

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Program Appeals, Mediation, and Litigation
1-APP (Revision 2)

Amendment 15

Approved by: Administrator



Amendment Transmittal

A Reasons for Amendment

Subparagraph 2 C has been amended to update ALS contact information.

Subparagraphs 14 F, 15 B, 15 D, 43 C, Exhibit 8, Exhibit 8.5, and Exhibit 15 have been amended to include the NAD website as mandatory language to insert in adverse decision letters.

Subparagraph 15 A has been amended to clarify that the adverse decision letter must clearly explain the reasons why the decision is not appealable.

Subparagraph 15 B has been amended to require the ECOA notice and USDA nondiscrimination statement on all FLP nonappealable adverse decision letters.

Paragraph 151, subparagraphs 155 C and 162 B, and Exhibit 58 have been amended to include changes because of the passage of the FOIA Improvement Act of 2016, enacted June 30, 2016. These changes include:

- notifying FOIA and Privacy Act requesters of their right to seek dispute resolution services from FSA's FOIA liaison and from the Office of Government Information Services at the National Archives and Records Administration
- providing FOIA and Privacy Act requesters 90 calendar days to file an administrative appeal of a decision to deny access to, or copies of, records.

Subparagraphs 162 B and 171 C, and Exhibit 58 have been amended to include the e-mail address for FOIA and Privacy Act requesters to electronically file an administrative appeal.

Amendment Transmittal (Continued)

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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
Charles Berge	Assistant to the Director	202-720-7757
--Karen Malkin	Assistant to the Director	202-690-2203--
Gwen Sellman	Staff Assistant	202-690-3297
--Matt Ponish	Assistant to the Director	202-720-2218--
Shelley Davis	Management Analyst	202-690-8034
Robin Wieland	Management Analyst	202-690-2814

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

F Appeal to NAD

The following is the **mandatory** language to insert in adverse decision letters:

“You may appeal this determination to the National Appeals Division (NAD) by filing a written request no later than 30 calendar days after you receive this notice according to the NAD appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing that you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and *--mediation. To appeal, you must write to NAD at the following address, or on the NAD website at www.nad.usda.gov, explain why you believe this determination is erroneous,--* and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. (*Insert NAD address.*)

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter according to the regulations at 7 CFR Part 780 and 7 CFR Part 11.”

G Mandatory Language When Decision-Maker is an Acting STC or COC

For decisions rendered by an acting STC or COC, add the following language immediately following the appeal rights portion of the determination letter:

“The provisions of regulations at 7 CFR §780.3 and §7.38 authorize me to make this decision as the acting (*State/county*) committee. I have attached to this determination a copy of that designation.”

Include as an attachment to the adverse decision letter a copy of the written designation.

***--15 Decisions That Are Not Appealable**

A Nonappealable Adverse Determinations

Paragraph 11 describes some decisions based on issues that are not appealable. Participants **cannot** appeal the rules, regulations, or generally applicable provisions themselves. Letters notifying participants that a decision is not appealable **must** clearly explain the reasons why--* the decision is not appealable. Avoid using general and vague statements that do not sufficiently demonstrate the reasons that the decision is not appealable.

--15 Decisions That Are Not Appealable (Continued)--

B Mandatory Language to Insert in a Nonappealable Adverse Determination Letter About the Right of Appealability Review

Participants may request that SED or NAD Director review the FSA determination that an adverse decision is **not** appealable. After fully explaining the adverse decision according to paragraph 12, and the reasons why the facts in the case are **not** in dispute, include the following mandatory language in the adverse decision:

*“(Insert, as applicable, “I have”, The COC has” or The STC has”) determined that the issue is not appealable. You may seek a review of this determination by filing with either the FSA State Executive Director or the National Appeals Division (NAD) Director a written request no later than 30 calendar days after the date you receive this notice according to the FSA appeal procedures found at 7 CFR Part 780 or the NAD appeal procedures found at 7 CFR Part 11. If you believe that this issue is appealable, you must write to either the FSA State Executive Director or the NAD Director at the applicable address shown and explain why you believe this determination is appealable. If you choose to seek an appealability review of this determination with the FSA State Executive Director, you need not send the NAD Director any information. If you seek an appealability review with the NAD Director, provide FSA a copy of your request. If you request an appealability review by the State Executive Director and the State Executive Director determines that the issue is not appealable, you will be afforded the right to request an appealability review by the NAD *--Director. (Insert SED and NAD addresses.) You may also contact the NAD Director on the NAD website at www.nad.usda.gov.”*

Note: FLP procedure requires that all nonappealable adverse decisions letters include the ECOA notice and USDA nondiscrimination statement.--*

Exception: If a COC employee determines that a decision is **not** appealable, replace the mandatory language in this subparagraph with the following:

“I have determined that the issue is not appealable. You may seek a review of this determination by filing with the FSA State Executive Director a written request no later than 30 calendar days after the date you receive this notice according to the FSA appeal procedures found at 7 CFR Part 780. If you believe that this issue is appealable, you must write to the FSA State Executive Director at the address shown and explain why you believe this determination is appealable. If the FSA State Executive Director determines that the issue is not appealable, you will be afforded the right to request an appealability review by the National Appeals Division Director. (Insert SED address.)”

--15 Decisions That Are Not Appealable (Continued)--

C Actions Required Following SED Appealability Determination

The following table describes the action required for the various SED appealability determinations.

IF SED’s appealability determination is that the adverse decision is...	THEN provide the right to...
Appealable	reconsideration, appeal, mediation, or appeal to NAD, as applicable, according to paragraph 13.
not appealable	seek an appealability review from NAD according to subparagraph 15 D.

D Mandatory Language to Insert in Notification of SED Non-Appealability Determination

If, after performing a review of appealability SED finds or determines that the matter or issue being contested is a matter or issue that is **not** appealable, the participant may request that the NAD Director review the FSA adverse determination and SED appealability determination. After fully explaining the adverse determination and basis upon which the SED determined it was not appealable, include the following **mandatory** language in SED’s non-appealability determination:

“(Insert, as applicable, “I have”, The SED has,)” determined that the issue is not appealable. You may seek a review of this determination by filing, with the National Appeals Division (NAD) Director, a written request no later than 30 calendar days after the date you receive this notice according to the NAD appeal procedures found at 7 CFR Part 11. If you believe that this issue is appealable, you must write to the NAD Director at the address shown and explain why you believe this determination is appealable. If you choose to seek an appealability review with the NAD Director, provide FSA a copy of your request. **--(Insert NAD address.)* You may also contact the NAD Director on the NAD website at **www.nad.usda.gov.--***

43 FSA's Consideration of NRCS Determination Appeals (Continued)

C Appeal Rights Following State Conservationist Review

If State Conservationist upholds the final NRCS Title XII determination and the appeal raises no other issues reviewable within FSA, the participant shall be given notice of the right to appeal the decision only to NAD.

Note: Participants appealing NRCS determinations also have the right to mediation unless they have already mediated the issue. If mediation is still applicable, follow subparagraph 14 E.

The following is **mandatory** language to be included in the adverse decision letter:

“You may appeal this determination to the National Appeals Division (NAD) by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. (*Insert NAD address.*)
--You may also contact the NAD Director on the NAD website at www.nad.usda.gov.--

If the participant subsequently requests a NAD appeal, FSA is responsible for submitting the FSA record to NAD. However, since this is an appeal of an NRCS final decision, an official from NRCS **must** continue to be involved in the appeal process to furnish information for FSA about the determination and/or decision under appeal to NAD. This may include information about the determination and/or decision, field visits, handbook guidance, and other documentation relevant in the matter to ensure that the record, as well as hearing exhibits and testimony submitted to NAD, is complete and contains all documentation and authorities relevant to the determination appealed to NAD.

Note: FSA **must** contact NRCS and provide the NRCS State Office appeals contact (Exhibit 27) a copy of the request for NAD appeal and all information provided by NAD about the appeal proceedings, including the request for FSA record, the pre-hearing teleconference, and all hearing and post-hearing notifications.

NRCS staff **must** attend, be available as witnesses, and assist FSA's representative in any appeal to NAD involving FSA's ratification of an NRCS final Title XII determination. FSA and NRCS may agree to have an NRCS employee function as FSA's representative on a case by case basis. In that case, FSA's representative **must** maintain a presence in the appeal proceedings and both agencies **must** attend the NAD hearing and participate in any further requests resulting from NAD's appeal decision.

43 FSA's Consideration of NRCS Determination Appeals (Continued)

D NRCS Appeal Contacts

Exhibit 27 provides a list of current NRCS appeal contacts. FSA offices shall consult with NRCS State Offices, if a contact is unavailable.

44-50 (Reserved)

Part 7 FOIA and Privacy Act**Section 1 FOIA****151 Administrative Appeal Rights****A Regulations**

[7 CFR 1.14(a)] Requesters seeking administrative appeal of a denial of a request for records or denial of a fee waiver must ensure that the appeal is received by the agency within 45 days of the date of the denial letter.

*--On June 30, 2016, the FOIA Improvement Act of 2016 was enacted, amending FOIA to allow requesters a period of at least 90 days after the date of the determination to deny a request. USDA determined that the requester must ensure that the appeal is received by the agency within 90 calendar days of the date of the denial letter. The 2016 FOIA amendment applies to FOIA requests and appeals made after June 30, 2016.

Note: This means that the new statutory language authorizing 90 days to appeal supersedes the current regulatory language authorizing 45 days. USDA regulations at 7 CFR Part 1, Subpart A will be amended to incorporate the new FOIA requirements.--*

The sole level of appeal for denials of requests filed under FOIA and the Privacy Act is to the Administrator. The address to file a FOIA or Privacy Act appeal is shown in subparagraph 162 B.

[7 CFR 1.13] The date of a request or appeal shall be the date it is received in the agency and office responsible for the administrative processing of FOIA requests or appeals.

151 Administrative Appeal Rights (Continued)**B Record Holding Office's Initial Denial**

--A requester has the right to administratively appeal any adverse determination, and to seek dispute resolution services from the FSA FOIA liaison or the Office of Government Information Services. Adverse determinations include:--

- denying the release of records, in full or in part, based on at least 1 of the 9 FOIA exemptions

Note: See 2-INFO for the legal basis for denying requests.

- “no records” response

Note: The issue on appeal is the adequacy of FSA’s search for records.

- denying a request for a fee waiver
- requester’s status for determining fee level

Note: See 2-INFO for categories of requesters.

- denying a request for expedited processing
- “agency records” determination

Note: “Agency records” are records that are either created or obtained by FSA and under FSA control at the time of the FOIA request.

151 Administrative Appeal Rights (Continued)**C Mandatory Language to Insert in Adverse FOIA Decision Letters**

Any FSA office issuing an adverse FOIA decision shall use the language in Exhibit 58. Language is provided for 5 types of adverse FOIA decisions, as follows:

- denial of release of information based on applicable FOIA exemptions
- no records response
- denial of expedited processing
- denial of fee waiver
- Glomar response.

*--Additional language provides the requester the right to seek dispute resolution services from the FSA FOIA liaison or the Office of Government Information Services.

D Requester Action

FOIA appeals shall be submitted to FSA's Administrator within 90 calendar days from the date of the adverse determination. The requester may submit an appeal via email or mail.--*

If the requester mails the appeal, "**STOP 0570**" **must** be included in the address. To facilitate the processing of an appeal, the requester should place "**FOIA APPEAL**" in capital

--letters on the front of the envelope. See Exhibit 58 for the complete mailing and e-mail-- address for submitting FOIA appeals to the Administrator.

152 State FOIA Coordinators

A Designation

Each State Office shall designate at least 1 employee to act as FOIA coordinator who, in addition to assisting the record holding office in processing FOIA requests, will be responsible for providing all necessary assistance to enable ALS to review and process FOIA appeals within the administrative deadline or any extension of the administrative deadline.

152 State FOIA Coordinators (Continued)

B Responsibilities Relating to Appeals

When ALS receives an appeal of a decision made by a State or County Office to deny the release of FSA records, ALS will notify the State FOIA coordinator. FOIA coordinators will provide assistance in:

- forwarding the FOIA request file compiled by the record holding office to ALS

Notes: If the volume of the requested records is so large as to make sending all records impractical, ALS may request a representative sample.

Copies shall be 1-sided and the best copies available. The record holding office shall notate on the FOIA request file that all copies are the best available. Copies of records that were withheld in full shall **not** have information blacked out or added. Copies of records that were partially released, according to 2-INFO, shall include the brackets showing the information that was withheld but the information shall **not** be blacked out.

- obtaining background information pertinent to the FOIA request, as determined by ALS or OGC
- obtaining declarations, if applicable, from the FSA employee who performed, supervised, or coordinated the record search efforts, as determined by ALS or OGC.

--If State and County Offices determine to ship copies of the requested fil, FedEx, United Parcel Service, or other shipping companies with overnight delivery must be used.--

Note: Mail sent to the National Office using standard USPS creates delays because of package inspections and irradiation technology usage to decontaminate bacteria. Because irradiation “over exposes” images on paper, reviewing the records and providing the requester the best copy available, as required by FOIA, will be difficult, if not impossible.

153 FOIA Request File

A Material To Be Included

A complete copy of the FOIA request file, maintained by the record holding office according to 25-AS, may be required to be forwarded to ALS. The material in the file shall include:

- the original written request
- a copy of the record holding office's response.

Depending on the individual request, the FOIA request file may also include, but **not** be limited to:

- originals or best copies available of the requested records

Note: Requested records will include pages released to the requester **and** pages withheld.

- supporting documentation or correspondence compiled in the course of processing the request relating to:
 - fees, including fee waiver determinations
 - the search for records
 - expedited processing determinations
 - consultations and referrals
 - contact with the requester about the request
 - any unusual circumstances that may justify a delay in responding to a request.

Note: See 2-INFO for examples of unusual circumstances that could justify a delay.

*--B Retention Period

FSA records that are denied release in response to an initial FOIA request must be segregated and preserved while a FOIA appeal or FOIA litigation is pending. All relevant records about individual requests, as described in subparagraph A, must be preserved until further notice.

C Consequences for Failure to Preserve Records

Failure to preserve records through the conclusion of FOIA litigation could result in court-ordered sanctions against FSA. Sanctions would include attorney fees and litigation costs, and potentially, other penalties such as injunctive relief.--*

154 Processing Appeals**A Regulations**

[7 CFR 1.14(b)] Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

B Separating Duties

If an appeal is received by the record holding office, the head of the office shall forward the appeal to the Administrator, according to paragraph 151, and notify the requester that the appeal is being referred to the Administrator for a determination.

C ALS Responsibility

ALS is responsible for processing administrative appeals under FOIA and preparing *--materials used by the Justice Department and OGC to defend FSA in FOIA litigation.--*

D ALS Initial Denial Review

The administrative appeals process is to be made available to a requester **after** FSA has given all consideration to the FOIA request according to FSA procedure. Processing the initial request may include performing a search for records and determining applicable fees. If responsive records exist, a review of the records shall be completed to determine what information is exempt from disclosure.

On a case-by-case basis, if the initial review by ALS reveals that the request was **not** processed according to 2-INFO, ALS may remand the FOIA request to the record holding office, through the State Office, for additional processing and a complete response. ALS will close its files on the appeal and notify the requester that the request is being referred to the record holding office for further processing and response. If the request is partially denied under FOIA, the requester will again be provided appeal rights to the Administrator.

State Offices shall contact PAS for guidance about the processing FOIA requests received.

155 Final Administrative Determination**A Regulation**

[7 CFR 1.14(c) (first sentence)] 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which an appeal of a denial is submitted shall inform the requester of its determination concerning that appeal within 20 working days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by 1.16, of its date of receipt.

B Appeal Is Granted in Full

If FSA determines to grant the appeal in full, the written response to the requester shall include any conditions surrounding the decision to grant the request, such as the payment of fees. If the responsive records are released to the requester by ALS on appeal, the response shall also include the name, mailing address, and telephone number of the FSA employee to contact to make arrangements for inspection or record release.

C Appeal Is Denied

If FSA determines to deny the appeal, either in part or in whole, FSA **must** receive concurrence from OGC with respect to legal sufficiency.

ALS shall send a copy of the records requested and all correspondence relating to the request to OGC. When the volume of records is so large as to make sending a complete copy impractical, ALS shall include a representative sample of the requested records and an informative summary of the records to OGC.

OGC shall review, as promptly as practicable, the request and appeal and provide FSA all necessary assistance to respond to the appeal within the administrative deadline or any extension of the administrative deadline.

The requester shall be informed of the final determination, the reasons for denial, if denied, the name, title or position of each employee responsible for denial, and the right to judicial *--review of the denial by an appropriate U.S. District Court. The requester shall also be provided the opportunity to seek dispute resolution services from the Office of Government Information Services.--*

Note: The Administrator, or designee, is authorized to receive FOIA appeals and make determinations to deny FOIA appeals.

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 90 calendar days from the date of the denial letter. The appeal shall be submitted by e-mail to **FSAFOIAappeal@wdc.usda.gov** or 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.

*--**Important:** The decision letter, refusing to grant access to records, shall include the mandatory language for the type of adverse decision that applies. See Exhibit 58 for language for the 5 types of adverse decisions.--*

C State Office Action

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

164 Final Determination**A Regulation**

[7 CFR 1.114(e)] If the head of an agency determines that an appeal pursuant to 1.112(b) is to be denied, the head of the agency shall inform the requester of that determination, the reason for the determination, and the requester's right under 5 U.S.C. 552a(g) to seek judicial review of the denial in Federal district court.

B Appeal is Granted

If FSA determines to grant the appeal, the requester will be notified of the determination in writing within 10 workdays and any requested records forwarded to ALS by the record holding office will be provided to the requester with the written determination.

If the requested records are **not** released by ALS on appeal, the requester will be notified of when and where to access the requester's own records. ALS shall notify the record holding office to provide access for personal inspection, or copies of the requested records, within 30 workdays of the final decision letter, unless for good cause shown, the record holding office is unable to provide access for personal inspection, or copies of the requested records, within 30 workdays of the final decision letter.

C Appeal is Denied

If FSA determines to deny access to, or the release of, the requested records, FSA **must** receive OGC's concurrence for legal sufficiency. ALS shall send a copy of the requested records and the reasons for FSA's proposed determination to OGC. Once OGC has completed its review, FSA shall notify the requester of FSA's decision, with the reasons for denying the request if denied, including the following:

- applicable Privacy Act and FOIA exemptions
- name and title of the person responsible for the final decision
- right to seek judicial review of the denial in an appropriate U.S. District Court
- *--right to seek dispute resolution services from the Office of Government Information Services.--*

Note: The Administrator, or designee, is authorized to receive Privacy Act appeals of denial to access and make determinations to deny such appeals.

165-170 (Reserved)

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 by e-mail to **FSAFOIAappeal@wdc.usda.gov** or 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 Police Affairs Branch Chief of Staff.

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 by e-mail to **FSAFOIAappeal@wdc.usda.gov** or 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.

Example Initial Determination Letters

The following example letters are for illustration purposes **only** and are **not** intended to be accurate descriptions of program or eligibility provisions.

Example 1 (COC Determination)

Date

Ms. Helga Moe
12 Farmville Rd
Taneyburg VA 12345-9876

Dear Ms. Moe:

This letter is in reference to the two applications you filed seeking benefits under the Crop Disaster Program for 2005 sweet pea losses on unit numbers 4 and 5. We have processed those applications.

Under the rules governing the program, payment eligibility occurs if the eligible loss of quantity of an eligible crop is in excess of 35 percent of expected production. As shown on the attached computation worksheets, and based on the information you certified to concerning unit crop acreage and 2005 crop year net production of sweet peas, the Somewhere County FSA Committee determined that units 4 and 5 did not suffer a loss great enough to trigger payment eligibility. Consequently, quantity loss payments are not computed for these units.

If you believe that the county committee has not properly considered the individual facts of your applications for unit numbers 4 and 5, you have the following options:

Reconsideration

You may request that the county committee reconsider this determination by filing a written request no later than 30 calendar days after you receive this notice in accordance with FSA appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to the National Appeals Division. To request reconsideration, write to me at the following address and explain why you believe this determination is erroneous. The address of the county committee is:

(Insert applicable address.)

--Mediation--

Mediation is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the State FSA State Executive Director at the following address:

(Insert applicable address.)

* * *

Example Initial Determination Letters (Continued)

*--

Example 1 (COC Determination) (Continued)

Appeal to STC

You may appeal the County Committee's determination to the State Committee by filing a written request no later than 30 calendar days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the State Committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to appeal to the State Committee, you may later appeal the determination of the State Committee to NAD. If you appeal an initial decision of a County Committee to the State Committee, you waive your right to reconsideration by the County Committee of that decision. To appeal, write to the State Committee at the following address and explain why you believe this determination is wrong.

(Insert applicable STC address.)

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, or on the NAD website at www.nad.usda.gov, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter.

(Insert applicable NAD address.)

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

Jon Rodriguez
County Executive Director

Attachment

--*

Example Initial Determination Letters (Continued)

*--

Example 3 (FLM Determination) (Continued)

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, or to the NAD website at **www.nad.usda.gov**, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter.

(Insert applicable NAD address.)

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

(Insert applicable nondiscrimination statement as instructed in 1-FLP, subparagraph 41C).

Sincerely,

(Insert name)

Farm Loan Manager

--*

Example Determination Letter for an FLM/SFLO Reconsideration (Continued)

*--

Mrs. Brenda Op and Op Farms Partnership
Page 3

DETERMINATION

The denial primary loan servicing was factually correct and in accordance with regulations.

If you believe that my decision is erroneous, you have the following options:

Mediation

Mediation is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the FSA State Executive Director at the following address: *(Insert SED address or Mediation Program address, as applicable.)*

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, or on the NAD website at www.nad.usda.gov, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. *(Insert applicable NAD address.)*

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

(Insert name)

Farm Loan Manager/Senior Farm Loan Officer

--*

Example Determination Letter for a COC Appeal Hearing (Continued)

*--

Mr. John Farm and Mr. Bill Land
Page 3

DETERMINATION

In view of the facts of this case and Farmland's position, the denial of 2003 NAP coverage for sweet corn was factually correct and according to rules governing the program. The record does not contain any evidence supporting a conclusion that Farmland's inability to submit a timely application for 2003 NAP coverage was the result of erroneous information or advice of an authorized FSA representative. Accordingly, the county committee denies Farmland's appeal and has declined to consider equitable relief provisions under 7 CFR 718.303.

If you believe that the county committee's decision is erroneous, you have the following options:

Appeal to State Committee

You may appeal the county committee's determination to the State Committee by filing a written request no later than 30 calendar days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the State committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to appeal to the State committee, you may later appeal the determination of the State Committee to NAD. To appeal, write to the State Committee at the following address and explain why you believe this determination is wrong. (Insert STC address.)

Mediation

Mediation is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the FSA State Executive Director at the following address: *(Insert SED address or Mediation Program address, as applicable.)*

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, or on the NAD website at www.nad.usda.gov, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. *(Insert applicable NAD address.)*

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

(Insert name)
County Executive Director

--*

Mandatory Language to Insert in Adverse FOIA Decision Letters

***--Note:** Exhibit 58 is available in Word format from the FSA Intranet at <http://inside.fsa.usda.gov/>. CLICK “Employee Forms”, “Find Current Forms Using Our Form Number Search”, in the “Form Number” field, ENTER “1-APP Exhibit 58”, and CLICK “Submit”.--*

A Required Language

Any FSA office issuing an adverse FOIA decision shall use the language in subparagraphs B *--through E. Language is provided for 5 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 ninety (90) 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. You may submit your appeal electronically to FSAFOIAappeal@wdc.usda.gov or by mail. If mailing the appeal, 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.

*--You may seek dispute resolution services from the FSA FOIA liaison. Contact information for the FSA FOIA liaison is:

OFFICE OF EXTERNAL AFFAIRS
PUBLIC AFFAIRS STAFF
USDA-FSA
1400 INDEPENDENCE AVE SW RM 4074-S
STOP CODE 0506
WASHINGTON DC 20250-0506
PHONE: (202) 720-6788
FAX: (202) 720-4034
EMAIL: fsa.foia@wdc.usda.gov.--*

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

B Denial of Release of Information Based on Applicable FOIA Exemptions (Continued)

*--You may contact the Office of Government Information Services at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Contact information for the Office of Government Services is:

OFFICE OF GOVERNMENT INFORMATION SERVICES
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
8601 ADELPHI ROAD-OGIS
COLLEGE PARK, MARYLAND 20740-6001
PHONE: (202) 741-5770
TOLL FREE (877) 684-6448
FAX: (202) 741-5769
EMAIL: ogis@nara.gov.

Contacting the FSA FOIA liaison or the Office of Government Information Services does not affect your right to administratively appeal to FSA.”--*

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 ninety (90) 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. You may submit your appeal electronically to FSAFOIAappeal@wdc.usda.gov or by mail. If mailing the appeal, 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)

C No Records Response (Continued)

*--You may seek dispute resolution services from the FSA FOIA liaison. Contact information for the FSA FOIA liaison is:

OFFICE OF EXTERNAL AFFAIRS
PUBLIC AFFAIRS STAFF
USDA-FSA
1400 INDEPENDENCE AVE SW RM 4074-S
STOP CODE 0506
WASHINGTON DC 20250-0506
PHONE: (202) 720-6788
FAX: (202) 720-4034
EMAIL: fsa.foia@wdc.usda.gov.

You may contact the Office of Government Information Services at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Contact information for the Office of Government Services is:

OFFICE OF GOVERNMENT INFORMATION SERVICES
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
8601 ADELPHI ROAD-OGIS
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PHONE: (202) 741-5770
TOLL FREE: (877) 684-6448
FAX: (202) 741-5769
EMAIL: ogis@nara.gov.

Contacting the FSA FOIA liaison or the Office of Government Information Services does not affect your right to administratively appeal to FSA.”--*

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 ninety (90) 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. You may submit your appeal electronically to **FSAFOIAappeal@wdc.usda.gov** or by mail. If mailing the appeal,--* 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.

*--You may seek dispute resolution services from the FSA FOIA liaison. Contact information for the FSA FOIA liaison is:

OFFICE OF EXTERNAL AFFAIRS
PUBLIC AFFAIRS STAFF
USDA-FSA
1400 INDEPENDENCE AVE SW RM 4074-S
STOP CODE 0506
WASHINGTON DC 20250-0506
PHONE: (202) 720-6788
FAX: (202) 720-4034
EMAIL: **fsa.foia@wdc.usda.gov**.--*

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

D Denial of Expedited Processing (Continued)

*--You may contact the Office of Government Information Services at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Contact information for the Office of Government Services is:

OFFICE OF GOVERNMENT INFORMATION SERVICES
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
8601 ADELPHI ROAD-OGIS
COLLEGE PARK, MARYLAND 20740-6001
PHONE: (202) 741-5770
TOLL FREE: (877) 684-6448
FAX: (202) 741-5769
EMAIL: ogis@nara.gov.

Contacting the FSA FOIA liaison or the Office of Government Information Services does not affect your right to administratively appeal to FSA.”--*

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 ninety (90) 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. You may submit your appeal electronically to FSAFOIAappeal@wdc.usda.gov or by mail. If mailing the appeal,--* 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)

E Denial of a Fee Waiver (Continued)

*--You may seek dispute resolution services from the FSA FOIA liaison. Contact information for the FSA FOIA liaison is:

OFFICE OF EXTERNAL AFFAIRS
PUBLIC AFFAIRS STAFF
USDA-FSA
1400 INDEPENDENCE AVE SW RM 4074-S
STOP CODE 0506
WASHINGTON DC 20250-0506
PHONE: (202) 720-6788
FAX: (202) 720-4034
EMAIL: fsa.foia@wdc.usda.gov.

You may contact the Office of Government Information Services at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Contact information for the Office of Government Services is:

OFFICE OF GOVERNMENT INFORMATION SERVICES
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
8601 ADELPHI ROAD-OGIS
COLLEGE PARK, MARYLAND 20740-6001
PHONE: (202) 741-5770
TOLL FREE: (877) 684-6448
FAX: (202) 741-5769
EMAIL: ogis@nara.gov.

Contacting the FSA FOIA liaison or the Office of Government Information Services does not affect your right to administratively appeal to FSA.”--*

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. You may submit your appeal electronically to **FSAFOIAappeal@wdc.usda.gov** or by mail. If mailing the appeal, 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.

*--You may seek dispute resolution services from the FSA FOIA liaison. Contact information for the FSA FOIA liaison is:

OFFICE OF EXTERNAL AFFAIRS
PUBLIC AFFAIRS STAFF
USDA-FSA
1400 INDEPENDENCE AVE SW RM 4074-S
STOP CODE 0506
WASHINGTON DC 20250-0506
PHONE: (202) 720-6788
FAX: (202) 720-4034
EMAIL: **fsa.foia@wdc.usda.gov**.

You may contact the Office of Government Information Services at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Contact information for the Office of Government Services is:

OFFICE OF GOVERNMENT INFORMATION SERVICES
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
8601 ADELPHI ROAD-OGIS
COLLEGE PARK, MARYLAND 20740-6001
PHONE: (202) 741-5770
TOLL FREE: (877) 684-6448
FAX: (202) 741-5769
EMAIL: **ogis@nara.gov**.

Contacting the FSA FOIA liaison or the Office of Government Information Services does not affect your right to administratively appeal to FSA.”--*

