Districts are not permitted to continue water deliveries to ineligible recipients simply because they are willing to pay the assessments. Reclamation will take all necessary actions to prevent the delivery of irrigation water to ineligible land.

Comments About the Proposed Rule

During the public comment period from June 28, 1994, through August 29, 1994, Reclamation received 48 responses on the proposed rule. The responses were submitted by or on behalf of 40 districts, 7 water user associations, 5 landholders, one Federal agency, and one U. S. Congressman.

Approximately 80 percent of the respondents either approved of the proposed rule entirely or in part. Many of these respondents stated that the administrative cost assessment will provide a reasonable and equitable means for addressing RRA form violations and will be a vast improvement over Reclamation's past policy of assessing compensation charges for nonsubmission of RRA forms.

Approximately 20 percent of the respondents were opposed to the rule, mainly because they think the administrative cost assessments are unnecessary or excessive. Several respondents objected to the rule because they do not think Reclamation has the legal authority to impose such assessments.

General Comments

Following are the general comments received about the proposed rule and our response to each:

Comment 1: Two respondents commented that the rule should make it clear that the administrative cost assessment will be the sole economic ramification for RRA form violations.

Response: The respondent's comment has not been accommodated because we think such language would be superfluous. First, the main purpose of the rule is to set forth the charges that will be assessed in cases of RRA form violations, which it does. In addition, it was stated previously in this preamble that the administrative cost assessment will replace the compensation charges Reclamation previously assessed for form violations. This statement clearly sets forth Reclamation's intent with regard to assessments for form violations.

Comment 2: Four respondents commented that the rule should clearly state that the administrative cost assessments will be applied prospectively only.

Response: The rule will be applied prospectively. The rule will be effective March 27, 1995. This date is printed at the beginning of this preamble, under EFFECTIVE DATE. We do not think it is necessary to repeat the effective date in the rule itself.

Comment 3: Nineteen respondents commented that the administrative cost assessments should be applied retrospectively to past RRA form violations instead of the compensation rate.

Response: As stated in the response to the preceding comment, the rule will be applied prospectively. However, Reclamation is currently considering a plan whereby issued and pending compensation bills for RRA form violations would be reviewed using the dollar amount in § 426.24(e) as the basis for possible action.

Comment 4: One respondent commented that Reclamation needs to define "\$260 per form violation" and asked how many RRA forms are required of a farmer in a single year.

Response: We assume the phrase the respondent is referring to is from a statement in the preamble of the proposed rule. The complete sentence reads as follows: "The assessment for administrative costs is initially set at \$260 per form violation." The sentence in question is a general statement, the main purpose of which was to make the reader aware of the amount of the administrative cost assessment; i.e., \$260. Sections 426.24(a) and (b) describe how the assessment will be applied to form nonsubmissions and form errors.

Regarding the respondent's question, a landholder generally needs to submit just one RRA form annually; however, in some cases, additional forms may be required. Regardless of the number of forms required, the \$260 assessment for forms nonsubmission will be based on a landholder's entire RRA form effort for the water year in question, for each district in which land is held. For example, if Landholder A held land in District B and received irrigation water in 1995 despite the fact that he/she submitted neither of two RRA forms required for that water year, the assessment would be \$260, not \$520.

Comment 5: One respondent commented that the proposed rule did not adequately comply with the Regulatory Flexibility Act because it did not explain why the rule would not have a significant effect on a substantial number of small entities.

Response: The explanatory language referred to by the respondent has been added to the preamble of this final rule. By doing so, Reclamation believes it is

in full compliance with the requirements of the Regulatory Flexibility Act.

Comment 6: Five respondents questioned Reclamation's authority to impose administrative cost assessments. Several of the respondents commented that the assessments are actually penalties, and since the RRA does not include a penalty provision, the assessments cannot be charged.

Response: Reclamation is authorized to promulgate regulations and to collect all data necessary to carry out its mission. 43 U.S.C. § 373; 43 U.S.C. 390 ww(c); 31 U.S.C. § 9701.

Reclamation determines eligibility to receive water, in large part, based on the information provided on RRA certification and reporting forms. Section 426.10(k) of the regulations requires that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive water.

In issuing the administrative fee rule, Reclamation has properly exercised its authority to promulgate regulations for ensuring the delivery of irrigation water only to eligible landholders. The fee is intended to improve compliance with RRA certification requirements and ensure that irrigation water is delivered only to those landholders eligible under the RRA and to recoup certain administrative costs Reclamation incurs due to noncompliance with RRA reporting requirements.

Reclamation, as a Federal agency, also may impose remedial measures. Courts have recognized an agency's authority to impose measures if they reasonably relate to the purpose of the enabling statute and further congressional objectives. *Gold Kist, Inc. v. Department, 741 F.2d 344, 348 (11th Cir. 1984); West v. Bergland, 611 F.2d 710, 725 (8th Cir. 1980); United States v. Frame, 885 F.2d 1119 (3d Cir. 1989).*

The \$260 charge provided for in this rule is an administrative fee designed to improve compliance with the acreage limitation requirements and to recover Reclamation's costs in helping landholders to meet the eligibility requirements of the Act. As such, the fee is remedial in nature rather than punitive.

In addition, Reclamation possesses authority to "* * * prescribe regulations establishing the charge for a service or thing of value provided by the agency." 31 U.S.C. § 9701. As discussed above, under Reclamation law, any landholder who received irrigation water prior to submitting the requisite certification forms failed to meet the criteria which Congress established for eligibility. When Reclamation becomes