

RECLAMATION

Managing Water in the West

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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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.

§ 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.

§ 428.4. Who must submit forms under this part.

- (a) You must submit RRA forms to districts annually as specified in § 428.6 if:
 - (1) You provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities; or

- (2) You are the ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries that provide services in total to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities.
- (b) Anyone who is the indirect owner of a legal entity that is a farm operator meeting the criteria of paragraph (a) of this section must submit forms to us annually, if any of the land to which services are being provided by that legal entity is land that the part owner formerly owned as excess land and sold or transferred at an approved price.
- (c) If you must submit RRA forms due to the requirements of this section, then you may not use a verification form for your annual submittal as provided for in § 426.18(l) of this chapter to meet the requirements of this section.
- (d) If you must submit RRA forms solely due to the requirements of this section, then once you have met the requirement found in paragraph (a) of this section you need not submit another RRA form during the current water year, even if you experience a change to your farm operating arrangements. Specifically, the requirements of § 426.18(k)(1) of this chapter are not applicable.

§ 428.5 Required information.

- (a) We will determine which forms you must use to submit the information required by this section.
- (b) You must declare all nonexempt land to which you provide services westwide.
- (c) You must give us other information about your compliance with Federal reclamation law, including but not limited to:
 - (1) Identifier information, such as your name, address, telephone number;
 - (2) If you are a legal entity, information concerning your organizational structure and part owners;
 - (3) Information about the land to which you provide services, such as a legal description, and the number of acres;
 - (4) Information about whether you formerly owned, as ineligible excess land or under recordable contract, the land to which you are providing services;
 - (5) Information about the services you provide, such as what they are, who decides when they are needed, and how much control you have over the daily operation of the land;
 - (6) If you provide different services to different land parcels, a list of services that you provide to each parcel;
 - (7) Whether you can use your agreement with a landholder as collateral in any loan;
 - (8) Whether you can sue or be sued in the name of the landholding; and
 - (9) Whether you are authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

§ 428.6 Where to submit required forms and information.

You must submit the appropriate completed RRA form(s) to each district westwide that is subject to the acreage limitation provisions and in which you provide services.

§ 428.7 What happens if a farm operator does not submit required forms.

- (a) If you do not submit required RRA form(s) in any water year, then:
 - (1) The district must not deliver irrigation water before you submit the required RRA form(s); and
 - (2) You, the trustee, or the landholder(s) who holds the land (including to whom the land held in trust is attributed) must not accept delivery of irrigation water before you submit the required RRA form(s).
- (b) After you submit all required RRA forms to the district, we will restore eligibility.
- (c) If a district delivers irrigation water to land that is ineligible because you did not submit RRA forms as required by this part, we will assess administrative costs against the district as specified in § 426.20(e) of this chapter. We will determine these costs in the same manner used to determine costs for landholders under §§ 426.20(a)(1) through (3) of this chapter.

§ 428.8 What can happen if a farm operator makes false statements on the required forms.

If you make a false statement on the required RRA form(s), Reclamation can prosecute you under the following statement:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to \$10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the farm operator will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

§ 428.9 Farm operators who are former owners of excess land.

- (a) Land held in trust or by a legal entity may not receive irrigation water if:
 - (1) You owned the land when the land was excess, whether or not under

- recordable contract;
 - (2) You sold or transferred the land at a price approved by Reclamation; and
 - (3) You are the direct or indirect farm operator of that land.
- (b) This section does not apply if:
- (1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or
 - (2) The full-cost rate is paid for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

- (a) All provisions of this part apply on January 1, 2001, except:
 - (1) For those districts whose 2001 water year commences prior to January 1, 2001, the applicability date of §§ 428.1 through 428.8 is October 1, 2000.
- (b) On January 1, 2001, this part applies to all farm operating arrangements between farm operators and trusts or legal entities that:
 - (1) Are then in effect; or
 - (2) Are initiated on, or after, January 1, 2001.