

# RECLAMATION

*Managing Water in the West*

## **PART 426 – ACREAGE LIMITATION RULES AND REGULATIONS**

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NOTE: This document is the final rulemaking published in the Federal Register on December 18, 1996 with an effective date of January 1, 1998. The exception is the text in 426.24(g) which was revised effective March 25, 2002. The text was taken from the Federal Register notice and required reformatting from an ascii file into a WordPerfect file and later into a Microsoft Word file. It is intended to be an exact replica (format excepted) of the published document.



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Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z-11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz-1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

## § 426.1 Purpose.

These rules and regulations implement certain provisions of Federal reclamation law that address the ownership and leasing of land on Federal Reclamation irrigation projects and the pricing of Federal Reclamation project irrigation water, and establish terms and conditions for the delivery of Federal Reclamation project irrigation water.

## § 426.2 Definitions.

As used in these rules:

*Acreage limitation entitlements* mean the ownership and nonfull-cost entitlements.

*Acreage limitation provisions* mean the ownership limitations and pricing restrictions specified in Federal reclamation law, including but not limited to, Sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

*Acreage limitation status* means whether a landholder is a qualified recipient, limited recipient, or prior law recipient.

*Commissioner* means the Commissioner of the Bureau of Reclamation, U.S. Department of the Interior.

*Compensation rate* means a water rate applied, in certain situations, to water delivery to ineligible land that is not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would apply to the landholder if the landholder was to receive irrigation water on land that exceeded a nonfull-cost entitlement.

*Contract* means any repayment or water service contract or agreement between the United States and a district providing for the payment to the United States of construction charges and normal operation, maintenance, and replacement costs under Federal reclamation law, even if the contract does not specifically identify the portion of the payment that is to be attributed to operation and maintenance and that portion that is to be attributed to construction. This definition includes contracts made in accordance with the Distribution System Loans Act, as amended (43 U.S.C. 421).

*Contract rate* means the assessment, as set forth in a contract, that is to be paid by a district to the United States, and recomputed if necessary on a per acre or per acre foot basis.

*Dependent* means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) and any subsequent amendments.

*Direct* when used in connection with the terms landholder, landowner, lessee, lessor, or owner, means that the party is the owner of record or holder of title, or the lessee of a land parcel, as appropriate. However, landholdings of joint

tenants and tenants-in-common will not be considered direct under these regulations.

*Discretionary provisions* refer to Sections 390cc through 390hh, except for 390cc(b), of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

*District* means any individual or any legal entity established under State law that has entered into a contract or can potentially enter into a contract with the United States for irrigation water service through federally developed or improved water storage and/or distribution facilities.

*Eligible*, except where otherwise provided, means permitted to receive an irrigation water supply from a Reclamation project under applicable Federal reclamation law.

*Entity*, see definition of legal entity.

*Excess land* means nonexempt land that is in excess of a landowner's maximum ownership entitlement under the applicable provisions of Federal reclamation law.

*Exempt*, except where otherwise provided, means not subject to the acreage limitation provisions.

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

*Full cost or full-cost rate* means an annual rate established by Reclamation that amortizes the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded operation and maintenance deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. The full-cost rate includes actual operation, maintenance, and replacement costs required under Federal reclamation law.

*Full-cost charge* means the full-cost rate less the actual operation, maintenance, and replacement costs required under Federal reclamation law.

*Indirect*, when used in connection with the terms landholder, landowner, lessee, lessor or owner, means that such party is not the owner of record or holder of title, or the lessee of a land parcel, but that such party has a beneficial interest in the legal entity that is the owner of record or holder of title, or the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under these regulations. A security interest held by lenders, who are not otherwise considered a landholder of the land in question, in a legal entity or in a land parcel will not be considered an indirect interest or a beneficial interest for purposes of these regulations.

*Individual* means any natural person, including his or her spouse, and including other dependents; provided that, under prior law, the term individual does not include a natural person's spouse or dependents.

- Ineligible*, except where otherwise provided, means not permitted to receive an irrigation water supply under applicable Federal reclamation law regardless of the rate paid for such water.
- Intermediate entity* means an entity that is a part owner of another entity and in turn is owned by others, either another entity or individuals.
- Involuntary acquisition* means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.
- Irrevocable election* means the execution of the legal instrument that a landholder subject to prior law provisions submits to become subject to the discretionary provisions of Federal reclamation law.
- Irrevocable elector* means a landholder who makes an irrevocable election to conform to the discretionary provisions of Federal reclamation law.
- Irrigable land* means land so classified by Reclamation under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided.
- Irrigation land* means any land receiving water from a Reclamation project facility for irrigation purposes in a given water year, except for land that has been specifically exempted by statute or administrative action from the acreage limitation provisions of Federal reclamation law.
- Irrigation water* means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with Reclamation.
- Landholder* means a party that directly or indirectly owns or leases nonexempt land.
- Landholding* means the total acreage of nonexempt land directly or indirectly owned or leased by a landholder.
- Lease* means any arrangement between a landholder (the lessor) and another party (the lessee) under which the economic risk and the use or possession of the lessor's land is partially or wholly transferred to the lessee. If a management arrangement or consulting agreement is one in which the manager or consultant performs a service for the landholder for a fee, but does not assume the economic risk in the farming operation, and the landholder retains the right to the use and possession of the land, is responsible for payment of the operating expenses, and is entitled to receive the profits from the farming operation, then the agreement or arrangement will not be considered to be a lease.
- Legal entity* or entity for the purpose of establishing application of the acreage limitation entitlements means, but is not limited to, corporations, partnerships, organizations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common. For purposes of the information requirements specified in § 426.18 only, trusts will be considered to be legal entities.
- Limited recipient* means any legal entity established under State or Federal law benefiting more than 25 natural persons. In order to become limited recipients,

legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

*Nondiscretionary provisions* means sections 390cc(b) and 390ii through 390zz-1 of the RRA.

*Nonexempt land* means either irrigation land or irrigable land that is subject to the acreage limitation provisions. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the nonexempt acreage. Areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public are excluded from nonexempt acreage.

*Nonfull-cost entitlement* means the maximum acreage a landholder may irrigate with irrigation water at a nonfull-cost rate.

*Nonfull-cost rate* means any water rate other than the full-cost rate. Nonfull-cost rates are paid for irrigation water made available to land in a landholder's nonfull-cost entitlement.

*Nonproject water* means water from sources other than Reclamation project facilities.

*Nonresident alien* means any natural person who is neither a citizen nor a resident alien of the United States.

*Operation and maintenance costs or O&M costs* mean all direct charges and overhead costs incurred by the United States after the date that Reclamation has declared a project, or a part thereof, substantially complete to operate, maintain, provide replacements of, administer, manage, and oversee project facilities and lands.

*Ownership entitlement* means the maximum acreage a landholder may directly or indirectly own and irrigate with irrigation water.

*Part owner* means an individual or legal entity that has a beneficial interest in a legal entity, but does not own 100 percent of that legal entity. A lender, who is not otherwise considered a landholder of the land in question, with a security interest in a legal entity or land owned by a legal entity shall not be considered a part owner under these regulations.

*Prior law* means the Reclamation Act of 1902, and acts amendatory and supplementary thereto (43 U.S.C. 371 *et seq.*) that were in effect prior to the enactment of the RRA, and as amended by the RRA.

*Prior law recipient* means an individual or legal entity that has not become subject to the discretionary provisions.

*Project* means any irrigation project authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the United States through Reclamation for the reclamation of lands. The term project includes any incidental features of an irrigation project.

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*Public entity* means States, political subdivisions or agencies thereof, and agencies of the Federal Government.

*Qualified recipient* means an individual who is a citizen or a resident alien of the United States or any legal entity established under State or Federal law that benefits 25 natural persons or less. A married couple may become a qualified recipient if either spouse is a United States citizen or resident alien. In order to become qualified recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

*Reclamation* means the Bureau of Reclamation, U.S. Department of the Interior.

*Reclamation fund* means a special fund established by the Congress under the Reclamation Act of 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues.

*Recordable contract* means a written contract between Reclamation and a landowner capable of being recorded under State law, providing for the disposition of land held by that landowner in excess of the ownership limitations of Federal reclamation law.

*Resident alien* means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.

*RRA* means the Reclamation Reform Act of 1982, Public Law 97-293, Title II, 96 Stat. 1263, (43 U.S.C. 390aa *et seq.*) as amended.

*Secretary* means Secretary of the U.S. Department of the Interior.

*Standard certification or reporting forms* mean forms on which landholders provide complete information about the directly and indirectly owned and leased nonexempt lands in their landholdings.

*Water year* means a 365-day period (or 366 days during leap years) whose start date is specified within a contract between Reclamation and the district or through some other agreement between Reclamation and the district.

*Westwide* means the 17 Western States where Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

### **§ 426.3 Conformance to the discretionary provisions**

- (a) *Districts that are subject to the discretionary provisions.* Unless an exemption in § 426.16 applies, a district is subject to the discretionary provisions if:
- (1) The district executes a new or renewed contract with Reclamation after October 12, 1982. The discretionary provisions apply as of the execution date of the new or renewed contract;
  - (2) The district amends its contract to conform to the discretionary provisions:
    - (i) A district may ask Reclamation to amend its contract to conform to the discretionary provisions;

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- (ii) The district's request to Reclamation must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, actions required by applicable State law to amend its contract; and
  - (iii) If the requirements of paragraphs (a)(2)(i) and (ii) of this section are met, then Reclamation will amend the contract, and the district becomes subject to the discretionary provisions from the date the district's request was submitted to Reclamation;
  - (iv) If the district only wants to amend its contracts to become subject to the discretionary provisions, the amendments need only be to the extent required to conform to the discretionary provisions; or
- (3) The district amends its contract after October 12, 1982, to provide the district with additional or supplemental benefits. The amendment must also include the district's conformance to the discretionary provisions:
- (i) The discretionary provisions apply as of the date that Reclamation executes the contract amendment;
  - (ii) For purposes of application of the acreage limitation provisions Reclamation considers a contract amendment as providing additional or supplemental benefits if that amendment:
    - (A) Requires the United States to expend significant funds;
    - (B) Requires the United States to commit significant additional water supplies; or
    - (C) Substantially modifies contract payments due the United States; and
  - (iii) For purposes of application of the acreage limitation provisions Reclamation does not consider the following contract actions as providing additional or supplemental benefits:
    - (A) The construction of facilities for conveyance of irrigation water for which districts contracted on or before October 12, 1982;
    - (B) Minor drainage and construction work contracted under a prior repayment or water service contract;
    - (C) Operation and maintenance (O&M) amendments;
    - (D) The deferral of payments provided the deferral is for a period of 12 months or less;
    - (E) A temporary supply of irrigation water as set forth in § 426.16(d);
    - (F) The transfer of water on an annual basis from one district to another, provided that:
      - (1) Both districts have contracts with the United States;
      - (2) The rate paid by the district receiving the transferred water:
        - (i) Is the higher of the applicable water rate for either district;
        - (ii) Does not result in any increased operating losses to the United States above those that would have existed in the absence of the transfer; and
        - (iii) Does not result in any decrease in capital repayment to the United States below what would have existed in the absence of the transfer; and



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- (3) The recipients of the transferred water pay a rate for the water that is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water;
  - (G) Contract actions pursuant to the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506); or
  - (H) Other contract actions that Reclamation determines do not provide additional or supplemental benefits.
- (b) *Districts that are subject to prior law.* Any district which had a contract in force on October 12, 1982, that required landholders to comply with the ownership limitations of Federal reclamation law remains subject to prior law unless and until the district:
- (1) Enters into a new or renewed contract requiring it to conform to the discretionary provisions, as provided in paragraph (a)(1) of this section;
  - (2) Makes a contract action requiring conformance to the discretionary provisions, as provided in paragraphs (a)(2) or (3) of this section; or
  - (3) Becomes exempt, as provided in § 426.16.
- (c) *Standard RRA contract article.*
- (1) New or renewed contracts executed after October 12, 1982, or contracts that are amended to conform to the discretionary provisions before or on the effective date of these rules must include the following clause:

The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).
  - (2) New or renewed contracts executed after the effective date of these rules, or contracts that are amended to conform to the discretionary provisions after the effective date of these rules must include the following clause:

The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.
- (d) *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions.* If a district provides irrigation water to other districts through subcontracts and the master contracting district is subject to:
- (1) The discretionary provisions, then all subcontracting districts who are entitled to receive irrigation water must also conform to the discretionary provisions; or

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- (2) Prior law, then the subcontracting district can amend its subcontract to conform to the discretionary provisions without subjecting the master contractor or any other subcontractor of the master contractor to the discretionary provisions. If a subcontract that does not include the United States as a party is amended to conform to the discretionary provisions, or the subcontract is a new or renewed contract executed after October 12, 1982, then the amended, new, or renewed subcontract must include the United States as a party.
- (e) *The effect on a landholder's status when a district becomes subject to the discretionary provisions.* If a district conforms to the discretionary provisions and the landholder is:
  - (1) Other than a nonresident alien or a legal entity that is not established under State or Federal law, and is:
    - (i) A direct landholder in that district, then the landholder becomes subject to the discretionary provisions and the associated acreage limitation status will apply in any district in which the landholder holds land; or
    - (ii) Only an indirect landholder in that and all other discretionary provisions districts, then the landholder's acreage limitation status is not affected. Such a landholder can receive irrigation water as a prior law recipient on indirectly held lands in districts that conform to the discretionary provisions.
  - (2) A nonresident alien, or legal entity not established under State or Federal law, and the landholder is:
    - (i) A direct landholder, then since such a landholder cannot become subject to, and has no eligibility under the discretionary provisions:
      - (A) All direct landholdings in districts that conform to the discretionary provisions become ineligible; and
      - (B) Directly held land that becomes ineligible as a result of the district's action to conform to the discretionary provisions may be placed under recordable contract as subject to the conditions specified in § 426.12; or
    - (ii) An indirect landholder, then such a landholder may receive irrigation water on land indirectly held in districts conforming to the discretionary provisions, with the entitlements for such landholder determined as specified in § 426.8.
- (f) *Landholder actions to conform to the discretionary provisions.*
  - (1) In the absence of a district's action to conform to the discretionary provisions, United States citizens, resident aliens, or legal entities established under State or Federal law, can elect to conform to the discretionary provisions by executing an irrevocable election. Upon execution of an irrevocable election:
    - (i) The elector's entire landholding in all districts shall be subject to the discretionary provisions;
    - (ii) The election shall be binding on the elector and his or her landholding, but will not be binding on subsequent landholders of that land;

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- (iii) An irrevocable election by a legal entity is binding only upon that entity and not on the part owners of that entity;
  - (iv) An irrevocable election by a part owner of a legal entity binds only the part owner making the election and not the entity or other part owners of the entity; and
  - (v) An irrevocable election by a lessor does not affect the status of a lessee, and vice versa. However, the eligibility and entitlement of neither a lessor nor a lessee may be enhanced through leasing.
- (2) A landholder makes an irrevocable election by completing a Reclamation issued irrevocable election form:
- (i) The elector's original irrevocable election form must be filed by the district with Reclamation and must be accompanied by a completed certification form, as specified in § 426.18;
  - (ii) The elector must file copies of the irrevocable election and certification forms concurrently with each district where the elector holds nonexempt land;
  - (iii) Reclamation will prepare a letter advising the recipient of the approval or disapproval of the election. Reclamation will base approval upon whether the election form and the accompanying certification form(s) indicate the elector's satisfaction of the various requirements of Federal reclamation law and these regulations;
  - (iv) If the election is approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent by Reclamation to each district where the elector holds land;
  - (v) The district(s) shall retain the forms; and
  - (vi) If the irrevocable election is disapproved, the landholder and the district will be advised by letter along with the reasons for disapproval.
- (3) A landholder that only holds land indirectly in a district that has conformed to the discretionary provisions, other than a nonresident alien or a legal entity not established under State or Federal law, may make an irrevocable election also by simply submitting certification forms to all districts where the landholder holds land subject to the acreage limitation provisions. An election made in this manner is binding in all districts in which such elector holds land.
- (g) *District reliance on irrevocable election form information.* The district is entitled to rely on the information contained in the irrevocable election form. The district does not need to make an independent investigation of the information.
  - (h) *Time limits for amendments or elections to conform to the discretionary provisions.* Reclamation will allow at anytime a landholder to elect or a district to amend its contract to conform to the discretionary provisions. An irrevocable election that was made after April 12, 1987, but on or before May 13, 1987, shall be considered effective as of April 12, 1987.

## § 426.4 Attribution of land.

- (a) *Prohibition on increasing acreage limitation entitlements.* Except as specifically provided in these rules, a landholder cannot increase acreage limitation entitlements or eligibility by acquiring or holding a beneficial interest in a legal entity. Similarly, the acreage limitation status of an individual or legal entity that holds or has acquired a beneficial interest in another legal entity will not be permitted to enlarge the latter legal entity's acreage limitation entitlements or eligibility.
- (b) *Attribution of owned land.* For purposes of determining acreage to be counted against acreage limitation entitlements, acreage will be attributed to all:
  - (1) Direct landowners in proportion to the direct beneficial interest the landowners own in the land; and
  - (2) Indirect landowners in proportion to the indirect beneficial interest they own in the land.
- (c) *Attribution of leased land.* Leased land will be attributed to the direct and indirect landowners as well as to the direct and indirect lessees in the same manner as described in paragraphs (b) and (d) of this section.
- (d) *Attribution of land held through intermediate entities.* If land is held by a direct landholder and a series of indirect landholders, Reclamation will attribute that land to the acreage limitation entitlements of the direct landholder and each indirect landholder in proportion to each landholder's beneficial interest in the entity that directly holds the land.
- (e) *Leasebacks.* Any land a landholder directly or indirectly owns and that is directly or indirectly leased back will only count once against that particular landholder's nonfull-cost entitlement.
- (f) *Effect on an entity of attribution to part owners.* For purposes of determining eligibility, the entire landholding will be attributed to all the direct and indirect landholders. If the interests in a legal entity are:
  - (1) Undivided, then all of the indirect part owners must be eligible in order for the entity to be eligible; or
  - (2) Divided, in such a manner that specific parcels are attributable to each indirect landholder, then the entity may qualify for eligibility on those portions of the landholding not attributable to any part owner who is ineligible.

## § 426.5 Ownership entitlement.

- (a) *General.* Except as provided in §§ 426.12 and 426.14, all nonexempt land directly or indirectly owned by a landholder counts against that landholder's ownership entitlement. In addition, land owned or controlled by a public entity that is leased to another party counts against the lessee's ownership entitlement, as specified in § 426.10.
- (b) *Qualified recipient ownership entitlement.* A qualified recipient is entitled to receive irrigation water on a maximum of 960 acres of owned nonexempt

land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.

- (c) *Limited recipient ownership entitlement.* A limited recipient is entitled to receive irrigation water on a maximum of 640 acres of owned nonexempt land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.
- (d) *Prior law recipient ownership entitlement.*
  - (1) Ownership entitlements for prior law recipients are determined by whether the recipient is one individual or a married couple, and for entities by the type of entity, as follows:
    - (i) An individual subject to prior law is entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land;
    - (ii) Married couples who hold equal interests are entitled to receive irrigation water on a maximum of 320 acres of jointly owned nonexempt land;
    - (iii) Surviving spouses until remarriage are entitled to receive irrigation water on that land owned jointly in marriage up to a maximum of 320 acres of owned nonexempt land. If any of that land should be sold, the applicable ownership entitlement would be reduced accordingly, but not to less than 160 acres of owned nonexempt land;
    - (iv) Children are each entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land, regardless of whether they are independent or dependent;
    - (v) Joint tenancies and tenancies-in-common subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per tenant, provided each tenant holds an equal interest in the tenancy;
    - (vi) Partnerships subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per partner if the partners have separable and equal interests in the partnership and the right to alienate that interest. Partnerships where each partner does not have a separable interest and the right to alienate that interest are entitled to receive irrigation water on a maximum of 160 acres of nonexempt land owned by the partnership; and
    - (vii) All corporations subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land.
  - (2) Prior law recipient ownership entitlements specified in this section apply on a westwide basis unless the land was acquired by the current owner on or before December 6, 1979. For land acquired by the current owner on or before that date, prior law ownership entitlements apply on a district-by-district basis.
  - (3) For those entities where an equal interest held by the part owners would result in a 160-acre per part owner entitlement for the entity, if the part owners interests are not equal then the entitlement of the entity will be determined by the relative interest held in the entity by each part owner.

## § 426.6 Leasing and full-cost pricing.

- (a) *Conditions that a lease must meet.* Districts can make irrigation water available to leased land only if the lease meets the following requirements. Land that is leased under a lease instrument that does not meet the following requirements will be ineligible to receive irrigation water until the lease agreement is terminated or modified to satisfy these requirements.
- (1) The lease is in writing;
  - (2) The lease includes the effective date and term of the lease, the length of which must be:
    - (i) 10 years or less, including any exercisable options; however, for perennial crops with an average life longer than 10 years, the term may be equal to the average life of the crop as determined by Reclamation, and
    - (ii) In no case may the term of a lease exceed 25 years, including any exercisable options;
  - (3) The lease includes a legal description, that is at least as detailed as what is required on the standard certification and reporting forms, of the land subject to the lease;
  - (4) Signatures of all parties to the lease are included;
  - (5) The lease includes the date(s) or conditions when lease payments are due and the amounts or the method of computing the payments due;
  - (6) The lease is available for Reclamation's inspection and Reclamation reviews and approves all leases for terms longer than 10 years; and
  - (7) If either the lessor or the lessee is subject to the discretionary provisions, the lease provides for agreed upon payments that reflect the reasonable value of the irrigation water to the productivity of the land; except
  - (8) Leases in effect as of the effective date of these regulations do not need to meet the criteria specified under paragraphs (a) (3) and (4) of this section, unless and until such leases are renewed.
- (b) *Nonfull-cost entitlements.*
- (1) The nonfull-cost entitlement for qualified recipients is 960 acres, or the Class 1 equivalent thereof.
  - (2) The nonfull-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the Class 1 equivalent thereof. The nonfull-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero.
  - (3) The nonfull-cost entitlement for prior law recipients is equal to the recipient's maximum ownership entitlement as set forth in § 426.5(d). However, for the purpose of computing the acreage subject to full cost, all owned and leased irrigation land westwide must be included in the computation.
- (c) *Application of the nonfull-cost and full-cost rates.*
- (1) A landholder may irrigate at the nonfull-cost rate directly and indirectly held acreage equal to his or her nonfull-cost entitlement.

- (2) If a landholding exceeds the landholder's nonfull-cost entitlement, the landholder must pay the appropriate full-cost rate for irrigation water delivered to acreage that equals the amount of leased land that exceeds that entitlement.
  - (3) In the case of limited recipients, a landholder does not have to lease land to exceed a nonfull-cost entitlement, since the nonfull-cost entitlement is less than the ownership entitlement. Therefore, limited recipients must pay the appropriate full-cost rate for irrigation water delivered to any acreage that exceeds their nonfull-cost entitlement.
- (d) *Types of lands that count against the nonfull-cost entitlement.*
- (1) All directly and indirectly owned irrigation land and irrigation land directly or indirectly leased for any period of time during 1-water year counts towards a landholder's nonfull-cost entitlement, except:
    - (i) Involuntarily acquired land, as provided in §§ 426.12 and 426.14; and
    - (ii) Land that is leased for incidental grazing or similar purposes during periods when the land is not receiving irrigation water.
  - (2) Reclamation's process for determining if a nonfull-cost entitlement has been exceeded is as follows:
    - (i) All land counted toward a landholder's nonfull-cost entitlement will be counted on a cumulative basis during any 1-water year;
    - (ii) Once a landholder's nonfull-cost entitlement is met in a given water year, any additional eligible land may be irrigated only at the full-cost rate; and
    - (iii) Irrigation land will be counted towards nonfull-cost entitlements on a westwide basis, even for prior law recipients, regardless of the date of acquisition.
- (e) *Selection of nonfull-cost land.*
- (1) A landholder that has exceeded his or her nonfull-cost entitlement may select in each water year, from his or her directly held irrigation land, the land that can be irrigated at a nonfull-cost rate and the land that can be irrigated only at the full-cost rate. Selections for full-cost or nonfull-cost land may include:
    - (i) Leased land;
    - (ii) Nonexcess owned land;
    - (iii) Land under recordable contract, unless that land is already subject to application of the full-cost rate under an extended recordable contract; or
    - (iv) A combination of all three.
  - (2) Once a landholder has received irrigation water on a given land parcel during a water year, the selection of that parcel as full cost or nonfull-cost is binding until the landholder has completed receiving irrigation water westwide for that water year.
- (f) *Applicability of a full-cost selection to an owner or lessee.* If a landowner or lessee should select land as subject to full-cost pricing, then that land can receive irrigation water only at the full-cost rate, regardless of eligibility of the other party to receive the irrigation water at the nonfull-cost rate.

- (g) *Subleased land.* Land that is subleased (the lessee transfers possession of the land to a sublessee) will be attributed to the landholding of the sublessee and not to the lessee.
- (h) *Calculating full-cost charges.* Reclamation will calculate a district's full-cost charge using accepted accounting procedures and under the following conditions.
  - (1) The full-cost charge does not recover interest retroactively before October 12, 1982. But, interest on the unpaid balance does accrue from October 12, 1982, where the unpaid balance equals the irrigation allocated construction costs for facilities in service plus cumulative federally funded O&M deficits, less payments.
  - (2) The full-cost charge will be determined:
    - (i) As of October 12, 1982, for contracts entered into before that date regardless of amendments to conform to the discretionary provisions; and
    - (ii) At the time of contract execution for new and renewed contracts entered into on or after October 12, 1982.
  - (3) For repayment contracts, the full-cost charge will fix equal annual payments over the amortization period. For water service contracts, the full-cost charge will fix equal payments per acre-foot of projected water deliveries over the amortization period.
  - (4) If there are additional construction expenditures, or if the cost allocated to irrigation changes, then a new full-cost charge will be determined.
  - (5) Reclamation will notify the respective districts of changes in the full-cost charge at the time the district is notified of other payments due the United States.
  - (6) In determining full-cost charges, the following factors will be considered:
    - (i) *Amortization period.* The amortization period for calculating the full-cost charge is the remaining balance of:
      - (A) For contracts entered into before October 12, 1982, the contract repayment period as of October 12, 1982;
      - (B) For contracts entered into on or after October 12, 1982, the contract repayment period;
      - (C) For water service contracts, the period from October 12, 1982, or the execution date of the contract, whichever is later, to the anticipated date of project repayment; and
      - (D) In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures; but, in no case will the amortization period exceed the project payback period authorized by the Congress;
    - (ii) *Construction costs.* For determining full cost, construction costs properly allocable to irrigation are those Federal project costs for facilities in service that have been assigned to irrigation within the overall allocation of total project construction costs. Total project



construction costs include all direct expenditures necessary to install or implement a project, such as:

- (A) Planning;
  - (B) Design;
  - (C) Land;
  - (D) Rights-of-way;
  - (E) Water-rights acquisitions;
  - (F) Construction expenditures;
  - (G) Interest during construction; and
  - (H) When appropriate, transfer costs associated with services provided from other projects;
- (iii) *Facilities in service.* Facilities in service are those facilities that are in operation and providing irrigation services;
- (iv) *Operation and maintenance (O&M) deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation that have been federally funded and that have not been paid by the district;
- (v) *Payments received.* In calculating the payments that have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Federal reclamation law, policy, and applicable contract provisions will be considered. These may include:
- (A) Direct repayment contract revenues;
  - (B) Net water service contract income;
  - (C) Contributions;
  - (D) Ad valorem taxes; and
  - (E) Other miscellaneous revenues and credits excluding power and municipal and industrial (M&I) revenues;
- (vi) *Interest rates.* Interest rates to be used in calculating full-cost charges will be determined by the Secretary of the Treasury as follows:
- (A) For irrigation water delivered to qualified recipients, limited recipients receiving water on or before October 1, 1981, and extended recordable contract land owned by prior law recipients, the interest rate for expenditures made on or before October 12, 1982, will be the greater of 7.5 percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year when the expenditures were made by the United States. The interest rate for expenditures made after October 12, 1982, will be the arithmetic average of:
    - (1) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year when the expenditures are made; and

- (2) The weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year the expenditures are made;
  - (B) For irrigation water delivered to limited recipients not receiving irrigation water on or before October 1, 1981, and prior law recipients, except for land owned subject to extended recordable contract, the interest rate will be determined as of the fiscal year preceding the fiscal year the expenditures are made, except that the interest rate for expenditures made before October 12, 1982, will be determined as of October 12, 1982. The interest rate will be based on the arithmetic average of:
    - (1) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance; and
    - (2) The weighted average yield on all interest-bearing marketable issues sold by the Treasury.
  - (C) Landholders who were prior law recipients and become subject to the discretionary provisions after April 12, 1987, are eligible for the full-cost interest rate specified in paragraph (h)(6)(vi)(A) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981, in that case they remain subject to the full-cost interest rate specified in paragraph (h)(6)(vi)(B) of this section.
- (i) *Direct and proportional charges for full-cost water.* In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost assessments will be made on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to make full-cost assessments:
  - (1) Assessments will be based on the actual amounts of water used in situations where measuring devices are in use, to the satisfaction of Reclamation, to reasonably determine the amounts of irrigation water being delivered to full-cost and nonfull-cost land; or
  - (2) In situations where, as determined by Reclamation, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and nonfull-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.
- (j) *Disposition of revenues obtained through full-cost water pricing.*
  - (1) *Legal deliveries.* If irrigation water has been delivered in compliance with Federal reclamation law and these regulations, then:
    - (i) That portion of the full-cost rate that would have been collected if the land had not been subject to full cost will be credited to the annual payments due under the district's contractual obligation;

- (ii) Any O&M revenues collected over and above those required under the district's contract will be credited to the project O&M account; and
  - (iii) The remaining full-cost revenues will be credited to the Reclamation fund unless otherwise provided by law, with any capital component of the full-cost rate credited to project repayment, if applicable.
- (2) *Illegal deliveries.* Revenues resulting from the assessment of compensation charges for illegal deliveries of irrigation water will be deposited into the Reclamation fund in their entirety, and will not be credited toward any contractual obligation, or O&M or repayment account of the district or project. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

## § 426.7 Trusts.

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

*Grantor revocable trust* means a trust that holds irrigable land or irrigation land that may be revoked at the discretion of the grantor(s), or terminated by the terms of the trust, and revocation or termination results in title to the land held in trust reverting either directly or indirectly to the grantor(s).

*Irrevocable trust* means a trust that holds irrigable land or irrigation land and does not allow any individual, including the grantor or beneficiaries, the discretion to decide when or under what conditions the trust terminates, and that upon termination the title to the land held in trust transfers either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

*Otherwise revocable trust* means a trust that holds irrigable land or irrigation land and that may be revoked at the discretion of the grantor(s) or other parties, or terminated by the terms of the trust, and revocation or termination results in the title to the land held in trust transferring either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

- (b) *Attribution of land held by a trust.* The acreage limitation entitlements of a trust are only limited by the acreage limitation entitlements of the trustees, grantors, or beneficiaries to whom land held by the trust must be attributed as provided for in § 426.4. The entitlements of the parties to whom trusted land is attributed are determined according to §§ 426.5, 426.6, and 426.8, and other applicable provisions of Federal reclamation law and these regulations.

Reclamation attributes nonexempt land held by a trust to the following parties:

- (1) For land held in an irrevocable trust, the land is attributed to the beneficiaries in proportion to their beneficial interest in the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(1) (i) and (ii) of this section are met. If the trust fails to meet any portion of these criteria, Reclamation attributes the land held in the trust to the trustee.
- (i) The trust is in written form and approved by Reclamation; and
  - (ii) The beneficiaries of the trust and the beneficiaries' respective interests are identified within the trust document.

- (2) For land held in a grantor revocable trust, the land is attributed to the grantor according to the grantor's acreage limitation status and the land's eligibility immediately prior to its transfer to the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section are met. If the trust fails to meet any portion of these criteria, the land held in trust will be ineligible to receive irrigation water until all of the criteria are met. The only exception is if the trust's and grantor's standard certification or reporting forms indicate that the land held by the trust has been attributed to the trust's grantor(s).
- (i) The trust meets the criteria specified in paragraph (b)(1) of this section;
  - (ii) The grantor(s) of all land held by the trust is (are) identified within the trust document;
  - (iii) The conditions under which the trust may be revoked or terminated are identified within the trust document; and
  - (iv) The recipient(s) of the trust land upon revocation or termination is (are) identified within the trust document.
- (3) For land held in an otherwise revocable trust, the land is attributed to the beneficiaries in proportion to their beneficial interests in the trust. However, this attribution is only made if the trust meets the criteria specified in paragraph (b)(1) of this section and the trust meets the additional criteria specified in paragraph (b)(2) of this section.
- (i) If Reclamation cannot determine who will hold the land in trust upon termination or revocation of the trust, or who is the grantor(s) of the land held in trust, then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in paragraph (b)(2) of this section.
  - (ii) If the trust fails to meet the criteria listed in paragraph (b)(1) of this section, but does meet the additional criteria listed in paragraphs (b)(2) (ii) through (iv) of this section, then the land is attributed to the trustee.
- (c) *Class beneficiaries.* For purposes of identifying beneficiaries, a class of beneficiaries specified within the trust document will be acceptable, as long as the trust document is specific as to the beneficial interest to which each member of the class will be entitled and the members of the class are identifiable.
- (1) Attribution during any given water year will be provided only to class beneficiaries that are natural persons and established legal entities. For purposes of administering the acreage limitation provisions, attribution to unborn or deceased persons, or entities not yet established, will not be allowed.
  - (2) If a trust includes a class of beneficiaries to which land subject to the acreage limitation provisions will be attributed, the trustee and each of the beneficiaries will be required to submit standard certification or reporting forms annually. The submittal of verification forms, as provided in § 426.18(1), will not be applicable to such trusts.

- (d) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revocable trust that meets the criteria specified in paragraph (b)(2) of this section is revised by the grantor in a manner that precludes attribution of the land held in trust to the grantor:
- (1) Before April 20, 1988, Reclamation will not assess full-cost rates for the land held by the revised trust for the period before it was revised; or
  - (2) On or after April 20, 1988, Reclamation will charge the full-cost rate for irrigation water delivered to any land held by the trust that exceeds the grantor's nonfull-cost entitlement, commencing December 23, 1987, until the trust agreement is revised to make it an irrevocable trust or an otherwise revocable trust.

## **§ 426.8 Nonresident aliens and foreign entities.**

- (a) *Definitions for purposes of this section:*  
*Domestic entity* means a legal entity established under State or Federal law.  
*Foreign entity* means a legal entity not established under State or Federal law.
- (b) *Restriction on receiving irrigation water.* Notwithstanding any other provision of Federal reclamation law or these regulations, a nonresident alien or foreign entity that directly holds land in a district that is subject to the discretionary provisions is not eligible to receive irrigation water on such land. Nonresident aliens and foreign entities may hold land indirectly in discretionary districts and both directly and indirectly in prior law districts and receive irrigation water on such land, subject to their acreage limitation entitlements.
- (c) *Entitlements for nonresident aliens and foreign entities.* Except as provided in paragraph (d) of this section, all nonresident aliens and foreign entities will be considered prior law recipients, and shall have entitlements and eligibility only as prior law recipients as specified in §§ 426.5(d) and 426.6(b)(3).
- (d) *Exception to prior law entitlement application.*
- (1) If a nonresident alien is a citizen of or a foreign entity is established in a country that has one of the following treaties with the United States or is a member of the listed organization, then that nonresident alien or foreign entity will not be restricted to prior law entitlements, provided the eligible landholding subject to the acreage limitation provisions is held indirectly:
    - (i) Friendship, Commerce and Navigation Treaty;
    - (ii) Bilateral Investment Treaty;
    - (iii) North American Free Trade Agreement;
    - (iv) Canada--United States Free Trade Agreement; or
    - (v) Organization for Economic Cooperation and Development.
  - (2) Nonresident aliens and foreign entities that meet the criteria listed in paragraph (d)(1) of this section will be required to provide proof of citizenship or documentation certifying the country in which the entity in question was established. Districts will retain such documentation in the landholder's file.

§ 426.9 Religious or charitable organizations.

- (3) If a nonresident alien or foreign entity meets the criteria listed in paragraph (d)(1) of this section, and only holds eligible land subject to the acreage limitation provisions indirectly, then the nonresident alien may be treated as a United States citizen or the foreign entity may be treated as a domestic entity for purposes of application of the acreage limitation provisions for the land held indirectly.
- (i) The nonresident alien or foreign entity may submit an irrevocable election to conform to the discretionary provisions as provided for in § 426.3(f). Conformance to the discretionary provisions through the submittal of a certification form will not be allowed as specified in § 426.3(f)(3).
  - (ii) Upon Reclamation's approval of the irrevocable election, a nonresident alien will be treated as having the ownership entitlement of a qualified recipient as described in § 426.5(b), for any land held indirectly. A foreign entity will be treated as a qualified recipient or a limited recipient as determined by the number of natural persons who are beneficiaries of the entity as specified by the definitions found in § 426.2, and the subsequent entitlement as provided in § 426.5(b) or (c), for any land held indirectly. The applicable nonfull-cost entitlements will be determined as described in § 426.6(b).
  - (iii) Reclamation will not approve irrevocable elections submitted by a nonresident alien or a foreign entity that holds any land directly in any prior law district.
  - (iv) Reclamation will not approve irrevocable elections submitted by a nonresident alien that is not a citizen of or foreign entity that has not been established in a country that has a treaty or international membership as specified in paragraph (d)(1) of this section.

**§ 426.9 Religious or charitable organizations.**

- (a) *Definitions for purposes of this section:*  
*Central organization* means the organization to which all subdivisions, such as parishes, congregations, chapters, etc., ultimately report.  
*Religious or charitable organization* means an organization or each congregation, chapter, parish, school, ward, or similar subdivision of a religious or charitable organization that is exempt from paying Federal taxes under Sec. 501 of the Internal Revenue Code of 1954, as amended.
- (b) *Acreage limitation status of religious or charitable organizations that are subject to the discretionary provisions.*
- (1) Religious or charitable organizations or their subdivisions that are subject to the discretionary provisions have qualified recipient status, if:
    - (i) The organization's or subdivision's agricultural produce and proceeds from the sales of such produce are used only for charitable purposes;
    - (ii) The organization or subdivision, itself, operates the land; and
    - (iii) No part of the net earnings of the organization or subdivision accrues to the benefit of any private shareholder or individual.

- (2) If Reclamation determines that a religious or charitable organization or any of its subdivisions does not meet the criteria listed in paragraph (b)(1) of this section, then:
  - (i) If the central organization has not met the criteria, Reclamation will treat the entire organization, including all subdivisions, as a single entity; or
  - (ii) If a subdivision has not met the criteria, only that subdivision and any subdivisions of it will be treated as a single entity and not the central organization or other subdivisions of the central organization; and
  - (iii) In order to ascertain the acreage limitation status, Reclamation determines the total number of members in both the organization that has not met the criteria and in any subdivisions that are under that organization. If Reclamation determines that total number equals:
    - (A) More than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a limited recipient status; or
    - (B) 25 members or less, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a qualified recipient status.
- (c) *Acreage limitation status of prior law religious or charitable organizations or subdivisions.*
  - (1) Religious or charitable organizations and each of their subdivisions are treated as separate prior law corporations, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.
  - (2) Reclamation will treat the entire organization, including all subdivisions, as a single prior law corporation, if the central organization or any subdivisions do not meet the criteria specified in paragraph (b)(1) of this section.
- (d) *Affiliated farm management between a religious or charitable organization and a more central organization of the same affiliation.* Reclamation permits a subdivision of a religious or charitable organization to retain its status as an individual entity while cooperating with a more central organization of the same affiliation in farm operation and management. Reclamation permits affiliated farm management regardless of whether the subdivision is the owner of the land being operated.

## **§ 426.10 Public entities.**

- (a) *Application of the acreage limitation provisions to public entities.*

Reclamation does not subject public entities to the acreage limitation provisions of Federal reclamation law with respect to land that Reclamation determines public entities farm primarily for nonrevenue producing functions. However, public entities are required to meet certification and reporting requirements as specified in § 426.18.

- (b) *Sale of public land.* Reclamation does not require public entities to seek price approval before they sell nonexempt lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.
- (c) *Leasing of public land.* Public entities can lease irrigation land that they own or control to eligible landholders. Land leased from a public entity counts towards the lessee's ownership and nonfull-cost entitlement.

## **§ 426.11 Class 1 equivalency.**

- (a) *General application.* Class 1 equivalency determinations will establish, on a district-wide basis, the acreage of land with lower productive potential (Classes 2, 3, and 4) that would be equivalent in productive potential to the most suitable land (Class 1) in the local agricultural economic setting.
  - (1) Reclamation establishes equivalency factors by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on Class 1 land.
  - (2) For equivalency purposes, Reclamation will classify all irrigable land as Class 1, 2, or 3; no other classifications are permissible for irrigable land. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.
  - (3) Once the Class 1 equivalency determinations have been made, individual landowners with land classified as 2 or 3 for equivalency purposes will have the right to adjust their actual landholding acreage to its Class 1 equivalent acreage.
  - (4) In a district subject to prior law, Class 1 equivalency can be applied only to landholders who are subject to the discretionary provisions.
  - (5) Requests for equivalency determinations will be scheduled by region, with the regional director of each Reclamation region having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.
- (b) *Who may request a Class 1 equivalency determination?* Only districts may request Class 1 equivalency determinations. Upon the request of any district subject to the acreage limitation provisions, Reclamation will make a Class 1 equivalency determination for that district. Equivalency determinations can be made only on a district-wide basis.
- (c) *Definition of Class 1 land.*
  - (1) *Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting that:*
    - (i) Most completely meets the various parameters and specifications established by Reclamation for irrigable land classes;
    - (ii) Has the relatively highest level of suitability for continuous, successful irrigation farming; and



- (iii) Is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The equivalency analysis will establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of Class 1 land.
  - (2) All land that Reclamation has not classified, or for which Reclamation has not yet performed the necessary economic studies, will be considered Class 1 land for the purposes of determining entitlements under these rules until such time as the necessary classifications or studies have been completed.
- (d) *Determination of land classes.* The extent and location of Class 1 land and land in lower land classes in a district have been, or will be, determined by Reclamation.
- (1) Reclamation will take into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors will include, but are not limited to the following and their effect on agricultural practices:
    - (i) The physical and chemical characteristics of the soil;
    - (ii) Topography;
    - (iii) Drainage status;
    - (iv) Costs of production;
    - (v) Land development costs;
    - (vi) Water quality and adequacy;
    - (vii) Elevation;
    - (viii) Crop adaptability; and
    - (ix) Length of growing season.
  - (2) Acceptable levels of detail for land classification studies to be utilized in making Class 1 equivalency determinations for a given district will be evaluated on the basis of the physical and agricultural economic characteristics of the area. For districts where the sole purpose of the land classification study is for a Class 1 equivalency determination, the level of detail of the land classification to be made will never be greater than that required to make a Class 1 equivalency determination.
  - (3) Reclamation will pay for at least a portion of the costs associated with the land classification study. The amount to be paid by Reclamation will be determined as follows:
    - (i) Reclamation has provided basic land classification data as part of the project development process since 1924. Accordingly, if Reclamation determines that acceptable land classification data are not available for making requested Class 1 equivalency determinations and if the project was authorized for construction since 1924, such data will be made available at Reclamation's expense; or
    - (ii) For each district located in projects authorized for construction prior to 1924, Reclamation will pay 50 percent of the costs and the district must pay 50 percent of the costs of new land classification studies required to make accurate Class 1 equivalency determinations.

- (4) When basic land classification data are available for a district, but the district does not agree with the accuracy or asserts that the data have become outdated, the district may request, and Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (43 U.S.C. 485), with the following conditions:
  - (i) The requesting district will pay 50 percent of the costs of performing such reclassifications and 100 percent of the costs of all other studies involved in the equivalency process; and
  - (ii) The results of such reclassifications will be binding upon the requesting district and Reclamation.
- (e) *Additional studies required for Class 1 equivalency determinations.*

Economic studies related to Class 1 equivalency determinations will measure net farm income by land classes within the district.

  - (1) Net farm income will be determined by considering the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land, after all fixed and variable costs of production, including costs of irrigation service, are accounted for.
  - (2) Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of Class 1 land.
  - (3) The cost of performing new or additional economic studies and computations inherent in the equivalency process will be the responsibility of the requesting district.
- (f) *Use of Class 1 equivalency with the acreage limitation provisions.* Class 1 land and land in lower classes will be identified on a district basis by Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors will then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they will be developed as specified in paragraph (d) of this section using standard procedures established by Reclamation.
  - (1) For purposes of ownership entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation concerning the district's request for equivalency.
    - (i) Reclamation will protect excess landowners' property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district requests an equivalency determination at least 6 months prior to the maturity of the recordable contract, the district fulfills its obligations under this section, and the district notifies Reclamation 6 months in advance of the maturity dates for the need for an expedited review.
    - (ii) Once the determination has been made, owners of land subject to recordable contracts may withdraw land from such recordable contracts in order to reach their ownership entitlement in Class 1 equivalent acreage.

- (iii) The requirement that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.
  - (iv) In cases of equivalency determination disputes, Reclamation will not undertake the sale of the reasonable increment of the excess land under a matured recordable contract which could be affected by a reclassification, provided the dispute is determined by Reclamation not to be an attempt to thwart the sale of excess land.
- (2) For purposes of nonfull-cost entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation on a district's request for equivalency.
- (i) During the time when such determinations are pending, the full-cost rate will be assessed based on a landholder's nonfull-cost entitlement as determined in the absence of Class 1 equivalency.
  - (ii) Following Reclamation's final determination, Reclamation will reimburse the district for any full-cost charges that would not have been assessed had Class 1 equivalency been in place from the date of the district's request. Districts will return such reimbursements to the appropriate landholders.
- (3) A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as Class 1 land for purposes of overall entitlement.
- (g) *Prior equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

## **§ 426.12 Excess land.**

- (a) *The process of designating excess and nonexcess land.* If a landowner owns more land than the landowner's ownership entitlement, all of the landowner's nonexempt land must be designated as excess and nonexcess as follows:
- (1) The landowner designates which land is excess and which is nonexcess in accordance with the instructions on the appropriate certification or reporting forms; or
  - (2) If a landowner fails to designate his or her land as excess or nonexcess on the appropriate certification or reporting forms:
    - (i) And all of the landowner's nonexempt land is in only one district:
      - (A) If the district's contract with Reclamation includes designation procedures, then the land is designated according to those procedures; or
      - (B) If the district's contract with Reclamation does not include designation procedures, then:

- (1) Reclamation will notify the landowner and the district that the landowner must designate the land as excess and nonexcess on the appropriate certification or reporting forms within 30-calendar days of the notification;
    - (2) If the landowner fails to make the designation within 30-calendar days of notification, the district will make the designation within 30-calendar days thereafter; or
    - (3) If the district does not make the designation within its 30-calendar days, Reclamation will make the designation; or
  - (ii) If the landowner owns nonexempt land in more than one district, then Reclamation will notify the landowner and the districts that the landowner has 60-calendar days from the date of notification to make the designation. If the landowner does not make the designation in the 60-calendar days, Reclamation will make the designation.
- (b) *Changing excess and nonexcess land designations.*
- (1) Landowners must file with the district(s) in which the land is located and with Reclamation the designation of excess and nonexcess land. The designation of land as excess is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval if:
    - (i) The excess land becomes eligible to receive irrigation water because the landowner becomes subject to the discretionary provisions as provided in § 426.3;
    - (ii) A recordable contract is amended to remove excess land when the landowner's entitlement increases because the landowner becomes subject to the discretionary provisions as provided in paragraph (j)(5) of this section; or
    - (iii) The excess land becomes eligible to receive irrigation water as a result of Class 1 equivalency determinations, as provided in § 426.11.
  - (2) No other redesignation of excess land is allowable without the approval of Reclamation in accordance with established Reclamation procedures. Reclamation will not approve a redesignation request if:
    - (i) The purpose of the redesignation is for achieving, through repeated redesignation, an effective farm size in excess of that permitted by Federal reclamation law; or
    - (ii) The landowner sells some or all of his or her land that is currently classified as nonexcess.
  - (3) When a redesignation involves an exchange of nonexcess land for excess land, a landowner must make an equal exchange of acreage (or Class 1 equivalent acreage) through the redesignation.
- (c) *Land that becomes excess when a district first contracts with Reclamation.*
- (1) If a landowner owned irrigable land on the execution date of the district's first water service or repayment contract, and the execution date was on or before October 12, 1982, the landowner's excess land is ineligible until the landowner:

- (i) Becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;
  - (ii) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;
  - (iii)Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or
  - (iv)Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.
- (2) If the landowner owned irrigable land on the execution date of the district's first water service or repayment contract and the execution date is after October 12, 1982, the landowner's excess land is ineligible until the landowner:
- (i) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;
  - (ii) Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or
  - (iii)Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.
- (d) *Land acquired into excess after the district has already contracted with Reclamation.*
- (1) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed on or before October 12, 1982, and:
- (i) Irrigation water was physically available when the landowner acquires such land, then the land is ineligible to receive such water until:
    - (A)The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;
    - (B) The landowner sells or transfers such land to an eligible buyer at a price and on terms approved by Reclamation;
    - (C) The sale from the previous landowner is canceled; or
    - (D)The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or
  - (ii) Irrigation water was not physically available when the landowner acquired the land, then the land is ineligible to receive water until:
    - (A)The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

- (B) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;
  - (C) The sale from the previous landowner is canceled;
  - (D) The landowner places the land under recordable contract when water becomes available; or
  - (E) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.
- (2) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed after October 12, 1982, and:
- (i) Irrigation water was physically available when the landowner acquired such land, then the land is ineligible until:
    - (A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;
    - (B) The sale from the previous landowner is canceled; or
    - (C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or
  - (ii) Irrigation water was not physically available when the landowner acquired such land, then the land is ineligible to receive water until:
    - (A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;
    - (B) The sale from the previous landowner is canceled;
    - (C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or
    - (D) The landowner places the land under recordable contract when water becomes available.
- (e) *If the status of land is changed by law or regulations.*
- (1) If the district had a contract with Reclamation on or before October 12, 1982, and eligible land became excess because the landowner's entitlement changed from being based on a district-by-district basis to a westwide basis, then such formerly eligible land is ineligible until:
    - (i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or
    - (ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.
  - (2) If the district had a contract with Reclamation on or before October 12, 1982, and the landowner was a nonresident alien or a legal entity not established under State or Federal law, who directly held

eligible land and such land is no longer eligible to receive water, then such formerly eligible land is ineligible until:

- (i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or
  - (ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.
- (3) If the district first entered a contract with Reclamation after October 12, 1982, and land would have been eligible before October 12, 1982, but is now ineligible because the landowner is a direct landholder and either a nonresident alien or a legal entity not established under State or Federal law, then such land that would have been eligible remains ineligible until:
- (i) If the landowner acquired such land before the date of the district's contract:
    - (A) The landowner places such land under a recordable contract requiring Reclamation sales price approval; or
    - (B) Sells or transfers the land to an eligible buyer subject to Reclamation sales price approval; or
  - (ii) If the landowner acquired such land after the date of the district's contract, the landowner sells or transfers such land to an eligible buyer subject to Reclamation sales price approval.
- (4) Eligible nonexcess land that is indirectly owned on or before December 18, 1996 by a nonresident alien or a legal entity not established under State or Federal law, and that becomes ineligible because of § 426.8 is ineligible until:
- (i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or
  - (ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.
- (f) *Excess land that is acquired without price approval.* If a landowner acquires land that is subject to Reclamation price approval, without obtaining such approval, the land is ineligible to receive water until:
- (1) The sales price is reformed to conform to the price approved by Reclamation and is eligible to receive irrigation water in the landowner's ownership entitlement; or
  - (2) Such landowner sells or transfers the land to an eligible buyer at a price approved by Reclamation.
- (g) *Excess land that is disposed of and subsequently reacquired.* Districts may not make available irrigation water to excess land disposed of by a landholder at a price approved by Reclamation, whether or not under a recordable contract, if the landholder subsequently becomes a direct or indirect

landholder of that land through either a voluntary or involuntary action, unless:

- (1) The landholder became or contracted to become a direct or indirect landholder of that land prior to December 18, 1996, and the land in question is otherwise eligible to receive irrigation water;
  - (2) Such land becomes exempt from the acreage limitations of Federal reclamation law;
  - (3) The landholder pays the full-cost rate for any irrigation water delivered to the landholder's formerly excess land that is otherwise eligible to receive irrigation water. If a landholder is a part owner of a legal entity that becomes the direct or indirect landholder of the land in question, then the full-cost rate will be applicable to the proportional share of irrigation water delivered to the land that reflects the part owner's interest in that legal entity; or
  - (4) The deed covenant associated with the sale has expired as provided for in paragraph (i) of this section.
- (h) *Application of the compensation rate for irrigating ineligible excess land with irrigation water.* Reclamation will charge the following for irrigation water delivered to ineligible excess land in violation of Federal reclamation law and these regulations:
- (1) The appropriate compensation rate for irrigation water delivered; and
  - (2) any other applicable fees as specified in § 426.20.
- (i) *Deed covenants.*
- (1) All land that is acquired from excess status after October 12, 1982, must have the following covenant (that runs with the land) placed in the deed transferring the land to the acquiring party in order for the land to be eligible to receive irrigation water except as otherwise specified in these regulations. The covenant must be in the deed regardless of whether or not the land was under recordable contract.

This covenant is to satisfy the requirements in 209(f)(2) of Pub. L. 97-293 (43 U.S.C. 390, *et seq.*). This covenant expires on (date). Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, provided however:

- (i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a bona fide involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise (hereinafter Involuntary Conveyance). Thereafter, this



land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 enacted on October 12, 1982, (43 U.S.C. 390aa *et seq.*), or to Section 46 of the Act entitled ``an Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes," enacted May 25, 1926 (43 U.S.C. 423e);

- (ii) If the status of this land changes from nonexcess into excess after a mortgage or deed of trust in favor of a lender is recorded and the land is subsequently acquired by a bona fide Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;
- (iii) The terms of this covenant requiring price approval shall not apply to the sales price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;
- (iv) Upon the completion of an Involuntary Conveyance, Reclamation shall reconvey or otherwise terminate this covenant of record;
- (v) However, the deed covenant shall not be reconveyed or otherwise terminated if the involuntarily acquiring landowner is the landowner who sold this land from excess status, unless that landowner is a financial institution as defined in § 426.14(a) of the Acreage Limitation Rules and Regulations (43 CFR Part 426); and
- (vi) The party whose excess ownership originally required the placement of this covenant may not receive Federal reclamation project irrigation water on the land subject to this covenant as a direct or indirect landowner or lessee, unless an exception provided for in § 426.12(g) is met.

**Note: 1.** Clauses (v) and (vi) of this covenant shall only be required on those covenants placed in deeds transferring land after January 1, 1998.

**Note: 2.** The date that the covenant expires shall be 10 years from the date the land was first transferred from excess to nonexcess status.

- (2) A landholder may purchase or otherwise voluntarily acquire into nonexcess status, land subject to a deed covenant, at a price approved by Reclamation if the land is within the landholder's ownership entitlement.
- (3) Upon expiration of the terms of the deed covenant, a landowner may resell such land at fair market value. A landowner may not sell more of such land in his or her lifetime than an amount equal to his or her ownership

entitlement. Once the landowner reaches this limit, any additional excess land or land subject to a deed covenant the landowner acquires is ineligible to receive irrigation water, until such land is sold to an eligible buyer at a price approved by Reclamation.

- (4) If a landholder acquires land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt, including, but not limited to, a mortgage, real estate contract, or deed of trust, inheritance, or devise, and is not the party whose excess ownership originally required placement of the deed covenant, then Reclamation must terminate the deed covenant upon the landholder's request. The provisions in paragraph (i)(1)(v) of this section and § 426.14(e) address termination of deed covenants for landholders whose excess ownership originally required placement of the deed covenant.
- (j) *Recordable contracts.*
  - (1) *Qualifications for recordable contracts.* A landowner can make excess land eligible to receive irrigation water by entering into a recordable contract with the United States if the landowner qualifies under applicable provisions of:
    - (i) The district's contract with Reclamation;
    - (ii) Federal reclamation law; and
    - (iii) These regulations.
  - (2) *Clauses to be included in recordable contracts.* A recordable contract must include:
    - (i) A clause whereby the landowner agrees to dispose of the excess land to an eligible buyer, excluding mineral rights and easements, under terms and conditions of the sale, in accordance with § 426.13; and within the period allowed for the disposition of excess land, that must be within 5 years from the date that the recordable contract is executed by Reclamation (except for the Central Arizona Project wherein the time period is 10 years from the date water becomes available to the land); and
    - (ii) A clause granting power of attorney to Reclamation to sell the land held under the recordable contract, if the landholder has not already sold the land by the recordable contract's maturation.
  - (3) *Date Reclamation can make irrigation water available.* Reclamation can make available irrigation water to land that the landowner plans to place under a recordable contract on the day that Reclamation receives the landowner's written request to execute a recordable contract. The landowner has 20-working days in which to execute the recordable contract from the date Reclamation sends the recordable contract to the landowner. Reclamation, in its discretion, may extend this period upon the landowner's request.
  - (4) *Water rate.* The rate for irrigation water delivered to land placed under recordable contract will be determined as follows:

- (i) If both the landowner and any lessee are prior law recipients, land placed under a recordable contract can receive irrigation water at a contract rate that does not cover full operation and maintenance (O&M) costs;
  - (ii) If either landowner or any lessee is subject to the discretionary provisions, the water rate applicable to the recordable contract must cover, at a minimum, all O&M costs; or
  - (iii) If a landholder leases land subject to a recordable contract and is in excess of his or her nonfull-cost entitlement, the lessee may select such land as the land on which the full-cost rate will be charged for the delivery of irrigation water, unless the land is already subject to the full-cost rate because of an extended recordable contract.
- (5) *Amending a recordable contract to include less acreage.*
- (i) Reclamation permits a landowner to amend a recordable contract to transfer land out of a recordable contract to nonexcess status, if:
    - (A) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or
    - (B) Land becomes eligible by implementation of Class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.
  - (ii) Landholders must receive Reclamation's approval to amend recordable contracts.
    - (A) The disposition period for any land remaining under a recordable contract will not change because of an amendment to remove some land.
    - (B) For land removed from a recordable contract based on paragraph (j)(5)(i) of this section, any requirement for application of a deed covenant will no longer be applicable.
- (6) *Sale of land by Reclamation.* If the landowner does not dispose of the excess land held under recordable contract within the period specified in the recordable contract, Reclamation will sell that land. Reclamation will not sell the land if the landowner complies with all requirements for sale of excess land under these rules within the period specified, regardless if Reclamation gives final approval of the sale within that period or after.
- (7) *Delivery of water when a recordable contract has matured.* Reclamation can make available irrigation water at the current applicable rate, pursuant to paragraph (j)(4) of this section, to excess land held under a matured recordable contract until Reclamation sells the land.
- (8) *Procedures Reclamation follows in selling excess land.* If Reclamation must sell excess land, the following procedures will be used:
- (i) If Reclamation determines it to be necessary, a qualified surveyor will make a land survey. The United States will pay for the survey initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land;

- (ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.13, to determine the appropriate sales price. The United States will pay for the appraisal initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land; and
- (iii) Reclamation will advertise the sale of the property in farm journals and in newspapers within the county in which the land lies, and by other public notices as deemed advisable. The United States will pay for the advertisements and notices initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land. The notices must state:
  - (A) The minimum acceptable sales price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising);
  - (B) That Reclamation will sell the land by auction for cash, or on terms acceptable to the landowner, to the highest eligible bidder whose bid equals or exceeds the minimum acceptable sales price; and
  - (C) The date of the sale (which must not exceed 90 calendar days from the date of the advertisement and notices);
- (iv) The proceeds from the sale of the land will be paid:
  - (A) First, to the landowner in the amount of the appraised value;
  - (B) Second, to the United States for costs of the survey, appraisal, advertising, etc.; and
  - (C) Third, any remaining proceeds will be credited to the Reclamation fund or other funds as prescribed by law; and
- (v) Reclamation will close the sale of the excess land when parties complete all sales arrangements. Reclamation will execute a deed conveying the land to the purchaser. Reclamation will not require the purchaser to include a covenant in the deed, as specified in paragraph (i) of this section, that restricts any further resale of the land.

## **§ 426.13 Excess land appraisals.**

- (a) *When does Reclamation appraise the value of a landowner's land?*

Reclamation appraises excess land or land burdened by a deed covenant upon a landowner's request or when required by Reclamation. If a landowner does not request an appraisal within 6 months of the maturity date of a recordable contract, Reclamation, in its discretion, can initiate the appraisal.
- (b) *Procedures Reclamation uses to determine the sale price of excess land or land burdened by a deed covenant.* Reclamation complies with the following procedures to determine the sale price of excess land and land burdened by a deed covenant, except if a landholder owns land subject to a recordable contract that was in force on October 12, 1982, or other pertinent contract that was in force on that date, and these regulations would be inconsistent with provisions in such a contract:

- (1) *Appraisals of land.* Reclamation will base all appraisals of land on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Reclamation must use standard appraisal procedures including: the income, comparable sales, and cost methods, as applicable. Reclamation will consider nonproject water supply factors as provided in paragraph (c)(1) of this section as appropriate; and
  - (2) *Appraisal of improvements to land.* Reclamation will assess the contributory fair market value of improvements to land, as of the date of appraisal, using standard appraisal procedures.
- (c) *Appraisals of nonproject water supplies.*
- (1) The appraiser will consider nonproject water supply factors, where appropriate, including:
    - (i) Ground water pumping lift;
    - (ii) Surface water supply;
    - (iii) Water quality; and
    - (iv) Trends associated with paragraphs (c)(1) (i) through (iii) of this section, where appropriate.
  - (2) Reclamation will develop the nonproject water supply and trend information with the assistance of:
    - (i) The district in which the land is located, if the district desires to participate;
    - (ii) Landowners of excess land or land burdened by a deed covenant and prospective buyers who submit information either to the district or Reclamation; and
    - (iii) Public meetings and forums, at the discretion of Reclamation.
  - (3) Data submitted may include:
    - (i) Historic geologic data;
    - (ii) Changing crops and cropping patterns; and
    - (iii) Other factors associated with the nonproject water supply.
  - (4) If Reclamation and the district cannot reach agreement on the nonproject water supply information within 60-calendar days, Reclamation will review and update the trend information as it deems necessary and make all final determinations considering the data provided by Reclamation and the district. Reclamation will provide these data to the appraisers who must consider the data in the appraisal process, and clearly explain how they used the data in the valuation of the land.
- (d) *The date of the appraisal.* The date of the appraisal will be the date of last inspection by the appraiser(s) unless there is a prior signed instrument, such as an option, contract for sale, agreement for sale, etc., affecting the property. In those cases, the date of appraisal will be the date of such instrument.
- (e) *Cost of appraisal.* If the appraisal is:
- (1) The land's first appraisal, the United States will initially pay the costs of appraising the value of the land, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land;

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- (2) Not the land's first appraisal, the landowner requesting the appraisal must pay any costs associated with the reappraisal, unless the value set by the reappraisal differs by more than 10 percent, in which case the United States will pay for the reappraisal; or
- (3) Associated with a sales price reformation as specified in § 426.12(f)(1), the landowner requesting the appraisal must pay any costs associated with the appraisal.
- (f) *Appraiser selection.* Reclamation will select a qualified appraiser to appraise the excess land or land burdened by a deed covenant, except as specified within paragraph (g) of this section.
- (g) *Appraisal dispute resolution.* The landowner who requested the appraisal may request that the United States conduct a second appraisal of the excess land or land burdened by a deed covenant if the landowner disagrees with the first appraisal. The second appraisal will be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. The appraisal made by the panel will fix the maximum value of the excess land and will be binding on both parties after review and approval as provided in paragraph (h) of this section.
- (h) *Review of appraisals of excess land or land burdened by a deed covenant.* Reclamation will review all appraisals of excess land or land burdened by a deed covenant for:
  - (1) Technical accuracy and compliance with these rules and regulations;
  - (2) Applicable portions of the "Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973," as revised in 1992;
  - (3) Reclamation policy; and
  - (4) Any detailed instructions provided by Reclamation setting conditions applicable to an individual appraisal.

**§ 426.14 Involuntary acquisition of land.**

- (a) *Definitions for purposes of this section.*
  - Financial institution* means a commercial bank or trust company, a private bank, an agency or branch of a foreign bank in the United States, a thrift institution, an insurance company, a loan or finance company, or the Farm Credit System.
  - Involuntarily acquired land* means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.
- (b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:
  - (1) The land becomes nonexcess in the new landowner's ownership; and

- (2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, and that deed commences when the land becomes eligible to receive irrigation water.
  - (3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.12(i), in the deed transferring title to the land to the buyer.
- (c) *Land that was held under a recordable contract and is acquired involuntarily.* Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract to the extent the land continues to be excess in his or her landholding, if the landowner:
- (1) assumes the recordable contract; and
  - (2) executes an assumption agreement provided by Reclamation.
  - (3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by Reclamation.
- (d) *Mortgaged land.* Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a lender through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:
- (1) If the new landowner designates the land as excess in his or her holding, then:
    - (i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;
    - (ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and
    - (iii) The land is eligible for sale at its fair market value without a deed covenant restricting its future sales price; or
  - (2) If the new landowner is eligible to designate the land as nonexcess and he or she designates the land as nonexcess, the land will be treated in the same manner as any other nonexcess land and will be eligible for sale at its fair market value without a deed covenant restricting its future sales price.
- (e) *Nonexcess land that becomes excess when acquired involuntarily.*
- (1) Reclamation can make irrigation water available for a period of 5 years to a landowner who involuntarily acquires land that becomes excess in the involuntarily acquiring landowner's holding provided the land was nonexcess to the previous owner and:
    - (i) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract;
    - (ii) The acquiring landholder is a financial institution; or

- (iii) The acquiring landowner previously held the land as ineligible excess or under a recordable contract and §§ 426.12(g)(1), (3), or (4) applies.
- (2) The following will be applicable in situations that meet the criteria specified under paragraph (e)(1) of this section:
  - (i) Reclamation will charge a rate for irrigation water delivered to such land equal to the rate paid by the former owner, except Reclamation will charge the full-cost rate if:
    - (A) The land becomes subject to full-cost pricing through leasing; or
    - (B) If the involuntarily acquired land is eligible to receive irrigation water only because § 426.12(g)(3) applies and the deed covenant has not expired;
  - (ii) The new landowner may not place such land under a recordable contract;
  - (iii) The new landowner may request that Reclamation remove a deed covenant as provided in § 426.12(i)(4), and may sell such land at any time without price approval and without the deed covenant. However, the deed covenant will not be removed and the terms of the deed covenant will be fully applied if the new landowner is the landowner who sold the land in question from excess status, except for:
    - (A) Financial institutions; or
    - (B) Landowners for which § 426.12(g) (1) or (2) apply; and
  - (iv) Such land will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until sold to an eligible buyer or redesignated as provided for in paragraph (f) of this section.
- (f) *Redesignation of excess land to nonexcess.* Landholders who designate involuntarily acquired land as excess as provided for in paragraphs (d)(1) and (e)(1) of this section and want to redesignate the land as nonexcess, must utilize the redesignation process specified under § 426.12(b)(2).
  - (1) However, such redesignations will not be approved if the water rate specified in paragraphs (d)(1)(ii) or (e)(2)(i) of this section is less than what would have been charged for water deliveries to the land in question if the landholder that involuntarily acquired the land had originally designated the land as nonexcess.
  - (2) Such landholders may utilize the redesignation process, if they remit to Reclamation the difference between the rate paid and the rate that would have been paid, if the land had been designated as nonexcess when involuntarily acquired, for all irrigation water delivered to the land in question while the land was designated as excess.
- (g) *Effect of involuntarily acquiring land subject to the discretionary provisions.* A landowner does not automatically become subject to the discretionary provisions if the landowner acquires irrigation land involuntarily which was formerly subject to the discretionary provisions. However, a landholder that is subject to the prior law provisions will become subject to the discretionary provisions upon involuntarily acquiring land if:
  - (1) The land is located in a district that is subject to the discretionary provisions;



- (2) The landholder in question will be the direct landowner of the land; and
- (3) The landholder in question declares the land as nonexcess.
- (h) *Land acquired by inheritance or devise.* If a landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per paragraphs (c)(3) and (e) of this section begins on the date of the previous landowner's death.

## **§ 426.15 Commingling.**

- (a) *Definition for purposes of this section:*  
*Commingled water* means irrigation water and nonproject water that use the same facilities.
- (b) *Application of Federal reclamation law and these regulations to prior commingling provisions in contracts.* If a district entered into a contract with Reclamation prior to October 1, 1981, and that contract has provisions addressing commingled water situations, those provisions stay in effect for the term of that contract and any renewals of it.
- (c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:
  - (1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of Federal reclamation law and these regulations will apply only to the landholders who receive irrigation water, provided:
    - (i) That the water requirements for eligible lands can be established; and
    - (ii) The quantity of irrigation water to be used is less than or equal to the quantity necessary to irrigate eligible lands.
  - (2) If the facilities used for commingling irrigation water and nonproject water are funded with monies made available pursuant to Federal reclamation law, landholders who receive nonproject water will be subject to Federal reclamation law and these regulations unless:
    - (i) The district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing or delivering the nonproject water; and
    - (ii) The fee will be established by Reclamation and will be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service
  - (3) If paragraphs (c)(2) (i) and (ii) of this section are met, the provisions of Federal reclamation law and these regulations will be applicable to only those landholders who receive irrigation water. Accordingly, the provisions of Federal reclamation law and these regulations will not be applicable to landholders who receive nonproject water delivered through

facilities funded with monies made available pursuant to Federal reclamation law if those paragraphs are met.

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

## **§ 426.16 Exemptions and exclusions.**

*(a) Army Corps of Engineers (Corps) projects.*

- (1) If Reclamation determines that land receives its agricultural water from a Corps project, Reclamation will exempt that land from specific provisions of Federal reclamation law, including the RRA, unless:
- (i) Federal law explicitly designates, integrates, or incorporates that land into a Federal Reclamation project; or
  - (ii) Reclamation provides project works for the control or conveyance of the agricultural water supply from the Corps project to that land.
- (2) Upon such determination, Reclamation will:
- (i) Notify the district of its exemption status;
  - (ii) Require the district's agricultural water users to continue, under contracts made with Reclamation, to repay their share of construction, operation and maintenance, and contract administration costs of the Corps project allocated to conservation or irrigation storage; and
  - (iii) At the request of the district delete provisions of the district's repayment or water service contract that imposes acreage limitation for those lands served by Corps projects.

*(b) Repayment of construction obligations.* The acreage limitation provisions do not apply to land in a district after the district has repaid, in accordance with the district's contract with Reclamation, all obligated construction costs for project facilities.

- (1) Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payments, if allowed by the district's contract with Reclamation, will qualify the district to become exempt.
- (2) If a district has a contract with the United States providing for individual landowner repayment of construction charges allocated to land, and the landowner has repaid all obligated construction costs allocated for that landowner's land, that landowner will become exempt from the acreage limitation provisions.
- (3) Upon payout Reclamation will:
- (i) Notify the district, and individual landowner in cases of individual landowner payout, of the exemption from the acreage limitation provisions;
  - (ii) Notify the district or individual landowner that the exemption does not relieve the district or individual landowner of the obligation to

- continue to pay, on an annual basis, O&M costs applicable to the district or landowner;
- (iii) Upon request by the owner of land for which repayment has occurred, provide a certificate from Reclamation acknowledging that the land is free of the acreage limitation provisions of Federal reclamation law;
  - (iv) Except as provided for in § 426.19(e), no longer apply the certification and reporting requirements to the district, if the entire district is exempt, or to exempt landowners as specified in paragraph (b)(2) of this section; and
  - (v) Consider on a case-by-case basis continuation of the exemption if additional construction funds for the project are requested.
- (c) *Rehabilitation and Betterment loans.* If Reclamation makes a Rehabilitation and Betterment loan (pursuant to the Rehabilitation and Betterment Act of October 7, 1949, as amended, 43 U.S.C. 504) to a project that was authorized under Federal reclamation law prior to the submittal of the loan request, by or for the district, Reclamation:
- (1) Considers the loan as a loan for maintenance, including replacements that cannot be financed currently;
  - (2) Does not consider the loan in determining whether the district has discharged its obligation to repay the construction cost of project facilities used to make irrigation water available for delivery to land in the district; and
  - (3) Will not allow such a loan to serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligation, nor serve as the basis for increasing the construction obligation of the district and thereby extending the period during which acreage limitation provisions will apply.
- (d) *Temporary supplies of water.* If Reclamation announces availability of temporary supplies of water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged floodflows of short duration a district may request that Reclamation make such supplies available to excess land. However, such water deliveries must not have an adverse effect on other authorized project purposes. Upon approval of the district's request, Reclamation will notify the requesting district of the availability of the temporary supply of water under the following conditions:
- (1) The contract for the temporary supply of water will be for 1 year or less in accordance with prior policies and practices;
  - (2) The acreage limitation provisions will not be applicable to the temporary supply of water;
  - (3) An applicable price for the water, if any, will be established; and
  - (4) Such other conditions as Reclamation may include.
- (e) *Isolated tracts.* If a landowner requests that Reclamation determine that portions of his or her owned land are isolated tracts that can be farmed economically only if included in a farming operation that already exceeds the

landowners ownership entitlement, and Reclamation makes such a determination, then Reclamation:

- (1) Will exempt such land from the ownership limitations of Federal reclamation law; and
  - (2) Will assess the full-cost rate for any irrigation water delivered to the isolated tract that exceeds the landowner's nonfull-cost entitlement.
- (f) *Indian trust or restricted lands.*
- (1) Indian trust or restricted lands are excluded from application of the acreage limitation provisions.
  - (2) Indian tribes and tribal entities operating on Indian trust or restricted lands are excluded from application of the water conservation provisions.

## **§ 426.17 Small Reclamation projects.**

- (a) *Effect of the RRA on loan contracts made under the Small Reclamation Projects Act.*
- (1) If a district entered into a loan contract under the Small Reclamation Projects Act of 1956 (43 U.S.C. 422) (SRPA) on or after October 12, 1982, the contract is subject to the provisions of the SRPA, as amended by Section 223 of the RRA and as amended by Title III of Pub. L. 99-546.
  - (2) If a district entered into an SRPA loan contract prior to October 12, 1982, and the district:
    - (i) Did not amend the loan contract to conform to the SRPA, as amended by Section 223 of the RRA, prior to October 27, 1986, then the acreage provisions of the contract continue in effect, unless the contract is amended to conform to the SRPA as amended by section 307 of Pub. L. 99-546.
    - (ii) Amended the loan contract to conform to the SRPA, as amended by Section 223 of the RRA, prior to October 27, 1986, the contract is subject to the increased acreage provisions provided in Section 223 of the RRA. Reclamation cannot alter, modify or amend any other provision of the SRPA loan contract without the consent of the non-Federal party.
- (b) *Other sections of these regulations that apply to SRPA loans.* No other sections of these regulations apply to SRPA loans, except as specified in § 426.3(a)(3)(ii) and paragraph (d) of this section.
- (c) *Effect of SRPA loans in determining whether a district has repaid its construction obligations on a water service or repayment contract.* If a district has a water service or repayment contract in addition to an SRPA contract, Reclamation does not consider the SRPA loan:
- (1) In determining whether the district has discharged its construction cost obligation for the project facilities;
  - (2) As a basis for reinstating acreage limitation provisions in a district that has completed payment of its construction cost obligation(s); or

- (3) As a basis for increasing the construction obligation of the district and extending the period during which acreage limitation provisions will apply to that district.
- (d) *Districts that have an SRPA loan contract and a contract as defined in § 426.2.* If a district has an SRPA loan contract and a contract as defined in § 426.2, the SRPA contract does not supersede the RRA requirements applicable to such contracts.

## **§ 426.18 Landholder information requirements.**

- (a) *Definition for purposes of this section:*  
*Irrigation season* means the period of time between the district's first and last water delivery in any water year.
- (b) *Who must provide information to Reclamation?* All landholders and other parties involved in the ownership or operation of nonexempt land must provide Reclamation, as required by these regulations or upon request, any records or information, in a form suitable to Reclamation, deemed reasonably necessary to implement the RRA or other provisions of Federal reclamation law.
- (c) *Required form submissions.*
  - (1) Landholders who are subject to the discretionary provisions must annually submit standard certification forms, except as provided in paragraph (l) of this section.
  - (2) Landholders who make an irrevocable election must submit the standard certification forms with their irrevocable election in the year that they make the election.
  - (3) Landholders who are subject to prior law must annually submit standard reporting forms, except as provided in paragraph (l) of this section.
  - (4) Landholders who qualify under an exemption as specified in paragraph (g) of this section need not submit any forms.
- (d) *Required information.* Landholders must declare on the appropriate certification or reporting forms all nonexempt land that they hold directly or indirectly westwide and other information pertinent to their compliance with Federal reclamation law.
- (e) *District receipt of forms and information.* Landholders must submit the appropriate, completed form(s) to each district in which they directly or indirectly hold irrigation land.
- (f) *Certification or reporting forms for wholly owned subsidiaries.* The ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries must file the required certification or reporting forms. The ultimate parent legal entity must disclose all direct and indirect landholdings of its subsidiaries as required on such forms.
- (g) *Exemptions from submitting certification and reporting forms.*
  - (1) A landholder is exempt from submitting the certification and reporting forms only if:

§ 426.18 Landholder information requirements.

- (i) The landholder's district has Category 1 status, as specified in paragraph (h) of this section, and the landholder is a:
  - (A) Qualified recipient who holds a total of 240 acres westwide or less;  
or
  - (B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.
- (ii) The landholder's district has Category 2 status, as specified in paragraph (h) of this section, and the landholder is a:
  - (A) Qualified recipient who holds a total of 80 acres westwide or less;  
or
  - (B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.
- (2) A wholly owned subsidiary is exempted from submitting certification or reporting forms, if its ultimate parent legal entity has properly filed such forms disclosing the landholdings of each of its subsidiaries.
- (3) In determining whether certification or reporting is required for purposes of this section:
  - (i) Class 1 equivalency factors as determined in § 426.11 shall not be used; and
  - (ii) Indirect landholders need not count involuntarily acquired acreage designated as excess by the direct landowner.
- (h) *District categorization.*
  - (1) For purposes of this section each district has Category 2 status, unless the following criteria have been met. If the district has met both criteria, it will be granted Category 1 status.
    - (i) The district has conformed by contract to the discretionary provisions;  
and
    - (ii) The district is current in its financial obligations to Reclamation.
  - (2) Reclamation considers a district current in its financial obligation if as of September 30, the district is current in its:
    - (i) Financial obligations specified in its contract(s) with Reclamation; and
    - (ii) Payment obligations established by the RRA, and these rules.
- (i) *Application of Category 1 status.* Once a district achieves Category 1 status, it will only be withdrawn if the Regional Director determines the district is not current in its financial obligations as specified in paragraph (h)(2) of this section. The withdrawal of Category 1 status will be effective at the end of the current water year and can be restored only as provided under paragraph (h) of this section. With the withdrawal of Category 1 status, the district will have a Category 2 status.
- (j) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a qualified recipient holds land in a Category 1 district, then the 240-acre forms threshold will be applicable in determining if the landholder must submit a certification form to that Category 1 district. If the same qualified recipient also holds land in a Category 2 district, then the 80-acre forms threshold will be applicable in determining if the landholder must submit a certification form to the Category 2 district.

- (k) *Notification requirements for landholders whose ownership or leasing arrangements change after submitting forms.* If a landholder's ownership or leasing arrangements change in any way:
- (1) During the irrigation season, the landholder must:
    - (i) Notify the district office, either verbally or in writing within 30-calendar days of the change; and
    - (ii) Submit new forms to all districts in which the landholder holds nonexempt land, within 60-calendar days of the change.
  - (2) Outside of the irrigation season, then the landholder must submit new standard certification or reporting forms to all districts in which nonexempt land is held prior to any irrigation water deliveries following such changes.
- (l) *Notification requirements for landholders whose ownership or leasing arrangements have not changed.* If a landholder's ownership or leasing arrangements have not changed since last submitting a standard certification or reporting form, the landholder can satisfy the annual certification or reporting requirements by submitting a verification form instead of a standard form. On that form the landholder must verify that the information contained on the last submitted standard certification or reporting form remains accurate and complete.
- (m) *Actions taken if required submission(s) is not made.*
- (1) If a landholder does not submit required certification or reporting form(s), then:
    - (i) The district must not deliver, and the landholder is not eligible to receive and must not accept delivery of, irrigation water in any water year prior to submission of the required certification or reporting form(s) for that water year; and
    - (ii) Eligibility will be regained only after all required certification or reporting forms are submitted by the landholder to the district.
  - (2) If one or more part owners of a legal entity do not submit certification or reporting forms as required:
    - (i) The entire entity will be ineligible to receive irrigation water until such forms are submitted; or
    - (ii) If the documents forming the entity provide for the part owners' interest to be separable and alienable, then only that portion of the land attributable to the noncomplying part owners will be ineligible to receive irrigation water.
- (n) *Actions taken by Reclamation if a landholder makes false statements on the appropriate certification or reporting forms.* If a landholder makes a false statement on the appropriate certification or reporting form(s) Reclamation can prosecute the landholder pursuant to the following statement which is included in all certification and reporting forms:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to \$10,000, or both, for any person knowingly and willfully to submit or cause to be submitted

to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the landowner or lessee will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

- (o) *Information requirements and Office of Management and Budget approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control numbers 1006-0005 and 1006-0006. The information is being collected to comply with Sections 206, 224(c), and 228 of the RRA. These sections require that, as a condition to the receipt of irrigation water, each landholder in a district which is subject to the acreage limitation provisions of Federal reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Federal reclamation law. Completion of these forms is required to obtain the benefit of irrigation water. The information collected on each landholding will be summarized by the district and submitted to Reclamation in a form prescribed by Reclamation.
- (p) *Protection of forms pursuant to the Privacy Act of 1974.* The Privacy Act of 1974 (5 U.S.C. 552) protects the information submitted in accordance with certification and reporting requirements. As a condition to execution of a contract, Reclamation requires the inclusion of a standard contract article which provides for district compliance with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

## **§ 426.19 District responsibilities.**

A district that delivers irrigation water to nonexempt land under a contract with the United States must:

- (a) Provide information to landholders concerning the requirements of Federal reclamation law and these regulations;
- (b) Provide Reclamation, as required by these regulations or upon request, and in a form suitable to Reclamation, records and information as Reclamation may deem reasonably necessary to implement the RRA and other provisions of Federal reclamation law;
- (c) Be responsible for payments to Reclamation of all appropriate charges specified in these regulations. Districts must collect the appropriate charges from each landholder based on the landholder's acreage limitation status, landholdings, and entitlements, and must not average the costs over the entire district, unless the charges prove uncollectible from the responsible landholders;
- (d) Distribute, collect, and review landholder certification and reporting forms;



## § 426.20 Assessment of administrative costs.

- (e) File and retain landholder certification and reporting forms. Districts must retain superseded landholder certification and reporting forms for 6 years; thereafter, districts may destroy such superseded forms, except:
  - (1) Districts must keep on file the last fully completed standard certification or reporting form, in addition to the current verification form; or
  - (2) If Reclamation specifically requests a district to retain superseded forms beyond 6 years.
- (f) Comply with the requirements of the Privacy Act of 1974, with respect to landholder certification and reporting forms;
- (g) Annually summarize information provided on landholder certification and reporting forms on separate summary forms provided by Reclamation and submit these forms to Reclamation on or before the date established by the appropriate regional director;
- (h) Withhold deliveries of irrigation water to any landholder not eligible to receive irrigation water under the certification or reporting requirements or any other provision of Federal reclamation law and these regulations; and
- (i) Return to Reclamation, for deposit as a general credit to the Reclamation fund, all revenues received from the delivery of water to ineligible land. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

## **§ 426.20 Assessment of administrative costs.**

- (a) *Assessment of administrative costs for delivery of water to ineligible land.*

Reclamation will assess a district administrative costs as described in paragraph (e) of this section if the district delivers irrigation water to land that was ineligible because the landholders did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.18; or to ineligible excess land as provided in § 426.12.

  - (1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.18, or for each landholder that received irrigation water on ineligible land as specified above.
  - (2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.
  - (3) The assessment in paragraph (a) of this section will be applied independently of the assessment specified in paragraph (b) of this section.
- (b) *Assessment of administrative costs when form corrections are not made.*

Reclamation will assess a district for the administrative costs described in paragraph (e) of this section, unless the district provides Reclamation with requested reporting or certification form corrections within 60-calendar days of the date of Reclamation's written request. If Reclamation receives the required corrections within this 60-calendar day time period, Reclamation will consider the requirements of § 426.18 satisfied.

## § 426.21 Interest on underpayments.

- (1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water and for whom the district does not provide corrected forms within the applicable 60-calendar day time period.
  - (2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.
  - (3) The assessment in paragraph (b) of this section will be applied independently of the assessment specified in paragraph (a) of this section.
- (c) *Party responsible for paying assessments.* Districts are responsible for payment of Reclamation assessments described under paragraphs (a) and (b) of this section.
- (d) *Disposition of assessments.* Reclamation will deposit to the general fund of the United States Treasury, as miscellaneous receipts, administrative costs assessed and collected under paragraphs (a) and (b) of this section.
- (e) *Amount of the assessment.* The administrative costs assessment required under paragraphs (a) and (b) of this section is set at \$290<sup>1</sup>. Reclamation will review the associated costs at least once every 5 years, and will adjust the assessment amount, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the Federal Register in December of the year the data are reviewed.

## § 426.21 Interest on underpayments.

- (a) *Definition of underpayment.* For the purposes of this section *underpayment* means the difference between what a landholder owed for the delivery of irrigation water under Federal reclamation law and what that landholder paid.
- (b) *Collection of interest on underpayments.* If a landholder has incurred an underpayment, Reclamation will collect from the appropriate district such underpayment with interest. Interest accrues from the original payment due date until the district pays the amount due. The original payment due date is the date the district should have paid the United States for water delivered to the landholder.
- (c) *Underpayment interest rate.* The Secretary of the Treasury determines the interest rate charged the district based on the weighted average yield of all interest-bearing marketable issues sold by the Department of the Treasury during the period of underpayment.

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<sup>1</sup> Effective January 1, 2004, the amount of the administrative fee was increased to \$290 from \$260.

## § 426.22 Public participation.

- (a) *Notification of contract actions.* Except for proposed contracts having a duration of 1 year or less for the sale of surplus water or interim irrigation water, Reclamation will:
  - (1) Provide notice of proposed irrigation or amendatory irrigation contract actions 60-calendar days prior to contract execution by publishing announcements in general circulation newspapers in the affected area;
  - (2) Issue announcements in the form of news releases, legal notices, official letters, memoranda, or other forms of written material; and
  - (3) Directly notify individuals and entities who made a timely written request for such notice to the appropriate Reclamation regional or local office.
- (b) *Notification of modification of a proposed contract.* In the event that modifications are made to a proposed contract the regional director must:
  - (1) Provide copies of revised proposed contracts to all parties who requested copies of the proposed contract in response to the initial notice; and
  - (2) Determine whether or not to republish the notice or to extend the comment period. The regional director must consider, among other factors:
    - (i) The significance of the impact(s) of the modification to possible affected parties; and
    - (ii) The interest expressed by the public over the course of contract negotiations.
- (c) *Information that Reclamation will include in published announcements.* Each published announcement will include, as appropriate:
  - (1) A brief description of the proposed contract terms and conditions being negotiated;
  - (2) Date, time, and place of meetings, workshops, or hearings;
  - (3) The address and telephone number to which inquiries and comments may be addressed to Reclamation; and
  - (4) The period of time during which Reclamation will accept comments.
- (d) *Public availability of proposed contracts.* Anyone can get copies of a proposed contract from the appropriate regional director or his or her designated public contact when the proposed contracts become available for review and comment, as specified in the published announcement.
- (e) *Opportunities for public participation.*
  - (1) Reclamation can provide, as appropriate: meetings, workshops, or hearings to provide local information. Advance notice of meetings, workshops, or hearings will be provided to those parties who make timely written request for such notice. Request for notice of meetings, workshops, or hearings should be sent to the appropriate Reclamation regional or local office.
  - (2) Reclamation or the district can invite the public to observe any contract proceedings.
  - (3) All public participation procedures will be coordinated with those involved with National Environmental Policy Act compliance, if

§ 426.23 Recovery of operation and maintenance (O&M) costs.

Reclamation determines that the contract action may or will have "significant" environmental effects.

- (f) *Individuals authorized to negotiate the terms of contract proposals.* Only persons authorized to act on behalf of the district may negotiate the terms and conditions of a specific contract proposal.
- (g) *Agency use of comments submitted during the period provided for comment or made at hearings.*
  - (1) Reclamation will review and summarize for use by the contract approving authority, testimony presented at any public hearing or any written comments submitted to the appropriate Reclamation officials at locations and within the comment period, as specified in the advance published announcement.
  - (2) Reclamation will make available to the public all written correspondence regarding proposed contracts under the terms and procedures of the Freedom of Information Act (5 U.S.C. 552), as amended.

**§ 426.23 Recovery of operation and maintenance (O&M) costs.**

- (a) *General.* All new, amended, and renewed contracts shall provide for payment of O&M costs as specified in this section.
- (b) *Amount of O&M costs a district must pay if it executes a new or renewed contract.* If a district executes a new or renewed contract after October 12, 1982, then that district must pay all of the O&M costs that Reclamation allocates to irrigation.
- (c) *Amount of O&M costs a district must pay if it amends its contract to conform to the discretionary provisions.* If a district has a contract executed prior to October 12, 1982, and the district amends the contract after October 12, 1982, as provided for in § 426.3(a)(2) to conform to the discretionary provisions, then the following applies:
  - (1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;
  - (2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (c)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and
  - (3) The district will not be required to pay an increased amount toward the construction costs of a project as a condition of the district's agreeing to a contract amendment pursuant to paragraph (c) of this section.
- (d) *Amount of O&M cost a district must pay if it amends its contract to provide supplemental or additional benefits.* If a district amends its contract after

§ 426.23 Recovery of operation and maintenance (O&M) costs.

October 12, 1982, to provide supplemental or additional benefits, as provided for in § 426.3(a)(3), then the following must be complied with:

- (1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;
  - (2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (d)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and
  - (3) The district must pay any increases in the amount paid annually toward the construction costs of a project that the United States requires the district to pay as a condition of agreeing to provide the district with supplemental and additional benefits.
- (e) *Amount of O&M a district pays under a prior contract.* For a district whose prior contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless the contract specifically provides contrary terms.
- (f) *Amount of O&M that Reclamation charges an irrevocable elector.*
- (1) Regardless of any terms to the contrary within a prior contract with a district, a landholder who makes an irrevocable election, as provided for in § 426.3(f) must pay, annually, his or her proportionate share of all O&M costs allocated by Reclamation to irrigation. The irrevocable elector's proportionate share is based upon the ratio of:
    - (i) The amount of land in the district held by the irrevocable elector that received irrigation water to the total amount of land in the district that received irrigation water; or
    - (ii) The amount of irrigation water in the district received by the irrevocable elector to the total amount of irrigation water that the district delivered.
  - (2) The district(s) where the irrevocable elector's landholding is located must collect from the irrevocable elector an amount equal to the irrevocable elector's proportionate share of all O&M costs allocated by Reclamation to irrigation and the following apply:
    - (i) If in the year the election is executed, the district's contract rate was more than the O&M costs allocated to the district in that year, then that positive difference at the time of the contract amendment must continue to be factored into the contract rate. This would be in addition to any adjusted O&M cost that results from paragraph (f)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and
    - (ii) Such collections must be forwarded annually to the United States.
- (g) *Amount of O&M that Reclamation charges if a landholder is subject to full-cost pricing.* In a district subject to prior law, if a landholder is subject to full-cost pricing the district must ensure that all O&M costs are included in

any full-cost assessment, regardless of whether the landholder is subject to the discretionary provisions. The revenues from such full-cost assessments must be collected and submitted to the United States.

## **§ 426.24 Reclamation decisions and appeals.**

### *(a) Reclamation decisions.*

- (1) *Decisionmaker for Reclamation's final determinations.* The appropriate regional director makes any final determination that these regulations require or authorize. If Reclamation's final determination is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that final determination.
- (2) *Notice to affected parties.* The appropriate regional director will transmit any final determination to any district and landholder, as appropriate, whose rights and interests are directly affected.
- (3) *Effective date for regional director's final determinations.* A regional director's decisions will take effect the day after the expiration of the period during which a person adversely affected may file a notice of appeal unless a petition for stay is filed together with a timely notice of appeal.

### *(b) Appeal of final determinations.*

- (1) *Appeal Submittal.* Any district or landholder whose rights and interests are directly affected by a regional director's final determination can submit a written notice of appeal. Such notice of appeal must be submitted to the Commissioner of Reclamation within 30-calendar days from the date of the regional director's final determination.
- (2) *Submittal of supporting information.* The affected party will have 60-calendar days from the date that the regional director issues a final determination to submit a supporting brief or memorandum to the Commissioner. The Commissioner may extend the time for submitting a supporting brief or memorandum, if:
  - (i) the affected party submits a request to the Commissioner in a timely manner;
  - (ii) the request includes the reason why additional time is needed; and
  - (iii) the Commissioner determines the appellant has shown good cause for such an extension and the extension would not prejudice Reclamation.
- (3) *Requests for stay of the final determination pending appeal.*
  - (i) The Commissioner will determine whether to stay a regional director's final determination within 30 days after receiving a properly filed petition for stay if the requesting party:
    - (A) Submits a request for stay in writing to the Commissioner, with, or in advance of, the notice of appeal, and states the grounds upon which the party requests the stay; and
    - (B) Demonstrates that the harm that a district or landholder would suffer if the Commissioner does not grant the stay outweighs the

interest of the United States in having the final determination take effect pending appeal.

(ii) A decision, or that portion of the decision, for which a stay is not granted will become effective immediately after the Commissioner denies or partially denies the petition for stay, or fails to act within 30 days after receiving the request.

(iii) A Commissioner's decision on a petition for a stay or any other Commissioner decision is appealable.

(c) *Appeal of Commissioner's decision.*

(1) *Appeal to the Office of Hearing and Appeals.* A party can appeal the Commissioner's decision to the Secretary by writing to the Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior. For an appeal to be timely, OHA must receive the appeal within 30-calendar days from the date of mailing of the Commissioner's decision.

(2) *Rules that govern appeals to OHA.* 43 CFR Part 4, Subpart G, and other provisions of 43 CFR Part 4, where applicable, govern the OHA appeal process, except for the accrual of underpayment interest as specified in paragraph (e) of this section.

(d) *Effective date of an appeal decision.* Reclamation will apply decisions made by the Commissioner or by OHA under paragraphs (b) and (c) of this section as of the date of the violation or other problem that was addressed in the regional director's final determination. If, during the appeal process, irrigation water has been delivered to land subsequently found to be ineligible, for other than RRA forms submittal violations, the compensation rate may be applied to such deliveries retroactively.

(e) *Accrual of interest on underpayments during appeal.* Interest on any underpayments, as provided in § 426.21, continues to accrue during an appeal of a regional director's final determination, an appeal of the Commissioner's decision, or judicial review of final agency action. Underpayment interest accrual will continue even during a stay under paragraphs (b)(4) or (c)(3) of this section.

(f) *Status of appeals made prior to the effective date of these regulations.*

(1) Appeals to the Commissioner of a regional director's final determination which were decided by the Commissioner or his or her delegate prior to the effective date of these regulations are hereby validated.

(2) Appeals to the Commissioner of final determinations made by a regional director and appeals to OHA, which are pending on appeal as of the effective date of these regulations will be processed and decided in accordance with the regulations in effect immediately prior to the effective date of these regulations.

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

(1) *Commissioner*, Bureau of Reclamation, Office of Policy,  
Attention: 84-53000<sup>1</sup>, P.O. Box 25007, Denver, Colorado 80225.

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<sup>1</sup> Effective April 2, 2006, this mail code was changed to 84-53000 from D-5200.

(2) *Director, Office of Hearings and Appeals, Department of the Interior;*  
801 North Quincy Street, Arlington, Virginia, 22203

### **§ 426.25 Reclamation audits.**

Reclamation will conduct reviews of a district's administration and enforcement of and landholder compliance with Federal reclamation law and these regulations. These reviews may include, but are not limited to:

- (a) Water district reviews;
- (b) In-depth reviews; and
- (c) Audits.

### **§ 426.26 Severability.**

If any provision of these regulations or the application of these rules to any person or circumstance is held invalid, then the sections of these rules or their applications which are not held invalid will not be affected.