aware of the violation and undertakes a variety of additional activities to obtain the forms and the necessary information, Reclamation is helping that landholder establish eligibility for receiving the "service or thing of value"—irrigation water. Certainly, these additional Reclamation activities are valuable services the agency provides districts and landholders who would otherwise not be in compliance with applicable Federal laws, regulations and contracts.

Finally, it should be noted that Reclamation's authority to promulgate these regulations was not diminished by the court's decision in Orange Cove Irrigation District v. United States, 28 Fed. Cl. 790 (1993). That case did not involve the issue of Reclamation's authority to assess administrative fees or to issue rules. The plaintiff in that case, Orange Cove Irrigation District (OCID), brought suit against the United States to recover money it paid to Reclamation at the time OCID renewed its water service contract in 1988. Reclamation had assessed the district full-cost charges for water delivered in 1987 to certain district landholders before they submitted RRA certification forms. On August 12, 1993, the court rendered its decision in favor of OCID. The case was resolved on the narrow issue of breach of contract and should only be read in light of facts specific to that controversy.

Although not necessary to its holding, the Court also determined that the assessment of full cost constituted an unauthorized penalty under the facts of this case and that the United States had not violated any notice and rulemaking requirements of the Administrative Procedure Act.

Comment 7: Twenty-one respondents commented that the rule should include a provision to increase the 40-acre exemption threshold for RRA form requirements. Ten of the respondents suggested the threshold be increased to 320 acres; six of them suggested a 160acre threshold. The remainder were not specific as to what the revised threshold should be. Many of the respondents stated that an increased threshold would help to decrease the cost and burden placed on districts and landholders and yet provide adequate means for proper enforcement of the RRA. Several respondents also stated that Reclamation ensured water users in the past that the 40-acre threshold would be increased. One respondent commented that the 40-acre threshold should not be reduced.

Response: As stated in the preamble to the proposed rule, the 40-acre threshold issue is outside the scope of this rulemaking. This rulemaking action was limited to administrative cost assessments in an effort to expedite the process. Reclamation is currently engaged in a rulemaking action in which we will review the Acreage Limitation Rules and Regulations in their entirety. The exemption threshold will be addressed in that rulemaking. The proposed rule for that rulemaking action is scheduled to be published in February 1995.

Comment 8: One respondent asked why the Government tells landholders the amount of land they may farm in order to make a living.

Response: The RRA does not limit the amount of land landholders may farm. It does, however, limit the amount of owned land on which any one landholder can receive irrigation water from Reclamation projects and the amount of leased land that can receive such water at a rate that is less than the full-cost rate. The reason for this is to ensure that the benefits from the Reclamation program are widely distributed rather than concentrated in the hands of a few landholders.

Specific Comments

The following comments refer to specific provisions within the proposed rule and are followed by Reclamation's response to each.

Section 426.24(a)—Forms Submittal

Comment 1: Eleven respondents commented that the rule needs to define the terms "direct landholder" and "indirect landholder," as used in §§ 426.24(a) and (b). Several of the respondents stated that the words "direct" and "indirect" should be deleted because the term "landholder" is sufficient by itself.

Response: The terms "direct landholder" and "indirect landholder" were included in the proposed rule so readers would be aware that in applying the administrative cost assessment to legal entities, Reclamation will treat compliance by an entity independently from compliance by its part owners or beneficiaries. For example, if three shareholders in a corporation submit their RRA forms, but the entity and the remaining two shareholders do not, the administrative cost assessment would be applied to the entity and each of the two shareholders that were not in compliance, for a total of \$780. Reclamation has decided to clarify §§ 426.24(a) and (b) by deleting the words "direct" and "indirect" and adding a sentence to address application of the administrative cost assessment when legal entities are involved as described above.

Comment 2: One respondent commented that if an entity completes the required RRA form, but one or more of the part owners does not, this should be treated as a form correction and not failure to file a form.

Response: Part owners of legal entities are required to file forms separately from those of the entities in which they have an interest. The reason for this is that the acreage limitation entitlements and other requirements of Reclamation law apply to part owners in the same manner as they apply to any other landholder. Since the part owners may own or lease land in addition to the land that is attributable to them through interest in the entity, it is not sufficient for the entity's form to be submitted in order to determine if all acreage limitation entitlements have been met. Therefore, if a part owner does not submit the required RRA forms, this is not viewed as a correctable error on the part of the entity, but rather as nonsubmission of forms by the part owner. Thus, in the case presented by the respondent, the \$260 administrative cost assessment would be applied for each part owner that received irrigation water without having submitted the required forms. However, an additional assessment would not be applied as a result of the entity's actions, because it was in compliance with the RRA form requirements.

Comment 3: One respondent requested that the following statement in the preamble to the June 28, 1994, proposed rule be clarified: "A district will be assessed for administrative costs when RRA forms are not submitted prior to receipt of irrigation water." The respondent questioned whether this statement referred to the receipt of irrigation water to landowners or to the district.

Response: The statement refers to the receipt of irrigation water by landholders subject to the RRA form requirements. We believe the language in § 426.24(a) is clear on this point; therefore, the rule was not revised to accommodate the comment.

Section 426.24(b)—Forms Corrections

Comment 1: Four respondents commented about the 45-day grace period provided for form corrections. One respondent thought landholders/ districts should be given a longer period of time in which to correct RRA forms before imposition of the \$260 assessment. Three of the landholders thought the 45-day grace period was fair.

Response: This section has been revised to increase the length of the grace period from 45 days to 60 days.