DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

RIN 1006–AA38

Acreage Limitation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking requests public comment on possible revisions to existing rules and regulations regarding acreage limitation provisions of the Reclamation Reform Act of 1982 (RRA). During the recently completed RRA rulemaking published in today's Federal Register, the Department of the Interior (Department) received a number of comments regarding the compliance of certain large trusts with the acreage limitation provisions of the RRA. Comments expressed a variety of viewpoints, including the assertion that some trusts with landholdings (owned or leased land) in excess of 960 acres may circumvent the requirements of Federal reclamation law. The Department seeks comment on this issue as specified below. In addition, the Department also hopes to obtain the views of interested parties on the extent of the Department's statutory authority to address matters described below.

DATES: Written comments on this advance notice of proposed rulemaking must be received by the Bureau of Reclamation by March 18, 1997.

ADDRESSES: Mail written comments to the Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Steven Richardson, Bureau of Reclamation, Mail Code W–1500, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–4291.

SUPPLEMENTARY INFORMATION:

Background

The RRA modernized Federal reclamation law, while retaining the principle of limiting the benefits of receiving federally subsidized water to farmers with relatively small landholdings. The RRA adjusted the acreage limitations for farms eligible to receive subsidized water. This change was intended to facilitate modern farming practices and to limit nonfull-cost water deliveries generally to landholdings of 960 acres or less, rather than the 160 acres established by the Reclamation Act of 1902. The RRA provides a number of exceptions to the 960-acre limitation. One of these, section 214 of the RRA, provides that the acreage limitation provisions do not apply to lands held in trust, if certain criteria are met.

In 1983, the Bureau of Reclamation (Reclamation) adopted rules implementing the RRA's trust provisions (43 CFR Part 426). The 1987 rules required that trust agreements must: (a) be in writing, (b) be approved by the Secretary of the Interior, (c) identify the beneficiaries, and (d) describe the interest of the beneficiaries. In December 1988, the rules were again revised to incorporate amendments to the RRA contained in the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). These amendments addressed treatment of revocable trusts, among other issues.

Under current Reclamation policy, Reclamation generally attributes land held by a trust to the beneficiaries of that trust. For example, the current regulations permit large landholdings in excess of 960 acres held in trust to be operated as one farm and to receive nonfull-cost water as long as no beneficiaries to whom land has been attributed exceed their acreage limitations. Current regulations do not distinguish between family, financial institution, and estate planning trusts on the one hand, and certain other large trusts created after 1982 that appear to some to be designed specifically to avoid the acreage limitation provisions of Federal reclamation law.

The Department published in the Federal Register on April 3, 1995, (63 FR 16922, Apr. 3, 1995) a notice of proposed rulemaking on the acreage limitation provisions and received hundreds of comments from the public. The final rule on acreage limitations (43 CFR Part 426) is published in today's Federal Register. This final rule makes no substantive change in the treatment of trusts.

The proposed rule sought to address outstanding concerns raised by some members of the public regarding compliance by large trusts with the acreage limitation requirements of the RRA and other as yet unregulated forms of land holding. The proposed rule would have amended the definition of what constitutes a lease for purposes of the acreage limitation requirements of the RRA. Reclamation treats large farm operations as leases, subject to the acreage limitation requirements, if the operator assumes the economic risk of the farming enterprise and has use or possession of the land. By contrast, the proposed rulemaking focused on possession of the land. Under that proposed change, if someone other than the landowner had possession of the land, then Reclamation would determine that a lease subject to the acreage limitation provisions existed regardless of whether that person or entity also assumed the economic risk. One of the effects of the proposed rule may have been to treat certain operators of land held in trust as lessees.

Based upon comments on the proposed rulemaking, Reclamation has determined that the proposed provision altering the definition of a lease is an inadequate means of addressing the concerns about compliance with the acreage limitation provisions of the RRA and could have produced unintended consequences. Many comments from the public raised concerns about the effects of such a change on custom service providers, specialty services, and lenders among others. Still others noted that the proposed change could be easily avoided. Given the widely divergent views and the complexity of this issue, this advance notice of proposed rulemaking seeks further public comment on the matter.

Summary of Proposal

The treatment of trusts under the RRA can significantly affect how much acreage in a given farming arrangement is eligible for nonfull-cost water. Many family farms, trust departments of financial institutions, and others use trusts for estate planning and other purposes unrelated to acreage limitations. Section 214 of the RRA, contemplating these legitimate trust purposes, provides that lands held in trust and meeting certain criteria are not subject to acreage limitations. Thus such trusts are eligible to receive nonfull-cost water from Reclamation projects. Following the enactment of the RRA, however, some holders of large farms created trusts, transferred their landholdings to those trusts, and continued to receive nonfull-cost water without regard to the traditional purposes for trusts that Congress may have contemplated in adopting section 214.

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

To address the issue of large trusts in excess of 960 acres that may circumvent acreage limitations, the Department invites comments and suggestions on:

- Whether to limit nonfull-cost water deliveries to large trusts with landholdings in excess of 960 acres (or other applicable acreage thresholds under the RRA);
- The criteria used to determine whether landholdings in excess of 960 acres, operated under a trust arrangement, should be eligible to receive nonfull-cost water deliveries;
- Whether nonfull-cost water deliveries to such landholdings are consistent with the principles of Federal reclamation law and sound public policy and, if not, how to implement a limit on such deliveries;
- What procedures might ensure fairness in transition to new rules that would limit large trusts to 960 acres for nonfull-cost water, and what safeguards would be necessary to avoid such trusts from adopting some other,as yet unregulated form, to escape acreage limitations; and
- The extent of the Department's statutory authority to address these issues, including, the extent of the Department's legal authority to regulate: (a) future trusts, (b) trusts established from 1982 to the present, and (c) trusts established prior to 1982.

By seeking public comment, Interior hopes to receive input and suggestions that will better enable the Department to ensure compliance wit the acreage limitation provisions by large trusts and other forms of landholdings in excess of 960 acres.

Dated: December 11, 1996.

Patricia J. Beneke,

Assistant Secretary, Water and Science.

[FR Doc. 96–31905 Filed 12–13–96; 10:31 am]

BILLING CODE 4310–94–P