Paragraph (c)(66), any SO_2 emission limits in 325 IAC 7-1-2 applicable in these counties (as incorporated by reference at (c)(66)(i))(A), and the site-specific SO_2 emission limits and other requirements in 326 IAC 7-1-16, (Floyd County), 326 IAC 7-1-18, (Morgan County), and 326 IAC 7-1-17 (Warrick County).

(i) *Incorporation by reference.* (A) 326 IAC 7-1-16, Floyd County Sulfur Dioxide Emission Limitations, as published in the March 1, 1988, *Indiana Register* (IR) at 11 IR 1737.

(B) 326 IAC 7-1-18, Morgan County Sulfur Dioxide Emission Limitations, as published on June 1, 1988, at 11 IR 3018.

(C) 326 IAC 7-1-17, Warrick County Sulfur Dioxide Emission Limitations, as promulgated by filing with the Secretary of State on November 7, 1988.

(D) 326 IAC 7-1-1, Applicability, as promulgated by filing with the Secretary of State on November 7, 1988.

[FR Doc. 88-27892 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[FRL-3492-6]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Montana, North Dakota and Wyoming; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: EPA is today providing notice that it granted delegation of authority to Montana on June 17, 1988, to enforce and implement the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) promulgated in 40 CFR Parts 60 and 61, respectively, as of July 1, 1987 (excluding 40 CFR Part 61, Subparts B, H, I, K, which pertain to radionuclides). This is a result of a request for delegation from the State of Montana on March 9, 1988.

EPA is today also providing notice that it granted delegation of authority to North Dakota on June 30, 1988, to implement and enforce (1) the NSPS for 40 CFR Part 60, Subparts Ka, LLL, KKK, VV, GGG, XX, OOO, and JJJ, and (2) the NESHAPs for 40 CFR Part 61, Subparts J and V. This is a result of a request for delegation from the State of North Dakota on January 26, 1988.

EPA is also today providing notice that it granted delegation of authority to Wyoming on September 30, 1988, to implement and enforce (1) the NSPS for 40 CFR Part 60, Subparts Na, AAa, LL, RR, VV, WW, XX, FFF, GGG, HHH, JJJ, KKK, LLL, OOO, and PPP, and (2) part of the NESHAP for asbestos (40 CFR Part 61, Subpart M), i.e., asbestos demolition, renovation and spraying operations, and waste disposal for demolition, renovation and spraying operations. This is a result of a request for delegation from the State of Wyoming on September 6, 1988.

EFFECTIVE DATES: June 17, 1988, for Montana.

June 30, 1988, for North Dakota.

September 30, 1988, for Wyoming.

ADDRESS: Copies of the revisions are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Environmental Protection Agency, Region VIII, Air Programs Branch, Suite 500, Denver, Colorado 80202-2405, (303) 293-1814, (FTS) 564-1814.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the states the authority to implement and enforce standards set forth in 40 CFR Part 60, NSPS, and 40 CFR Part 61, NESHAP.

Montana

On March 9, 1988, the State of Montana requested the authority to implement and enforce those NSPS and NESHAPs promulgated in 40 CFR Parts 60 and 61, respectively, effective through July 1, 1987. Pursuant to that request, on June 17, 1988, delegation was given with the following letter:

Honorable Ted Schwinden,
Governor of Montana, State Capitol, Helena, Montana 59620

Dear Governor Schwinden: This is in response to your submittal dated March 9, 1988. The submittal was a request for modifications to the Montana State Implementation Plan (SIP). The modifications consisted of revisions to the following Montana rules: Standards of Performance for New Stationary Sources (NSPS); National Emissions Standards for Hazardous Air Pollutants (NESHAPs); Air Quality Models, and Particulate Matter. This letter addresses only those revisions that pertain to the NSPS and NESHAPs. The air quality models and particulate matter regulations will be addressed through separate **Federal Register** actions.

On May 18, 1977, EPA delegated to the State of Montana the authority to implement and enforce those NSPS that had been promulgated by EPA as of January 26, 1976, and those NESHAPs that had been promulgated by EPA as of October 14, 1975. (See 42 FR 44573, September 6, 1977.)

Additionally, on September 17, 1984 (49 FR 36368), EPA published in the **Federal Register** two tables updating the delegation status of NSPS and NESHAPs for states in Region VIII. The NSPS table indicated that the State of Montana had delegation for the following: 40 CFR Part 60, Subparts A, D, Da, E, F, G, H, I, J, K, Ka, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, GG, HH, MM, and PP. The NESHAPs table incorrectly showed that the State of Montana did not have delegation for any NESHAPs. (We will be correcting the NESHAPs table that currently appears in the Code of Federal Regulations in the near future.)

With regard to the March 9, 1988, submittal, EPA has reviewed the pertinent laws of the State of Montana and the rules and regulations thereof, and has determined that they provide an adequate and effective procedure for implementing and enforcing the NSPS and NESHAPs in the State of Montana. Therefore, pursuant to Sections 111(c) and 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR Parts 60 and 61, I hereby delegate our authority for the implementation and enforcement of the NSPS and NESHAPs to the State of Montana as follows:

1. Authority for all sources located in or to be located in the State of Montana which are subject to the NSPS and NESHAPs (except 40 CFR Part 61, Subparts B, H, I, K, which pertain to radionuclides) promulgated in 40 CFR Parts 60 and 61, respectively, as of July 1, 1987.

2. Not all authorities of NSPS and NESHAPs can be delegated to states under Sections 111(c) and 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS and NESHAPs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; (3) rulemaking to implement. To the best of our knowledge, the following are the authorities in 40 CFR Parts 60 and 61 that EPA cannot delegate to the State:

NSPS

40 CFR Part 60 Subpart	Section(s)
A	60.8 (b)(2) and (b)(3) and those sections throughout the standards that reference 60.8 (b)(2) and (b)(3), 60.11 (b) and (e).
Da	60.45a.
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b (e)(3)(iii) and (e)(3)(iv), 60.116b(f)(2)(iii).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3), 60.335(a)(ii).
VV	60.482-1(c)(2), 60.484.
WW	60.493(b)(2)(i)(A), 60.496(a)(1).
XX	60.502(e)(6).
GGG	60.592(c).
JJJ	60.623.
KKK	60.634.

NESHAPs

40 CFR Part 61 Subpart	Section(s)
A	61.02 (definition of "alternative method"); 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii).
E	61.53.(c)(4).
F	61.66.
J	61.112(c).
M	61.151(c)(2), 61.152(b)(3), 61.153(c), 61.154(b)(2), 61.156(d).
N	61.164 (a)(2) and (a)(3).
O	61.172 (b)(2)(ii)(B) and (b)(2)(ii)(C), 61.174 (a)(2) and (a)(3).
V	61.242-1(c)(2), 61.244.

3. Since the State of Montana has emission standards in ARM 16.8.1401 to .1419, for several source types in addition to the NSPS, which are a part of the SIP and federally enforceable, EPA requires that any source subject to the NSPS must also conform to the requirements of all other federally-enforceable air quality rules and meet the most stringent requirement when inconsistencies with other requirements exist. (This comment was made to the Department of Health on January 4, 1988.)

This delegation is based upon and is a continuation of the same conditions as those stated in our letter of May 18, 1977, except condition 6, relating to federal facilities. Condition 6 has been voided by the CAA Amendments of 1977. It is important to note that EPA retains concurrent enforcement authority as stated in condition 3 of our May 18, 1977, letter. (A copy of the May 18, 1977, letter was published in the **Federal Register** of September 6, 1977 (42 FR 44573), and is enclosed for your convenience.) In addition, information received by the State of Montana pursuant to 40 CFR 60.676(b), pertaining to Nonmetallic Mineral Processing Plants, should be copied to the Director of Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. A notice announcing this delegation will be published in the **Federal Register** in the near future.

Since this delegation is effective immediately, there is no need for the State to notify EPA of its acceptance. Unless we receive written notice from you of objections within ten days of the date of this letter, the State of Montana will be deemed to have accepted all of the terms of the delegation.

Sincerely,

James J. Scherer,

Regional Administrator.

North Dakota

On January 26, 1988, the State of North Dakota submitted revisions to its NSPS and NESHAP regulations. Such revisions included the addition of NSPS for the following source categories: Storage vessels for petroleum liquids constructed after May 18, 1978; on-shore natural gas processing plants (SO_2 emissions); on-shore natural gas processing plants (equipment leaks of Volatile Organic Compounds (VOC)); synthetic organic chemicals manufacturing industry (equipment leaks of VOC); petroleum refineries (equipment leaks of VOC); bulk gasoline terminals; nonmetallic mineral processing plants; and petroleum dry cleaners (40 CFR Part 60, Subparts Ka, LLL, KKK, VV, GGG, XX, OOO, and JJJ, respectively). Such revisions also included the addition of the following NESHAPs: Equipment leaks (fugitive emission sources) of benzene and equipment leaks (fugitive emission sources) (40 CFR Part 61, Subparts J and V, respectively). Pursuant to such submittal, on June 30, 1988, delegation was given with the following letter:

Honorable George A. Sinner,
Governor of North Dakota, State of North Dakota, Office of the Governor, Bismarck, North Dakota 58505

Dear Governor Sinner: This letter is in response to your submittal dated January 26, 1988. The submittal was a revision to the Implementation Plan for the Control of Air Pollution for the State of North Dakota and included the addition of and revision to several Air Pollution Control Rules and Regulations. This letter addresses only those additions that pertain to the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The remaining regulations are being addressed through separate **Federal Register** actions.

Subsequent to states adopting NSPS and NESHAPs regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NSPS and NESHAPs so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to North Dakota for implementation and enforcement of eight NSPS and two NESHAPs.

EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS and NESHAPs by the State of North Dakota. Therefore, pursuant to Section 111(c) and 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR Parts 66 and 61, EPA hereby delegates its authority for the implementation and enforcement of the NSPS and NESHAPs to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 FR Part 60. The categories of new stationary sources covered by this delegation are as follows: storage vessels for petroleum liquids constructed after May 18, 1978; on-shore natural gas processing plants (SO_2 emissions); on-shore natural gas processing plants (equipment leaks of Volatile Organic Compounds (VOC)); synthetic organic chemicals manufacturing industry (equipment leaks of VOC); petroleum refineries (equipment leaks of VOC); bulk gasoline terminals; nonmetallic mineral processing plants; and petroleum dry cleaners.

(B) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the emission standards for hazardous air pollutants promulgated in 40 CFR Part 61. The categories of hazardous air pollutants covered by this delegation are as follows: equipment leaks (fugitive emission sources) of benzene and equipment leaks (fugitive emission sources).

(C) Not all authorities of NSPS and NESHAPs can be delegated to states under Section 111(c) and 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections NSPS and NESHAPs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision-making to ensure national consistency; and (3) EPA rulemaking to implement. The following are the authorities in 40 CFR Parts 60 and 61 that EPA cannot delegate to the State:

(i) 40 CFR 60.114a [33-15-12-04(9)(e) in North Dakota's Regulations] pertains to an equivalency determination and rulemaking to implement in Storage Vessels of Petroleum Liquids constructed after May 18, 1978;

(ii) 40 CFR 60.634 [33-15-12-04(22)(e) in North Dakota's Regulations] pertains to an equivalency determination and rulemaking to implement in Equipment Leaks of VOC from Onshore Natural Gas Processing Plants;

(iii) 40 CFR 60.482-1(c)(2) and 60.484 [33-15-12-04(23)(c) (3) and (23) (o) in North Dakota's Regulations] pertains to equivalency determinations and a rulemaking to implement in Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry;

(iv) 40 CFR 60.592(c) [33-15-12-04(24)(c)(3) in North Dakota's Regulations] pertains to an equivalency determination in Equipment Leaks of VOC in Petroleum Refineries; and

(v) 40 CFR 60.623 [33-15-12-04(27)(d) in North Dakota's Regulations] pertains to an equivalency determination and rulemaking to implement in Petroleum Dry Cleaners.

(vi) 40 CFR 60.502(e)(6) [33-15-12-04(25)(c)(5)(f) in North Dakota's Regulations] pertains to an equivalency determination in Bulk Gasoline Terminals.

(vii) 40 CFR 61.112(c) [33-15-13-07(3)(c) in North Dakota's Regulations] pertains to an equivalency determination in Emission Standards for Equipment Leaks (fugitive emissions sources) of Benzene.

(viii) 40 CFR 61.242-1(c)(2) and 244 [33-15-13-08 (3)(a), (3)(b) and (5) in North Dakota's Regulations] pertains to equivalency determinations in Emission Standards for Equipment Leaks (fugitive emissions sources).

(D) As 40 CFR Parts 60 and 61 are updated by EPA, North Dakota must revise its rules and regulations accordingly.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 30, 1976, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 2 and if at any time there is a conflict between a State and Federal Regulation (40 CFR Parts 60 and 61), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 7 of our letter dated August 30, 1976. (A copy of the August 30, 1976 letter was published in the notices section of the **Federal Register** of October 13, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of North Dakota (41 FR 44859). Copies of the **Federal Register** are enclosed for your convenience.) In addition, information received by the State of North Dakota pursuant to 40 CFR 60.676(b), pertaining to Nonmetallic Mineral Processing Plants, should be copied to the Director of Emission Standards and Engineering Division (MD-13), U.S. EPA, Reasearch Triangle Park, North Carolina 27711.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation.

Sincerely,

James J. Scherer,

Regional Administrator.

Wyoming

On September 6, 1988, the State of Wyoming submitted revisions to its NSPS and NESHAPs regulations. Such submittal included the addition of the following NSPS source categories: Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983; steel plants—electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983; metallic mineral processing plants; pressure sensitive tape and label surface coating operations; equipment leaks of volatile organic chemicals (VOC) in the synthetic organic chemicals manufacturing industry; beverage can surface coating industry; bulk gasoline terminals; flexible vinyl and urethane coating and printing; equipment leaks of VOC in petroleum refineries; synthetic fiber production facilities; petroleum dry cleaners; equipment leaks of VOC from onshore natural gas processing plants; onshore natural gas processing—SO_2 emissions; nonmetallic mineral processing plants; and wool fiberglass insulation manufacturing plants (40 CFR Part 60, Subparts Na, AAa, LL, RR, VV, WW, XX, FFF, GGG, HHH, JJJ, KKK, LLL, OOO, and PPP); and part of the following NESHAP: Asbestos (40 CFR Part 61, Subpart M). Pursuant to such submittal, on September 30, 1988, delegation was given with the following letter:

Charles A. Collins, Administrator,
Air Quality Division, Governor of North Dakota, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002

Dear Mr. Collins:

On September 6, 1988, you requested approval on several revisions and additions to the Wyoming Air Quality Standards and Regulations (WAQSR) and State Implementation Plan (SIP). This letter addresses only those WAQSR that pertain to the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs), i.e. Section 22, NSPS, and Section 29, Emission Standards of Asbestos for Demolition, Renovation and Spraying Air Pollution Control Rules and Regulations. The remaining WAQSR (stack height, visibility and ambient air) are being addressed through separate **Federal Register** actions.

Subsequent to states adopting NSPS and NESHAPs regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NSPS and NESHAPs so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of fifteen NSPS and one NESHAP.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS and NESHAPs by the State of Wyoming. Therefore, pursuant to Section 111(c) and 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR Parts 60 and 61, EPA hereby delegates its authority for the implementation and enforcement of the NSPS and NESHAPs to the State of Wyoming as follows:

(A) Responsibility for all sources located, or to be located in the State of Wyoming subject to the standards of performance for new stationary sources promulgated in 40 FR Part 60. The categories of new stationary sources covered by this delegation are as follows: secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983 (Na); steel plants—electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983 (AAa); metallic mineral processing plants (LL); pressure sensitive tape and label surface coating operations (RR); equipment leaks of volatile organic chemicals (VOC) in the synthetic organic chemicals manufacturing industry (VV); beverage can surface coating industry (WW); bulk gasoline terminals (XX); flexible vinyl and urethane coating and printing (FFF); equipment leaks of VOC in petroleum refineries (GGG); synthetic fiber production facilities (HHH); petroleum dry cleaners (JJJ); equipment leaks of VOC from onshore natural gas processing plants (KKK); onshore natural gas processing—SO_2 emissions (LLL); nonmetallic mineral processing plants (OOO); and wool fiberglass insulation manufacturing plants (PPP).

(B) Responsibility for all sources located, or to be located, in the State of Wyoming subject to the emission standards for hazardous air pollutants promulgated in 40 CFR Part 61. The category of hazardous air pollutant sources covered by this delegation is as follows: Asbestos demolition, renovation and spraying, waste disposal for demolition, renovation and spraying operations. This delegation does *not* include the following category of sources: asbestos mills, roadways, manufacturing, fabricating, and insulating materials, waste disposal for manufacturing and fabricating operations, and inactive waste disposal for asbestos mills, manufacturing and fabricating operations. EPA will retain the authority to implement and enforce those categories of sources not delegated to the State.

It should be noted that WAQSR Section 29(a) only states applicability to (g) when in fact it should include (j) also. The State should correct this oversight with the next regulation update.

(C) Not all authorities of NSPS and NESHAPs can be delegated to states under Section 111(c) and 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS and NESHAPSs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; and (3) EPA rulemaking to implement. The following are the authorities in 40 CFR Parts 60 and 61 that EPA cannot delegate to the State:

(i) 40 CFR Parts 60.482-1(c)(2) and 60.484 pertain to equivalency determinations and a rulemaking to implement in Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry;

(ii) 40 CFR Parts 60.493(b)(2)(i)(A) and 496(a)(1) pertain to equivalency determinations in the Beverage Can Surface Coating Industry; and

(iii) 40 CFR Part 60.502(e)(6) pertains to an equivalency determination in Bulk Gasoline Terminals;

(iv) 40 CFR Part 60.592(c) pertains to an equivalency determination in Equipment Leaks of VOC in Petroleum Refineries;

(v) 40 CFR Part 60.623 pertains to an equivalency determination and rulemaking to implement in Petroleum Dry Cleaners;

(vi) 40 CFR Part 60.634 pertains to an equivalency determination and rulemaking to implement in Equipment Leaks of VOC from Onshore Natural Gas Processing Plants;

(vii) 40 CFR Parts 152(b)(3), 154(b)(2), and 156 (d) pertains to equivalency determinations in Asbestos.

(D) As 40 CFR Parts 60 and 61 are updated by EPA, Wyoming must revise its rules and regulations accordingly and in a timely manner or such delegation will be revoked.

In the review of the draft submittal, EPA brought to the State's attention (see April 19, 1988, letter to Charles Collins from Douglas Skie, EPA), amendments, revisions, additions, etc. pertaining to NSPS (i.e., General

Provisions, Testing Methods, Performance Specifications and previously delegated NSPS Subparts) that had been promulgated by EPA but had not yet been incorporated into WAQSR Section 22. The State has committed to consider and/or make the noted revisions and corrections in the "Response to the comments submitted by the EPA in the April 19, 1988, letter" which was included in Addendum 4 of the State's September 6, 1988 submittal. EPA is proceeding with this delegation on the grounds that the State has made such commitment. If the State does not revise and update its regulations in FY89 as it has committed, EPA will re-evaluate this delegation and past delegations.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal Regulation (40 CFR Parts 60 and 61), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our letter dated August 2, 1977. This is particularly important with regard to your General Provisions and Testing Methods, Appendix II. Comments EPA provided on these draft regulations indicated that they are not up-to-date. The State, however, has committed to update those regulations in its next regulation review in FY89.

In addition, whereas the original delegation letter pertaining only to NSPS, those conditions in the original delegation letter now apply to NESHAPs, as appropriate. (A copy of the August 2, 1977 letter was published in the notices section of the **Federal Register** of September 15, 1977 (42 FR 46386), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the **Federal Register** are enclosed for your convenience.)

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

Sincerely,

James J. Scherer,

Regional Administrator

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Aluminum reduction, Ammonium sulfate plants, Asphalt, Asphalt concrete plants, Asphalt processing and asphalt roofing manufacture, Basic oxygen process steelmaking, Brass, Bronze, Cement industry, Coal preparation plants, Copper, Copper smelters, Electric power plants, Electric utility steam generating units, Ferroalloy, Fossil fuel-fired steam generators, Gasoline, Glass, Glass products, Glass manufacturing, Grain, Grain elevators, Graphic arts, Inceneraters, Incorporation by reference, Industrial-commercial-institutional steam generating units, Intergovernmental relations, Iron, Iron and steel plants, Lead, Lead smelters, Lead acid battery, Lime, Lime manufacturing, Magnetic tape industry, Metals, Metallic minerals, Nitric acid plants, Nonmetallic minerals, Paper and paper products industry, Petroleum, Petroleum refineries, Petroleum liquid storage vessels, Phosphate fertilizer industry, Primary copper smelters, Plastic parts for business machines coating, Primary zinc smelters, Primary lead smelters, Primary aluminum reduction, Pulp mills, Phosphate rock, Portland cement, Residential wood heaters, Rubber industry, Secondary lead smelters, Secondary brass and bronze ingot production, Sewage disposal, Sewage treatment, Steel, Sulfuric acid plants, Turbines, Waste treatment and disposal, Zinc, Zinc smelters, Tires, Surface coating, Industrial organic chemicals, Organic solvent cleaners, Fiberglass insulation, Synthetic fibers, Stationary gas turbines, Natural gas processing, Wool fiberglass, Metal furniture surface coaters, Automobile and light duty surface coaters, Metal coal surface coaters, Beverage can surface coaters, and Flexible vinyl and urethane coaters and printers.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Equipment leaks (fugitive emission sources), Inorganic arsenic, Hazardous materials, Mercury, Vinyl chloride.

Authority: 42 U.S.C. 7411 and 7412.

Date: December 2, 1988.

James J. Scherer,

Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

Subpart A—General Provisions

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411.

2. Section 60.4(c) is amended by revising the table to read as follows:

§ 60.4 Address

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
A General provisions	(*)	(*)	(*)	(*)	(*)	(*)
D Fossil fuel fired steam generators	(*)	(*)	(*)	(*)	(*)	(*)
Da Electric utility steam generators	(*)	(*)	(*)	(*)	(*)	(*)
Db Industrial-commercial institutional steam generators	(*)	(*)			(*)	
E Incinerator	(*)	(*)	(*)	(*)	(*)	(*)
F Portland cement plant	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric acid plants	(*)	(*)	(*)		(*)	(*)
H Sulfuric acid plant	(*)	(*)	(*)		(*)	(*)
I Asphalt concrete plants	(*)	(*)	(*)	(*)	(*)	(*)
J Petroleum refineries	(*)	(*)	(*)		(*)	(*)
K Petroleum storage vessels (6/11/73-5/19/78)	(*)	(*)	(*)	(*)	(*)	(*)
Ka Petroleum storage vessels (5/18/78-7/23/84)	(*)	(*)	(*)		(*)	(*)
Kb Petroleum storage vessels (after 7/23/84)		(*)			(*)	
L Secondary lead smelters	(*)	(*)			(*)	(*)
M Secondary brass & bronze production plants	(*)	(*)			(*)	(*)
N Primary emissions from basic oxygen process furnaces (after 6/11/73)	(*)	(*)			(*)	(*)
Na Secondary emissions from basic oxygen process furnaces (after 1/20/83)	(*)	(*)			(*)	(*)

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued

[(NSPS) for region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
O Sewage treatment plants	(*)	(*)	(*)	(*)	(*)	(*)
P Primary copper smelters	(*)	(*)			(*)	(*)
Q Primary zinc smelters	(*)	(*)			(*)	(*)
R Primary lead smelters	(*)	(*)			(*)	(*)
S Primary aluminum reduction plants	(*)	(*)			(*)	(*)
T Phosphate fertilizer industry: wet process phospheric plants	(*)	(*)	(*)		(*)	(*)
U Phosphate fertilizer industry: superphosphoric acid plants	(*)	(*)	(*)		(*)	(*)
V Phosphate fertilizer industry: diammonium phosphate plants	(*)	(*)	(*)		(*)	(*)
W Phosphate fertilizer industry: triple superphosphate plants	(*)	(*)	(*)		(*)	(*)
X Phosphate fertilizer industry: granular triple superphosphate storage facilities	(*)	(*)	(*)		(*)	(*)
Y Coal preparation plants	(*)	(*)	(*)	(*)	(*)	(*)
Z Ferroalloy production facilities	(*)	(*)			(*)	(*)
AA Steel plants: electric arc furnaces (10/21/74–8–17–83)	(*)	(*)			(*)	(*)
AAa Steel plants: electric arc furnaces and argon-oxygen decarburization vessels (after 8/7/83)		(*)			(*)	(*)
BB Kraft pulp mills	(*)	(*)			(*)	(*)
CC Glass manufacturing plants	(*)	(*)			(*)	(*)
DD Grain elevators	(*)	(*)	(*)	(*)	(*)	(*)
EE Surface coating of metal furniture	(*)	(*)			(*)	(*)
GG Stationary gas turbines	(*)	(*)	(*)	(*)	(*)	(*)
HH Lime manufacturing plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead-acid battery manufacturing plants	(*)	(*)			(*)	(*)
LL Metallic mineral processing plants	(*)	(*)		(*)	(*)	(*)
MM Automobile and light duty truck surface coating operations	(*)	(*)			(*)	(*)
NN Phosphate rock plants	(*)	(*)			(*)	(*)
PP Ammonium sulfate manufacturing	(*)	(*)			(*)	(*)
QQ Graphic arts industry: publication rotogravure printing	(*)	(*)			(*)	(*)
RR Pressure sensitive tape and label surface coating	(*)	(*)			(*)	(*)
SS Industrial surface coating: large appliances	(*)	(*)			(*)	(*)
TT Metal coil surface coating	(*)	(*)			(*)	(*)
UU Asphalt processing and asphalt roofing manufacture	(*)	(*)	—	—	(*)	(*)
VV Synthetic organic chemicals manufacturing: equipment leaks of VOC	(*)	(*)	(*)		(*)	(*)
WW Beverage can surface coating industry	(*)	(*)			(*)	(*)
XX Bulk gasoline terminals	(*)	(*)	(*)		(*)	(*)
AAA Residential wood heaters					(*)	
BBB Rubber tires					(*)	
FFF Flexible vinyl and urethane coating and printing	(*)	(*)			(*)	(*)
GGG Equipment leaks of VOC in petroleum refineries	(*)	(*)	(*)		(*)	(*)
HHH Synthetic fiber production	(*)	(*)			(*)	(*)
JJJ Petroleum dry cleaners	(*)	(*)	(*)		(*)	(*)
KKK Equipment leaks of VOC from onshore natural gas processing plants	(*)	(*)	(*)		(*)	(*)
LLL Onshore natural gas processing: SO_2 emissions	(*)	(*)	(*)		(*)	(*)
OOO Nonmetallic mineral processing plants	(*)	(*)	(*)	(*)	(*)	(*)
PPP Wool fiberglass insulation manufacturing plants	(*)	(*)			(*)	(*)
SSS Magnetic tape industry					(*)	
TTT Plastic parts for business machines coatings					(*)	

(*) Indicates delegation.

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

Subpart A—General Provisions

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7412.

2. Section 61.04(c) is amended by revising the table to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

[(NESHAPS) for Region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
A General Provisions	(*)	(*)	(*)	(*)	(*)	(*)
C Beryllium	(*)	(*)	(*)		(*)	
D Beryllium Rocket Motor Firing	(*)	(*)	(*)		(*)	
E Mercury	(*)	(*)	(*)		(*)	
F Vinyl Chloride	(*)	(*)	(*)		(*)	
J Equipment Leaks (Fugitive Emission Sources) of Benzene		(*)	(*)		(*)	
M Asbestos	(*)	(*)	(*)	(*)	(*)	(*)
N Inorganic Arsenic Emissions from Glass Manufacturing Plants		(*)			(*)	
O Inorganic Arsenic Emissions from Primary Copper Smelters		(*)			(*)	

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS—Continued

[(NESHAPS) for Region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities		(*)			(*)	
V Equipment Leaks (Fugitive Emission Sources)		(*)	(*)		(*)	

(*) Indicates delegation.
[1] Delegation for asbestos demolition, renovation and spraying operations, and waste disposal for demolition, renovation and spraying operations only.

[FR Doc. 88-28958 Filed 12-15-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3492-7]

Florida; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final authorization on application of Florida for program revision.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed Florida's application and has reached a decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Florida to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for Florida shall be effective at 1:00 pm on January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, Telephone: (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes in EPA's regulations in 40 CFR Parts 260 through 266 and 124 and 270.

B. Florida

Florida initially received final authorization of its hazardous waste program on February 12, 1985 (50 FR 3908, January 29, 1985). On February 27, 1987, Florida submitted a final revision application for non-HSWA requirements promulgated through June 30, 1985. Florida received final authorization for these revisions on March 1, 1988 (53 FR 127, January 5, 1988). Florida was placed on a schedule of compliance to obtain program modifications for section 3006(f), Availability of Information (AOI) of the HSWA (52 FR 26013, July 10, 1987). Today, Florida is seeking approval of its program revisions for the following authorities through June 30, 1986, in accordance with 40 CFR 271.21(b)(4).

Federal requirement	State authority
Closure, Post-Closure and Financial Responsibility Requirements: Settlement Agreement 51 FR 16443-16459, May 2, 1986.	F.S. 403.704(16). F.S. 403.722. F.A.C. 17-30.020(1). F.A.C. 17-30.180(1)(2). F.A.C. 17-30.290(1)(a) and (4). F.A.C. 17-30.300.
Listing of Spent Pickle Liquor (K062) 50 FR 19320 as amended at 51 FR 33612, May 28, 1986 and September 22, 1986.	F.S. 403.704(16). F.S. 403.72(1). F.A.C. 17-30.030(1).

Federal requirement	State authority
RCRA section 3006(f), Availability of Information 40 CFR Part 2, Subpart A, 5 U.S.C. 552.	F.S. 119.07. F.S. 119.011. F.S. 119.12. F.S. 120.68. F.A.C. 17-30.310.

EPA has reviewed Florida's application, and has made a final decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

EPA recognizes Florida's lack of a provision for waiver of fees for information in the public interest as specified at 40 CFR 2.120(d). A public hearing was scheduled for October 20, 1988. No requests to hold the hearing, or adverse public comments were received prior to the end of the public comment period on October 13, 1988. Therefore, the public hearing was cancelled by publishing legal notices in six major Florida newspapers prior to the scheduled date of the hearing. Two commenters expressed concern after the public hearing had been cancelled, that the wording of the **Federal Register** notice published September 15, 1988 (53 FR 35836) was not clear regarding the agency's option to cancel the hearing if no public interest was expressed. EPA apologizes to those inconvenienced, and will take steps to improve the wording of future public notices. One commenter expressed concern that Florida's fees for information, though minimal, could still prove to be an obstacle for some citizens or public interest groups; and that the Florida legislature should be aware of this possibility. However, the commenter did not express an objection to EPA's tentative determination to authorize Florida for the modifications in question. (For fuller discussion of Florida's information release provisions and fee structure, see 53 FR 35836 dated September 15, 1988). Consequently, EPA is hereby granting final authorization for the additional program modifications to Florida's Hazardous Waste Management Program.

Florida is not seeking authorization to operate on Indian lands.

C. Decision

I conclude that Florida's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised. Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its program revision application and previously approved authorities. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This, rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 9, 1988.

Lee A. DeHihns,

Acting Regional Administrator.

[FR Doc. 88-28957 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation Rules and Regulations

September 12, 1988.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: These rules revise the existing rules for administration of the Reclamation Reform Act of 1982 (RRA). The existing rules have been revised to incorporate several amendments to the RRA that are contained in the Omnibus Budget Reconciliation Act of 1987 (1987 Budget Act), which was enacted on December 22, 1987. The amendments address audits for compliance with Reclamation law, water rates for land owned under extended recordable contracts, underpayments for irrigation water deliveries to landholdings, and treatment of revocable trusts.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Alonso Knapp; telephone (303) 236-4042.

SUPPLEMENTARY INFORMATION:

Background

The RRA, Title II, Pub. L. 97-293 (96 Stat. 1263), was signed into law by President Reagan on October 12, 1982. The Act modernized Reclamation law. Final rules and regulations implementing the RRA were published in the **Federal Register** on December 6, 1983. Those rules were revised on April 13, 1987, primarily to add provisions for implementing section 203(b) of the Act. That section mandated that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in a landholding in excess of 160 acres. On October 26, 1987, the rules were again revised. The purpose of this revision was to eliminate "gifted land" as a type of land transaction subject to the involuntary acquisition provisions of the rules.

Reclamation is now revising the rules to incorporate provisions implementing the new RRA amendments contained in the 1987 Budget Act. Proposed rules were published in the **Federal Register** on June 10, 1988. During the week of June 20, 1988, public hearings were held in San Francisco, California; Denver, Colorado; and Washington, DC. Two persons presented testimony at these hearings. In addition to the two parties represented by witnesses at the hearings, we also received written documents from seven other parties during the public comment period, which closed on July 11, 1988. All of the comments were reviewed and taken into consideration in preparing these final rules.

Summary of Revisions

Following is a summary of the RRA amendments in the 1987 Budget Act and changes that have been made to the rules:

Audits

The first amendment, section 224(g), mandates the Secretary of the Interior to conduct a thorough audit of compliance with Reclamation law by individuals and legal entities. The amendment requires the Secretary, at a minimum, to complete audits of landholdings and operations exceeding 960 acres within 3 years. The Secretary is also required to submit a report to Congress summarizing audit findings and actions that have been taken to correct instances of noncompliance.

Reclamation has initiated its audit efforts. However, since this amendment places no new requirements on landholders themselves, we have added no additional audit language to the rules. The existing provision, § 426.10(i), addresses audits and provides landholders with sufficient information regarding this topic. However, this section has been reworded to make it clear that the performance of audits is mandatory rather than discretionary on the part of Reclamation. In addition, in order to ensure that the Secretary has the information necessary to perform the required audits, § 426.10(a) has been revised to clarify that districts, prior law and new law recipients, and persons operating irrigation land under management arrangements or consulting agreements must provide information and records upon request by the Secretary.

Extended Recordable Contracts

The second amendment, section 224(h), clarifies that both prior law and new law recipients are required to pay the full-cost rate for water deliveries to land under an extended recordable contract. We have revised § 426.11(i)(4) of the rules accordingly. In addition, § 426.7(f) of the rules has been revised to reflect the fact that the full-cost interest rate applicable to prior law recipients for land under extended recordable contract is that set forth in section 202(3)(A) of the RRA and § 426.7(f)(1) of the April 13, 1987, rules. Consequently, the full-cost interest rate applying to prior law recipients with land under extended recordable contract will be different from the interest rate applying to them for leased land.

Underpayments

We have added a new section to the rules to incorporate the third RRA amendment, section 224(i). This amendment provides that when the Secretary finds that any individual or legal entity has not paid the required amount for irrigation water delivered to a landholding, he shall collect the amount of any underpayment with interest accruing from the day the required payment was due until paid. This requirement of law is reflected in § 426.23 of the rules. The "Severability" provision, which is designated as § 426.23 in the April 13, 1987, rules, has been redesignated as § 426.24 in the revised rules.

Revocable Trusts

The last of the RRA amendments revises the trust section of the RRA, section 214, by adding a subsection providing that land in a revocable trust will be attributed to the grantor if (1) the trust is revocable at the discretion of the grantor or the trust revokes or terminates by its terms once a specific time period has expired and (2) revocation or termination results in title to the land reverting either directly or indirectly to the grantor. Reclamation has revised § 426.6(b)(4) and (d)(6) to incorporate this amendment.

Executive Order 12291

The Department of the Interior has determined that the revised rules do not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required and has not been prepared.

National Environmental Policy Act

A FONSI (finding of no significant impact) and a supplement to the April 1987 environmental assessment, which address the environmental impacts of the revised rules, have been prepared and are available for public review. Copies of these documents may be obtained upon request from Reclamation offices located in Boise, Idaho; Sacramento, California; Boulder City, Nevada; Salt Lake City, Utah; Billings, Montana; and Washington, DC.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1006-0005 and 1006-0006. Public reporting burden for this information is estimated to average 0.5 hours per response for the individual landholders' forms and 40 hours per response for the Certification and Reporting forms, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Carolyn Hipps, Chief, Publications and Records Management Branch, Bureau of Reclamation, Denver Federal Center, Denver, CO 80225, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Small Entity Flexibility Analysis

These rules will not have a significant economic effect on a substantial number of small entities. Only a small number of landholders farming land irrigated by Reclamation projects westwide will be affected by any provision of section 5302 of the 1987 Budget Act. Two of these provisions, the audit and underpayment provisions, are expected to result in little or no economic effect on landholders. The other two provisions, which address revocable trusts and extended recordable contracts, may impact a small number of landholders. However, such landholders will be able to mitigate the potential impacts by altering their trust agreements or, in the case of extended recordable contracts, by becoming subject to the discretionary provisions or selling the recordable contract land before the extended contract period actually matures.

Comments About the Proposed Rules

During the public comment period from June 10 to July 11, 1988, we received documents from nine different parties containing comments about the proposed revisions to the existing rules. Two of the parties submitting written comments also gave testimony at the public hearing in San Francisco on June 20, 1988. No witnesses were present to offer testimony during the hearings in Denver and Washington, DC.

Four of the nine documents received were from respondents residing in California, while two were from respondents in Arizona. The remaining three documents were from parties representing national or regional interests. In looking at the interest groups represented by the parties submitting documents, we found that four were submitted by water districts, two by farm operators, two by conservation/environmental groups, and one by a Federal agency.

We received thirty-one different types of comments directed toward the supplement to the EA and specific provisions in the rules. In some cases, more than one respondent made the same comment. Taking this into consideration, we received a total of 43 comments. For the most part, the comments were divided equally among all the provisions of the rules. No one provision received a disproportionate number of comments.

In addition to receiving comments addressing specific provisions in the rules, we also received several comments about the rules in general. One respondent felt that we did not allow enough time for the public to review the proposed rules before the hearings were held. Another respondent warned that farmers in the Central Arizona Project (CAP) will use groundwater instead of irrigation water if Reclamation adopts punitive rules. The respondent further stated that such action would adversely affect the districts' repayment capability and water conservation efforts. Several respondents urged Reclamation to take a strong stand against the ongoing lawsuit challenging the validity of the April 13, 1988, rules. In addition, Reclamation also received commendations from several respondents for (1) preparing rules that are fair and reasonable, (2) only making changes when absolutely required because of the 1987 Budget Act, and (3) making an effort to understand the concerns of the districts and water users.

Following is a summary of the significant comments received during the comment period, along with our response to each of them:

Section 426.6(b)(4)—Trusts

Comment 1: One respondent commented that it was not fair that Reclamation established an April 20, 1988, deadline for revising revocable trusts, since the rules were not out until June 10, 1988.

Response: In Conference Report 100-498, the conferees require the Secretary to provide landholders a grace period in which to restructure existing trusts to avoid payment of full cost as a result of the new trust amendment. However, the conferees also specifically limit this grace period to no more than 120 days from the date the law was enacted. Reclamation gave affected landholders the benefit of the full 120 days by establishing an April 20, 1988, deadline. In addition, districts were made aware of the deadline in early March so that landholders would have enough time in which to take advantage of the grace period.

Comment 2: One commenter stated that the trust provision should not apply to Central Arizona Project (CAP) contractors because their contracts state that full-cost pricing will not apply to project water delivered on an interruptible basis. CAP deliveries will be considered interruptible until January 1989.

Response: Congress did not include any exemptions from the provisions contained in section 5302. Therefore, we have not addressed this issue in these rules. The issue of whether or not CAP contractors have a grace period before the ownership and full-cost pricing provisions of Reclamation law apply to them is addressed in a January 13, 1988, memorandum. In that memorandum, the Commissioner concluded that the distinction between interruptible and noninterruptible service is immaterial in determining whether the CAP lands served are required to be in conformance with all of the provisions of the RRA. There is no legal basis for suspending the requirements of the RRA on the grounds that the water deliveries are interruptible.

Comment 3: One respondent suggested that in order to be able to monitor any indirect relationships to the grantor, the rules should require identification of any trustors and all principals in any legal entity involved with a trust, not just the grantors and the persons (entities) to whom the trust land will revert upon revocation.

Response: This comment has not been accommodated. The certification and reporting forms are being revised to require landholders to identify revocable trust arrangements. All such arrangements will be thoroughly reviewed to determine the relationships, both direct and indirect, of all involved parties.

Comment 4: One respondent commented that in the case of grantors who maintain control over land as a trustee during the period of a revocable trust, the language of § 426.6(b)(4)(i), which grants fiduciary trustees a blanket exemption from the ownership and pricing limitations, contradicts § 426.6.6(b)(4)(iii), which provides that land held in certain revocable trusts shall be attributed to the grantor. The respondent suggested that Reclamation solve the problem by adding the following to the end of the first sentence in § 426.6(b)(4)(i):

provided further that the trustee is not the grantor of the land in the trust, subject to attribution to the grantor under subsection (b)(4)(iii).

Response: We agree with the respondent's comment and have revised the language as suggested, with a few minor modifications.

Comment 5: One commenter felt that the distinction between "grantor" and "trustor" sets up situations, such as in example 5 of the proposed rules, that appear ripe for potential abuse. The commenter suggested that, as is the case with grantors, trust land should be attributed to trustors who control and can benefit from a revocable trust.

Response: Reclamation has interpreted the revocable trust provision to mean that when an individual or entity (be it grantor or a trustor) places land in a trust but retains the right to regain the title to the land, either directly or indirectly, through trust revocation, such land is to be attributed to that individual or entity. We do not believe the law gives us the authority to attribute the land to a third party (be it a trustor or grantor) that will gain title to the land through trust revocation if that party did not place the land in the trust.

Comment 6: The last sentence of § 426.6(b)(4)(iii) presumes that the exact identity of the person to whom the trust *will* revert upon revocation is always known. However, what happens if title to the land *could* revert to the grantor only under certain circumstances?

Response: The new law specifies two types of circumstances under which land in a revocable trust must be attributed to the grantor. There are many other conceivable situations under which trusted land could revert to the grantor, but Congress did not address them.

In those cases where title to revocable trust land *could* revert to the grantor, but *only* under certain circumstances, the terms of the trust will be carefully reviewed to determine if the arrangement fully meets the conditions set forth in section 5302(b). Particular attention will be given to determining if the title reverts to the grantor at his own discretion. If such is the case, the land would be attributed to the grantor. However, if the title reverts to the grantor depending on circumstances not within his discretion, for example, depending on actions within the beneficiary's discretion, the land would then be attributed to the beneficiary. New language has not been added to the rules to specifically address this comment, because we think the conditions listed in the first sentence of § 426.6(b)(4)(iii) already adequately cover the situation posed by the respondent.

Comment 7: In addition to addressing full-cost situations resulting from proper attribution, one respondent thought that § 426.6(b)(4)(iv) should also address situations where such attribution causes the grantor to exceed his ownership entitlement. The respondent further stated that in such cases, retroactive charges and prospective cut-off in water deliveries are appropriate.

Response: Section 426.6(b)(4)(iv) was added to the rules in response to Congress' specific reference in the Conference Report to the full-cost situations that can result from the amendment requiring attribution to grantors. A similar provision was not added to address situations resulting in the grantor exceeding his ownership entitlement because Congress made no specific reference to such situations. Furthermore, we do not think it is appropriate to address such situations in the trust section of the rules, because many different sets of circumstances unrelated to revocable trusts can result in a landowner exceeding his ownership entitlement. Generally, all excess land is ineligible to receive irrigation water and retroactive charges would be imposed should water be delivered to such land despite its ineligibility.

Comment 8: One respondent stated that the new rules appear to create the potential for the beneficiary of a revocable trust to enjoy all the benefits of a lease without the arrangement being called a lease. The respondent suggested that the rules should make clear that revocable trusts are subject to § 426.7 just like any other situation equivalent to a lease.

Response: We have interpreted this comment to mean that the commenter believes the new rules create the potential for a beneficiary to use revocable trusts as a means to receive irrigation water at the contract rate on land in excess of his basic entitlement. The commenter seems to be suggesting that in revocable trust situations, the trust land should be attributed to the grantor (as the owner) and also to the beneficiary (as a lessee).

We have not accommodated this comment, because we do not believe we have the authority to attribute such trust land to both parties. The law specifically states that such land is to be attributed to one party; namely, the grantor.

Section 426.10(a)—Information Requirements

Forms

Comment 1: One commenter was concerned that the new language in this section of the rules might mean that Reclamation is contemplating requiring certification from districts as well as from landowners and lessees. The commenter stated that he would be opposed to this move because it is not required by the RRA. He further stated that districts should not have the responsibility to verify the accuracy of data on landholders' forms.

Response: Section 426.10(a) was revised mainly for the purpose of clarifying the term "individuals" as that term was used in this section of the April 13, 1987, rules; it was not revised for the purpose of requiring districts to submit the same certification/reporting forms as do owners and lessees. Such a requirement would clearly be impossible due to the very different roles of these parties. However, pursuant to section 228 of the RRA, § 426.10(h) of the existing rules does require water districts to submit a yearly report summarizing landholders' certification/reporting forms. This requirement has been in effect since the RRA was enacted and is not a provision that is new to the acreage limitation rules.

Regarding districts' responsibility to verify information on landholders' forms, ultimately it is each landholder who is responsible for the information on his/her form. However, under their contracts with the United States, districts are responsible for providing Reclamation with necessary data and reports. We think it is reasonable as part of this requirement to require districts to report known discrepancies on landholder forms. Reclamation has the added responsibility of further investigating such discrepancies.

Comment 2: One respondent suggested that the reference in this paragraph to "§ 426.7(a)(1)" should be changed to "§ 426.7(a)."

Response: During our analysis of this comment, we realized that in contrast to the respondent's suggestion, our reference was not detailed enough. Our intent in the subject sentence was to refer specifically to management arrangements and consulting agreements. These items are discussed in only one place—subparagraph (a)(1)(i) of § 426.7. The intended meaning of the subject sentence would be changed if the citation were to include all of paragraph (a), or for that matter, all of subparagraph (a)(1). Therefore, the reference citation has been revised to be even more specific than it was in the proposed rules.

Comment 3: Two respondents questioned whether Reclamation has the legal authority to impose information requirements on any person or entity other than landowners and lessees. The respondents think that any information the Secretary needs regarding management or consulting agreements should be obtained from the landholders under penalty of perjury.

Response: Section 224(c) of the RRA provides the authority for Reclamation to impose information requirements on individuals and entities who are not landowners or lessees. In that section, the Secretary is directed to collect all data necessary to carry out the provisions of the law. Congress did not limit information collection efforts to owners and lessees.

Comment 4: One respondent supported the clarification made in this section, stating that the clarification assures that the Secretary has access to all the information necessary to conduct the audits required by law.

Response: No response necessary.

Comment 5: One commenter stated that the existing forms do not adequately identify operators—they only ask for the operator's name and address. The commenter also stated that it is inappropriate simply to notify water users that they *may* have to provide information about operators when requested on a case-by-case basis. Such an approach causes delays in the auditing process, places unnecessary burden on the Secretary to determine which documents to request, and risks the loss of information from years prior to the audit which may be needed to determine if underpayments are due.

The commenter also maintained that to be legally sufficient, the rules must make it clear that individuals and entities operating land under an agreement described in § 426.7(a)(1) are required to provide information about their operations on a regular basis. In addition, the commenter suggested that the rules should not limit information collection to just those operators described in § 426.7(a)(1). Rather, Reclamation should get information from all individuals and entities with other interests in the operations.

Response: The Solicitor's Office has determined that it is not legally necessary to require forms from all operators in order to satisfy the requirements of section 224(g) of the RRA. Despite the fact that we are not requiring all operators to submit forms, we have taken measures to ensure that we will have adequate information about all operations. The existing certification/reporting forms already require landowners and lessees to report whether or not they have hired a farm operator. In addition, the forms are being revised to require landholders to provide more detailed information about such operators. For example, under the proposed new forms, all landholders must list the telephone numbers, the services provided, and the acreage associated with each operator. We believe that such information from the forms, in combination with the information we can request directly from operators pursuant to § 426.10(a), will provide Reclamation with all the data needed to satisfy the requirements of section 224(g) of the law.

Comment 6: We received two comments suggesting that the forms need to be revised so that landowners with extended recordable contracts will know that they need to complete the "Application for Selection of Non-Full-Cost Land" form.

Response: The forms are being revised accordingly.

Audits

Comment 7: Several respondents stated that the preamble should be expanded to make it clear that, (1), as required by law, audits of smaller farms and operations (under 960) will also take place and (2) underpayment provisions also apply to these smaller farms.

Response: Reclamation plans to conduct audits of smaller farms and operations as well as of those that exceed 960 acres. The underpayment provision applies, as written in § 426.23 of the rules, to small and large farms alike.

Comment 8: Two respondents stated that Reclamation should set forth in the preamble and other public documents its intent to meet the statutory requirements to complete audits of each set of land managed in a single farming operation of over 960 acres, whether limited to single landholdings or extended over several landholdings operated together under farm management contracts and the like.

Response: As required by section 224(g), Reclamation plans to complete audits of entities and individuals whose landholdings or operations exceed 960 acres. In determining which operations to audit, we will look at the total holding of the operating entity.

Comment 9: One respondent pointed out that § 426.10(i) of the existing rules states that "The Secretary *may* conduct field audits, as necessary * * *," and suggested that "may" should be changed to "will" in order to be consistent with the directive in the 1987 amendments to the RRA.

Response: The final rules have been revised to reflect the respondent's suggestion.

Comment 10: We received comments from two persons suggesting that Reclamation establish audit procedures wherein landholders would be (1) given notice that they had been selected for an audit and an opportunity to participate in the audit process, (2) given the opportunity to appeal decisions, (3) permitted to rely on prior decisions by Reclamation.

Response: We do not believe it is appropriate to establish specific audit procedures in the rules. Procedures have been and will continue to be developed through policy guidance rather than through the rulemaking process. The procedures will include appropriate opportunities for landholders to be involved in the audit process.

Section 426.11(i)(4)—Water Rates for Land Under Extended Recordable Contract

Comment 1: Two respondents felt that the following language would make clause (i) of the first paragraph in § 426.11(i)(4) easier to read and understand:

"for land under recordable contract owned by qualified and limited recipients, the non-full-cost rate was applicable until October 21, 1985, (January 10, 1986 in Westlands Water District) or until the extended contract period expired, whichever occurred first, and after October 21, 1985, (January 10, 1986 in Westlands Water District) water deliveries have been subject to the full-cost rate through the effective termination date of the extended recordable contract, * * *."

Response: This comment does not suggest a substantive change; therefore, it has not been accommodated.

Comment 2: Two persons stated that since the full-cost rate category status of land under extended recordable contract is not affected by the status of the lessee, the word "owned" should replace the word "held" in clauses (i) and (ii) of this section.

Response: This comment has been accommodated.

Comment 3: One commenter objected to the sentence in the preamble which states that prior to the 1987 amendments, section 205(c) of the RRA applied only to landholders subject to the discretionary provisions. The commenter believes that statement should be revised to make it clear that prior to the 1987 amendment, it was Reclamation's rules, not the law, that applied section 205(c) to only some landowners with extended recordable contracts.

Response: The Department disagrees with the commenter's legal view. It is the Department's legal view that the statute itself, not merely Reclamation's rules, limited the application of section 205(c) to landholders subject to the discretionary provisions.

Comment 4: One person commented that the proposal to charge prior law recipients the full-cost rate for land under extended recordable contracts is (1) unlawful because it interprets section 224(h) in a way that contradicts the expressed intention of Congress and applicable constitutional principles of statutory interpretation and (2) is unwise and unfair because it reverses established policies and principles.

Response: We disagree with the legal statement made in this comment.

Comment 5: Two respondents requested that the rules specifically state that a recordable contract on land designated as nonexcess and non-full cost is deemed terminated immediately upon receipt by Reclamation of an irrevocable election.

Response: While the rules do not specifically state when a recordable contract is deemed terminated, the rules as currently written, permit us to treat recordable contracts as stated by the commenter. Reclamation's policy on this matter can be summarized as follows: If a landowner elects to become subject to the discretionary provisions, the election is considered effective on a conditional basis as of the date Reclamation receives the election form. As of that date, the less than full-cost rate would apply to any land a landowner withdraws from an extended recordable contract and includes as part of his nonexcess land designation, unless the land becomes subject to full-cost pricing through leasing or the election is disapproved. If the election is disapproved, the landowner is held responsible for any full-cost charges that accumulated during the review period.

Comment 6: The following proposal was received from two respondents: Since it takes Reclamation a long time to complete excess land sale price approvals, the buyer and seller of excess land should be permitted to enter into a binding escrow, and Reclamation should treat this action as a disposition of excess land. Thereby, the full-cost rate to extended recordable contract land could be terminated prior to actual transfer of title. If necessary to protect the interests of the United States, this proposal could include a provision for payment of the full-cost differential into a trust fund for the duration of the escrow.

Response: This suggestion has not been accommodated because the law requires, without exception, that section 205(c) of the RRA be applied to all owners of land under extended recordable contract. Therefore, as long as title to such land remains with the seller, we do not have the authority to waive the full-cost requirements.

However, Reclamation has taken steps to satisfy the concerns raised bv this commenter. First, we have reduced the time it takes to complete excess land appraisals by adding additional staff to process the appraisals and by instituting a multiple appraisal process. Second, we will permit owners of such land to sell the land before the appraisal process is completed without jeopardizing the land's eligibility to receive water, provided the buyer and seller enter into a reformation agreement. Under such an agreement, the seller and buyer agree to reform the sale price of the land should it exceed Reclamation's approved sale price. The interim water deliveries are made at the rate applicable to the buyer based on his status under the law.

Comment 7: One commenter felt that it is not fair that lessees of extended recordable contract land must pay the full-cost rate even though they are within their entitlements to receive subsidized water. The commenter suggested that the rules provide that if an existing grower is within the acreage limitations, he gets the subsidized water even if the landlord does not qualify.

Response: Reclamation's main responsibility in implementing section 224(h) of the RRA is to make sure that the full-cost rate is paid for water deliveries to land under extended recordable contract. Regarding the question of whether such charges are to be paid by the owner or the lessee, it is our policy that this is a matter among the landowner, lessee, and the district. Therefore, this comment has not been accommodated.

Section 426.23—Interest on Underpayments

Comment 1: We received the following related questions regarding the underpayment provision: What is a district's responsibility for collecting underpayments? For example, suppose a lessee leases land from a qualified recipient, and then without his or the district's knowing, the qualified recipient becomes a limited recipient. Is either the district or the lessee responsible for the underpayments? As another example, would a district be held liable for an underpayment that is discovered after a landowner has moved? Finally, if a district's payments are due semiannually (in June and January), will underpayments be calculated back to June even though the landholder subject to the underpayment did not take water until August?

Response: For the most part, the United States' repayment and water service contracts are with districts, not individuals. Under these contracts, it is the district's responsibility to collect the proper water rate and comply with Federal law and regulations. Therefore, collection efforts will be directed to the districts. Districts, in turn, have recourse under State law against the party(s) responsible for any underpayments. It must also be remembered that a lessee has the responsibility to protect himself, through the terms of the lease, from situations that have the possibility of affecting him adversely. Regarding the date from which underpayments will be calculated, Reclamation is in the process of developing policy on how this aspect of the underpayment provision will be applied.

Comment 2: One respondent was concerned about the underpayment provision, stating that it has the potential of having catastrophic adverse economic impacts in CAP districts because of the extent of full-cost water service in this area.

Response: Since Congress granted no exemptions from the underpayment provision, it is Reclamation's responsibility to implement it in all districts. It should be remembered that the full-cost rates for CAP landholders were not increased as a result of the underpayment provision. They are the same now as they were before the legislation was enacted. In addition, the underpayment provision will affect only a limited number of landholders, since it applies to only those who did not pay the required rate for water deliveries. In those cases where the full-cost rates are prohibitive, landholders and districts will need to make a special effort to ensure that landholders are fully aware of their status under the RRA.

Comment 3: One respondent was opposed to collection efforts for underpayments associated with delivery of interruptible CAP water to excess land. The respondent stated that the district contracts provide that acreage limitation and full-cost pricing do not apply to interruptible water.

Response: In a January 13, 1988, memorandum, the Commissioner concluded that the distinction between interruptible and noninterruptible service is immaterial in determining whether the CAP lands served are required to be in conformance with all of the provisions of the RRA. There is no legal basis for suspending the requirements of the RRA on the grounds that the water deliveries are interruptible.

Comment 5: Two commenters suggested that Reclamation address the provisions of section 10166 of the 1987 Budget Act—the IRS provision on illegal Federal irrigation subsidies.

Response: The Internal Revenue Service (IRS) has the primary responsibility for implementing the subject provision. Therefore, we have not addressed that provision in these rules. Reclamation, however, has offered its assistance to the Commissioner of the IRS in coordinating implementation of the illegal subsidy provision.

Comment 6: We received one comment suggesting that a policy be established wherein the underpayment provision applies when landholders provide certification/reporting forms with incorrect information for the purpose of circumventing the law; however, it would not apply to landholders whose forms contain errors, provided the landholders are still within their entitlements.

Response: Erroneous completion of certification/reporting forms would fall within the scope of the underpayment provision only if it resulted in land receiving irrigation water at less than the required rate. As a general rule, this provision would not be invoked in those cases where a landholder makes a mistake on his forms but is still within his entitlement limitations after the form has been corrected.

Environmental Assessment, FONSI, Small Entity Flexibility

Comment 1: One respondent felt Reclamation's economic analyses need to address the economic impacts on the CAP. Since the full-cost rate in the CAP is $250 ac/ft, the respondent disagreed with Reclamation's conclusion that the proposed rules have no impact on a substantial number of small entities.

Response: For the most part, the rules do not create *new* full-cost situations for landholders in the CAP. The underpayment provision merely requires that landholders who received irrigation water at a rate less than that actually required by applicable laws and regulations must pay the required amount (plus interest) for that water. The extended recordable contract provision requires payment of the full-cost rate; however, there are no such contracts in the CAP. In addition, landowners were given a grace period in which to restructure any trust agreements so that they could avoid any full-cost charges that might result from implementation of the revocable trust provision.

Comment 2: Two commenters felt that the draft FONSI is based on an inadequate Environmental Assessment (EA) that contains no actual evaluation of the environmental effects of the proposed rules. They believe the new EA does not consider cumulative impacts of the new regulations in conjunction with the 1987 regulations and does not make a full evaluation of whether the regulations will affect natural resources.

Response: We disagree with the commenter. We believe the NEPA documentation is adequate.

List of Subjects in 43 CFR Part 426

Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 43 CFR Part 426 is amended as set forth below.

Dated: October 27, 1988.

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

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

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

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, title II, 96 Stat. 1263, as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; and the Reclamation Act of 1902, as amended and supplemented 32 Stat. 388, (43 U.S.C. 371 et seq.).

2. Section 426.6 is amended by revising paragraphs (b)(4) and (d)(6) to read as follows:

§ 426.6 Ownership entitlement.

* * * * *

(b) * * *

(4) Trusts.

(i) An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitations imposed by title II nor the ownership provisions of prior law for land held in this capacity; provided, the trust agreement: is in writing and is approved by the Secretary, identifies the beneficiaries, describes the interests of the beneficiaries and in the case of revocable trusts, the trust agreement also identifies the grantor(s) of all lands held in the trust, identifies the person(s) or entity (entities) who may revoke the trust and to whom title to the lands held in the trust will be conveyed upon the revocation of the trust, and provided further that the trusted land is not attributable to a grantor acting as trustee pursuant to § 426.6(b)(4)(iii). The Secretary shall be notified of any changes in the above conditions.

(ii) In the case of irrevocable trusts and revocable trusts other than those described in (b)(4)(iii) of this section, the lands held in the trust will be attributed to the beneficiary or beneficiaries of the trust according to the interest held in the trust by each beneficiary. The eligible acreage attributable to each beneficiary in trust land in combination with other land directly or indirectly owned by such beneficiary shall not exceed that beneficiary's ownership entitlement unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition provided in § 426.16.

(iii) In the case of revocable trusts which may be revoked at the discretion of the grantor(s) of the lands held in the trust and such revocation results in title to the trust lands reverting to the grantor(s) either directly or indirectly, or if the terms of the trust require that it be revoked or terminated upon the expiration of a specified period of time and such revocation or termination results in the title to the lands held in the trust reverting either directly or indirectly to the grantor(s), the lands held in that trust will be attributed to the grantor(s) of the lands. Therefore, in the case of such revocable trusts, the eligible acreage attributable to each grantor in trust land in combination with other land directly or indirectly owned by such grantor shall not exceed that grantor's ownership entitlement unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition process provided in § 426.16. However, a revocable trust in which a grantor retains the power to change the beneficiaries or to modify the terms of the trust, but does not provide that the title to trust property will revert to the grantor upon revocation or termination shall not result in an attribution to the grantor of the trust property.

(iv) If the attribution of trust property described in (b)(4)(iii) of this section results in the grantor of such property becoming subject to the payment of full cost for irrigation water delivered to lands within his landholding, such full cost will not apply to the grantor if the trust agreement was revised before April 20, 1988, to avoid or preclude the attribution of the trust property to the grantor. If such a trust agreement was not so revised by that date, the grantor must pay full cost for irrigation water delivered to that portion of the grantor's landholding that exceeds the non-full-cost entitlement, commencing December 23, 1987, until such trust agreement is so revised. The application of this rule may be illustrated by the following:

Example (1). Bank X is the trustee for five irrevocable trusts, each of which has more than one beneficiary. The irrevocable trusts contain 1,280, 960, 640, 800, and 400 acres, respectively. The land in the irrevocable trusts is in districts which have amended their contracts to conform to the discretionary provisions of Title II. Since the ownership and pricing limitations of title II do not apply to Bank X as trustee for the trusts and all beneficiaries who are qualified recipients are within their respective ownership entitlements, all 4,080 acres in the five irrevocable trusts are eligible to receive irrigation water at the contract rate. However, if a beneficiary owned directly or indirectly other irrigation land which, when combined with his beneficial interest in the subject irrevocable trusts, caused him to exceed the 960-acre ownership limitation, either that beneficiary or the trustee would be required to designate the nonexcess land for which irrigation water could be supplied, depending upon whether the land to be so designated is directly held by the beneficiary or the trust.

Example (2). Farmer X, a qualified recipient, provides in his will for the establishment of a trust and the conveyance of 640 acres of his land receiving irrigation water into that trust for his minor child upon his death. Farmer X designates his brother as trustee of that testamentary (irrevocable) trust. The land is located in a district which has amended its contract to come under the discretionary provisions of Title II. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer X dies, and the testamentary trust he has established is activated. The brother, as trustee, is entitled to receive irrigation water for the land in trust as well as the land he owns.

Note.—The land placed in the testamentary trust by Farmer X is counted against his ownership entitlement during his lifetime as long as the land remained in his ownership.

Example (3). Farmer X, a qualified recipient, owns 960 acres eligible to receive irrigation water in a district subject to the provisions of Title II. He decides to place 160 acres of his land in an irrevocable trust with his daughter as the life tenant. The 160 acres of trust land shall be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land shall be attributed to Farmer X or to the person upon whom she is dependent.

Example (4). ABC Corporation, a prior law recipient, establishes a revocable trust and places 160 acres of land receiving irrigation water in the trust for the benefit of J. Jones. Under the terms of the revocable trust, the trust will terminate and title to the 160 acres will revert back to ABC Corporation in 10 years. All 160 acres of the land in trust is attributed to the corporation with all stockholders attributed an indirect interest in proportion to their percent of stock held in the Corporation.

Example (5). As in Example (4) above, ABC Corporation establishes a trust for the benefit of J. Jones, which is revocable at the discretion of ABC Corporation, the trustor. But Corporation X, a fully independent legal entity, rather than Corporation ABC, contributes the 160 acres to the trust. In this example, the 160 acres is attributed to the beneficiary of the trust, J. Jones, since the criteria for attribution to the grantor (Corporation X) have not been met; namely, the 160 acres will revert in 10 years to the trustor (Corporation ABC), not the grantor, and the grantor does not have the power to revoke the trust.

Example (6). Farmer X, a qualified recipient, places 960 acres of land receiving irrigation water in a trust for his son. The trust agreement provides that the trust shall expire in 20 years, and ownership of the trust land shall be vested in Corporation Y, of which Farmer X is a part owner with 5 percent interest. Because title to 5 percent of the trust land will revert indirectly to Farmer X upon termination of the trust, 48 acres (960 x 5 percent) of the trust land is attributed to Farmer X. The remaining 912 acres of trust land is attributable to the beneficiaries of the trust. If Farmer X's interest in Corporation Y changes during the term of the trust, the amount of trust land attributed to Farmer X will change accordingly.

* * * * *

(d) * * *

(6) See § 426.6(b)(4).

* * * * *

3. Section 426.7 is amended by revising paragraph (f) to read as follows:

§ 426.7 Leasing and full-cost pricing.

* * * * *

(f) Interest rate calculations for full cost. In determining full cost, the interest rates to be used will be determined by the Secretary of the Treasury as follows:

(1) Interest rates applicable to (i) qualified recipients, (ii) limited recipients receiving water on or before October 1, 1981, and (iii) extended recordable contract land owned by prior law recipients after December 22, 1987.

(A) The interest rates for expenditures made on or before October 12, 1982, shall be the greater of 7½ percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year in which the expenditures were made by the United States.

(B) The interest rate for expenditures made after October 12, 1982, shall be the arithmetic average of (*1*) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year in which 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 in which the expenditures are made.

(2) Interest rates applicable to (i) limited recipients not receiving irrigation water on or before October 1, 1981, and (ii) prior law recipients, except for land owned under extended recordable contract after December 22, 1987. The interest rate shall be determined as of

the fiscal year preceding the fiscal year in which expenditures are made except that the interest rate for expenditures made before October 12, 1982, shall be determined as of October 12, 1982. The interest rate shall be based on the arithmetic average of (A) the computed average interest payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance and (B) the weighted average yield on all interest-bearing marketable issues sold by the Treasury.

Note: Prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the full-cost interest rate specified in paragraph (f)(1) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981.

4. Section 426.10 is amended by revising paragraphs (a) and (i) to read as follows:

§ 426.10 Information requirements.

(a) In general. Districts, qualified recipients, limited recipients, prior law recipients and natural persons or legal entities operating irrigation land under an agreement described in § 426 7(a)(1)(i) shall provide the Secretary upon request in a form suitable to the Secretary such records and information as the Secretary may deem reasonably necessary to implement Pub. L. 97–293 and Federal Reclamation law.

* * * * *

(i) *Auditing.* The Secretary will conduct field audits, as necessary, to ensure compliance with Reclamation law and these regulations.

* * * * *

5. Section 426.11 is amended by revising paragraph (i)(4) to read as follows:

§ 426.11 Excess land.

* * * * *

(i) * * *

(4) Water rates for land under extended recordable contracts. Land under recordable contract may continue to receive irrigation water deliveries at the non-full-cost rate for the original disposition period of the recordable contract. The rate for irrigation water deliveries to land under recordable contract during the extended contract period shall be determined as follows:

(i) For land under recordable contract owned by qualified and limited recipients, the non-full-cost rate shall apply until the date 18 months after the date the Secretary resumes the processing of excess land sales, or until the extended contract period expires, whichever occurs first, and after the date 18 months from the date the Secretary resumes the processing of excess lands sales, water deliveries shall be made at the full-cost rate through the effective termination date of the extended recordable contract,

(ii) For land under extended recordable contract owned by prior law recipients, water deliveries shall be made at the full-cost rate described in § 426.7(f)(1) commencing December 23, 1987, through the effective termination date of the extended recordable contract. The principles of this rule may be illustrated by the following:

Example (1). Landowner X entered into a recordable contract on June 27, 1972. The recordable contract provided for a 10-year disposition period which ended on June 27, 1982. However, Landowner X was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The district in which the land is located amended its contract to conform to the discretionary provisions on January 1, 1983. Since Landowner X had 5 years remaining on the original recordable contract when the moratorium was imposed, the contract will be extended for 5 years from the date the processing of the sale is resumed. The resumption date will be determined by the Secretary. Landowner X must pay the full-cost rate, however, for any irrigation water delivered to the land under extended recordable contract beginning 18 months from the date the moratorium is lifted.

Example (2). Landowner Y entered into a recordable contract with a 10-year disposition period on June 27, 1976. Landowner Y was prevented from selling the land by the Secretarial moratorium of June 27, 1977. At that time, 9 years remained in the disposition period of the recordable contract. The district in which the land is located amended its contract to conform with the discretionary provisions of title II on January 1, 1983. The Secretary resumes the processing of the excess land sale on May 21, 1984. The original disposition period of the recordable contact expires on June 27, 1986, which is more than 18 months after the Secretary resumed the processing of the excess land sale. Therefore, Landowner Y must pay the full-cost rate for water deliveries to that land beginning June 27, 1986, for the duration of the extended contract period. The extended contract period will expire on May 21, 1993, 9 years after the Secretary resumed the processing of the excess land sale.

Example (3). Landholder Z entered into a recordable contract on June 27, 1974. The recordable contract provided for a 10-year disposition period that ended on June 27, 1984. However, Landowner Z was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The Secretary resumed the processing of excess land sales on May 21, 1984. Landholder Z had 7 years remaining on his recordable contract when the moratorium was imposed; therefore, the contract will be extended for 7 years from May 21, 1984, or until May 21, 1991. Landholder Z's land is located in a district that remains subject to prior law, and Landholder Z has not made an irrevocable election to become subject to the discretionary provisions. Since Landholder Z is a prior law recipient and the land was under extended recordable contract prior to December 23, 1987, water deliveries to this land prior to December 23, 1987, were properly made at the contract rate. However, for all water deliveries taking place on or after December 23, 1987, Landholder Z must pay the full-cost rate, as described in § 426.7(f)(1), through the effective termination date of the extended recordable contract.

* * * * *

§ 426.23 [Redesignated as § 426.24]

§ 426.24 [Redesignated from § 426.23]

6. Section 426.23 is redesignated as § 426.24, and new § 426.23 is added to read as follows:

§ 426.23 Interest on underpayments.

When the Bureau finds that any individual or legal entity subject to Federal Reclamation law has not paid the required amount for irrigation water delivered to a landholding pursuant to Reclamation law, the Bureau will collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The due date is the date the required payment should have been paid by the district to the United States for water delivered to a landholding. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the period of underpayment.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-320; RM-6314]

Radio Broadcasting Services; Russellville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 266C1 for Channel 266C at Russellville, Kentucky, and modifies the license of Station WBVR(FM) to reflect the lower class channel, at the request of Target Communications of Kentucky, Inc., license of Station WBVR(FM), Russellville, Kentucky. Channel 266C1 can be used at the current transmitter site of Station WBVR(FM) at