment period, which occurs in 2030. Amortizing the unpaid balance over the remaining authorized repayment period of 48 years results in an annual full-cost charge of \$657,945 or \$7.31 per acre-foot. Normal O&M charges would be collected annually in addition to this rate. It should be noted that even though the contract renewal extends beyond 2030, the repayment period is limited to the authorized repayment period ending in 2030, with full-cost charges calculated accordingly.

*Example (19).* 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.

*Example (20).* Farmer L and his wife own 320 acres receiving irrigation water in Beta Irrigation District and lease another 320 acres receiving irrigation water in the same district. Farmer L, his wife, and Beta Irrigation District all remain subject to prior law. Beta Irrigation District's water service contract specifies a rate of \$10 per acre-foot, and its full-cost rate is calculated to be \$25 per acre-foot. Farmer L has a turnout and measuring device to the 320 acres he has selected to pay full cost, and a separate turnout and measuring device to the 320 acres receiving water at the contract rate. At the end of the water year, district records show that Farmer L received 1,000 acre-feet of water on his full-cost land, and 1,050 acre-feet of water on his nonfull-cost land. These measurements are judged to be accurate and reliable; therefore, Farmer L's water charges for that year are (1,000 acre-feet times \$25) plus (1,050 acre-feet times \$10) for a total of \$35,500. If accurate records showing the amounts of water delivered to Farmer L's full-cost and nonfull-cost land had not been maintained, it would have been necessary to assume that equal amounts of water per acre had been delivered to both types of land. Without accurate water delivery records, Farmer L's water charges for that year would have been (1,025 acre-feet times \$25) plus (1,025 acre-feet times \$10) or \$35,875.

*Example (21).* Farmer M, a qualified recipient, leases 1,000 acres in Gamma Irrigation District where the contract rate is \$5 per acre-foot, and the full-cost rate is \$15 per acre-foot. Farmer M applies irrigation water to 960 acres and irrigates the remaining 40 acres from a private well. In 1 particular year, Farmer M applied water to the land six times during the irrigation season; but in the final two applications, his well failed, so he chose to apply irrigation water to his entire landholding. Because there were no separate measuring devices for the 40 full-cost acres, it was necessarily assumed that equal amounts of water per acre were applied to the full-cost and nonfull-cost land during the final two applications of water. Gamma Irrigation District's record showed that 600 acre-feet were delivered to Farmer M during each of the first four applications, and 625 acre-feet during each of the last two applications. Farmer M's water charges for that year were calculated as follows: The first four applications did not include any full-cost water; therefore, the appropriate charge was (4 times 600 acre-feet  $\times$  \$5) or \$12,000. The final two applications were 96 percent contract rate and 4 percent full cost. Thus, the appropriate charges were (2 times 625 acre-feet times .96 times \$5) plus (2 times 625 times .04 times \$15), or \$6,750. Farmer M's total charge for the year was \$12,000 for the first four applications plus \$6,750 for the last two applications, for a total of \$18,750.

*Section 426.7* of the existing regulations, *Leasing and full-cost pricing*, would be renumbered § 426.6. The proposed new § 426.7, *Trusts*, would be a new section devoted to

describing the requirements and entitlements of trusts. This new section would not alter existing Reclamation policy regarding trusts, but would include some existing policies that are not referenced in the current regulation.

Paragraph (a) would define the three categories of trusts. The effects of inclusion or absence of required elements of each category of trust would be described in paragraph (b)

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

Paragraph (b)(2) would describe attribution of trusted land in the case of a revocable trust that provides for reversion of the trusted land to the grantor upon revocation. Land held by trusts in this situation would be attributed to the grantor(s) of the trust, conditioned on the facts immediately prior to the transfer of the land to the trust, if specified criteria are met.

Paragraph (b)(3) would describe attribution of trusted land for all types of revocable trusts other than those covered under paragraph (b)(2). Land held by trusts in this category would be attributed to either the beneficiaries or to the trustee, depending on whether specified criteria are met. If the revocable trust, however, does not specify its grantors, the conditions under which it may be revoked, or to whom the land would revert upon revocation, the trusted land would be ineligible to receive irrigation water until these issues were resolved.

Application of this section is illustrated by the following examples:

*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 as a result of this action.

*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 life tenant. The trust agreement satisfies the criteria of § 426.7(b)(1). The 160 acres of trust land shall be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land shall 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 to the corporation and to the corporation's stockholders in proportion to their percent of stock held in the corporation.

*Example (5).* Assume the same facts as in Example 4 above, except that Corporation X, a legal entity fully independent of ABC Corporation, contributes the 160 acres to the trust created by ABC Corporation. In this example, the 160 acres are attributed to the beneficiary of the trust, J. Jones, since the criteria for attribution to the grantor (Corporation X) have not been met, namely, the 160 acres will revert in 10 years to the trustor (ABC Corporation), not the grantor, and the grantor does not have the power to revoke the trust. As such the trust is in fact an otherwise revocable trust.

*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) and (3). 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 beneficiaries 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.

*Section 426.8* of the existing regulations, *Operation and Maintenance (O&M) charges*, would be renumbered § 426.22. The proposed new § 426.8, *Religious or charitable organizations*, would replace § 426.15 of the existing

regulations. This section would describe the entitlements of these types of organizations.

Paragraph (a) would define religious or charitable organizations for the purpose of this section. The titles of paragraphs (b) and (c) would be modified to reflect their application to both the ownership and nonfull-cost entitlements of religious and charitable organizations. This change would eliminate the need for paragraph (d) in the existing regulation.

A more significant modification would change the consequences of failure by a subdivision of a religious or charitable organization to satisfy the three criteria established by the RRA. Under the current rules, failure by such a subdivision to meet these criteria results in the entire organization being reduced to the entitlements of a single limited recipient. Under the proposed rules, only the subdivision in question would be affected by its failure to meet the criteria; the central organization and other subdivisions would be unaffected.

The new language would also establish that the qualified or limited recipient status of a subdivision which fails to meet the three criteria would be determined by counting the subdivision's membership. Thus, most subdivisions which fail to meet the criteria would be treated as limited recipients.

Paragraph (d) on leasing would be deleted as unnecessary. The provisions establishing that religious or charitable organizations are treated either as qualified or limited recipients would eliminate any need for a separate statement regarding leasing. The proposed paragraph (d) on affiliated farm management would replace the existing paragraph.

Section 426.9 in the existing regulations, *Class 1 equivalency*, would be renumbered § 426.10. The proposed new § 426.9, *Public entities*, would replace § 426.17 of the existing regulations. This section would describe the application of acreage limitation laws to public entities and would be rewritten for clarity and organization. Paragraph (a) would define the term public entities for purposes of this section. Paragraph (b) would be rewritten to show that public entities are exempt from certain acreage limitation provisions rather than the land. The rephrasing would more accurately state Reclamation policy, as the land can become subject to ownership limitations through the holding of a lessee. Also, the wording of paragraph (d) would be changed to state that land leased from a public entity would count toward the lessee's

ownership entitlement, rather than being worded as a prohibition of leasing in excess of ownership entitlements.

Section 426.10 in the existing regulations, *Information requirements*, would be replaced by §§ 426.17, *Landholder information requirements*, 426.18, *District responsibilities*, and 426.24 *Reclamation audits*. The proposed new § 426.10, *Class 1 equivalency*, would replace § 426.9 of the existing regulations.

Substantial editorial and organizational changes would be made throughout this section. The only substantive change would be in § 426.10(g). Provisions to this paragraph would prohibit application of class 1 equivalency in cases where irrigation of the land would result in hazardous or toxic return flows. This rule would affect existing equivalency determinations only if the land is reclassified for some reason.

The wording of paragraph (b) would be 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.

The following examples illustrate the application of § 426.10:

*Example (1).* Farmer X has a total landholding 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 landholding 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. If Farmer X desires to maximize his actual nonexcess acreage, he would declare 223 acres of class 1 land as excess and designate 577 acres of class 1, 300 acres (250 acres class 1 equivalent) of class 2, and 200 acres (133 acres class 1 equivalent) of class 3 as nonexcess and eligible to receive irrigation water. This would result in a total of 1,077 actual acres which would equal 960 acres of class 1 land in productive capacity. Or, he could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres

of class 1 land and 192 acres (192 divided by 1.2 equals 160 acres class 1 equivalent) of class 2 land. This total landholding of 992 acres would, again, be equal in productive capacity to 960 acres of class 1 land. In the latter case, all 200 acres of Farmer X's class 3 land and 108 acres of his class 2 land would be considered excess and ineligible to receive irrigation water in his landholding.

*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. The payment of the costs between the landholder and the district would be a district matter. The application of equivalency would be available only to the landholder(s) who exercise 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 equivalency until after the district makes the equivalency request and Reclamation has acted upon that request.

*Example (4).* Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested 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). Landholder X would also be reimbursed for certain full-cost payments made for land which became nonfull-cost as a result of the equivalency determination.

*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 an 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 water 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 on 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 an 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 an 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 § 426.11(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.

Section 426.11 would be generally rewritten for conciseness.

The *In general* section has been deleted because the first sentence contained a definition of *excess land* redundant with that found in § 426.2.

Paragraphs (d) (2) and (3) of the existing regulation would be merged in paragraph (d)(2) of the proposed regulation.

In the proposed paragraph (j)(4)(i), paragraph (e) of the existing regulation, the new language would make clear that land subject to a recordable contract can receive irrigation water at a less-than-full O&M rate only if both the owner and the lessee are subject to prior law. The sentence from the current rules allowing recordable contract land to be selected as full-cost land was deleted because that issue is addressed in § 426.6.

Paragraphs 426.11(g) and (i) of the current rules would be deleted. These paragraphs apply to only a very small number of landholders who have pre-1982 recordable contracts. Reclamation proposes to not retain paragraphs in the CFR that (1) currently apply to only a few landholders, and (2) are likely to become completely obsolete in the next few years. These few landholders' recordable contracts will continue to be administered as provided in the existing rule.

Paragraph 426.11(i) of the proposed regulation, which corresponds to paragraph 426.11(h) of the existing regulation, would add a new paragraph

to the deed covenant language. The proposed language would provide that the covenant terms, which permit removal of the covenant and eliminate the requirement for sale price approval, would not apply if the acquiring party is the party who originally held the land as excess. It should be noted that the provisions of the deed covenant would apply only when title to the land is transferred. Thus, the deed covenant would apply only to direct landowners, and would not apply to the sale or purchase of an indirect interest in a legal entity that is the direct landholder.

In paragraph 426.11(e) of the proposed regulation, which corresponds to paragraph 426.11(k) of the current regulation, a new provision has been proposed. This language would permit direct landowners to place under recordable contract certain land indirectly held by nonresident aliens or legal entities not established under State or Federal law. If such land is not placed under a recordable contract it would become ineligible as a result of implementation of the proposed regulation.

The proposed regulation would add a new paragraph (g) which would promote the intent of statutes concerning the disposal of excess land by prohibiting excess land sellers from receiving irrigation water if they lease back or reacquire the land either voluntarily or involuntarily. Such *lease back* or reacquisition situations, however, would be grandfathered if the agreement or transaction transferring the land back to the excess land seller takes place prior to July 1, 1995.

The proposed regulation would also add a new paragraph (h) which would provide for assessment of the compensation rate (see § 426.2), which has been Reclamation policy, and an administrative fee (see § 426.19) if ineligible excess land is irrigated in violation of Federal reclamation law and regulations.

Application of the section is illustrated by the following examples:

*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 U.S. citizen and 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 F and his wife own 1,200 acres of irrigable land in District Y which is subject to prior law. They owned this land even before District Y entered into a repayment contract with the United States. Landowner F and his wife have designated 320 acres as nonexcess and eligible to receive irrigation water. The remaining 880 acres are excess and ineligible to receive irrigation water. This excess land cannot be placed under recordable contract because the 10-year grace period for executing recordable contracts, as provided in the district's contract, has expired. Landowner F makes an irrevocable election to conform to the discretionary provisions. By that election, Landowner F becomes a qualified recipient, and is therefore entitled to redesignate 640

additional acres as nonexcess. Landowner F's remaining 240 acres can become eligible if he sells it to an eligible buyer at an approved price or redesignates it, with the approval of Reclamation, as nonexcess.

*Example (6).* 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 (7).* 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 (8).* In 1980, Landowner I, a U.S. citizen, buys 1,920 acres of land in District U. In addition to its own water supply, District U wishes to receive supplemental irrigation water. Therefore, it enters into a water service contract with the United States on May 14, 1984. Thereby, all direct landholders in the district automatically become subject to the discretionary provisions. As a qualified recipient, Landowner I may receive irrigation water on any 960 acres which he designates as nonexcess. The remaining 960 acres are excess and ineligible for service until Landowner I places the land under recordable contract, sells it to an eligible buyer at a price approved by Reclamation, or receives Reclamation approval to redesignate the land as nonexcess. If Landowner I had purchased the 1,920 acres from nonexcess status in 1985, rather than before the date of the district's contract, he still would have been able to designate 960 acres as nonexcess and eligible to receive irrigation water. However, the remaining 960 acres of excess land would not have been eligible until sold to an eligible buyer at a Reclamation-approved price, the sale is cancelled, or he receives Reclamation approval to redesignate the land as nonexcess. The excess acres could not have been placed under recordable contract unless irrigation water had not been physically available when the land was purchased.

*Example (9).* Landowner J is a qualified recipient and owns 1,400 acres of irrigable land in District Z. The landowner places 440 acres under recordable contract so that he may receive irrigation water at the nonfull-cost rate on all owned land in the district. Subsequently, Landowner J leases the 440

acres under recordable contract to Landowner K who is a limited recipient that did not receive irrigation water prior to October 1, 1981. Therefore, the full-cost rate must be paid for irrigation water delivered to the 440 leased acres. Leasing the land to Landholder K does not affect other terms of the recordable contract.

*Example (10).* Farmer L owns 160 acres of irrigable land in District V and 1,000 acres in District W. Districts V and W are both subject to prior law, and both have fixed-rate water service contracts which no longer cover actual operation and maintenance costs. Farmer L has designated the 160 acres in District V as nonexcess and has placed the 1,000 acres in District W under recordable contract. This means that Farmer L is able to receive irrigation water at the contract rate on all her owned land. Subsequently, District V amends its contract to become subject to the discretionary provisions. As provided in § 426.11(b)(1), Farmer L withdraws 800 acres from under recordable contract and redesignates that land as part of her 960-acre entitlement as a qualified recipient. Since Farmer L is now a qualified recipient, she must pay the full operation and maintenance costs applicable in each district for all land in her landholding, including the 200 acres remaining under recordable contract.

*Example (11).* Landowner M and his wife are U.S. citizens and own 320 acres of irrigation land purchased on or prior to December 6, 1979, and designated as nonexcess in each of Districts A, B, C, and D. In June of 1980, Landowner M purchased an additional 280 acres in District E. District A amends its contract to conform to the discretionary provisions. Landowner M and his wife automatically and without benefit of choice become a qualified recipient and as such are entitled to irrigate no more than 960 acres westwide with irrigation water. Their present ownership exceeds their 960-acre ownership entitlement by 600 acres. Since the 280 acres in District E were purchased after December 6, 1979, that land was ineligible to receive irrigation water even under prior law. Therefore, no part of that parcel can be placed under recordable contract and the land remains ineligible until sold to an eligible buyer at an approved price, the sale is cancelled, or the land is redesignated with Reclamation approval. The remaining 320 excess acres, however, have been eligible under prior law. Therefore, that land can continue to receive irrigation water if Landowner M either sells it to an eligible buyer or places the land under a 5-year recordable contract. In either case, Landowner M can sell the land at fair market value.

*Example (12).* 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 (13).* Corporation N, a foreign corporation owned by two stockholders who are citizens and residents of Norway, purchased 480 acres of irrigation land in District A. Subsequent to the purchase, District A entered into its first contract with the United States, thereby becoming subject to the discretionary provisions. Corporation N, however, is not eligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. Since Corporation N's land had never been subject to prior law, it does not fall under the purview of § 426.11(e)(2). However, since the land was purchased before the date of the district's contract, the corporation can receive irrigation water by placing the land under a recordable contract requiring Reclamation sale price approval, as provided in § 426.11(e)(3)(i).

*Example (14).* Landholder O, a nonresident alien, is the sole stockholder in Corporation P, a qualified recipient legal entity registered in Idaho. 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.

*Example (15).* Landholder P sold 500 acres of excess land to Landholder Q, and financed the purchase, in 1996. In 1998, Landholder Q defaults and Landholder P forecloses and repossesses the land. Upon transfer of the land's title back to Landholder P, the land becomes ineligible to receive irrigation water because that transaction took place after the effective date of these regulations. Furthermore, Landholder P may not make any part of the land nonexcess in his holding. Thus, Landholder P must sell the land to an eligible landholder at a Reclamation-approved price if it is to be eligible to receive irrigation water.

*Example (16).* Landholder R sold 500 acres of excess land to Landholder S in 1993. In 1994, Corporation T, of which Landholder R is the sole stockholder, leases the land from Landholder S. The land remains eligible until the expiration or termination date of the lease. If Corporation T renews the lease after the effective date of these regulations, the land becomes ineligible while the renewed lease is in effect, because of Landholder R's interest in Corporation T and the renewed agreement took effect after the effective date of these regulations.

*Section 426.12.* Editorial changes would be made to the existing regulation.

*Section 426.13* in the existing regulation, *Exemptions*, would be renumbered § 426.15. The proposed new § 426.13, *Involuntary acquisition of land*, would replace § 426.16 of the existing regulations.

Paragraph (a) would define involuntarily acquired land. A change would be made to paragraph (e) of this section to reflect the changes discussed in § 426.11 regarding the reacquisition of formerly excess land by the party that originally held the land as excess.

*Section 426.14* in the existing regulations, *Residency*, would be deleted because residency has not been a provision of acreage limitation law since it was repealed by the RRA in 1982. The proposed new § 426.14, *Commingling*, would replace § 426.18 of the existing regulations. Editorial changes would be made to the existing regulation.

The following examples illustrate the application of this section:

*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 § 426.14(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 and can also serve as an example in § 426.15.

*Example (3).* A district has nonproject water available to deliver to lands considered not eligible (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 constructed with funds 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.

*Section 426.15* in the existing regulation, *Religious and charitable organizations*, would be renumbered § 426.8. The proposed new § 426.15, *Exemptions and exclusions*, would replace § 426.13 of the existing regulation.

This section would be rewritten for editorial changes and clarification. Paragraph (f) would be added to make clear that the RRA is not applicable to Indian trust or restricted lands.

It should be noted that a given contract action could be considered an additional or supplemental benefit pursuant to § 426.3 of this proposed regulation even though it neither invokes nor extends the application of acreage limitation laws 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 § 426.15.

*Section 426.16* in the existing regulation, *Involuntary acquisition of land*, would be renumbered § 426.13. The proposed new § 426.16, *Small reclamation projects*, would replace § 426.21 of the existing regulation.

The only substantive changes that would be made to this section are in paragraph (a). A phrase would be added to reflect the fact that Small Reclamation Projects Act loans would be considered additional and supplemental benefits as provided in § 426.3 of the new regulation. In addition, language has been added to reflect Title III of Pub. L. 99-546 and its effect of reducing the acreage limitation entitlements from 960 to 320 acres for districts that enter into a new SRPA contract or amend their SRPA contract after October 27, 1986.

*Section 426.17* in the existing regulation, *Land held by governmental agencies*, would be renumbered § 426.9. The proposed new § 426.17, *Landholder information requirements*, would replace, in part, § 426.10 of the existing regulation.

This section would be rewritten to address only the certification and reporting requirements of landholders. A new definition paragraph and section regarding district responsibilities (§ 426.18) would be added. This section would clarify district certification and reporting requirements. In addition, a new section concerning Reclamation audits (§ 426.24) would be added.

References to the contents of the certification and reporting forms would be deleted because a comprehensive list of these contents would be too unwieldy for these regulations, and a partial list would be inappropriate.

A paragraph on eligibility would be added stating that landholders that have not filed the required forms are not eligible to receive irrigation water. The phrase *must not accept delivery of* would be added to make clear that the landholder, as well as the district, is responsible for water deliveries in the absence of the required forms.

Wholly-owned subsidiaries would be specifically exempted from forms requirements, provided the ultimate parent legal entity has met its forms requirement.

The 40-acre certification and reporting exemption threshold would be replaced with a new system which would permit higher exemption thresholds for landholders in districts that meet the following requirements:

district conformance by contract with the discretionary provisions; the district's financial obligations are not delinquent; and the district has entered into a formal resources management partnership with Reclamation. Districts that meet the requirements would be granted Category 1 status. Category 1 districts would be allowed exemption thresholds as high as 240 acres for qualified recipients and 80 acres for some limited recipients. The specific threshold for a district would be determined and documented in the partnership agreement with the district, based on factors such as the resources management objectives of the partnership and the achievements of the district(s) under the partnership. Landholders in districts which have not formed formal partnerships with Reclamation or do not meet the other two criteria, would remain in Category 2 status. Such districts would be subject to an 80-acre exemption threshold for qualified recipients and a 5-acre threshold for all limited recipients. For both categories, the exemption threshold for prior law recipients remains set at 40 acres.

The following examples illustrate the application of this section:

*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, as a prior law parent legal entity, must submit reporting 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 reporting thresholds must submit the necessary forms in order for the landholding to be eligible. Corporations B, C, and D are not required to file.

*Example (3).* In September 1996, the management of District A enters into a formal partnership agreement with Reclamation to improve resources management in the district. The district and Reclamation agree to develop an integrated resources management plan and develop and implement an incentive pricing mechanism for the district. As part of the close working relationship

with the district and the information generated by the partnership, and the fact that the other two requirements specified in § 426.17(h) have been met, the Regional Director determines that a 240-acre reporting threshold would be appropriate for qualified recipients in the district and an 80-acre threshold would be appropriate for limited recipients who first received irrigation water on or before October 1, 1981. The partnership agreement establishes these thresholds as part of Category 1 status for the district.

*Example (4).* Landholder A is a qualified recipient who leases 120 acres in District X and 40 acres in District Y. For 1997, District X achieves Category 1 status, but District Y does not. Landholder A is therefore subject to Category 2 thresholds and must certify in both districts in 1997 because his total landholding exceeds the 80-acre qualified recipient threshold of Category 2.

*Example (5).* Bank Y is a limited recipient and has 12,000 acres of involuntarily acquired excess landholdings, some of which are located in Category 2 districts. Bank Y has also designated 500 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 75 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 certification thresholds; therefore, Bank Y is subject to Category 2 thresholds and must file certification forms. Stockholder A need not consider the bank's involuntarily acquired excess land in determining whether she is required to certify, but she must consider the 75 acres of attributed nonexcess land. Because she has not exceeded the 80-acre threshold applicable to qualified recipients in Category 2 districts, she is not required to file. However, had Stockholder A exceeded a certification or reporting threshold, she would have been 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 which has a partnership agreement with Reclamation specifying 80 acre and 200 acre thresholds for limited and qualified recipient, respectively. 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, but 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 5-acre threshold, and because Corporation E is not wholly owned by Corporation F. Corporation G need not file because it is subject to an 80-acre threshold, as specified in the district's partnership agreement with Reclamation. Farmer B must file because he has exceeded the applicable 200-acre threshold also specified in the district's partnership agreement with Reclamation.

*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 forms until the start of the next irrigation season.

*Section 426.18* in the existing regulation, *Commingling*, would be renumbered § 426.14. The proposed new § 426.18, *District responsibilities*, would replace, in part, § 426.10 of the existing regulation. This new section would be 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 explicitly establish district responsibilities in these proposed regulations.

The proposed changes to provisions of this section would be nonsubstantive, except the number of years districts will be required to retain expired RRA forms will be increased from 3 to 6 years. Some existing Reclamation policy not contained in the existing regulation, however, would be included. The proposed section would be included to help prevent future misunderstandings about districts' roles in RRA administration.

The application of this rule is illustrated by the following examples:

*Example (1).* Landholder A submitted to District X a 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 March 2000; thereafter, it may be destroyed by the district.

*Example (2).* Same facts as Example 1, except that in October 1999 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 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 certification form, for 6 years thereafter.

*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 excess land. Therefore, the payments made by District Y to the United States for the water used to irrigate the excess land (\$1,000) must be deposited into the Reclamation fund and not credited toward any obligation of District Y to the United States.

*Section 426.19* of the existing regulation, *Water conservation*, would be deleted as water conservation would be the topic of a new regulation, part 427. The proposed new § 426.19,

*Assessment of administrative costs*, would replace § 426.24 of the existing regulation.

The only proposed substantive change from the existing regulation would be to add irrigation of ineligible excess land as a violation subject to assessment of an administrative fee. Reclamation will base 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 this section:

*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 1992 and 1993, 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 1992 and 1993 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 1992 and 1993, 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 1992, and \$260 for 1993.)

*Example (3).* Farmer X and his wife, 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 § 426.11, or otherwise eligible to receive irrigation water. However, Reclamation found that irrigation water had been delivered to the 160 excess acres in both 1992 and 1993. For the irrigation water

delivered in these 2 years, District A will be assessed the compensation rate as set forth in § 426.11(h). An additional fee of \$520 will also be assessed to the district (\$260 each for 1992 and 1993)

*Section 426.20* of the existing regulation, *Public participation*, would be renumbered § 426.21. The proposed new § 426.20, *Interest on underpayments*, would replace § 426.23 of the existing regulation.

A definition of underpayment is proposed as paragraph (a), and other editorial changes from the existing regulation would be made for clarity and organization.

*Section 426.21* of existing regulation, *Small reclamation projects*, would be renumbered § 426.16. The proposed new § 426.21, *Public participation*, would replace § 426.20 of the existing regulation.

The only substantive change made would be in paragraph (8) of the current rule, which would be replaced by paragraph (b) of the proposed rule, to delete the 60-day public comment period. The existing provision reduces Reclamation's flexibility to base the comment period on specific circumstances and is not a statutory requirement.

*Section 426.22* of the existing regulation, *Decisions and appeals*, would be renumbered § 426.23. The proposed new § 426.22, *Recovery of operation and maintenance (O&M) costs*, would replace § 426.8 of the existing regulation.

This section would be rewritten for clarity. The proposed language would contain no substantive changes to existing policy.

*Section 426.23* of the existing regulation, *Severability*, would be renumbered § 426.25. The proposed new § 426.23, *Agency decisions and appeals*, would replace § 426.22 of the existing regulation.

This section would be rewritten to streamline the appeals process and to enhance the protection of parties who may be adversely affected by RRA-related decisions.

The proposed language would require the appropriate regional director to make initial agency decisions. It would provide flexibility to the regional director in establishing the effective date of the initial decision, and would protect landholders by providing for a 10 calendar day delay before deliveries of water are terminated. Furthermore, affected parties would be able to request reconsideration of the initial decision.

The proposed language would permit regional directors to notify potentially affected parties if appropriate, and would allow any impacted party to use

the appeal process whether or not the regional director gave notice of the particular agency decision. Parties who were not notified would have a longer period of time to initiate the appeals process than would parties who were notified of an initial decision. The proposed rules would also allow affected parties to request a stay of the regional director's initial decision while it is being reconsidered.

Following reconsideration by the regional director, affected parties would have the opportunity to appeal the final agency action directly to the Department of the Interior's Office of Hearings and Appeals. This change would streamline the review process by eliminating the Commissioner level of review provided by the existing regulation.

The proposed language would also provide for retroactive application of decisions (which is current practice) and application of the compensation rate in cases of illegal irrigation water deliveries.

The proposed language would validate any decisions made under the existing appeals process, and provide that appeals pending as of the effective date of the new regulation would be processed under the existing regulation.

Completion of this administrative appeals process would be required before parties may file suit in court regarding final agency determinations pursuant to part 426.

*Section 426.24.* The proposed § 426.24, *Reclamation Audits*, would replace § 426.10(i) of the existing regulation.

*Section 426.25.* The proposed § 426.25, *Severability*, would replace § 426.24 of the existing regulations.

#### **Description and Analysis of Part 427**

Reclamation has a major responsibility, in partnership with water users, States, Indian tribes, and other interested parties, to help improve water management and the efficiency of water use in nearly every major river basin in the Western United States. Water conservation measures can improve reliability and reduce costs for water users, and under some circumstances yield water for additional agricultural, urban, or environmental needs.

Opportunities for additional water conservation and efficiency improvements vary from system to system depending on factors such as delivery and storage facilities, operational practices, existing conservation measures, and the use or destination of "non-conserved" water (i.e., downstream appropriators, riparian habitat, groundwater recharge, estuary inflow, evaporation, etc.). To be most

effective, water conservation measures must be evaluated on a site-specific basis and must be tailored to the circumstances of each water system and its local environment.

Preparation and implementation of water conservation plans by recipients of Reclamation project water is one aspect of Reclamation's overall water conservation program. Improvements in water management on Federal projects can reduce overall operating costs, improve reliability of existing water supplies, postpone the need for new or expanded water supplies, and reduce the impacts of drought.

The RRA challenges those who contract for Federal project water supplies to develop water conservation plans that examine existing water management practices, evaluate alternative 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.

These rules and regulations prescribe the requirements for preparation and submittal of water conservation plans prepared by water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act.

Section 427.1 explains the purpose of these rules and regulations, § 427.2 describes conservation plan requirements, and § 427.3 describes incentives for preparing adequate water conservation plans.

Section 427.4 references additional information that will be available from Reclamation in the form of Technical Guidelines and Criteria for Water Conservation Plans (Guidelines and Criteria). These Guidelines and Criteria describe the standards and process which Reclamation will use to evaluate district water conservation plans, describe the schedule and process for submitting plans, provide information on environmental compliance, suggest specific plan elements, and identify water conservation measures for evaluation and inclusion in district water conservation plans.

The Guidelines and Criteria are currently undergoing a public review that began on January 10, 1995 and will end on April 10, 1995. Upon completion of this review period, Reclamation intends to finalize the Guidelines and Criteria as guidance in the development

and approval of water conservation plans.

Although the Guidelines and Criteria are not part of the proposed rules and regulations, they were included as part of the proposed rule alternative in the draft EIS. This allowed an evaluation of the proposed rules in combination with the Guidelines and Criteria. Although page 2-18 of the draft EIS states that the Guidelines and Criteria are included as an appendix to the rules, it was decided it was not necessary to print the Guidelines and Criteria with the proposed rules. A copy of the Guidelines and Criteria may be obtained by calling Mr. Craig Phillips at (303) 236-1061 ext. 265 or by contacting any Bureau of Reclamation Regional Office.

#### Public Comment

Public comment is solicited on all aspects of this proposed rulemaking. Reclamation will consider all comments received. All those wishing to make comments are advised that, pursuant to the Administrative Procedure Act (5 U.S.C. 551, 553), all information provided to Reclamation will be available for public inspection.

To assist Reclamation in compiling and analyzing comments, it is requested that comments be grouped according to the two separate parts (i.e., part 426 and 427) of the proposed rule. However, it is not required that comments be so organized.

Oral comments on the proposed rules will be accepted at public hearings which will be conducted in April 1995 on the proposed rules and regulations and on the draft EIS which evaluates these proposed rules and regulations. Hearings will be announced in a separate **Federal Register** notice.

#### National Environmental Policy Act

In compliance with the NEPA, a draft EIS has been prepared which analyzes the impacts of these proposed rules and regulations and alternatives thereto. The draft EIS includes a no action alternative, a preferred alternative (which is the proposed rule), and three additional alternatives encompassing a range of potential rules and regulations. The draft EIS is being published and distributed for public review concurrent with the publication of these proposed rules and regulations.

#### Environmental Compliance, Review, and Consultation Requirements

The EIS and related coordination activities described below will provide full compliance for the promulgation of final rules and regulations. However, 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.

This EIS has been prepared concurrently with environmental review and consultation required by Federal environmental law other than NEPA, as required by 40 CFR 1502.25. Compliance with specific environmental review and consultation requirements is described below.

#### Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.)

The Fish and Wildlife Coordination Act (FWCA) requires Federal agencies to consult with the Fish and Wildlife Service, National Marine Fisheries Service (as applicable), and state wildlife agencies during the planning of new projects and for modifications to existing projects (e.g., whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever) so that wildlife resources receive equal consideration along with other project objectives and features.

Compliance with the FWCA requires: (1) Consultation, (2) opportunity for the Fish and Wildlife Service, the National Marine Fisheries Service, and the State wildlife agency to report, (3) consideration of FWCA report recommendations, (4) incorporation of justifiable wildlife features into a recommended plan or action, and (5) incorporation of the FWCA report as an integral part of the decision making package submitted to Congress or to any agency or person having the authority by administrative action to authorize construction of a project or modification of a previously authorized project.

In meetings and correspondence between Reclamation and the Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies, it was agreed that a formal FWCA report would not be required for this rulemaking. Rather, coordination efforts with the Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies were handled by those agencies providing technical assistance to

Reclamation, which assistance has been appropriately documented. Detailed FWCA coordination and formal reports will be accomplished for specific sites in the future as the need and opportunity arises (e.g., amendment or renewal of specific repayment or water service contracts which are subject to these regulations).

The EIS that accompanies this proposed rulemaking contains a description of the general FWCA compliance process and makes the commitment to deal with site-specific issues as they come up in the future when a site-specific Federal action is taken. The EIS does not satisfy the site-specific need for future compliance with the FWCA.

#### **Endangered Species Act (16 U.S.C. 1521, et seq.)**

The objective of the Endangered Species Act (ESA) is to provide a means whereby the ecosystem upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such species. It is further stated in the ESA that it is the policy of the Congress "that all Federal Departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of the Act." The ESA further states that "Federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species."

Section 7 of the ESA establishes the interagency cooperation program under which Federal agencies have their primary compliance responsibilities. In meetings between Reclamation and the Fish and Wildlife Service and National Marine Fisheries Service, it was agreed that the way to comply with the ESA for the purposes of this rulemaking would be to use section 7(a)(1) of the ESA and describe, in broad terms, the general effects of actions associated with new or revised regulations. Thus, Reclamation initiated informal ESA consultation on a broad spectrum basis and requested a list of federally proposed or listed threatened, endangered, and candidate species from the Fish and Wildlife Service and the National Marine Fisheries Service.

A tiering process will be used down to a level more appropriate to section 7(a)(2) of the ESA, whereby consultation will be initiated if and when site-specific analyses becomes necessary, such as with the amendment or renewal of specific repayment or water service contracts. The EIS indicates that if

Reclamation consults under Section 7 of the ESA, individual landowners will not have to go through Section 10 compliance on their own.

#### **National Historic Preservation Act (15 U.S.C. 470, et seq.)**

The National Historic Preservation Act of 1966, (NHPA), as amended, is the basic Federal law governing preservation of cultural resources of national, regional, state, and local significance. Specifically, section 106 of the NHPA requires each Federal agency to consider the effect of its actions on "any district, site, building, structure or object that is included in or eligible for inclusion in the National Register". Furthermore, an agency must afford the Advisory Council on Historic Preservation, an independent Federal agency created by the National Historic Preservation Act, an opportunity to comment on any of the agency's undertakings that could affect historic properties. Procedures for meeting section 106 requirements are defined in Federal regulations 36 CFR part 800. Other Federal legislation further promotes and requires the protection of historic and archaeological resources by the Federal government. Among these laws are the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act.

Informal consultation with the Advisory Council on Historic Preservation to apprise them that this rulemaking has been initiated. The draft EIS will be sent to the Council and the 17 western State Historic Preservation Offices for official comment. Procedures prescribed in 36 CFR part 800 will be followed for future site-specific Federal actions pursuant to these rules that trigger compliance under NHPA.

#### **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 proposed regulations will have a significant economic effect on a substantial number of small entities. It has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis has not been prepared.

#### **Paperwork Reduction Act**

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 requirements are presently promulgated in 43 CFR 426.10. To comply with these requirements, Reclamation provides forms for the landholders' and districts' use. The existing landholder forms have been approved by the Office of Management and Budget (OMB) under clearance number 1006-0005. This clearance expires on October 31, 1995. The district summary forms have been approved under clearance number 1006-0006; that clearance expires on July 31, 1995.

This proposed rulemaking contains a change to the existing § 426.10 that would reduce the reporting burden by raising the acreage threshold for which certification and reporting forms are required. The estimated average annual paperwork reduction which would occur if the proposed revisions to § 426.10 are made final is about 3100 hours per year westwide. It is estimated that the proposed rule's changes to the definition of what constitutes a lease will cause a slight increase of burden hours for farm operators who do not now have to complete forms. The net reduction would be approximately 3000 hours per year westwide and will reduce the paperwork burden by about 20 percent compared to current requirements, which are approximately 14,400 hours.

Section 427.2 of the proposed water conservation rules require that water districts and other entities prepare and submit water conservation plans. Reclamation will be requesting OMB approval for collection of information contained in water conservation plans consistent with the requirements of the Paperwork Reduction Act.

#### **Executive Order 12866**

Under Executive Order 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. It has been determined that this proposed rule is a significant regulatory action within the meaning of the Executive Order.

#### **Executive Order 12612, Federalism**

This rule has no significant impact on Federalism under Executive Order 12612. The regulations affect State/Federal relations in three ways, none of which are significant. First, while the

rules involve state water, consistent with section 8 of the Reclamation Act of 1902, 43 U.S.C. 383, these regulations do not affect state control of irrigation water rights. Second, the rules relate extensively to state organized irrigation districts. However, these proposed regulations would serve to clarify the existing Reclamation-district relationship and would not affect a significant change in policy. Finally, while the regulations address the commingling of Reclamation and non-reclamation water, the rules do not change existing policy.

### Executive Order 12630, Takings

This proposed rule has been reviewed under Executive Order 12630 to determine the takings implications of the proposed rule. Because districts and individual water users hold only contractual rights to services provided by Reclamation and the proposed rule would have only a de minimus impact on the value of any Constitutionally-protected property right if such right exists, it has been determined that this proposed rule does not present a significant risk of a taking.

Authorship: The primary authors of these proposed regulations are Gary Anderson, J. William McDonald, Richard Rizzi, and Rusty Schuster, Program Analysis Office, Bureau of Reclamation; however, much of the substance of the regulations was developed by RRA and water conservation experts throughout Reclamation.

### List of Subjects in 43 CFR Part 426 and 43 CFR Part 427

Administrative practice and procedure, Irrigation, Reclamation, Reporting and record keeping requirements.

Dated: March 22, 1995.

**Elizabeth Ann Rieke,**

*Assistant Secretary—Water and Science.*

For the reasons stated in the preamble, it is proposed that 43 CFR part 426 be revised as follows and that 43 CFR part 427 be added as follows:

Part 426 is revised to read as follows:

### PART 426—ACREAGE LIMITATION RULES AND REGULATIONS

- Sec.
- 426.1 Purpose.
  - 426.2 Definitions.
  - 426.3 Conformance to the discretionary provisions.
  - 426.4 Attribution of land.
  - 426.5 Ownership entitlement.
  - 426.6 Leasing and full-cost pricing.
  - 426.7 Trusts.
  - 426.8 Religious or charitable organizations.
  - 426.9 Public entities.
  - 426.10 Class 1 equivalency.
  - 426.11 Excess land.

- 426.12 Excess land appraisals.
- 426.13 Involuntary acquisition of land.
- 426.14 Commingling.
- 426.15 Exemptions and exclusions.
- 426.16 Small reclamation projects.
- 426.17 Landholder information requirements.
- 426.18 District responsibilities.
- 426.19 Assessment of administrative costs.
- 426.20 Interest on underpayments.
- 426.21 Public participation.
- 426.22 Recovery of operation and maintenance (O&M) costs.
- 426.23 Agency decisions and appeals.
- 426.24 Reclamation audits.
- 426.25 Severability.

**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, 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* means the ownership and nonfull-cost entitlements.

*Acreage limitation provisions* means 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 deliveries to ineligible land that are not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would otherwise apply to the landholder.

*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 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 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* refers 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 Bureau of Reclamation project under applicable Federal reclamation law.

*Entity*, see definition of *legal entity*.

*Excess land* means nonexempt land that is in excess of the 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 of Federal reclamation law.

*Extended recordable contract* means a recordable contract whose term was extended due to moratoriums on the sale of excess land that were established in 1976 and 1977.

*Full cost* or *full-cost rate* means an annual rate established by the Bureau of 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 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 the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under 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 legal instrument that a landholder executes 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 the Bureau of 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 irrigation water 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.

*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 possession of the lessor's land is partially or wholly transferred to the lessee. Possession means the authority to make, or prevent the lessor from making, decisions concerning the farming enterprise on the land; or the assumption of economic risk with respect to the farming enterprise on the land. In situations where possession has been partially transferred from a landholder to another party, a lease will be considered to exist if the majority of possession is not held by the potential lessor. In situations where possession has been transferred from a landholder to more than one other party, a lease will be considered to exist between the lessor and the party holding the greatest degree of possession.

*Legal entity* means, but is not limited to, corporations, partnerships, trusts, organizations, associations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common.

*Limited recipient* means any legal entity established under State or Federal law benefiting more than 25 natural persons. In order to become limited recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

*Non-discretionary provisions* means section 390cc(b) and 390hh through 390zz-1 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.).

*Nonexempt land* means irrigation land or irrigable land that is subject to the acreage limitation provisions of Federal reclamation law. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by that 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.

*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* means 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 entity that has a beneficial interest in an entity, but does not own 100 percent of that entity.

*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 Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), and as amended by the Reclamation Reform Act of 1982.

*Prior law recipient* means an individual or legal entity that has not become subject to the discretionary provisions. All nonresident aliens and legal entities not registered under State or Federal law will be considered prior law recipients, and shall have entitlement and eligibility only as prior law recipients.

*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 the Bureau of 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 Interior.

*Standard certification or reporting forms* means those forms on which landholders provide complete information about the directly and indirectly owned and leased land in their landholding.

*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 § 426.15 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 solely 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 Reclamation amends the contract, the district becomes subject to the discretionary provisions from the date the district's request was made; 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 the Secretary executes the contract amendment;

(ii) For purposes of application of the acreage limitation provisions, Reclamation considers all contract amendments as providing additional or supplemental benefits, except as specified in paragraphs (a)(3)(iii) or (iv) of this section. This includes loans made under the following acts that require amendment of a district's existing contract:

(A) Rehabilitation and Betterment Act (43 U.S.C. 504);

(B) Small Reclamation Projects Act (43 U.S.C. 422);

(C) Distribution Systems Loan Act (43 U.S.C. 421); and

(D) Emergency Fund Act (43 U.S.C. 502);

(iii) for purposes of application of the acreage limitation provisions Reclamation considers a contract amendment as not providing additional or supplemental benefits if that amendment:

(A) Does not require the United States to expend significant funds;

(B) Does not require the United States to commit significant additional water supplies; or

(C) Does not substantially modify contract payments due the United States; and

(iv) 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 an existing 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 § 426.15(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 operation and maintenance 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 remain 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 § 426.3(a)(1);

(2) Makes a contract action requiring conformance to the discretionary provisions, as provided in § 426.3(a) (2) or (3); or

(3) Becomes exempt, as provided in § 426.15.

(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 through 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 are subject to Federal 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 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.

The contracting officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State as they now or hereafter exist, and the rules and regulations promulgated by the Secretary of the Interior. These determinations shall be made in consultation with the contractor.

(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 registered under State or Federal law, and is:

(i) A direct landholder in that district, then the landholder becomes subject to the discretionary provisions and that acreage limitation status will apply in any district in which the landholder holds land; or

(ii) Only an indirect landholder, 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 registered 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 § 426.11; or

(ii) An indirect landholder, then such a landholder, as a prior law recipient, may receive irrigation water on land indirectly held in districts conforming to the discretionary provisions, but such holdings cannot exceed the landholder's prior law entitlements.

(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 members of that entity;

(iv) An irrevocable election by a member of a legal entity binds only the member making the election and not the entity or other members 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 § 426.17;

(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 or reporting forms(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 landowner 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 registered under state or Federal law, may make an irrevocable election also by simply submitting a certification form. 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 on April 12, 1987.

#### § 426.4 Attribution of land.

(a) *Prohibition on increasing acreage limitation entitlements.* Except as specifically provided in these rules, landholders 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 entity that directly owns 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 § 426.4 (b) and (d).

(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, land will be attributed in its entirety to all 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 §§ 426.11 and 426.13, 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 § 426.9.

(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) Individuals subject to prior law are 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. If any of that land should be sold, the applicable ownership entitlement would be reduced accordingly, but not to less than 160 acres;

(iv) Children are each entitled to receive irrigation water on a maximum of 160 acres, 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 owned 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. For any land acquired after that date, prior law ownership entitlements apply on a westwide basis.

#### § 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 must be 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; or

(ii) Equal to the average life of the perennial crop grown on the land, if the crop has a life longer than 10 years. In no case may the term of a lease exceed 25 years, including any exercisable options;

(3) The lease includes a legal description of the land subject to the lease;

(4) Signatures with signature dates of all parties to the lease are included;

(5) The lease includes the date(s) lease payments are due and the amounts of the payment required;

(6) The lease must be available for Reclamation's inspection and Reclamation must review and approve 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 must provide for agreed upon payments that reflect the reasonable value of the irrigation water to the productivity of the land.

(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 considered.

(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 eligible land 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 leased for any period of time during one water year counts towards a landholder's nonfull-cost entitlement, except:

(i) Involuntarily acquired land, as provided in §§ 426.11 and 426.13; 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 one water year;

(ii) Once a landholder's nonfull-cost entitlement is met in a given water year, any additional land leased by that landholder in that water year 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 for the remainder of 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 rates.* Reclamation will calculate a district's full-cost rate 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 rate 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 will be the remaining balance of:

(A) The contract repayment period as of October 12, 1982 for contracts entered into before October 12, 1982;

(B) The contract repayment period for contracts entered into on or after October 12, 1982;

(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 deficits funded.* Operation and maintenance (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 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 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 on the arithmetic average as follows, based on the average interest rates and yields during 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:

(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.

(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 account of the district or project.

#### § 426.7 Trusts.

(a) *Definitions for purposes of this section:*

*Irrevocable trust* means a non-revocable trust that holds irrigable land or irrigation land.

*Grantor revocable trust* means a trust which holds irrigable land or irrigation land that may be revoked at the discretion of the grantor(s), or terminated at a specified point in time, in such a manner that revocation results in reversion of the land to the grantor(s), either directly or indirectly.

*Otherwise revocable trust* means a trust that holds irrigable land or irrigation land and that is revocable or terminable by the terms prescribed by the trust, and the revocation or termination results in the title to the land held in trust reverting either directly or indirectly to a person or entity other than the grantor.

(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 is determined according to §§ 426.5 and 426.6, and any other applicable provisions of Federal reclamation law and these regulations. Reclamation attributes nonexempt land held by a trust as follows:

(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 following criteria are met. If the trust fails to meet any portion of the criteria listed in paragraph (b)(1) (i) or (ii) of this section then 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 following criteria are met. If the trust fails to meet any portion of the criteria listed in paragraph (b)(2) (i), (ii), (iii), or (iv) of this section, then 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 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 § 426.7(b)(1);

(ii) The grantor(s) of all land held by the trust is 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 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 § 426.7(b)(1) and the trust meets the additional criteria specified in § 426.7(b)(2).

(i) If the trust fails to meet the criteria listed in § 426.7(b)(1), but does meet the additional criteria listed in § 426.7(b)(2), then the land is attributed to the trustee.

If the trust fails to meet the additional criteria listed in § 426.7(b)(2), then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in § 426.7(b)(2).

(c) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revised his or her grantor revocable trust that meets the criteria specified in § 426.7(b)(2), 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 Religious or charitable organizations.

(a) *Definition for purposes of this section:*

*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 taxation under section 501 of the Internal Revenue Code of 1954, as amended.

(b) *Acreage limitation status of religious or charitable organizations which 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 accrue 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, then 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) Less than 25 members, 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) Reclamation treats each congregation, chapter, parish, school, ward, or other subdivision of a religious or charitable organization as an individual, prior law corporation, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.

(2) Reclamation must treat the entire organization, including all subdivisions, as a single prior law corporation if the central organization or any associated subdivisions do not meet the criteria specified in § 426.8(b)(1).

(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 record of the land being operated.

#### § 426.9 Public entities.

(a) *Definition of public entities.* For purposes of this section *public entities* means States, political subdivisions or agencies thereof, and agencies of the Federal government.

(b) *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 § 426.17.

(c) *Sale of public land.* Reclamation does not require public entities to seek price approval before they sell irrigable lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.

(d) *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 entitlement.

#### § 426.10 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 classes 2, 3, and 4 land will have the right to adjust, for acreage limitation entitlement purposes, 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.

(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 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 the Commissioner 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 cost of all other studies inherent 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.

(4) District 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.

(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 § 426.10(d) 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 on the district's request for equivalency.

(i) Reclamation will protect the excess landowner's property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district's request for an equivalency determination was made at least 6 months prior to the maturity of the recordable contract and the district fulfills its obligations under this section and 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 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) *Exception to use of class 1 equivalency factors.* Prior to the application of class 1 equivalency to any land not subject to class 1 equivalency on the effective date of these rules, Reclamation will perform an analysis to determine whether the irrigation of such land could contribute to hazardous or toxic irrigation return flows. In addition, when any land subject to class 1 equivalency on the effective date of these rules is reclassified for any reason, Reclamation will perform an analysis to determine whether the irrigation of such land could contribute to hazardous or toxic irrigation return flows.

(1) Reclamation will make reasonable efforts to specifically identify any land that could contribute to hazardous or toxic return flows.

(2) Increased acreage entitlements as a result of class 1 equivalency will not be permitted on land whose irrigation Reclamation finds could contribute to hazardous or toxic irrigation return flows.

(3) On land for which application of class 1 equivalency will be revoked as a result of this paragraph (g), such revocation will take place at the beginning of the irrigation season following Reclamation's determination.

(4) The cost of performing the analyses required by this paragraph (g) will be the responsibility of the requesting district.

(h) *Existing 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.

#### § 426.11 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 and 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 irrigable land or irrigation 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) The designation of excess and nonexcess land must be filed with the district(s) in which the land is located and with Reclamation and is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval:

(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 § 426.11(j)(5); or

(iii) The excess land becomes eligible to receive irrigation water as a result of equivalency determinations, as provided in § 426.10.

(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 § 426.11(b)(1)(i);

(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 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 § 426.11(b)(2).

(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 such excess land to an eligible buyer in a sale or transfer at a price and on terms approved by Reclamation; or

(iii) Redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2).

(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 § 426.11(b)(1)(i);

(B) The landowner sells such land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is cancelled; or

(D) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(ii) Irrigation water was physically not 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 § 426.11(b)(1)(i);

(B) The landowner sells the land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is cancelled;

(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 § 426.11(b)(2).

(2) If the 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 the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is cancelled; or

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); 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 the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is cancelled;

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in § 426.11(b)(2); or

(D) The landowner places the land under recordable contract when water becomes available.

(e) *If the status of land is changed by law and 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 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 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 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 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 such land to an eligible buyer subject to Reclamation sales price approval.

(4) Eligible nonexcess land that is indirectly owned on or before July 1, 1995, by a nonresident alien or a legal entity not established under State or Federal law, and that becomes ineligible because of these rules 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 such land to an eligible buyer. The sales price does not need Reclamation's approval.

(f) *Excess land that is transferred without approval or in violation of other requirements.*

(1) If a landowner purchases land that is subject to Reclamation price approval, without obtaining such approval, the land is ineligible to receive water until:

(i) 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

(ii) Such landowner sells the land to an eligible buyer at a price approved by Reclamation.

(2) If a landowner acquires land for which irrigation water is available and by that acquisition places himself or herself in an excess status, the land so acquired cannot be placed under recordable contract. The landowner must sell the land to an eligible buyer at a price approved by Reclamation, in order for such land to again be eligible.

(g) *Excess land that is disposed of and subsequently reacquired.* Districts may not under any circumstances make available irrigation water to excess land of which a landholder disposes, if the landholder subsequently becomes a direct or indirect landholder of that land, unless:

(1) The landholder became or contracted to become a direct or indirect landholder of that land prior to July 1, 1995; or

(2) Such land becomes exempt from the acreage limitations of Federal reclamation law.

(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.

(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 purchaser 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; and

(v) Paragraphs (i) through (iv) above shall not apply if the acquiring party specified therein is the party whose excess ownership

originally required the placement of this covenant. Furthermore, the party whose excess ownership originally required the placement of this covenant may not under any circumstances receive Federal reclamation project irrigation water on the land subject to this covenant as a direct or indirect landowner or lessee.

**Note:** 1. Clause (v) of this covenant shall only be required on those covenants placed in deeds transferring land after the effective date of these regulations.

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 the deed covenant must be terminated by Reclamation upon the landholder's request.

(j) *Recordable Contracts.*

(1) *Qualifications for recordable contracts.* A landowner can make excess land eligible by entering into a recordable contract with the United States if the landowner qualifies under applicable provisions of:

(i) The landowner's water 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, excluding mineral rights and easements, under terms and conditions of the sale, in accordance with § 426.12; 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 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, the annual operation and maintenance costs; or

(iii) If a lessee holds land under 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 full-cost will be charged for the delivery of irrigation water.

(5) *Amending a recordable contract to include less acreage.* Reclamation permits a landowner to amend a recordable contract to transfer land out of a recordable contract to nonexcess status, if:

(i) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or

(ii) Land becomes eligible by implementation of class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.

(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 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, whether Reclamation gives any needed 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 § 426.11(j)(4), 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) a qualified surveyor must make a land survey, as determined necessary by Reclamation. The United States will pay for the survey initially, 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;

(ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.12 of these regulations, to determine the appropriate sale price. The United States will pay for the appraisal initially, 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; 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 sale price for the land. The United States will reimburse itself for these costs from the sale of the land. The notices must state:

(A) the minimum acceptable sale 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 sale 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 sale 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 restricting any further resale of the land, as specified in § 426.11(i).

**§ 426.12 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 § 426.12(c)(1) 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 may 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 an existing 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 excess land's first appraisal, the United States will initially pay the costs of appraising the excess land's value, 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; or

(2) Not the excess land's first appraisal, the landowner 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.

(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 § 426.12(g).

(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 § 426.12(h).

(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.

#### § 426.13 Involuntary acquisition of land.

(a) *Definitions.*

For purposes of this section *involuntarily acquired land* is 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, commencing 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 § 426.11(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, if the landowner, to the extent the land continues to be excess in his or her landholding:

(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 new landowner 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 sale 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 sale price.

(e) *Nonexcess land that becomes excess when acquired involuntarily.*

(1) Reclamation can make irrigation water available to a landowner for a period of 5 years if the landowner acquires land involuntarily and that land becomes excess in the involuntarily acquiring landowner's holding provided:

(i) The land was nonexcess to the previous owner; and

(ii) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract, except as provided for in § 426.11(g).

(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, unless the land becomes subject to full-cost pricing through leasing;

(ii) The new landowner may not place such land under a recordable contract;

(iii) The new landowner may remove a deed covenant as provided in § 426.11(i)(4), and may sell such land at any time without price approval and without the deed covenant;

(iv) Reclamation will not allow the involuntary acquiring landowner to redesignate the land as nonexcess after he or she designates the land as excess; and

(v) 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.

(f) *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.

(g) *Land acquired by inheritance or devise.* If the landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per § 426.13(e) begins on the date of the previous landowner's death.

#### § 426.14 Commingling.

(a) *Definitions for purposes of this section:*

*Commingled water* means irrigation water and nonproject water that uses the same facilities.

*Nonproject water* means water from other sources as defined in the contract.

(b) *Application of Federal reclamation law and these regulations to existing commingling provisions in contracts.* If a district entered into its present contract with Reclamation prior to October 1, 1981, or renewed such a contract, and that contract has provisions addressing commingled water situations, those provisions stay in effect.

(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 constructed with funds made available pursuant to Federal reclamation law, 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 Reclamation program-funded facilities if those paragraphs are met.

(d) Federal reclamation law and these regulations do not apply to irrigation water from federally financed facilities that is acquired by an exchange and that results in no material benefit to the recipient of the water.

#### § 426.15 Exemptions and exclusions.

(a) *Army Corps of Engineers projects.*

(1) If Reclamation determines that land receives its agricultural water from an Army Corps of Engineers (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 districts that have repaid, in accordance with the district's contract with Reclamation, all obligated construction costs for Reclamation 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 repayment of construction charges allocated to land, and the individual landowner has repaid all obligated construction costs allocated for that landowner's land, that landowner may become exempt from the acreage limitation provisions.

(3) Upon exemption Reclamation will:

(i) Notify the district or individual landowner 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;

(iii) Allow the owner of land for which repayment has occurred, to request a certificate from Reclamation acknowledging that the land is free of the acreage limitation provisions of Federal reclamation law;

(iv) No longer apply the certification and reporting requirements to the district, if the entire district is exempt, or to exempt landowners as specified in § 426.15(b)(2); 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 R&B 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 project water available for delivery to such land; and

(3) Will not allow such a loan to serve as the basis for reinstating acreage limitations 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 limitations 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 durations a district may request that Reclamation make such supplies available to excess land. If Reclamation determines that such water deliveries would 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;

(2) The acreage limitation provisions of Federal reclamation law 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 can be farmed economically only if included in a farming operation that already exceeds an acreage limitation entitlement, and Reclamation makes such a determination, then Reclamation:

(1) Will exempt such land from the ownership limitations of Federal reclamation law;

(2) Will count such land against the landowner's or any lessee's nonfull-cost entitlements; and

(3) Will assess the full-cost rate for any irrigation water delivered if the landowner or any lessee of the isolated tract exceeds applicable nonfull-cost entitlements.

(f) *Indian trust or restricted lands.*

Indian trust or restricted lands are excluded from application of the RRA.

#### § 426.16 Small Reclamation projects.

(a) *Affect of the RRA on loan contracts made under the Small Reclamation Project 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 Public Law 99-546.

(2) If a district entered into a 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 provisions of the contract continue in effect.

(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 § 426.16(d).

(c) *Affect 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 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 will apply to that district.

(d) *Districts that have a SRPA loan contract and a contract as defined in § 426.2.* If a district has a SRPA loan contract and a contract as defined in § 426.2, the SRPA contract does not supersede the RRA requirements applicable to such contracts.

#### § 426.17 Landholder information requirements.

(a) *Definitions 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.

*Standard certification or reporting forms* means those forms on which landholders provide complete information about the directly and indirectly owned and leased land in their landholding.

(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 reclamation law.

(c) *Required form submissions.*

(1) Landholders who are subject to the discretionary provisions must submit certification forms.

(2) Landholders who make an irrevocable election must submit the appropriate certification forms with their irrevocable election in the year that they make the election.

(3) Landholders who are subject to prior law must submit reporting forms.

(4) Landholders who qualify under an exemption listed under paragraph (g) of this section need not submit any forms.

(d) *Required information.*

Landholders must declare on the appropriate certification or reporting forms all irrigable and irrigation 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 § 426.17(h), and the landholder is a:

(A) Qualified recipient whose total landholding westwide is 240 acres or less as provided for in § 426.17(i);

(B) Limited recipient who first received any irrigation water:

(1) On or before October 1, 1981, and whose total direct and indirect landholding westwide is 80 acres or less as provided for in section 426.17(i); or

(2) After October 1, 1981, and whose total direct and indirect landholding westwide is 5 acres or less; or

(C) Prior law recipient whose total direct and indirect landholding westwide is 40 acres or less.

(ii) The landholder's district has Category 2 status, as specified in § 426.17(h), and the landholder is a:

(A) Qualified recipient whose total direct and indirect landholding westwide is 80 acres or less;

(B) Limited recipient whose total direct and indirect landholding westwide is 5 acres or less; or

(C) Prior law recipient whose total direct and indirect landholding westwide is 40 acres or less.

(2) Wholly owned subsidiaries need not submit certification or reporting forms provided the ultimate parent legal entity has properly filed and has disclosed all direct and indirect landholdings of its subsidiaries as required on such forms.

(3) In determining whether certification or reporting is required under paragraph (g):

(i) Class 1 equivalency factors as determined in § 426.10 shall not be used; and

(ii) Landholders need not count involuntarily acquired excess acreage that they hold indirectly.

(h) *District categorization.* For purposes of this section each district has Category 2 status, unless the district applied for and the regional director granted the district Category 1 status. Category 1 districts must meet the following criteria:

(1) District conformance by contract with the discretionary provisions;

(2) The district must have entered into a partnership agreement with Reclamation which can include but is not limited to the development of integrated resources management plans, the development and implementation of specific water conservation standards for the district, or the development of specific measurable efficiencies for the district; and

(3) The district's financial obligations to the United States are not delinquent.

(i) *Application of Category 1 status.* The specific forms thresholds, up to the levels allowed in § 426.17(g)(1)(i), will be specified within the partnership agreement made between the district and Reclamation. The agreement will include a provision for periodic review of the achievements of the district under the partnership. The regional director may withdraw the Category 1 status at any time if the district fails to accomplish the specific actions stated within the partnership agreement.

(j) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a landholder's entire landholding,

westwide, is not located in Category 1 districts, then the landholder must submit forms under the Category 2 certification or reporting requirements in all districts.

(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 15 calendar days of the change; and

(ii) Submit new forms to all districts in which the landholder holds nonexempt land, within 30 calendar days of the change.

(2) Outside of the irrigation season, then, the landholder must submit new certification or reporting forms to all districts in which nonexempt land is held prior to any irrigation water delivery 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 the 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 that Reclamation takes if required submission(s) are not made.*

(1) If a landholder does not submit required certification or reporting form(s), then:

(i) 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 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 clearance Nos. 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. The information collected on each landholding will be summarized by the district and submitted to Reclamation in a form prescribed by Reclamation. Completion of these forms is required to obtain the benefit of irrigation water.

(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.

#### **§ 426.18 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 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.

#### **§ 426.19 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 § 426.19(e) 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 § 426.17; or to ineligible excess land as provided in § 426.11.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.17, 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 § 426.19(a) will be applied independently of the assessment specified in § 426.19(b).

(b) *Assessment of administrative costs when form corrections are not made.* Reclamation will assess a district for the administrative costs described in § 426.19(e), 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 corrections within 60-calendar days, Reclamation will consider the requirements of § 426.17(b) 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 § 426.19(b) will be applied independently of the assessment specified in § 426.19(a).

(c) *Party responsible for paying assessments.* Districts are responsible for payment of Reclamation assessments described under § 426.19(a) and (b).

(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 § 426.19(a) and (b).

(e) *Amount of the assessment.* The administrative costs assessment required under § 426.19(a) and (b) 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.

#### § 426.20 Interest on underpayments.

(a) *Definition of underpayment.* For the purposes of this section *underpayment* means the difference between what a landholder owed 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.

#### § 426.21 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 if parties to contract negotiations modify 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.

**§ 426.22 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 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 (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 each year the district must pay:

(1) 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) 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 an existing contract.* For a district whose existing contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless specifically provided to the contrary by the terms of the contract.

(f) *Amount of O&M that Reclamation charges an irrevocable elector.*

(1) Regardless of any terms to the contrary within an existing 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 or districts in which 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 meet the following requirements:

(i) 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 (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 to the United States.

(g) *Amount of O&M that Reclamation charges if a landholder is subject to full-cost pricing.* In those districts 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.

**§ 426.23 Agency decisions and appeals.**

(a) *Initial agency decisions.*

(1) Decisionmaker for initial agency decisions:

(i) The appropriate regional director makes any initial agency decision that these regulations require or authorize; or

(ii) If the initial agency decision is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that decision.

(2) *Notice to affected parties.* A regional director will notify parties, that are potentially affected by his or her initial decision, in writing.

(3) *Effective date for initial agency decisions.* A regional director's initial decision takes effect immediately, unless the regional director otherwise specifies, or the decision involves the termination of water deliveries. A decision to terminate water delivery can take effect no sooner than 10 calendar days after the regional director makes his or her initial decision.

(b) *Reconsideration of initial agency decision.*

(1) *Requests for reconsideration.* Any district or landholder whose rights and interests are directly affected by a regional director's initial decision can submit a written request for reconsideration of the regional director's decision. The regional director must receive requests for reconsideration of an initial decision from districts and landholders, who:

(i) Received notification of a regional director's decision by mail, within 30 calendar days from the date of the initial decision; or

(ii) Did not receive notification of the initial decision by mail, within 90 calendar days from the date of the initial decision.

(2) *Requests for stay of the initial agency decision pending reconsideration.*

(i) The regional director will stay his or her initial decision if the requesting party:

(A) Submits a request for stay in writing to the regional director, with, or in advance of, the request for reconsideration, and states the grounds upon which the party requests the stay; and

(B) Demonstrates that the harm which a district or landholder would suffer if the regional director does not grant the stay outweighs the interest of the United States in having the initial decision take effect pending reconsideration.

(ii) The initial decision will be automatically stayed pending the regional director's review of the initial agency decision, unless the regional director:

(A) Acts upon the request for a stay within 15 calendar days of the request; and

(B) Informs, by certified mail, the requesting party or parties of his or her decision within 1 business day after he or she rules on the request for a stay.

(iii) A regional director's decision on a request for a stay is not appealable.

(c) *Reclamation's final action.*

(1) *If no party requested a reconsideration of the initial decision.* If the regional director does not receive a request for reconsideration within the time frames specified in § 426.23(b)(1), the initial decision becomes Reclamation's final action on the 91st day after the date of the initial decision.

(2) *If a party requested reconsideration of the initial decision.* If the regional director receives a timely request for reconsideration, the regional director will make a ruling on a request for reconsideration of an initial agency decision within 30 calendar days of receipt of the request, and will inform the requesting parties of his or her ruling by certified mail. This ruling will constitute Reclamation's final action.

(i) The date of Reclamation's final action will be the date of mailing the regional director's ruling to the requesting party or parties.

(ii) The regional director will establish the effective date of Reclamation's final action.

(d) *Appeal of Reclamation's final actions.*

(1) *Reclamation's final actions that cannot be appealed.* An initial agency decision that becomes Reclamation's final action as a result of a failure by an affected party to request reconsideration as provided in § 426.23(b)(1) cannot be further appealed.

(2) *Reclamation's final actions that can be appealed.* A party that timely requested reconsideration of the agency's initial decision may appeal Reclamation's final action to the Secretary of the Interior 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 Reclamation's final action.

(3) *Rules that govern the appeal process.* Except for the authority of regional directors to grant stays of their determinations under § 426.23(d)(4), 43 CFR part 4, subpart G, and other provisions of 43 CFR part 4, where applicable, govern the appeal process.

(4) *Requests for stay of Reclamation's final action pending appeal.* An appellant can request that the regional director who was responsible for Reclamation's final action stay that action pending an appeal as specified in § 426.23(d)(2). The procedures and time frames set forth in § 426.23(b)(2) for requests for stays of initial agency decisions apply to requests for stays of final Reclamation actions. If the regional director fails to act on the appellant's stay within 15 calendar days of its receipt, then Reclamation's final action will automatically be stayed pending final action by OHA. A regional director's decision on a request for a stay cannot be appealed.

(e) *Effective date of an appealed decision.* Reclamation can apply decisions made by a regional director or by OHA under § 426.23 (c) and (d) as of the date of the initial agency decision. 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.

(f) *Accrual of interest on underpayments during reconsideration or appeal.* Interest on any underpayments, as provided in § 426.20, continues to accrue during the reconsideration of an initial agency decision or an appeal of Reclamation's final action or judicial review of final agency action. Underpayment interest accrual will continue even during a stay under § 426.23 (b)(2) or (d)(4).

(g) *Status of appeals made prior to the effective date of these regulations.* (1) Appeals to the Commissioner of a regional director's 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 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.

(h) *Addresses.* All requests for reconsideration, stays, appeals, or other communications to the United States under this section must be addressed as follows:

(1) *Regional directors,* at their current mailing addresses, which may be obtained by writing or calling the Office of the Commissioner, Bureau of Reclamation, 1849 C Street NW., MS-7060-MIB, Washington, DC 20240,

telephone (202) 208-4157; or by writing or calling the Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone (303) 236-3292.

(2) *Director, Office of Hearings and Appeals,* Department of the Interior, 4015 Wilson Boulevard, Room 1103, Ballston Tower No. 3, Arlington, VA 22203.

**§ 426.24 Reclamation audits.**

Reclamation has the authority to 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.

**§ 426.25 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.

Part 427 is added as follows:

**PART 427—WATER CONSERVATION RULES AND REGULATIONS**

Sec.

- 427.1 Purpose.
- 427.2 Conservation Plan Requirements.
- 427.3 Incentives.
- 427.4 Technical Guidelines and Criteria.

**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, 390ww, 43 U.S.C. 422a et seq., and 43 U.S.C. 440.

**§ 427.1 Purpose.**

These rules and regulations prescribe the requirements for preparation and submittal of water conservation plans prepared by water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act.

**§ 427.2 Conservation Plan Requirements.**

(a) *Submission requirements.* All water districts and other entities that contract with the United States for a supply or storage of water under Federal reclamation law, the Small Reclamation Projects Act, the Water Conservation and Utilization Act, or the Warren Act must submit water conservation plans for approval by the appropriate Regional

director at least once every 5 years, except:

(1) Districts that receive only irrigation water and deliver the water to less than 2000 acres of land,

(2) Districts that receive only municipal and industrial water and deliver the water to fewer than 3,300 people,

(3) Districts that receive any combination of irrigation water, municipal and industrial water, or water for other uses and receive an average annual water supply of less than 2,000 acre-feet from all Federal reclamation projects combined,

(4) Districts whose only contract is a temporary contract of 1 year or less,

(5) The Central Utah Water Conservancy District, Utah, and each petitioner of Central Utah Project water, which must comply only with the requirements of section 207 of the Central Utah Project Completion Act (Titles II through III of Pub. L. 102-575, 106 Stat. 4605, 4616), provided the district and petitioners have met the requirements of section 207 of the Act. If the district or a petitioner of Central Utah Project water also receives water from any other Federal reclamation project, that entity is subject to the requirements of § 427.2 with respect to the non-Central Utah Project water,

(6) Districts receiving water from the Central Valley Project, California, so long as criteria for evaluating water conservation plans have been developed, published, and are in effect under section 3405(e) of the Central Valley Project Improvement Act (Title XXXIV of Pub. L. 102-575, 106 Stat. 4706, 4713), or

(7) Districts that have met the requirements of these regulations by meeting the alternative standards or performance requirements of a State or Federal water conservation program as approved and notified in writing by the regional director.

(b) *Required Elements of a Water Conservation Plan.* A water conservation plan must set forth definite goals for improvements in the management and efficient use of water. The plan must also identify those actions that are necessary and

appropriate for achieving the plan's stated goals. The plan must establish a reasonable time schedule for implementing the identified actions and for meeting the plan's goals. The plan must also establish appropriate criteria for measuring progress toward meeting the plan's goals and include an assessment of progress achieved to date. At a minimum the plan must include the following actions:

(1) A water measurement and accounting system designed to measure and account for all water conveyed through the district's distribution system to water users. The system must include metering or measuring devices at each agricultural water delivery turnout and each municipal and industrial water delivery service connection;

(2) A water pricing structure for district water users designed to encourage increased efficiency of water use;

(3) An information/education program for water users designed to promote increased efficiency of water use; and

(4) Designation of a district water conservation coordinator.

#### § 427.3 Incentives.

(a) Reclamation will provide technical and financial assistance to districts and entities developing and implementing water conservation plans, as funding and staff availability permits. Reclamation will also establish voluntary partnerships with districts and entities in a collaborative effort to improve the management of water and associated resources in the Western United States, and to assist districts and entities in achieving their water conservation goals. However, if Reclamation does not provide technical or financial assistance, for whatever reason, the district is not relieved of its responsibility for the development and implementation of an adequate water conservation plan.

(b) Reclamation will consider a district's progress in development and implementation of water conservation plans when prioritizing the allocation of future discretionary Reclamation program benefits. Except in unusual

circumstances, future discretionary benefits will be unavailable to a district or entity that does not have an approved plan or is not adequately implementing an approved plan. These discretionary benefits may include:

(1) Discretionary funds including, but not limited to, drought relief funds, drought assistance, loans and/or grants under various statutory authorities, construction funding, and technical planning assistance;

(2) Discretionary programs or benefits including, but not limited to, temporary supplies of water under 43 U.S.C. 3900o, temporary or short-term contracts, and Warren Act contracts; and

(3) Facilitating water transfers to or by a district, accommodating changes in the place or type of use of water, or assisting in the identification of beneficiaries that may be willing to fund conservation activities.

#### § 427.4 Technical Guidelines and Criteria.

(a) Reclamation has developed Technical Guidelines and Criteria for Water Conservation Plans (Guidelines and Criteria). These Guidelines and Criteria describe the standards and process which Reclamation will use to evaluate district water conservation plans, describe the schedule and process for submitting plans, provide information on environmental compliance, suggest specific plan elements, and identify water conservation measures for evaluation and inclusion in district water conservation plans.

(b) The Guidelines and Criteria may be obtained from any Bureau of Reclamation regional office. The addresses of the regional offices may be obtained by writing or calling the Office of the Commissioner, Bureau of Reclamation, 1849 C Street N.W., MS-7060-MIB, Washington, D.C. 20240, telephone (202) 208-4157; or by writing or calling the Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone (303) 236-3292.

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