

For: State and County Offices

Revised Policy for Trade Adjustment Assistance (TAA) Determinations and Appeals

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

A new policy is being implemented about TAA determinations and appeals. TAA appeal procedures have been based on FAS regulations providing for FAS to use FSA’s appeals procedures. Some TAA participants, however, appealed to the National Appeals Division (NAD) instead of using the FSA appeals process. Judicial review of NAD determinations falls under the jurisdiction of the U.S. District Courts. However, the statutory authority for TAA, the Trade Act of 1974, provides that disputes for TAA are under the jurisdiction of the U.S. Court of International Trade. This jurisdictional inconsistency has been reviewed by USDA’s OGC and is the basis of this change.

OGC has concluded that current regulations about FSA involvement in TAA determinations must be revised. Accordingly, the TAA regulations will be amended to be consistent with the review process provided by the Trade Act of 1974. Under the revised regulation, it will be clear that challenges to TAA determinations will clearly fall under the jurisdiction of the U.S. Court of International Trade, **not** FSA or NAD.

B Purpose

This notice provides new policy and procedures about TAA determinations.

Note: 1-SP will be amended to reflect these changes.

Disposal Date	Distribution
May 1, 2005	State Office; State Office relay to County Offices

Notice SP-29

2 New Policy for TAA Determinations and Appeals

A TAA Determinations and Appeals

Effective with this notice:

- COC may approve, but may not disapprove, individual TAA applications
- only FAS may disapprove TAA applications or provide any other adverse program determination

Note: To allow FAS to review applications, COC shall send to FAS all original FSA-229's that:

- have been previously disapproved by FSA
 - cannot be approved by FSA.
- TAA applicants may challenge adverse TAA determinations made by FAS through the U.S. Court of International Trade
 - neither FSA nor NAD will have jurisdiction to review adverse TAA determinations because FSA will:
 - withdraw all previous adverse determinations, including application disapprovals unless NAD has already issued a determination
 - not make any future adverse TAA determinations
 - STC and COC shall:
 - treat all appeals that may be scheduled or are pending with either STC or NAD as having been improperly filed and take no further action
 - not issue any payments based on NAD decisions about FY 2004 TAA applications
 - FAS will provide all disapproval notifications through using a letter that County Offices will address and send to the applicant.

Notice SP-29

3 Instructions for Sending Selected FY 2004 Applications to FAS

A County Office

Because of the timing of this policy change, instructions for FY 2004 applications are different than for FY 2005 applications.

Note: See subparagraph 4 B for FY 2005 applications.

For **FY 2004 applications only**, COC shall:

- retain the original FSA-229's that have been approved by COC
- send all other original FSA-229's, those that have been disapproved or cannot be approved, to FAS.

Note: Do **not** include any application documentation such as production evidence, tax records, etc.

B Application Categories

COC shall identify each FSA-229 sent to FAS **according to 1 of the following categories** so that FAS knows the proper response for each. The 3 categories of applications are those that COC:

- disapproved and the disapproval has **not been appealed** to NAD or STC

Note: These applicants will **not** be sent any additional notification by any agency.

- disapproved and the disapproval **has been appealed** to NAD or STC

Note: FSA and FAS in Washington, DC will send jointly-signed notifications to such applicants.

- cannot approve for payment and the applicant has **not** been notified.

Note: COC will send a disapproval notification signed by FAS.

Notice SP-29

3 Instructions for Sending Selected FY-2004 Applications to FAS (Continued)

C Application Status

COC shall consider all applications sent to FAS as likely disapproved unless FAS advises otherwise on a case-by-case basis.

For FY 2004 applications **already disapproved**, COC shall:

- take no further action about the application status in the software, regardless of whether the status is “pending” or “disapproved”
- place a copy of FSA-229 in the file folder and send only the original to FAS.

For FY 2004 applications that COC has **not yet disapproved** either online or on the paper copy, as soon as COC can determine that FSA-229 cannot be approved, COC shall:

- complete items 9a through 9d
- leave items 10a, 10b, and 11 blank
- add any notation necessary at the bottom explaining why approval is not provided by COC if the reason is not fully explained by 1 of the entries in item 9a through 9d, such as “duplicate application”
- enter or leave the application status as “pending” in the application software
- mark a copy of FSA-229 as “Sent to FAS” and retain in the file folder with other application documentation
- mail the original FSA-229 to FAS without any supporting documentation.

Note: The original FSA-229 will be retained by FAS.

Notice SP-29

4 State and County Office Instructions for Applicant Notifications

A FY 2004 Applicant Notifications

COC shall:

- **not** send any notification at this time to **applicants who have not appealed** their disapproval to NAD or STC
- send to **applicants not previously notified by FSA of their disapproval** the letter from FAS shown in Exhibit 1.

Note: The FAS Disapproval Letter can be found at <http://intranet.fsa.usda.gov>, under the title "FAS Disapproval Letter".

Letters informing applicants of a disapproval of their TAA applicants shall **not** be signed by COC, STC, or any other representative of FSA. This letter must contain the reason for the disapproval. **This letter shall be sent no sooner than 5 days after the applicant's FSA-229 was sent to FAS.**

STC and COC shall **not** provide any further notifications to applicants who have appealed a TAA adverse determination to STC or NAD. FAS and FSA will jointly send from Washington, DC the notification shown in Exhibit 2 to applicants who have a pending appeal, whether the appeal was submitted to STC or NAD.

B County Office Instructions for FY 2005 Applications

TAA application software will be revised for applications submitted under all FY 2005 petitions. Under the planned software revisions, COC shall:

- review all applications and related documentation
- enter all applications into the TAA application software, except that COC shall only be able to enter the application status as
 - pending
 - approved
 - suspended
 - referred to FAS
- unless approved, mark a copy of the original FSA-229 as "Sent to FAS" and retain in the file folder with other application documentation
- send FAS (without supporting documentation) all original FSA-229's that COC cannot approve
- send the FAS notification of disapproval provided in Exhibit 1 to the applicant when generated by system software. This letter must contain the reason for the disapproval.

Notice SP-29

4 State and County Office Instructions for Applicant Notifications (Continued)

B County Office Instructions for FY 2005 Applications (Continued)

For all FY 2005 FSA-229's received from COC's, FAS will:

- access the application software
- if warranted, disapprove applications by entering the status as "Disapproved"
- retain all original FSA-229's mailed to it for review.

5 Instructions for Mailing FSA-229 to FAS for Review

A Mailing Instructions

COC shall:

- minimize the frequency of mailings, to the extent practicable
- bundle forms according to petition number if appropriate
- send all copies through commercial delivery service such as FedEx, UPS, etc. to:

**Deputy Director
Import Policies and Program Division
Foreign Agricultural Service
1400 Independence Ave. S.W.
STOP 1021
Room 5531, South Building
Washington, DC 20250-1021**

6 Action

State Office Action

State Offices shall advise County Offices of this notice.

FAS Disapproval Letter



[FAS Disapproval Date]

United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Foreign
Agricultural
Service

International Trade
Policy

Import Policies and
Programs Division

1400 Independence
Avenue, S.W.
AgStop 1021
Washington, DC
20250-1021

[NAME]
[ADDRESS]
[ADDRESS]

Dear [Applicant's Name]:

This is to inform you that the Foreign Agriculture Service has disapproved your application for a cash benefit under the Trade Adjustment Assistance for Farmers program (TAA).

We have reviewed the information that you provided to the Farm Service Agency with your application and have made a final determination that you are ineligible for a cash payment.

Your application was disapproved because [Enter reason]
[continued reason]

You may request review of our final determination by contacting the United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001. The Office of the Clerk of the Court can provide instructions for requesting a judicial review. The Clerk of the Court can be reached at (212) 264-2800 or you can visit the Court's website <http://www.cit.uscourts.gov> (select "Trade Adjustment Assistance - Judicial Review".) Appeals to the Court must be filed within 60 days from the date of this letter.

Sincerely,

Deputy Director
Import Policies and Program Division

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FAS/FSA Joint Letter



FAS/FSA JointLetter

United States Department of Agriculture

Farm and Foreign Agricultural Services

Foreign Agricultural Service

International Trade Policy

Import Policies and Programs Division

1400 Independence Avenue, S.W. AgStop 1021 Washington, DC 20250-1021

{NAME} {ADDRESS} {ADDRESS}

Dear {Name of Applicant}:

This is to inform you that your Trade Adjustment Assistance cash benefit has been disapproved by the Foreign Agricultural Service (FAS).

The Farm Service Agency (FSA) has withdrawn its initial disapproval of your application and referred it to the FAS for a final determination of your eligibility. FAS reviewed the information that you provided in your application and determined that you are ineligible for a cash payment.

Your application was disapproved because [enter reason for disapproval].

This notification letter constitutes final FAS disapproval of your application. FAS will disregard any appeal you have already made to FSA or to the National Appeals Division because FAS makes the final decision regarding your application.

You may request review of the FAS determination by contacting the United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001. The Office of the Clerk of the Court can provide instructions for requesting a judicial review. The Clerk of the Court can be reached at (212) 264-2800 or you can visit the Court's website http://www.cit.uscourts.gov (select "Trade Adjustment Assistance - Judicial Review".) Appeals to the Court must be filed within 60 days from the date of this letter.

Sincerely,

Sincerely,

Deputy Director Import Policies and Program Division International Trade Policy

Director Price Support Division

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