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annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (d)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district must pay any increases in the amount paid annually toward the construction costs of a project that the United States requires the district to pay as a condition of agreeing to provide the district with supplemental and additional benefits.

(e) *Amount of O&M a district pays under a prior contract.* For a district whose prior contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless the contract specifically provides contrary terms.

(f) *Amount of O&M that Reclamation charges an irrevocable elector.* (1) Regardless of any terms to the contrary within a prior contract with a district, a landholder who makes an irrevocable election, as provided for in § 426.3(f) must pay, annually, his or her proportionate share of all O&M costs allocated by Reclamation to irrigation. The irrevocable elector's proportionate share is based upon the ratio of:

(i) The amount of land in the district held by the irrevocable elector that received irrigation water to the total amount of land in the district that received irrigation water; or

(ii) The amount of irrigation water in the district received by the irrevocable elector to the total amount of irrigation water that the district delivered.

(2) The district(s) where the irrevocable elector's landholding is located must collect from the irrevocable elector an amount equal to the irrevocable elector's proportionate share of all O&M costs allocated by Reclamation to irrigation and the following apply:

(i) If in the year the election is executed, the district's contract rate was more than the O&M costs allocated to the district in that year, then that positive difference at the time of the contract amendment must continue to be factored into the contract rate. This would be in addition to any adjusted O&M cost that results from paragraph (f)(1) of this section. The positive dif-

ference would be factored into the contract rate for the remainder of the term of the contract; and

(ii) Such collections must be forwarded annually to the United States.

(g) *Amount of O&M that Reclamation charges if a landholder is subject to full-cost pricing.* In a district subject to prior law, if a landholder is subject to full-cost pricing the district must ensure that all O&M costs are included in any full-cost assessment, regardless of whether the landholder is subject to the discretionary provisions. The revenues from such full-cost assessments must be collected and submitted to the United States.

**§ 426.24 Reclamation decisions and appeals.**

(a) *Reclamation decisions.* (1) *Decision-maker for Reclamation's final determinations.* The appropriate regional director makes any final determination that these regulations require or authorize. If Reclamation's final determination is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that final determination.

(2) *Notice to affected parties.* The appropriate regional director will transmit any final determination to any district and landholder, as appropriate, whose rights and interests are directly affected.

(3) *Effective date for regional director's final determinations.* A regional director's decisions will take effect the day after the expiration of the period during which a person adversely affected may file a notice of appeal unless a petition for stay is filed together with a timely notice of appeal.

(b) *Appeal of final determinations.* (1) *Appeal Submittal.* Any district or landholder whose rights and interests are directly affected by a regional director's final determination can submit a written notice of appeal. Such notice of appeal must be submitted to the Commissioner of Reclamation within 30-calendar days from the date of the regional director's final determination.

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(2) *Submittal of supporting information.* The affected party will have 60-calendar days from the date that the regional director issues a final determination to submit a supporting brief or memorandum to the Commissioner. The Commissioner may extend the time for submitting a supporting brief or memorandum, if:

(i) The affected party submits a request to the Commissioner in a timely manner;

(ii) The request includes the reason why additional time is needed; and

(iii) The Commissioner determines the appellant has shown good cause for such an extension and the extension would not prejudice Reclamation.

(3) *Requests for stay of the final determination pending appeal.* (i) The Commissioner will determine whether to stay a regional director's final determination within 30 days after receiving a properly filed petition for stay if the requesting party:

(A) Submits a request for stay in writing to the Commissioner, with, or in advance of, the notice of appeal, and states the grounds upon which the party requests the stay; and

(B) Demonstrates that the harm that a district or landholder would suffer if the Commissioner does not grant the stay outweighs the interest of the United States in having the final determination take effect pending appeal.

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

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

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

(2) *Rules that govern appeals to OHA.* 43 CFR part 4, subpart G, and other

provisions of 43 CFR Part 4, where applicable, govern the OHA appeal process, except for the accrual of underpayment interest as specified in paragraph (e) of this section.

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

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

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

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

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

(1) Commissioner, Bureau of Reclamation, Office of Policy, Attention: D-5200, P.O. Box 25007, Denver, Colorado 80225.

(2) Director, Office of Hearings and Appeals, Department of the Interior,

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801 North Quincy Street, Arlington, Virginia 22203.

[61 FR 66805, Dec. 18, 1996, as amended at 67 FR 13702, Mar. 25, 2002]

**§ 426.25 Reclamation audits.**

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

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

**§ 426.26 Severability.**

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

**PART 427—WATER CONSERVATION RULES AND REGULATIONS**

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590y *et seq.*; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390b, 43 U.S.C. 390jj, 43 U.S.C. 422a *et seq.*, and 43 U.S.C. 523.

SOURCE: 61 FR 66825, Dec. 18, 1996, unless otherwise noted.

**§ 427.1 Water conservation.**

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and municipal and industrial (M&I) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water

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under the authority of the Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

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

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- 428.11 Effective date.

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z-11; 31 U.S.C. 9701; 32 Stat. 388, as amended.

SOURCE: 65 FR 4324, Jan. 26, 2000, unless otherwise noted.

**§ 428.1 Purpose of this part.**

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

**§ 428.2 Applicability of this part.**

- (a) This part applies to farm operators who provide services to:
  - (1) More than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity; or