DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006–AA38

Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new part to the Bureau of Reclamation's (Reclamation) regulations to supplement the Acreage Limitation Rules and Regulations in 43 CFR part 426 that implement the Reclamation Reform Act of 1982 (RRA). The proposed rule would require certain farm operators to submit RRA forms that describe the services they perform and the land they service. The rule would also address the eligibility of certain formerly excess land held in trusts or by legal entities to receive nonfull-cost Reclamation irrigation water.

DATES: Reclamation must receive written comments on this proposed rule by January 19, 1999. We will not necessarily consider comments received after the above date during our review of the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Administrative Record, Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240. You may also comment via the Internet to epetacchi@usbr.gov (see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**). In addition, you may hand-deliver comments to Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 208–3368, or Richard Rizzi, (303) 445–2900.

SUPPLEMENTARY INFORMATION: This section provides the following information:

I. Public Comment Procedures
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I. Public Comment Procedures

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. We may not necessarily consider or include in the Administrative Record for the final rule comments which we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). We will not consider anonymous comments.

If you submit your comments via the Internet, please submit as an ASCII file avoiding the use of special characters and any form of encryption. Please include in the subject line ''AA38'' and include your name and return address in the body of your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 208–3368.

The administrative record and all comments, including names and home addresses of respondents, will be available for public review at the address listed above (see **ADDRESSES**), during the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, except holidays. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Introduction

This proposed rule would supplement the Acreage Limitation Rules and Regulations, 43 CFR part 426, that govern implementation and administration of the RRA. The proposed rule would create a separate CFR part, 43 CFR part 428, addressing information requirements for certain farm operators, and the eligibility of certain formerly excess land that is operated by a farm operator who was the landowner of that land when it was ineligible excess land or land placed under recordable contract.

We are proposing this rule to address comments raised in both the rulemaking concluded on December 18, 1996 (the Acreage Limitation Rules and Regulations) and in the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** (61 FR 66827, Dec. 18, 1996). Among other things, the comments stated that although we collect information from landholders to verify compliance with the RRA, we do not collect this information from farm operators. Commenters pointed out that we, consequently, may not have adequate information to determine if the provisions of a farm operating arrangement constitute a ''lease'' under the acreage limitation provisions and thus require application of the nonfull-cost entitlements of the RRA. Other comments stated that we should analyze all farm operations in excess of 960 acres to determine compliance with the acreage limitation provisions of Federal reclamation law. Public comments from the ANPR are addressed below.

We believe that this rule balances the interests in enforcing the law with the interests of limiting paperwork burdens on the public. By limiting the applicability of the proposed rule as described below, we hope to target our resources to achieve compliance with the acreage limitation provisions of Federal reclamation law in an efficient manner. We seek comments on whether this rule will meet that goal.

III. Summary of Proposed Changes

The proposed rule would extend RRA certification and reporting forms requirements to farm operators who:

(1) Provide services to more than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity, or

(2) Provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres.

In addition, this part applies to the eligibility of formerly excess land held in trusts or by legal entities, that is operated by a farm operator who was the landowner of that land when it was ineligible excess land or land placed under recordable contract. The provisions of 43 CFR part 426 not specifically addressed in this rule are unchanged.

This section summarizes the differences between the existing regulations and the proposed rule. A detailed analysis can be found later in this preamble.

Certification and Reporting Requirements

Under 43 CFR part 426, landholders (direct or indirect landowners or lessees) whose total westwide landholdings exceed the RRA forms submittal thresholds must submit RRA forms. Farm operators do not now have to submit RRA forms. The new 43 CFR part 428 would extend certification and reporting requirements to farm operators who (1) provide services to more than 960 acres held by one trust or legal entity, or (2) provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres. By extending the certification and reporting requirements to these farm operators, we can get information that we need to determine the following :

(1) Who has use or possession of the land being farmed under a farm operating arrangement; and

(2) Who is responsible for payment of operating expenses, and who is entitled to receive the profits from the farming operation as indicators of economic risk.

We need this information because the acreage limitation provisions apply to all owned or leased land. Use or possession of the land and who has all or a portion of the economic risk associated with the farming enterprises are the factors we use to determine if a farm operating arrangement is in fact a lease. If we determine that a farm operating arrangement is a lease, then the farm operator leasing the land will be subject to the acreage limitation provisions.

Excess Land Provisions

Part 426 provides that a seller of excess land may not receive Reclamation irrigation water if he or she again becomes the landholder of that land either voluntarily or involuntarily, with certain exceptions. This proposed rule would apply similar restrictions to farm operators who sold their excess land at an approved price, and provide services to that land if it is held in trust or by a legal entity. The only exceptions would be if the formerly excess land became exempt from application of the acreage limitation provisions or the full-cost rate was paid for deliveries of Reclamation irrigation water to the formerly excess land. This provision will not be effective until January 1, 2000, at which time all farm operating arrangements between farm operators and trusts or legal entities that meet the criteria will be affected. This includes farm operating arrangements that were in existence prior to January 1, 2000, as well as any farm operating arrangement initiated on or after that date. We believe this provision is consistent with the intent of the RRA excess land provisions, and that it parallels excess land provisions that apply to landholders.

The following example illustrates the situation this provision would address: Landowner A, a qualified recipient, owns 5,000 acres subject to the acreage limitation provisions, which is 4,040 acres more than his 960-acre ownership entitlement. Landowner A sells his excess land at a price that Reclamation approved to a trust benefitting 10 individuals who are each subject to the discretionary provisions; none of the beneficiaries' landholdings exceed their acreage limitation entitlements. The trustee of the trust then hires Landowner A to operate the land owned by the trust. Consequently, Landowner A continues to farm the entire 5,000 acres as a farm operator, and the land continues to receive Reclamation irrigation water at the nonfull-cost rate.

We do not believe the intent of the excess land provisions of Federal reclamation law has been met in the preceding example. As part of the rulemaking that was completed on December 18, 1996, we included as § 426.12(g) a provision that addresses this issue with regard to landholders. It provides that a district may not make Reclamation irrigation water available at the nonfull-cost rate to excess land disposed of by a landholder at a price Reclamation approved, whether or not under recordable contract, if the landholder later becomes a direct or indirect landholder of that land through either a voluntary or involuntary action. Section 426.12(g) provides specific exceptions to this provision.

We believe that, starting on January 1, 2000, this same concept should apply to farm operators who provide services to land held in trusts or by legal entities or any combination thereof that the farm operator formerly owned as excess and sold at an approved price. We are seeking comments on the following issues related to formerly excess land and farm operators:

- Should we apply this excess land provision more broadly or should we include other exceptions to the proposed provision?
- Should we not include either of the two exceptions provided in the proposed rule (the land is no longer subject to the acreage limitation provisions and payment of the full-cost rate for deliveries of Reclamation irrigation water to the land in question) or should we otherwise alter them in some manner?
- Is the effective date of January 1, 2000, reasonable for this excess land provision or should we apply some other date?

IV. Background

The RRA modernized Federal reclamation law, while retaining the principle of limiting the benefits of receiving Federally subsidized water to farmers with relatively small landholdings. The RRA adjusted the acreage limitations for farms eligible to receive nonfull-cost water. This change was intended to facilitate modern farming practices and to limit nonfull-cost water deliveries generally to landholdings of 960 acres or less, rather than the 160 acres established by the Reclamation Act of 1902. However, not only does the RRA provide a number of exceptions to the 960-acre limitation, such as those associated with certain involuntary acquisitions, it also provides for much lower entitlement levels for legal entities that benefit more than 25 natural persons. In addition, the RRA and the part 426 regulations include provisions that exempt trustees acting in a fiduciary capacity from application of the acreage limitation provisions if certain criteria are met.

The RRA does not force districts or landholders to conform to the new acreage limitation provisions; thus, the prior law provisions still apply to some districts and landholders. Any owned land subject to acreage limitations that exceeds a landholder's ownership entitlement is considered excess land, and must be sold to an eligible buyer at a price that Reclamation approves in order for that excess land to be eligible to receive Reclamation irrigation water at any price. Any owned or leased land subject to acreage limitations that exceeds a landholder's nonfull-cost entitlement is considered full-cost land and the landholder must pay the full-cost rate for any Reclamation irrigation water delivered to that land.

The part 426 regulations implement certain provisions of the RRA. They address the ownership and leasing of land on Federal Reclamation irrigation projects, the pricing of Reclamation irrigation water, and certain terms and conditions for delivery of Reclamation irrigation water. Under part 426, we require all landholders (individuals or legal entities that directly or indirectly own or lease land that is subject to acreage limitation provisions of Federal reclamation law) whose landholdings exceed established RRA forms submittal thresholds to file RRA forms. Landholders must provide information on RRA forms about the land they hold, and certify that they are in compliance with the acreage limitation provisions of Federal reclamation law. The

regulations also provide that a district may not make available Reclamation irrigation water to excess land disposed of by a landholder at a price Reclamation approved, whether or not under recordable contract, if the landholder subsequently becomes a direct or indirect landholder of that land through either a voluntary or involuntary action.

On December 11, 1996, the Natural Resources Defense Council (NRDC) and the Departments of Interior and Justice entered into an amended settlement contract in the case of *NRDC* v. *Underwood, No. Civ. S–88–375–LKK* (a full description of this litigation may be found in the preamble to the final rule for the Acreage Limitation Rules and Regulations (61 FR 66757, Dec. 18, 1996)). As a result, the Department of the Interior (Interior) published the ANPR and invited comments and suggestions on the following:

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

Need for Applying Excess Land Provisions to Certain Farm Operators

In considering potential abuses of existing rules concerning trusts, we have focused on trusts that hold more than 960 acres westwide. In several instances, these large trusts were created by owners of excess lands who were required by Section 209 of the RRA to dispose of their interests in excess lands or face the permanent ineligibility of the lands for receipt of Reclamation irrigation water. By requiring the disposal of excess lands, the Congress was attempting to assure that the benefits of Federal irrigation water would be more widely distributed.

In some instances owners of excess lands sold or transferred their excess lands to large trusts. Then, some of these trusts, which are subject to more liberal acreage limitation provisions, entered into farm operating agreements with the former owners of such land, creating a situation where substantially the same enterprise continued to farm the same large acreage.

The foregoing practice has in fact occurred on a limited basis in the Central Valley Project in California, and we are further concerned that the practice may occur elsewhere in the future as recordable contracts under which excess lands have been temporarily made eligible to receive Reclamation irrigation water expire or other excess lands are sold.

While the foregoing arrangements are in literal conformance with existing regulations, we believe that they do not meet the intent of the law. To address this issue, we are proposing a change in how Section 209 is administered to attribute to former owners of excess lands any formerly excess land held in trusts and operated by the former owner of the excess lands. Essentially, we propose to treat the contractual relationship between the trust and the former owner of excess lands as a continuing financial interest in such lands by the former landowner, an interest that we can regulate in our rulemaking power granted by the Congress in Section 224 of the RRA. This change would eliminate any incentive for former owners of excess lands to use the large trust vehicle to maintain a continuing farming enterprise and would curb any abuse of congressional intent inherent in such arrangements.

We propose to apply this concept also to legal entities that hold formerly excess land and hire the former owner of such land under a farm operating arrangement. We do not believe there are many instances where legal entities have bought formerly excess land and then arranged for the former owner to farm the land as a farm operator. However, we are concerned that application of this concept only to trusts does not cover the full scope of possible arrangements and may result in a transfer of land ownership to various legal entities that will continue to arrange to have the land farmed in the same manner as the trust. We want to preclude such actions.

To ensure a transition and public education period, we will not implement this provision until January 1, 2000. This provides an opportunity for all trusts and legal entities that would be affected by the excess land provision (because their landholdings include formerly excess land and they have hired the former landholder to provide services to such land as a farm operator) to make other farming arrangements. In doing so, affected trusts and legal entities can avoid having to pay the full-cost rate for the delivery of Reclamation irrigation water to the formerly excess land, or even the ineligibility of such land, if they take action before January 1, 2000. Of course, affected trusts and legal entities could limit the consequences of the excess land provision at any time after January 1, 2000, by making alternative arrangements in how the formerly excess land is farmed. In addition, this proposed change will not affect the underlying trust itself. Trusts are still subject to the requirements of Section 214 of the RRA, and as such, the acreage limitation entitlements of the landholder(s) to whom the land held in trust is attributed will determine if the land is eligible to receive Reclamation irrigation water in the holdings of the trust.

Need for Certification and Reporting From Certain Farm Operators

In December 1987, the Congress amended the RRA by passing the audit provisions of the Omnibus Budget Reconciliation Act of 1987 (section 224[g] of the RRA as amended). Section 224[g] directed the Secretary of the Interior (Secretary), or his designee, to undertake audits of ''those legal entities and individuals whose landholdings or operations exceed 960 acres. * * *'' To comply with this mandate, we considered requiring all farm operators to submit RRA forms. However, by the time a proposed rule was published in the **Federal Register** (53 FR 21857, Jun. 10, 1988) we did not include that concept. Instead, we altered the general information requirements of the Acreage Limitation Rules and Regulations to make it clear that natural persons or legal entities operating land were required to provide records and information upon our request. This decision was confirmed in the final rules, which were effective on January 17, 1989 (53 FR 50530, Dec. 16, 1988). We then revised the RRA forms to require landholders to provide additional information concerning their farm operators.

Since 1989, we have learned that other approaches could be more effective and that this procedure places a greater burden on both the districts and us than if certain farm operators

were required to submit RRA forms. The current approach also greatly increases the likelihood that all farm operators providing services to more than 960 acres westwide will not be identified.

In order for the current system to work, information concerning farm operators must be gathered from all RRA forms landholders submit annually. That information then must be collated on a westwide basis to determine if any farm operator is providing services to more than 960 acres. The collation is required because any landholder, other than a trust, whose landholding exceeds 960 acres is either (a) not receiving Reclamation irrigation water on such land or (b) paying the full-cost rate for Reclamation irrigation water received on such land. In the case of the former, we have little interest in activities farm operators may have on land that is not receiving Reclamation irrigation water. In the case of the latter, determining that a farm operator is a lessee will have little effect on the eligibility of the land in question or the rate associated with the water deliveries to that land, since the full-cost rate is already being applied. What we need to identify are those farm operators providing services to multiple landholdings, the total of which exceed 960 acres. Then we must determine if the arrangements under which the services are being provided are leases for acreage limitation purposes.

We knew in 1988 that if only the name and address of farm operators were provided by landholders, it would be difficult to collate the data. This is due to the fact that operators may be providing services under different entity names and, if the operator is an individual, landholders may know the operator by different names (e.g., J. Smith, John Smith, Johnny Smith, Jack Smith, Smith Enterprises, etc.). In addition, there may be multiple farm operators that have the same name. If we relied only on addresses, we may be faced with multiple addresses for one farm operator which we would not be able to easily determine was the same person or entity (e.g., post office boxes, business address, residential address, etc.). Thus, we tried to use telephone numbers as the unique identifier, but this effort depends on the landholder providing such on their RRA forms. Regardless, we have determined that the current process does not ensure consistent application of the regulations and is inefficient. In addition, it is extremely difficult for us to verify that a landholder has or has not provided the required farm operator information, since there are few, if any, independent sources of information concerning farm operators to cross-check information.

We have considered requiring landholders to provide more information, such as taxpayer identification numbers, for their farm operators who are legal entities. But this would require the landholders to have such knowledge, resulting in a new burden on landholders. In addition, this approach would still result in the requirement for districts to gather the data and us to collate it, thereby increasing the associated burdens to all parties involved.

Conversely, if certain farm operators were required to submit RRA forms, then many of the difficulties in administration we experience on this issue would be resolved. For example, an operator would be required to include all land on which the operator was providing services westwide; thus, no data gathering by the districts or collation by us would be required. In fact, the districts would only be required to complete a new tabulation sheet concerning farm operators and include that sheet with their annual summary forms submittal. In addition, with RRA forms being submitted by farm operators, we would have a source of verification; specifically, the RRA forms submitted by landholders to whom the farm operator is providing services.

Impacts of the Proposed Rule

We believe that the proposed rule would help to ensure that the recipients of Reclamation irrigation water comply with the laws and regulations governing Federal Reclamation irrigation projects. It is difficult to determine exactly how many entities may be affected by the proposed changes, but, for the following reasons, we do not believe that the rules will be burdensome.

If the changes proposed today were adopted as final, it is possible that certain farm operators would need to submit RRA forms starting on January 1, 2000, and, after we reviewed the associated farm operating arrangement, the pricing and availability of Reclamation irrigation water could be affected for some farms. For landholders that on January 1, 2000, have a farm operator providing services to land the farm operator formerly owned as ineligible excess land or land placed under recordable contract, we would require those landholders or farm operators to pay full cost for any Reclamation irrigation water received on now eligible land.

We published a report in 1991 (The Reclamation Reform Act of 1982 Annual Report to the Congress, February 1991) that indicated there were approximately 80 farm operators who were providing services to more than 960 acres westwide. Also in that 1991 report, we disclosed that there were 35 trusts as of the end of 1990 that held more than 960 acres. Another large trust was found shortly thereafter for a total of 36. Recently we reviewed RRA forms submitted by districts for the 1997 water year and found 75 trusts that exceed 960 acres; this represents an 108 percent increase. We have no reason to believe there has been a larger increase in the number of farm operators providing services to more than 960 acres. Therefore, starting with the 1991 figure of 80 large operators, there may be approximately 165 such operators today. When the focus is narrowed to those farm operators who provide services to more than 960 acres held in trusts or by legal entities, the number of farm operators who may be affected by the proposed rule should decline towards 100. Those farm operators providing services to land they formerly owned as excess and sold at an approved price should be an even smaller number. But even these farm operators would not be immediately affected by the proposed excess land provisions and would only be impacted if they continued, on or after January 1, 2000, to have an arrangement to provide services to land they formerly owned as ineligible excess land or land placed under recordable contract.

Without the expanded information requirements in this rule, we simply do not have data readily available as to exactly how many farm operators would be affected by these provisions. The only way we will be sure in the near term about how many farm operators are providing services to more than 960 acres held in trusts or by legal entities is through the expansion of the RRA forms submittal requirements to farm operators.

Once implemented on January 1, 2000, the only impact for all of these farm operators would be that they would have to submit RRA forms. If a farm was affected by the excess land provision in the future, there is no reason the farm has to employ as a farm operator the individual or legal entity who formerly owned the land in question as excess. Therefore, an affected farm could hire a different farm operator and continue to receive Reclamation irrigation water at the nonfull-cost rate.

Authority for the Proposed Rule

Section 224(c) of the RRA gives the Secretary the authority to publish regulations to carry out the provisions of

the RRA and other provisions of Federal reclamation law. Our authority for the proposed application of the RRA forms requirements to certain farm operators is also section 224(c), which directs the Secretary to collect all data necessary to carry out the provisions of the RRA and other provisions of Federal reclamation law.

Section 224(g) provides that the Secretary must thoroughly audit compliance with the reclamation law of the United States, including with the RRA, by legal entities and individuals subject to the law. This section specifically directs the Secretary to audit legal entities and individuals whose landholdings or operations exceed 960 acres.

One of the primary purposes of the acreage limitation provisions of Federal reclamation law is to encourage the creation and preservation of small family farms, and this is accomplished by limiting the number of acres that any one landholder may own and receive Reclamation irrigation water on at any price. Allowing the former owner of ineligible excess land (ineligible excess land is not eligible to receive Reclamation irrigation water at any price) or land placed under recordable contract to receive Reclamation irrigation water as a farm operator circumvents one of the basic principles of Federal reclamation law.

V. Public Involvement

As part of the ANPR effort, on March 14, 1997, we held a public meeting in Sacramento, California concerning the ANPR. We also received 53 letters during the public comment period on the ANPR that was open from December 18, 1996, through April 17, 1997.

VI. Public Comments and Responses on Advance Notice of Proposed Rulemaking

The following section presents general public comments on the ANPR. These include comments on authority, process, relationship with other documents, relationship with other laws and mandates, water rights and contracts, westwide action, and other general comments that were not specifically directed toward the new 43 CFR part 428.

Comment 1. The manager of an irrigation district indicated that Reclamation should be prioritizing irrevocable trust reviews to speed up the process of compliance determinations which will assist the district in its monitoring responsibilities.

Response. We initially had a large backlog of trusts to review as well as other acreage limitation implementation actions to take. We have addressed most of this backlog. Regardless, trusts are considered to be conditionally approved when submitted to us to assist trustees and districts while a trust is being reviewed.

Comment 2. The same commenter raised concerns about reviewing only one part of the RRA regulations, without revisiting other parts.

Response. We throughly reviewed all aspects of the RRA during the rulemaking process that was completed on December 18, 1996. It was determined at that time the only issues that needed further review were those relating to trusts holding more than 960 acres westwide and how such land is farmed. In addition, we recognized that if action was to be taken with regard to large landholdings held in trust, we needed to ensure the land in question was not just transferred to some other type of landholding arrangement and continued to be farmed in the same manner.

Comment 3. Another commenter indicated that Reclamation must recognize its obligations to mitigate, conserve, and protect the interest of the people as well as the purpose and intent of the RRA. Reclamation must clarify policy with reference to protection of trust resources, uses, and values to be co-equal with water development and delivery.

Response. While we recognize our various responsibilities, the purpose of this rulemaking is specific to collecting information from farm operators providing services to more than 960 acres westwide held in trusts or by legal entities to determine if such farming arrangements are in fact leases for acreage limitation purposes. In addition, this proposed rule helps ensure the intent of the excess land provisions of Federal reclamation law will be met.

Comment 4. The same commenter suggests further that the proposed rule must include 6 concerns: 1. Must continue to focus on family farms. 2. The 960-acre limit must apply to operations, as well as farms. 3. Allowing subsidies to more than 960 acres is a violation of the intent of law. 4. There must be penalties for violation of the acreage limitation. 5. Limit the water subsidy to forcefully encourage water conservation measures. 6. The taxpayer should not subsidize any farming operation or corporation.

Response. We concur that one of the primary purposes of acreage limitation is to encourage and foster small family farms. The proposed rule is intended to facilitate the gathering of information to ensure operators providing services to more than 960 acres held in trusts or by legal entities are meeting the requirements of the RRA. In addition, we are proposing that steps be taken to ensure certain farm operators do not circumvent the intent of the excess land provisions of Federal reclamation law.

We have been advised in the past by the Office of the Solicitor that legislative action would be required to assess penalties for violation of the acreage limitation provisions. In addition, the RRA is specific as to the number of acres on which legal entities may receive nonfull-cost Reclamation irrigation water.

Comment 5. A beneficiary of a trust, writing on behalf of the beneficiaries of the trust, stated that proposed new regulations are not in accordance with law and are contrary to the legislative history of RRA.

Response. Since no new regulations were included as part of the ANPR issued on December 18, 1996, we urge everyone to examine the proposed regulations published with this Preamble. We believe section 224(c) of the RRA provides the authority necessary to promulgate these proposed regulations as follows:

> The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of Federal reclamation law.

Comment 6. The same commenter stated that the Federal program benefits were intended to be limited by the concept of beneficial ownership, not by the concept of farm size. In 1979 the Congress included a farm size limitation in an earlier version of RRA, but deleted such limitation in all subsequent reviews of Reclamation regulations.

Response. We agree that the Congress has not limited farm size. However, the Congress did address and limit how much land could be owned or leased by an individual or entity and be eligible to receive Reclamation irrigation water at the nonfull-cost rate. The collection of RRA forms from certain farm operators will help ensure this provision is being enforced by providing us with sufficient information to determine if a farm operating arrangement is in fact a lease for acreage limitation purposes. The Congress also has made it clear that the excess land provisions are to preclude the accrual of speculative gain in the disposition of excess land, assist in fostering the wide distribution of benefits associated with the Reclamation program, and encourage the creation of family farms.

Comment 7. The same commenter stated that the proposed new regulations are a dangerous misuse of administrative power.

Response. We disagree. In fact, in 1987 (Public Law 100–203, section 5302[a]) the Congress directed Interior to use its administrative tools to ensure compliance with the acreage limitation provisions of the RRA. Section 224(c) of the RRA requires the Secretary to collect all data necessary to carry out the acreage limitation program and to prescribe regulations needed to carry out those provisions.

Comment 8. Eighteen members of the Congressional Western Water Caucus expressed concerns about the ANPR stating their belief that a rulemaking for trusts is unnecessary, because Interior already has the tools through audits and other investigation techniques to ensure compliance with the acreage limitation provisions enacted by the Congress and the existing regulations.

Response. We do not have sufficient information with regard to farm operators providing services to more than 960 acres held in trusts or by legal entities to determine if the operating arrangements are in fact leases for acreage limitation purposes. In addition, we believe that these proposed regulations will help ensure the intent of the excess land provisions is not being circumvented by farm operators farming the land they previously owned as ineligible excess land or under recordable contract.

Comment 9. The general manager of a California municipal utility district stated that he and his district were concerned about again reopening the rules and regulations. They feel that it is not appropriate or necessary to proceed with rulemaking at this time. If there is a perceived problem with larger trusts, Reclamation should step up the enforcement and audit procedures of such trusts to ensure they are complying with the law, rather than reopening the process once again.

Response. We agree that it is unnecessary to reopen 43 CFR part 426 to ensure compliance with the RRA by certain farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. By creating 43 CFR part 428, we hope to provide certainty to the vast majority of landholders that receive Reclamation irrigation water, while taking the necessary steps to ensure compliance with the RRA by those farm operators.

Comment 10. A representative of a national conservation group urged Reclamation to adopt policies that would ensure compliance with the intent of the RRA. Reclamation should limit irrigation subsidies to 960 acres, which will strengthen family farms, reduce the Federal deficit, and help protect the environment. Commenter urged that the current loopholes be closed and bring fairness to Federal irrigation programs.

Response. We are proposing these additional regulatory provisions to ensure compliance with the RRA by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. The proposed rule is intended to better ensure compliance by requiring certain farm operators to submit RRA forms. In addition, a perceived loophole associated with the excess land provisions would be closed.

Comment 11. The representative of a national taxpayers group stated support for strong reforms in the Federal water subsidy program. The concern is that each farming operation is only entitled to receive subsidized water on 960 acres, regardless of how many individuals benefit from the operation. In addition, they are urging encouragement of efficient use of water.

Response. We cannot change the law, but must enforce the acreage limitation provisions of the RRA. Part of this effort is to ensure farm operators providing services to more than 960 acres held in trusts or by legal entities are not lessees for acreage limitation purposes.

Comment 12. The representative of a brewery in San Francisco, California stated that he does not see why the taxpayers should subsidize large corporate farmers. He also has a concern about the impacts upon the environment in the Delta and the San Francisco Bay. Reclamation should adopt the concept of transparency to see through some of the fancy legal stuff that lets folks get around the spirit of the law.

Response. We cannot change the statute, but can take the proposed additional actions to obtain information needed to ensure compliance with the RRA by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities.

Comment 13. A commenter from San Carlos, California stated that Federal water subsidies should be limited to only farming operations which meet the 960-acre limit. Rulemaking must correct the trust arrangements. Reclamation should enforce the acreage limits by determining when land owned by different parties is actually being farmed as one operation.

Response. We are taking additional steps to obtain information needed to ensure compliance with the acreage limitation provisions of Federal reclamation law by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities.

Comment 14. The same commenter stated that Reclamation should penalize those who do not abide by the acreage limits. Improper water subsidies only aggravate our water shortages and encourage the inefficient use of resources.

Response. We vigorously enforce the acreage limitation provisions as defined by the Congress. However, we have been advised in the past by the Office of the Solicitor that legislative action would be required to assess penalties for violations of the acreage limitation provisions.

Comment 15. A commenter representing a water conservation group urged a strong stand in implementing the acreage limitation provisions of the RRA. Reclamation should write regulations that minimize the exceptions to the 960-acre limit on subsidized project water.

Response. We agree and the current Acreage Limitation Rules and Regulations (43 CFR part 426) only allow those exceptions to the 960-acre limit provided by statute.

Comment 16. The same commenter stated that Reclamation must take action to limit corporate welfare and reduce environmental impacts.

Response. Our proposed rule will not change the law, but it should help to ensure compliance with the RRA by those farm operators who provide services to more than 960 acres westwide held in trusts or by legal entities.

Comment 17. A commenter representing two irrigation districts in central Arizona stated that farmers of both districts thought that all RRA matters were laid to rest with the issuance of the revised regulations.

Response. Because of the concern over trusts holding more than 960 acres westwide, we chose to create a new 43 CFR part 428 to gather information from farm operators providing services to such trusts or legal entities or combination thereof. We are also concerned about whether the intent of the excess land provisions is being met in association with the practices of certain farm operators to provide services to the land the farm operator formerly owned as ineligible excess land or under recordable contract. Therefore, we have proposed in 43 CFR part 428 that action is taken to ensure such farm operators are in compliance with the intent of the excess land provisions.

Comment 18. The same commenter stated that the key question is whether Interior has the authority to regulate

trusts. It would take an act of the Congress to change section 214 of the RRA. Changing the application to trusts would undermine what farmers in Arizona have relied upon for more than 10 years. To now change the law through regulation is not consistent with sound public policy.

Response. We are seeking to enforce the RRA, including section 214, by adding a new 43 CFR part 428 to extend the information requirements to farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. We also want to ensure the intent of the excess land provisions is being met. No new provisions directly regulating trusts are being proposed.

Comment 19. The president of a water district in California stated that the law should be left alone, as the regulations work well and no change is necessary. This is important so that those working under the law can operate with some degree of certainty.

Response. We agree that certainty is important and so we have chosen to create a new 43 CFR part 428 to extend the information requirements to certain farm operators and to address an excess land issue, which will provide greater certainty for all water users.

Comment 20. A member of the Congress from California expressed concern that Reclamation use all its power to revise regulations so as to apply the 960-acre limit to all farms, including farms managed or operated through trusts, leases, creative management agreements, limited partnerships, or other devices used to evade the subsidy limit.

Response. We agree that the regulations must be equitably applied and, accordingly, have proposed provisions to obtain information concerning farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. In addition, we want to ensure that the intent of the excess land provisions is met by those farm operators.

Comment 21. The manager of an irrigation district indicated that he was concerned about reopening the rules and regulations. Trusts are not a problem in his district, but he sees Reclamation being able to step up enforcement and audit procedures regarding trusts to solve any problems and does not need to issue new regulations.

Response. We agree that enforcement is a key element in ensuring compliance with the RRA by certain farm operators. We intend the proposed rule to provide us with additional information needed for our enforcement activities and to address certain excess land concerns without disturbing the provisions of 43 CFR part 426.

Comment 22. A commenter representing a community alliance of small farmers expressed concerns that no farm operation should receive subsidized water for more than 960 acres.

Response. A key to any application of the acreage limitation provisions is in how certain terms are defined. The RRA defines landholding to include directly or indirectly owned or leased land. Any farm operator that is determined to be a landholder is subject to application of the acreage limitation provisions.

Comment 23. The same commenter stated that providing Federal water at less than full cost to large farm operations results in degradation of the communities and the well-being of farm workers.

Response. The Congress recognized the need to preserve small family farms when they limited the availability of nonfull-cost water.

Comment 24. Legal counsel for a trust in California commented that any attempt by Interior to: classify a trust as a ''legal entity'' under RRA; treat trustees as the owner of real property held in trust; or exempt *only* trustees from ownership/pricing limitations, would be inconsistent with common law of trusts and RRA.

Response. The proposed rule does not attempt to: classify a trust as a ''legal entity'' under RRA; treat trustees as the owner of real property held in trust; or exempt only trustees from ownership and pricing limitations.

Comment 25. The same commenter stated that Reclamation should stick to the following interpretation of RRA: that no one person can receive nonfull-cost water on more than 960 acres, no matter whether the land is owned, leased, involved in a trust or other entity.

Response. We have not altered that interpretation of the RRA; with the understanding that the acreage limitation provisions apply to legal entities as well as to individuals. Sections 214 of the RRA and 426.7 of the Acreage Limitation Rules and Regulations include provisions that exempt trustees acting in a fiduciary capacity from application of the acreage limitation provisions if certain criteria are met. These proposed rules have no impact on those provisions.

Comment 26. The same commenter stated that Reclamation has adequate tools to ensure compliance, and should ''follow the money'' to determine recipient of benefit of the nonfull-cost water.

Response. We generally do have adequate tools to ensure compliance. However, we believe we need additional information regarding farm operators involved in farming more than 960 acres westwide held in trusts or by legal entities. We also need additional information to determine if farm operators for trusts or legal entities formerly owned the land they are providing service to as ineligible excess land or under recordable contract. The new RRA forms requirements for farm operators are intended to address these issues.

Comment 27. The same commenter stated that nonfull-cost water to trusts should not be limited in any manner, and that Reclamation has no statutory authority to restrict the exemption on trusts in RRA section 214.

Response. We are required by statute to limit nonfull-cost water deliveries to land held in trust if the individuals or entities to whom the land held in trust is attributed exceed their acreage limitation entitlements. This requirement is addressed in 43 CFR part 426. The proposed rule would also limit such deliveries starting on January 1, 2000, if the land held in trust is being farmed by a farm operator and that farm operator formerly owned the land as ineligible excess or under recordable contract.

Comment 28. A national conservation group stated that no matter how many individuals benefit from a farming operation, the operation is only entitled to receive subsidized water on 960 acres. The limit applies both to the farm, and to each individual.

Response. The acreage limitation provisions are fully applied to any farm operation that is determined to be a landholder. The proposed rule does seek to ensure congressional intent associated with excess land is met by farm operators providing services to trusts or legal entities.

Comment 29. The same commenter stated that the proposed rule must address all large farming operations, not just trusts, because if Reclamation only regulates trusts, the trusts will find some other way to escape acreage limits.

Response. We recognize this possibility and included farm operators providing services to legal entities in both the proposed information requirements and the excess land provisions.

Comment 30. The same commenter stated that trusts are a ''glaring loophole'' in RRA's acreage limitations, and Reclamation must ''close the loophole'' in order to preserve the purpose of RRA. Reclamation should treat trusts like any other legal entity,

limiting them to subsidized water on no more than 960 acres for qualified recipients. The trusts provision of the RRA was intended to protect banks or other institutions acting in a purely fiduciary capacity.

Response. We are limiting this proposed rule to extending the information requirements to farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. In addition, an excess land provision involving farm operators is included.

Comment 31. The same commenter stated that established precedent requires Reclamation to interpret the RRA trust exception narrowly to preserve the central purpose of the RRA. The regulations should read:

> An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitation imposed by title II nor any other provisions of Reclamation law. However, the interest of each beneficiary (qualified or limited recipients) in trust land in combination with other land he/she may own shall not exceed the ownership limitation of title II. Moreover, the quantity of land in a trust receiving irrigation water cannot exceed the ownership entitlement of title II.

Response. 43 CFR part 426 already addresses attribution of land held in trust to, generally, beneficiaries, and under certain circumstances to grantors or trustees. Acreage limitations clearly are applicable under those attribution requirements. There is no evidence that there have been any problems associated with those provisions and further clarification is not needed as part of this rulemaking.

Comment 32. The same commenter urged that the regulations must specifically address situations where the trustee serves as the farm operator of the trust property, clearly applying acreage limitations to the trustee as well as the trust.

Response. By requiring farm operators providing services to more than 960 acres westwide held in trusts or by legal entities to submit RRA forms annually, we will be better able to determine if a trustee who is also acting as a farm operator for the land held in trust is in fact a lessee of the land.

Comment 33. The same commenter stated that Reclamation should revise the rules governing ''leases'' to use criteria or indicators to determine whether a landholding is actually part of a larger farming operation. The commenter suggests that Reclamation use indicators similar to those suggested by the General Accounting Office (GAO).

Response. We already use the indicators suggested by the GAO in their 1989 report as indicators of economic risk, use, or possession, which are then used to determine if an operating arrangement is in fact a lease.

Comment 34. The same commenter stated that there are many reasons why limiting subsidies to large corporate farms is sound public policy, consistent with Federal reclamation law, including: (1) The purpose of the subsidy is to assist small family farms, not individual shareholders in large corporate farms or investors in a large business trust; (2) Limiting subsidies can benefit the environment, something Reclamation is required to do under a variety of statutes and treaties; and (3) Irrigation subsidies create economic inefficiencies and poor allocation of natural resources.

Response. The Congress was very clear as to how acreage limitations are to be applied to ''large corporate farms.'' Specifically, under the discretionary provisions corporations that benefit more than 25 natural persons are to be limited recipients with a 640-acre ownership entitlement and a 320-acre nonfull-cost entitlement, if the corporation received Reclamation irrigation water on or before October 1, 1981. If the corporation first received such water after that date, they are to pay the full-cost rate for any Reclamation irrigation water received. For those ''large corporate farms'' that remain under prior law, they continue to have 160-acre ownership and nonfull-cost entitlements. We have no authority to further limit subsidies to such entities.

VII. Detailed Analysis of Proposed 43 CFR Part 428

Section 428.1

This section provides a statement of the purpose of these regulations.

Section 428.2

This section includes a statement of applicability. Rather than repeating provisions found in 43 CFR part 426, paragraph (b) of this section specifies that 43 CFR part 428 supplements part 426.

Section 428.3

This section defines the terms ''Custom operator,'' ''Farm operator,'' ''we or us,'' and ''you'' for purposes of part 428.

Section 428.4

This section expands the RRA forms requirements to farm operators who provide services to more than 960 nonexempt acres westwide held by a single trust or legal entity, or any combination of trusts and legal entities. These requirements also apply to any indirect owner of a legal entity that is a farm operator that must submit RRA forms. Exemptions to this requirement are provided in § 426.18(g)(2) and (3) of this chapter.

Section 428.5

This section establishes how the information collection will occur. Paragraph (a) of this section specifies that we will determine what forms will be used.

Paragraph (b) of this section establishes that information must be provided by the farm operator for all nonexempt land to which the farm operator provides services westwide.

This section provides in paragraph (c) the types of information we would require to be submitted by each farm operator.

Section 428.6

This section specifies that farm operators required to submit forms must submit them to each district westwide that is subject to the acreage limitation provisions, and in which the farm operator provides services.

Section 428.7

This section describes what will happen if a farm operator fails to meet the RRA forms requirements. Paragraph (a) of this section provides that the district is not to deliver water to the land in question until the farm operator submits the required forms for that water year. In addition, the farm operator, landholder, or trustee of the land in question must not accept delivery of such water.

Paragraph (b) provides that after the farm operator submits the forms, we would restore eligibility for the land.

Paragraph (c) specifies that we will assess administrative costs as described in § 426.20(e) of this chapter if Reclamation irrigation water is delivered to land that is ineligible because the farm operator failed to submit required forms.

Section 428.8

This section provides that we could prosecute a farm operator for submitting false information on the required forms, and suspend the farm operator's eligibility to receive Reclamation irrigation water.

Section 428.9

This section addresses the eligibility of formerly excess land being farmed by certain farm operators. Paragraph (a) of this section provides (1) if a landholder

disposed of excess land at a price Reclamation approved, (2) the land is held in trust or by a legal entity, and (3) that former landholder is the direct or indirect farm operator of that land, then the farm operator and landholder may not receive water on such land.

Paragraph (b) of this section includes the following exceptions to the provisions included in paragraph (a) of this section: (1) The land becomes exempt from the acreage limitation provisions of Federal reclamation law or (2) the landholder or farm operator pays the full-cost rate for any Reclamation irrigation water delivered to the land in question, assuming the formerly excess land is otherwise eligible to receive Reclamation irrigation water. If a part owner of a legal entity that is the farm operator is the party that held the land as ineligible excess or under recordable contract and the full-cost rate is to be paid, then application of that rate will be based on the proportional share the part owner has in the legal entity.

Section 428.10

This section specifies that districts must not make water available to formerly excess land to which the former owner who sold it at an approved price is now providing services as a farm operator. Reference is made to the exceptions provided in § 428.9(b).

Section 428.11

This section establishes an effective date of January 1, 2000, for 43 CFR part 428. This section also specifies that on January 1, 2000, the excess land provisions found in § 428.9 will apply to any farm operating arrangements between farm operators and trusts or legal entities then in place and any future farm operating arrangements.

VIII. Procedural Matters

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) and Departmental Manual 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The rule is categorically excluded from NEPA review under 40 CFR 1508.4, Departmental Manual 516 DM 2, Appendix 1, paragraph 1.6, and 516 DM 6, Appendix 9, paragraph 9.4A.1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2.

As provided in 516 DM 2, Appendix 1, paragraph 1.6, an action is excluded from review if it is a ''Non-destructive data collection, inventory (including field, aerial and satellite surveying and mapping), study, research and monitoring activities.'' This rule requires an information collection, and would not have a significant effect on the human environment. As provided in 516 DM 6, Appendix 9, paragraph 9.4A.1, the following is excluded from review: ''Changes in regulations or policy directives and legislative proposals where the impacts are limited to economic and/or social effects.'' The only impacts associated with the excess land provisions would be that certain farm operators that meet the criteria in the proposed regulations or the associated landholders would have to pay full cost for Reclamation irrigation water delivered to land to which the farm operator is providing services, the landholder would have to hire a different farm operator to provide the services, or the landholder and farm operator could not receive Reclamation irrigation water on that land. This provision will not be effective until January 1, 2000.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. E.O. 12866 defines a ''significant regulatory action'' as a regulatory action meeting any one of four criteria specified in the Executive Order. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. We have therefore submitted the proposed rule to the OMB for review.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We provide some 140,000 Western farmers with irrigation water. We estimate that out of this number, fewer than 200 entities, not necessarily small entities, could be affected by the rule. The effect on most of these entities starting on January 1, 2000, would be limited to the annual completion of RRA forms. For some of these entities, the farm operator was also the owner of the land in question when the land was ineligible excess or under recordable contract. In cases where such a farm operating arrangement is still in place on January 1, 2000, or is implemented on or after that date, the full-cost rate would be applicable to all deliveries of Reclamation irrigation water to such land. However, the landholder in question could avoid paying the full-cost rate by hiring a different farm operator who did not formerly own the land in question as excess. Therefore, we have determined that the proposed rule will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Will not have an annual effect on the economy of $100 million or more. The rule could affect up to an estimated 200 farms, but the effects would not approach $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There could be an economic effect on fewer than an estimated 200 farms, but we do not anticipate that this will cause any noticeable increase in costs or prices.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule would only affect at most a small sector of the farming industry, and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. This information collection is described below.

Existing Information Collection Under the Acreage Limitation Rules and Regulations

Sections 206, 224(c), and 228 of the RRA (43 U.S.C. 390ff, 390ww(c), and 390zz) require, among other things, that (1) as a condition to the receipt of Reclamation irrigation water, each

landholder must annually certify, in a form suitable to the Secretary, that they are in compliance with the provisions of the RRA, and (2) districts must annually submit to us, in a form suitable to the Secretary, records and information necessary to implement the RRA. These mandatory requirements are addressed in 43 CFR 426.18. To comply with these requirements, we provide forms for the landholders' and districts' use. The landholder forms have been approved by OMB under control number 1006–0005. The district summary forms have been approved under control number 1006–0006. Both clearances expire on December 31, 1999.

Information Collection Under the Proposed Rule

The proposed rule contains a change that would increase the reporting burden by requiring certain farm operators to submit RRA forms starting on January 1, 2000. We estimate that the reporting burden would be increased by less than 200 hours as a result of this change. The primary purpose of requiring those farm operators who provide services to more than 960 acres westwide held in trusts or by legal entities to complete and submit RRA forms would be to provide us with sufficient information to determine if the farm operating arrangement is a lease as defined in section 426.2 of this chapter.

As with all acreage limitation information collections, we would require farm operators to provide identifier information; such as name, address, telephone number, etc., and if the farm operator is an entity, information concerning the entity's organizational structure and part owners. In addition, farm operators would be required to provide information concerning the land to which they are providing services; such as legal descriptions, number of acres, etc. We would also require farm operators to provide information concerning the specific services they are providing, who decides when such services are needed, how the farm operator is compensated for the services, the control the farm operator has over the daily operation of the land in question, etc. If different services are provided to different land parcels, such distinctions would need to be specified.

In order to effectively administer and enforce the proposed excess land provisions, we would require farm operators to provide information as to whether the land to which services are being provided was formerly owned by the farm operator as ineligible excess land or under recordable contract.

At this time, we would like comments on the planned RRA forms requirements for farm operators. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) the accuracy of our burden estimate for the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. In addition, we would like comments on specific issues related to the proposed information collection including:

- Should the RRA forms submittal threshold for farm operators be 960 acres westwide held in trusts or by legal entities as provided in the proposed rules or some other figure (e.g., 40 acres, 240 acres, etc.)?
- Is the proposed definition of ''farm operator'' sufficient or should it be altered? For example, is there a way to define ''farm operator'' that reduces how many additional RRA forms would need to be submitted, other than through application of the forms submittal threshold.
- Is the definition of and exemption for ''custom operator'' included in the proposed rule sufficient?
- Should certain specific questions be asked of farm operators on the RRA forms? Examples of such include: Whether the farm operator is authorized to use his agreements with a landholder as collateral in any loan; whether the farm operator can sue or be sued in the name of the landholding; and whether the farm operator is authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

In considering the issues associated with certain farm operators being required to submit RRA forms, we would also like comments as to whether current RRA forms should be modified to accommodate the additional information requirements applicable to farm operators, or if an entirely new form only to be completed by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities should be developed.

Submit comments on the RRA information collection changes to us along with written comments on the proposed rule, or separately (see **DATES, ADDRESSES,** and Public Comment Procedures under **SUPPLEMENTARY INFORMATION**, above).

Executive Order 12612, Federalism

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required. This proposed rule would supplement existing provisions for administering the RRA. The regulation would not significantly change the relationship or relative roles of the Federal and State Government. It would not lead to Federal control over traditional State responsibilities, or decrease the ability of the States to make policy decisions with respect to their own functions. This regulation would not affect the distribution of power and responsibilities among the various levels of government and does not preempt State law. In summary, this regulation would not have a significant impact on Federalism as described by E.O. 12612.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule would not result in imposition of undue additional fiscal burdens on the public. The rule would not result in physical invasion or occupancy of private property or substantially affect its value or use. Specifically, the rule would not result in the taking of contractual rights to storage water in Reclamation reservoirs or water rights established under State law.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The rule would require certain farm operators, which are not small governments, to submit RRA forms. The excess land provision of the rule will not affect small governments. These potential effects would not amount to costs of more than $100 million per year.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, *§ 428.4 Who must submit forms under this part.*)

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

IX. List of Subjects in 43 CFR Part 428

Agriculture, Irrigation, Reclamation, Reporting and recordkeeping requirements, Water resources.

Dated: November 10, 1998.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to add a new part 428 to title 43 of the Code of Federal Regulations as follows:

PART 428—INFORMATION REQUIREMENTS FOR CERTAIN FARM OPERATIONS IN EXCESS OF 960 ACRES AND THE ELIGIBILITY OF CERTAIN FORMERLY EXCESS LAND

Sec.

428.1 Purpose of this part.
428.2 Applicability of this part.
428.3 Definitions used in this part.
428.4 Who must submit forms under this part.
428.5 Required information.
428.6 Where to submit required forms and information.
428.7 What happens if a farm operator does not submit required forms.
428.8 What can happen if a farm operator makes false statements on the required forms.
428.9 Farm operators who are former owners of excess land.
428.10 Districts' responsibilities concerning certain formerly excess land.
428.11 Effective date.

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.

§ 428.1 Purpose of this part.

This part addresses Reclamation Reform Act of 1982 (RRA) forms requirements for certain farm operators and the eligibility of formerly excess land that is operated by a farm operator who was the landowner of that land when it was excess.

§ 428.2 Applicability of this part.

(a) This part applies to farm operators who provide services to:

(1) More than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity; or

(2) The holdings of any combination of trusts and legal entities that exceed 960 acres.

(b) This part also applies to farm operators who provide services to formerly excess land held in trusts or by legal entities if the farm operator previously owned that land when the land was ineligible excess or under recordable contract.

(c) This part supplements the regulations in part 426 of this chapter.

§ 428.3 Definitions used in this part.

Custom operator means an individual or legal entity that provides a specialized, farm-related service that a farm owner, lessee, sublessee, or farm operator employs for agreed-upon payments. This includes, for example, crop dusters, custom harvesters, grain haulers, and any other such services.

Farm operator means an individual or legal entity other than the owner, lessee, or sublessee that performs any portion of the farming operation. This includes farm managers, but does not include spouses, minor children, employees for whom the employer pays social security taxes, or custom operators.

We or us means the Bureau of Reclamation.

You means a farm operator.

§ 428.4 Who must submit forms under this part.

(a) You must submit RRA forms to us annually if:

(1) You provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities; and

(2) You are not covered by the exceptions found in § 426.18(g)(2) and (3).

(b) Anyone who is the indirect owner of a legal entity that is a farm operator meeting the criteria of paragraph (a) of this section must submit forms to us annually.

§ 428.5 Required information.

(a) We will determine which forms you must use to submit the information required by this section.

(b) You must declare all nonexempt land to which you provide services westwide.

(c) You must give us other information about your compliance with Federal reclamation law, including but not limited to:

(1) Identifier information, such as your name, address, telephone number;

(2) If you are a legal entity, information concerning your organizational structure and part owners;

(3) Information about the land to which you provide services, such as a legal description, and the number of acres;

(4) Information about whether you formerly owned, as ineligible excess land or under recordable contract, the land to which you are providing services;

(5) Information about the services you provide, such as what they are, who decides when they are needed, and how much control you have over the daily operation of the land;

(6) If you provide different services to different land parcels, a list of services that you provide to each parcel;

(7) Whether you can use your agreement with a landholder as collateral in any loan;

(8) Whether you can sue or be sued in the name of the landholding; and

(9) Whether you are authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

§ 428.6 Where to submit required forms and information.

You must submit the appropriate completed RRA form(s) to each district westwide that is subject to the acreage limitation provisions and in which you provide services.

§ 428.7 What happens if a farm operator does not submit required forms.

(a) If you do not submit required RRA form(s) in any water year, then:

(1) The district must not deliver irrigation water before you submit the required RRA form(s); and

(2) You, the trustee, or the landholder(s) who holds the land (including to whom the land held in trust is attributed) must not accept delivery of irrigation water before you submit the required RRA form(s).

(b) After you submit all required RRA forms to the district, we will restore eligibility.

(c) If a district delivers irrigation water to land that is ineligible because you did not submit RRA forms as required by this part, we will assess administrative costs against the district as specified in § 426.20(e). We will determine these costs under § 426.20(a)(1) through (3).

§ 428.8 What can happen if a farm operator makes false statements on the required forms.

If you make a false statement on the required RRA form(s), Reclamation can prosecute you under the following statement:

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 farm operator will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

§ 428.9 Farm operators who are former owners of excess land.

(a) You or a landholder may not receive irrigation water on land held in trust or by a legal entity if:

(1) You owned the land when the land was excess, whether or not under recordable contract;

(2) You sold the land at a price approved by Reclamation; and

(3) You are the direct or indirect farm operator of that land.

(b) This section does not apply if:

(1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or

(2) You or the landholder pays the full-cost rate for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

This part will be effective beginning on January 1, 2000. On that date the provisions of § 428.9 will apply to all farm operating arrangements between farm operators and trusts or legal entities that:

(a) Are then in effect; or

(b) Are initiated on, or after, January 1, 2000.

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