

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 re-

gional 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, 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.

**§ 427.1**

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 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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- 428.3 Definitions used in this part.
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428.10 Districts' responsibilities concerning certain formerly excess land.

428.11 Effective date.

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z-11; 31 U.S.C. 9701; 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

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

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

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

**§ 428.3 Definitions used in this part.**

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

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

*We* or *us* means the Bureau of Reclamation.

*You* means a farm operator.