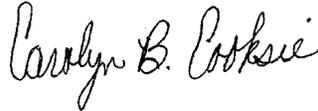


UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Program Appeals, Mediation, and Litigation 1-APP (Revision 2)	Amendment 11
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Approved by: Acting Administrator



Amendment Transmittal

A Reasons for Amendment

Subparagraphs 2 B, 162 B, 171 C, and 173 C, and Exhibits 58 and 61, have been amended to update the room number included in ALS' mailing address.

Subparagraph 2 C has been amended to update contact information.

Subparagraph 10 A has been amended to clarify an FSA reviewing authority's refusal to recommend equitable relief.

Page Control Chart		
TC	Text	Exhibit
	1-3, 1-4 2-5, 2-6 7-31, 7-32 7-71, 7-72 7-75, 7-76	58, pages 1, 2 page 3 61, page 1

2 FSA, Office of the Administrator, OBPI, ALS Organization

A ALS Organizational Structure and Duties

ALS is part of the Office of the Administrator. ALS:

- monitors and coordinates administrative appeal activities
- develops administrative appeal policy
- prepares National directives
- assists OGC and the Department of Justice with administrative appeals and litigation involving FSA and CCC

Note: ALS is FSA's point of contact for obtaining concurrence on behalf of the Executive Vice President, CCC, or Administrator, on any compromise or offer of settlement stemming from or potentially about administrative appeal or litigation.

- conducts hearings, as necessary, about suspension and debarment appeals
- assembles and prepares for signature by the Administrator, requests for NAD Director review or reconsideration
- provides guidance to FSA offices and officials on mediation cases and on appeals and litigation matters
- reviews and processes FOIA and Privacy Act appeals
- reviews and processes AFIDA appeals.

2 FSA, Office of the Administrator, OBPI, ALS Organization (Continued)

B ALS Addresses

The addresses for ALS are as follows.

For FedEx, UPS, or other Approved Overnight Mail Delivery	For USPS Delivery
USDA, FSA, ALS *--SOUTH BUILDING ROOM 5971-S 1400 INDEPENDENCE AVE SW WASHINGTON DC 20250-5971--* Telephone: 202-690-3297.	USDA, FSA, ALS STOP 0570 APPEALS AND LITIGATION STAFF 1400 INDEPENDENCE AVE SW WASHINGTON DC 20250-0570

Notes: Use FedEx, UPS, or other approved overnight service when time is of the essence or when sending any electronic disks, photographs, or other sensitive or damageable material.

USPS regular or priority mail shall **not** be used to send case files or packages to ALS, or when time is a factor. USPS regular mail should be used **only** for routine letter correspondence.

C ALS Contact Information

ALS contacts are as follows.

Appeals and Litigation Staff Main Telephone Number: 202-690-3297 FAX Number: 202-690-3003.		
Name	Title	Phone Number
John W. Welch	Director	202-690-3297
Gwen Sellman	Staff Assistant	202-690-3297
Charles Berge	Management Analyst	202-720-7797
Shelley Davis	Management Analyst	202-690-8034
Robin Wieland	*--Management Analyst--*	202-690-2814

10 Matters Outside the Jurisdiction of 7 CFR Part 780 and the Informal Appeals Process (Continued)

A Matters Outside the Scope (Continued)

- decisions resulting from matters administered with funding furnished by non-Federal providers
- matters administered by FSA for or on behalf of others under Memorandums of Understanding with USDA agencies

Example: TAA programs are **not** CCC or FSA programs and are **not** subject to FSA or CCC regulations, including relief regulations. Accordingly, adverse decisions under TAA are **not** reviewable administratively by FSA or NAD.

- decisions or communications about nonprogram loans
- anything about FSA's handling or priority of assignments of payments
- denying access to records or other information under FOIA or Privacy Act and implementing regulations, directives, and notices that are appealable under FOIA or the Privacy Act (Part 7)
- an FSA reviewing authority's refusal to recommend equitable relief

Note: Relief determinations are subject to appeal; however, FSA's electing **not** to consider relief on its own initiative is **not** an adverse decision giving rise to any ***--**appeal or mediation right. Granting or denying relief is entirely discretionary; participants are **not** entitled to relief. However, failure to act on a participant's **--*** request, including a participant's relief request, is appealable.

- administrative matters, such as where FSA locates Service Centers or provides structures for conducting FSA business
- a lack of program funding
- U.S. grain standard determinations made under CCC loan and purchase programs
- interest rates established by either FSA or CCC
- refusal by SED or any other FSA official or committee to consider, request, or further a request for administrative waiver, variance, or relief
- requirements that participants furnish information such as cash flow statements, farm operating plans, applications, etc.
- withholding payments according to 7 CFR Part 1403 and 58-FI
- determinations, including determinations on relief, that are administratively or judicially final.

10 Matters Outside the Jurisdiction of 7 CFR Part 780 and the Informal Appeals Process (Continued)

B Handling Decisions Outside the Scope

If FSA issues a verbal or written communication or statement for any of the matters or issues identified in subparagraph A, the communication or statement shall **not** do either of the following:

- include a determination of eligibility or extent of eligibility
- provide any appeal, mediation, or appealability review rights.

11 Nonappealable Decisions

A Decisions That Are Not Appealable

[7 CFR 780.5(a)] Decisions that are not appealable under this part shall include those based on the following:

- (1) Any general program provision or program policy or any statutory or regulatory requirement that is applicable to similarly situated participants;**
- (2) Mathematical formulas established under a statute or program regulation and decisions based solely on the application of those formulas;**
- (3) Decisions made pursuant to statutory provisions that expressly make agency decisions final or their implementing regulations;**
- (4) Decisions on equitable relief made by a State Executive Director or State Conservationist pursuant to Section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171;**
- (5) Decisions of other Federal or State agencies;**
- (6) Requirements and conditions designated by law to be developed by agencies other than FSA;**
- (7) Disapprovals or denials because of a lack of funding;**
- (8) Decisions made by the Administrator or a Deputy Administrator that may otherwise be appealable under this part.**

*--Only adverse decisions are subject to appeal, mediation, or appealability provisions. For examples of matters or issues that are **not** decisions, see paragraph 10.

Note: Denial of relief and failure to act on the request or right of a participant are appealable adverse decisions.--*

Section 2 Privacy Act – Access to Records

161 Right to Appeal Decision to Deny Access to Records**A USDA Regulations**

[7 CFR 1.112(a) (first sentence)] Any individual who wishes to be notified if a system of records maintained by an agency contains any record pertaining to him or her, or to request access to such records, shall submit a written request in accordance with the instructions set forth in the system notice for that system of records.

[7 CFR 1.112(b)] Any individual whose request under paragraph (a) of this section is denied may appeal that denial to the head of the agency which maintains the system of records to which the request relates.

Note: The complete FSA Privacy Act System of Records was published in FR, Volume 62, No. 25, page 5568, on February 6, 1997. FSA's Privacy Act System of Records is included in 3-INFO, Exhibit 4.

B FSA Policy

Unlike FOIA, the Privacy Act does **not** speak of a requester's right to administratively appeal any adverse determination that FSA makes on his or her request.

FSA permits individuals to request an administrative review of initial denials of access comparable to that under FOIA to avoid, where possible, the need for unnecessary judicial action.

162 Refusal to Grant Access Notification**A Regulation**

[7 CFR 1.114(d) (second sentence)] If the system manager determines to deny the request, the system manager shall inform the requester of that determination, the reason for the determination, and the title and address of the agency head to whom the denial can be appealed.

B Record Holding Office's Initial Denial

If FSA determines to deny an individual access to his or her own records, the requester shall be notified of the determination in writing.

The head of the record holding office **must** cite both the applicable Privacy Act and FOIA exemption to withhold information from the individual to whom the records pertain.

Note: In the interest of full disclosure, the Privacy Act requires that requests for access to, or copies of, records subject to the Privacy Act **must** be analyzed under both FOIA and the Privacy Act.

See 3-INFO, paragraph 20, for the descriptions of the 2 Privacy Act exemptions that apply to FSA records subject to the Privacy Act, and 2-INFO * * * for the descriptions of the 9 FOIA exemptions.

The requester shall be provided the opportunity to submit a written appeal of the denial to the Administrator within 45 calendar days from the date of the denial letter. The appeal shall be submitted to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTENTION: APPEALS AND LITIGATION STAFF
--1400 INDEPENDENCE AVE SW RM 5971-S--
STOP 0570
WASHINGTON DC 20250-0570
Telephone: 202-690-3297.

Note: To facilitate the processing of the appeal, the requester shall be instructed to place "PRIVACY ACT APPEAL" in capital letters on the front of the envelope.

C State Office Action

The designated State FOIA coordinator shall send a copy of the denial letter to the Director, PAS.

Section 3 Privacy Act – Amending FSA Records**171 Right to Appeal Decision to Refuse to Amend and Notification****A Right to Appeal Decision to Refuse to Amend Regulations**

[7 CFR 1.116(a)] Any individual who wishes to request correction or amendment to any record pertaining to him or her contained in a system of records maintained by an agency shall submit that request in writing in accordance with the instructions set forth in the system notice for that system of records.

[7 CFR 1.118(a)] Any individual whose request for correction or amendment under 1.116 is denied, and who wishes to appeal that denial, shall address such appeal to the head of the agency which maintains the system of records to which the request relates, in accordance with the procedures set forth in the agency's initial denial of the request.

Note: The complete FSA Privacy Act System of Records was published in FR, Volume 62, No. 25, page 5568, on February 6, 1997. FSA's Privacy Act System of Records is included in 3-INFO, Exhibit 4.

B Refusal to Amend Notification

[7 CFR 1.117(a)(2) (first sentence)] [The agency shall ... promptly} inform the requester of its refusal to amend the record in accordance with the request; the reason for the refusal; the procedures whereby the requester can appeal the refusal to the head of the agency; and the title and business address of that official.

171 Right to Appeal Decision to Refuse to Amend and Notification (Continued)

C Record Holding Office’s Review and Initial Denial

If FSA, after reviewing the record that the requester believes is not accurate, relevant, timely, or complete, determines **not** to grant all or any portion of the request to amend, the requester shall be notified of the determination, in writing, along with the reasons for the determination. The requester shall be provided the opportunity to submit a written appeal of the refusal to amend to the Administrator within 45 calendar days from the date of the denial letter. The appeal shall be submitted to the following address:

ADMINISTRATOR
ATTENTION: APPEALS AND LITIGATION STAFF
FARM SERVICE AGENCY
STOP 0570
--1400 INDEPENDENCE AVE SW RM 5971-S--
WASHINGTON DC 20250-0570
Telephone: 202-690-3297.

Note: To facilitate processing the appeal, the requester shall be instructed to place “PRIVACY ACT APPEAL” in capital letters on the front of the envelope or on the cover sheet of the FAX transmittal.

D State Office Action

The designated State FOIA coordinator shall send a copy of the denial letter to the Director, PAS.

173 Review by Administrator and Final Determination**A Regulation**

[7 CFR 1.118(b) (first sentence)] The head of each agency shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests a review, unless, for good cause shown, the head of the agency extends this 30-day period and so notifies the requester, together with an estimate of the date on which a final determination will be made.

B Agree to Amend Record

If the Administrator determines to grant all or any portion of an appeal of the refusal to amend records, the requester shall be notified of the determination in writing. The record holding office shall be notified to make the requested correction or amendment. The record holding office shall inform all previous recipients of the subject record, including any person or agency outside USDA as maintained in the accounting of disclosures, of the exact nature of the correction or amendment.

Note: See 3-INFO, paragraph 22 for instructions for accounting for certain disclosures of Privacy Act records.

173 Review by Administrator and Final Determination (Continued)

C Refusing to Amend Record

If FSA determines on appeal to refuse to amend records, FSA **must** receive OGC's concurrence.

ALS shall send a copy of the request to amend records, all documentation submitted by the requester in support of the request, and FSA's proposed determination to OGC.

Once OGC has completed its review, the Administrator shall notify the requester of the decision and the reasons for denying the request, if denied. The denial letter shall also inform the requester of the following:

- his or her right to file a concise statement of the reasons for disagreeing with FSA's decision
- that the statement of disagreement shall be submitted to the following address:

ADMINISTRATOR, FARM SERVICE AGENCY
ATTENTION: APPEALS AND LITIGATION STAFF
STOP 0570
--1400 INDEPENDENCE AVE SW RM 5971-S--
WASHINGTON DC 20250-0570
Telephone: 202-690-3297

- that the statement of disagreement will be made available to anyone to whom the record is subsequently disclosed along with the following:
 - the record, if determined appropriate
 - a brief statement by FSA summarizing its reasons for refusing to amend the record
- that, where FSA has made prior disclosures of the record and an accounting of those disclosures was made, prior recipients of the record will be provided a copy of any statement of disagreement and a brief statement of FSA's reasons for refusing to amend the record
- the right to seek judicial review of FSA's determination to refuse to amend the record in the appropriate U.S. District Court.

Note: The delegation of authority to the Administrator may be **not** redelegated.

Mandatory Language to Insert in Adverse FOIA Decision Letters

A Required Language

Any FSA office issuing an adverse FOIA decision shall use the language in subparagraphs B through E. Language is provided for 4 types of adverse FOIA decisions.

B Denial of Release of Information Based on Applicable FOIA Exemptions

The following language shall be used when denying the release of information based on applicable FOIA exemptions.

“If you believe this determination to withhold information is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of why you believe this decision is in error. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words “Freedom of Information Act Appeal.” Mail your appeal package to the following address.

ADMINISTRATOR
ATTN: APPEALS AND LITIGATION STAFF
USDA FSA
--1400 INDEPENDENCE AVE SW RM 5971-S--
STOP CODE 0570
WASHINGTON DC 20250-0570.”

C No Records Response

The following language shall be used when there is a no records response.

“If you believe that there are, in fact, records responsive to your request in files maintained by FSA, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal the location of the responsive records, if it is known to you, and the reason why you believe that there are records responsive to your request in FSA files. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words “Freedom of Information Act Appeal.” Mail your appeal package to the following address.

ADMINISTRATOR
ATTN: APPEALS AND LITIGATION STAFF
USDA FSA
--1400 INDEPENDENCE AVE SW RM 5971-S--
STOP CODE 0570
WASHINGTON DC 20250-0570.”

Mandatory Language to Insert in Adverse FOIA Decision Letters (Continued)

D Denial of Expedited Processing

The following language shall be used when denying expedited processing.

“If you believe the determination to deny your request for expedited processing is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of the particular circumstances which constitute exceptional need or urgency for the specific records you requested. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words “Freedom of Information Act Appeal.” Mail your appeal package to the following address.

ADMINISTRATOR
ATTN: APPEALS AND LITIGATION STAFF
USDA FSA
--1400 INDEPENDENCE AVE SW RM 5971-S--
STOP CODE 0570
WASHINGTON DC 20250-0570.”

E Denial of a Fee Waiver

The following language shall be used when denying a fee waiver.

“If you believe the determination to deny your request for a fee waiver is incorrect, you may appeal to the FSA Administrator. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of how disclosure of the information to you is likely to contribute significantly to public understanding of the operations or activities of the government and the reasons disclosure would not be primarily in your commercial interest. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words “Freedom of Information Act Appeal.” Mail your appeal package to the following address.

ADMINISTRATOR
ATTN: APPEALS AND LITIGATION STAFF
USDA FSA
--1400 INDEPENDENCE AVE SW RM 5971-S--
STOP CODE 0570
WASHINGTON DC 20250-0570.”

Mandatory Language to Insert in Adverse FOIA Decision Letters (Continued)

F Glomar Response

The following language shall be used when FSA can neither confirm nor deny the existence of records.

“You have the right to challenge FSA’s response to your request for records. The Appeals and Litigation Staff must receive your written appeal within forty-five (45) calendar days of the date of this letter. Please include in the appeal a brief explanation of why you believe FSA’s response is not appropriate. Be sure to include a copy of your initial request letter in your appeal package, and clearly mark both your letter and its envelope with the words “Freedom of Information Act Appeal.” Mail your appeal package to the following address.

ADMINISTRATOR
ATTN: APPEALS AND LITIGATION STAFF
USDA FSA
--1400 INDEPENDENCE AVE SW RM 5971-S--
STOP CODE 0570
WASHINGTON DC 20250-0570.”

Example Letter to Participants or Payees for EFT's

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United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Farm Service
Agency

1400 Independence
Ave, SW
Stop 0570
Washington, DC
20250-0570

TO: (Enter name of participant or payee; such as, "I. Am Farms")

THROUGH: (Enter name and address of the participant's attorney or representative; such as, "Lawyers are Us, P.O. Box 1, Fargo, ND 58103")

FROM: Farm Service Agency
Appeals and Litigation Staff, Room 5971-S
1400 Independence Ave., SW
Washington, D.C. 20250

PHONE: 202-690-3297 FAX: 202-690-3003

SUBJECT: Data Required for Electronic Funds Transfer

In connection with an agreement or order directing that payment be issued, the Farm Service Agency requests the following information.

Participant's Name:	<i>I. Am Farms</i>
Last 4 of Participant's Tax ID:	<i>1234</i>
Participant's Mailing Address:	<i>P.O. Box A, Fargo, ND 58103</i>
Participant's Phone:	<i>701-555-1515</i>
Do you want payment to go to you as participant or someone else?	If participant wants payment to be issued directly to the participant, leave this block blank . If participant wants payment issued to another designated account; such as the attorney or a law firm, enter name and address where the participant wants the payment issued: <i>Lawyers are Us P.O. Box 1 Fargo, ND 58103</i>
Please complete the following for the account where you want funds deposited.	
Name and address of bank or financial institution where you want payment to go:	<i>Dakota Financial Financial Street Fargo, ND 58103</i>
Bank Routing Number:	<i>123456789</i>
Account Number:	<i>987654</i>
Name of Owner on Account:	<i>Lawyers are Us, Escrow and Trust Account</i>
Tax ID of owner of account (only to assist in identification of owner with bank):	If this is the same as the participant, leave this block blank . <i>12-3456789</i>
PLEASE SUBMIT THIS FORM TOGETHER WITH A COPY OF A VOIDED CHECK AND BLANK DEPOSIT SLIP OF THE ACCOUNT WHERE YOU WANT FUNDS DEPOSITED.	

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