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and operations of the Farm Credit Administration;

(ii) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of the Farm Credit Administration's programs and operations;

(iii) Prevent and detect fraud and abuse in the Farm Credit Administration's programs and operations; and

(iv) Provide a means to keep the Chairman and Congress fully and currently informed about problems and deficiencies relating to the Farm Credit Administration's programs and operations and the necessity for, and progress of, corrective actions.

(7) *Office of Secondary Market Oversight.* The Office of Secondary Market Oversight, a separate office within the Farm Credit Administration pursuant to section 8.11 of the Act, provides for:

(i) The examination of the Federal Agricultural Mortgage Corporation and its affiliates; and

(ii) The general supervision of the safe and sound performance of the powers, functions, and duties vested in the Federal Agricultural Mortgage Corporation and its affiliates.

(e) *Additional Information.* Current information on the organization of the Farm Credit Administration may be obtained from the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102-5090.

[53 FR 16693, May 11, 1988, as amended at 59 FR 21641, Apr. 26, 1994; 61 FR 67185, Dec. 20, 1996]

Subpart B—Rules and Procedures for Service Upon the Farm Credit Administration

§ 600.10 Service of Process.

(a) Except as otherwise provided in the Farm Credit Administration regulations, the Federal Rules of Civil Procedure or by order of a court with jurisdiction over the Farm Credit Administration, any legal process upon the Farm Credit Administration shall be duly issued and served upon the Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

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(b) Service of process upon the Secretary to the Farm Credit Administration Board may be effected by personally delivering a copy of the documents to the Secretary or by sending a copy of the documents to the Secretary by registered or certified mail.

(c) The Secretary shall promptly forward a copy of all documents to the General Counsel and to any Farm Credit Administration personnel named in the caption of the documents.

[54 FR 50736, Dec. 11, 1989, as amended at 59 FR 21642, Apr. 26, 1994]

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

AUTHORITY: 5 U.S.C. 7301; 12 U.S.C. 2243, 2252.

§ 601.100 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit Administration are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit Administration regulation at 5 CFR part 4101, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[60 FR 30782, June 12, 1995]

PART 602—RELEASING INFORMATION

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AUTHORITY: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235; 52 FR 10012.

Subpart A—Information and Records Generally

§ 602.200 General rule.

Except as necessary in performing official duties or as authorized by §§ 602.205 through 602.288 of this part, no one employed by the Farm Credit Administration shall disclose information of a type not ordinarily contained in published reports or press releases regarding the Farm Credit Administration or any banks or associations of the Farm Credit System or its borrowers or members. Information prepared for newspapers, publishing and broadcasting companies, and all new or revised publications shall be cleared with the Office of Congressional and Public Affairs.

[51 FR 41938, Nov. 20, 1986]

§ 602.205 Farm Credit Administration examination reports.

Reports of examinations of Farm Credit System institutions made by the Farm Credit Administration may be disclosed only with the consent of the Chairman of the Farm Credit Administration Board. Consent is given for disclosing reports of regular examinations to the Farm Credit System institution involved or interested, but disclosure of reports of special examinations shall be only by action or consent of the Chairman in each instance. Consent is also given for disclosing reports of regular examinations to authorized representatives of the Farm Credit Administration and, when requested for confidential use in official investigations of matters touched upon therein, to agents of the Federal Bureau of Investigation, Department of Justice; the Assistant Postmaster General, Inspection Service, U.S. Postal Service; the Secret Service; the Internal Revenue Service; Office of the Inspector General, Department of Agriculture; and the General Accounting Office.

[51 FR 41938, Nov. 20, 1986]

§ 602.215 Data regarding borrowers and loan applicants.

Because the relationship between borrowers and the institutions in the cooperative Farm Credit System is confidential, Farm Credit Administration personnel shall hold in strict confidence all information regarding character, credit standing, and property of borrowers and applicants for loans. They shall not exhibit or quote the following documents: Loan applications; letters and statements relative to the character, credit standing, and property of borrowers and applicants; recommendations of loan committees; and reports of inspectors, fieldmen, investigators, and appraisers, except as authorized by § 618.8320 of this chapter. This section is subject to the following further exceptions:

(a) Farm Credit Administration examiners and other accredited representatives of the Farm Credit Administration shall have free access to all information, records, and files.

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(b) Accredited representatives of the offices named in §602.205 of this part at their request, be given information pertinent to their official investigations of individual cases, and may examine such portions of the records and files as contain the information.

(c) Information concerning borrowers may be given for the confidential use of any Farm Credit System institution, or any Government agency, in contemplation of the extension of agricultural credit or the collection of loans.

(d) Credit information concerning any borrower may be given when such borrower consents thereto in writing.

(e) In litigation between a borrower (or that borrower's successor in interest) and the United States or a bank or association, any competent evidence may be introduced with respect to any relevant statements made orally or in writing by or to the borrower or that borrower's successor.

[37 FR 11413, June 7, 1972, as amended at 51 FR 41938, Nov. 20, 1986]

§ 602.220 Waiver of restrictions.

If it appears that justice would be served by releasing information in circumstances forbidden by §602.215 of this part, the restrictions of that section may be waived as to a particular case by the Chairman of the Farm Credit Administration Board. A recommendation for such waiver may be submitted by any institution concerned. Any such recommendation from an association shall be submitted through the appropriate Farm Credit Bank, with the request that it be considered and forwarded to the Farm Credit Administration, if deemed advisable. Each such recommendation shall be supported by a statement of facts and approved by counsel for the forwarding bank. The recommendation should be addressed to the General Counsel, Farm Credit Administration.

[51 FR 41938, Nov. 20, 1986, as amended at 56 FR 2673, Jan. 24, 1991]

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Subpart B—Availability of Records of the Farm Credit Administration

§ 602.250 Official records of the Farm Credit Administration.

(a) The Farm Credit Administration shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person, except exempt records, which include the following:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Farm Credit Administration, including matters which are for the guidance of agency personnel;

(3) Records which are specifically exempted from disclosure by statute;

(4) Commercial or financial information obtained from any person or organization and privileged or confidential;

(5) Inter-Agency or intra-Agency memorandums or letters which would not be available by law to a private party in litigation in which the United States, as real party interest on behalf of the Farm Credit Administration, is a party, or from any Farm Credit System institution, including banks, associations, service organizations, the Funding Corporation, the Farm Credit System Assistance Board, or the Farm Credit System Financial Assistance Corporation, to a private party in litigation with such institution if such memorandums or letters are records of such institution;

(6) Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

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(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit institutions that are regulated and examined by the Farm Credit Administration that are prepared by, on behalf of, or for its use; except that reports to shareholders filed with the Farm Credit Administration pursuant to part 620 of this chapter and those items in reports of condition and performance filed with the Farm Credit Administration pursuant to part 621 of this chapter that are of essentially the same character as items disclosed in reports to shareholders filed with the Farm Credit Administration pursuant to part 620 of this chapter, shall be available to the public on request for a reasonable fee.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

[40 FR 7339, Feb. 19, 1975, as amended at 51 FR 8656, Mar. 13, 1986; 56 FR 2673, Jan. 24, 1991; 56 FR 28476, June 21, 1991]

§602.251 Current index.

The Farm Credit Administration will make available for public inspection and copying a current index to provide identifying information as to any matter required by 5 U.S.C. 552(a)(2)(C) to be made available or published in the FEDERAL REGISTER. Because of the infrequent requests in the past for material required to be indexed, it is determined that the publication of the index in the FEDERAL REGISTER is unnecessary and impractical. However, the Farm Credit Administration will provide a copy of such index to a member of the public upon request therefor at a cost not in excess of the direct cost of duplication.

[40 FR 7339, Feb. 19, 1975]

§602.255 Identification of records requested.

A member of the public who requests records from the Farm Credit Administration shall provide a reasonable description of the records sought including, where possible, specific information as to dates, titles, and subject matter, so that such records may be located without undue search or inquiry. If a record is not identified by a reasonable description, the request therefor may be denied.

[40 FR 7339, Feb. 19, 1975]

§602.260 Request for records.

Requests for records shall be in writing and addressed to the attention of the Freedom of Information Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. A request improperly addressed will be deemed not to have been received for purposes of the 20-day time period set forth in §602.261(a) of this part until it is received, or would have

been received, by the Freedom of Information Officer with the exercise of due diligence by Agency personnel. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection or copying during business hours on a regular business day in a public reference facility in the offices of the Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

[62 FR 41254, Aug. 1, 1997]

§ 602.261 Response to requests for records.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extensions thereof as provided in paragraph (d) of this section, of the receipt of a request by the Freedom of Information Officer, the Freedom of Information Officer shall determine whether to comply with or deny such a request and transmit a written notice thereof to the requester.

(b) Within 30 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Director, Office of Resources Management, Farm Credit Administration, and both the letter and envelope shall be clearly marked "FOIA Appeal." An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by agency personnel, in the Office of the Director, Office of Resources Management.

(c) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of an appeal in the Office of the Director, Office of Resources Management, the Director shall act upon the appeal and place a notice of the determination thereof in writing in the mails addressed to the requester. If the determination on the appeal upholds in whole or in part the denial of the request for records, or, if a deter-

mination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted that person's administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(d) In "unusual circumstances," the 20-day time limit prescribed in paragraphs (a) and (c) of this section, or both, may be extended by the Freedom of Information Officer or, in the case of an appeal, by the Director, Office of Resources Management, provided that the total of all extensions does not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject matter interest therein.

(e) A requester may obtain, upon request, expedited processing of a request

for records when the requester demonstrates a "compelling need" for the information. The Freedom of Information Officer will notify the requester within 10 calendar days after receipt of such a request whether the Agency granted expedited processing. If expedited processing was granted, the request will be processed as soon as practicable.

(1) For the purposes of this paragraph, "compelling need" means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A requester shall demonstrate a compelling need by a statement certified by the requester to be true and correct to the best of such person's knowledge and belief.

(3) The procedures of this paragraph (e) for expedited processing apply to both requests for information and to administrative appeals.

[40 FR 7339, Feb. 19, 1975, as amended at 51 FR 41939, Nov. 20, 1986; 56 FR 28476, June 21, 1991; 62 FR 41254, Aug. 1, 1997]

§ 602.262 Business information.

(a) Business information provided to the Farm Credit Administration by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit Administration determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1) *Business information* means trade secrets or other commercial or financial information.

(2) *Business submitter* means any person or entity which provides business information to the government.

(3) *Freedom of Information Officer* means the Freedom of Information Officer, Office of Congressional and Public Affairs.

(4) *Requester* means the person or entity making the Freedom of Information Act request.

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to the Farm Credit Administration has been given the opportunity to comment on the proposed disclosure of information.

(d)(1) For business information submitted to the Farm Credit Administration prior to January 1, 1988, the Farm Credit Administration shall provide a business submitter with notice of a request whenever:

(i) The information is less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) The Farm Credit Administration has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter; or

(iii) The information is less than 10 years old and is subject to a prior express commitment of confidentiality given by the Farm Credit Administration to the business submitter.

(2) For business information submitted to the Farm Credit Administration on or after January 1, 1988, the Farm Credit Administration shall provide a

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business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit Administration has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (d)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(4) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit Administration shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit Administration with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit Administration shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit Administration decides to disclose business information over the objection of a business submitter, the Free-

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dom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit Administration shall promptly notify the business submitter of such action.

[56 FR 28476, June 21, 1991]

Subpart C—Fees for Provision of Information

SOURCE: 56 FR 28477, June 21, 1991, unless otherwise noted.

§ 602.265 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) The term *commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit Administration shall determine the purpose for which the documents requested will be used. If the Farm Credit Administration has reasonable cause to doubt the purpose, specified in the request, for which a requester will use the records sought, or where the purpose is not clear from the request itself, the Farm Credit Administration

shall seek additional clarification before assigning the request to a specified category.

(b) The term *direct costs* means those expenditures the Farm Credit Administration actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit Administration actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial, trade or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dis-

semination of newspapers through telecommunication services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit Administration may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) The terms *reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) The term *review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term *review* does not include the time spent resolving general legal or policy issues regarding the application of exemptions. The Farm Credit Administration shall only charge fees for reviewing documents in response to a commercial use request.

(h) The term *search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit Administration and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be the less expensive and the

faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A “search” for material that is responsive to a request should be distinguished from a “review” of material to determine whether the material is exempt from disclosure.

§ 602.266 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit Administration shall charge fees for records requested by or on behalf of educational institutions and non-commercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(b) The Farm Credit Administration shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit Administration shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and re-

producing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 602.271, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit Administration shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b) or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 602.271 requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of “8½ x 11” or “11 x 14.” Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meet the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit Administration will determine the hourly cost of operating the central processing unit and the operator’s hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit Administration will begin assessing charges for computer search.

§ 602.267 Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for,

reproducing and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit Administration for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit Administration analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit Administration will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Farm Credit Administration.

(h) A receipt for fees paid will be given upon request.

§ 602.268 Waiver or reduction of fees.

(a) The Farm Credit Administration may grant a waiver or reduction of fees if the Farm Credit Administration determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit Administration will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs of receiving and recording a requester's remittance, and processing the fee.

§ 602.269 Advance payments—notice.

(a) Where it is anticipated that the fees chargeable will amount to more than \$25.00 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily estimated.

(b) If the anticipated fees exceed \$250.00 and if the requester has a history of promptly paying fees charged in connection with information requests, the Farm Credit Administration may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

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(c) If the anticipated fees exceed \$250.00 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit Administration may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit Administration may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified Farm Credit Administration personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

§ 602.270 Interest.

The Farm Credit Administration may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit Administration, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

§ 602.271 Charges for unsuccessful searches or reviews.

The Farm Credit Administration may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 602.266 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit Administration may assess charges for time spent reviewing records for requesters in the category provided for in

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§ 602.266(c) even if the records located are determined to be exempt from disclosure.

§ 602.272 Aggregating requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit Administration reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Farm Credit Administration may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which the Farm Credit Administration Is Not a Named Party

§ 602.280 General purposes.

The purposes of these rules are to maintain the confidentiality of official documents and information of the Farm Credit Administration, conserve the time of Farm Credit Administration employees for their official duties, maintain the impartial position of the Farm Credit Administration in litigation in which the Farm Credit Administration is not a named party, and enable the Chairman to determine when to authorize testimony and to produce documents in legal proceedings in which the Farm Credit Administration is not a named party. This subpart sets forth the procedures to be followed with respect to testimony concerning official matters and production of official documents of the Farm Credit Administration in legal proceedings in which the Farm Credit Administration is not a named party. This subpart in no way affects the rights and procedures governing public access to official documents pursuant to the freedom of information act or the privacy

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act. See part 602, subpart B, and part 603 of this chapter.

[51 FR 41939, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.281 Definitions.

For the purpose of this subpart:

(a) *Chairman* means the Chairman of the Farm Credit Administration Board or his or her designee.

(b) *Court* means any entity conducting a legal proceeding.

(c) *Demand* means any order, subpoena, or other legal process for testimony or documents.

(d) *Document* means any record or paper, including but not limited to a report, credit review, audit, examination, letter, telegram, memorandum, study, calendar and diary entry, log, graph, pamphlet, note, chart, tabulation, analysis, statistical or information accumulation, any kind of record of meetings and conversations, film impression, magnetic tape, or any electronic media, disk, film, or mechanical reproduction that is generated, obtained, or adopted by the FCA in connection with the conduct of its official business.

(e) *Employee* means any officer, former officer, employee or former employee of the FCA, any member of the Farm Credit Administration Board or former member of the Farm Credit Administration Board or the Federal Farm Credit Board, any receiver or conservator appointed by the FCA, or any agent or independent contractor acting on behalf of the FCA, even though the appointment or contract has terminated.

(f) *FCA* means the Farm Credit Administration.

(g) *FCA Counsel* means the General Counsel or his or her designee, a Department of Justice attorney, or counsel authorized by the FCA to act on behalf of the FCA or an employee.

(h) *General Counsel* means the General Counsel of the FCA or his or her designee.

(i) *Legal proceeding* means any administrative, civil, or criminal proceeding, including a discovery proceeding therein, before a court of law, administrative board or commission, hearing officer, or other body in which the FCA is not a named party or in which the FCA

has not instituted the administrative investigation or administrative hearing.

(j) *Official* means concerning the authorized business of the FCA.

(k) *Person* means any individual, or any agency, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein but does not include the FCA or any FCA employee.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.282 General policy.

It is the policy of the FCA that official documents will not be voluntarily produced and the FCA employees will not voluntarily appear as witnesses in any legal proceeding. Under appropriate circumstances, the Chairman may grant exceptions in writing to this policy when the Chairman determines that the disclosure of official documents or testimony would be in the best interest of the FCA or in the public interest.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.283 Request for testimony or production of documents.

(a) No FCA employee shall give testimony concerning official matters nor produce any official documents in any legal proceeding without the prior written authorization of the Chairman.

(b) If testimony by an FCA employee concerning official matters or the production of official documents is desired, the requesting party or his or her counsel shall submit a letter to the Chairman setting forth the title of the case, the forum, the requesting party's interest in the case, a summary of the issues in the litigation, the reasons for the request, and a showing that the desired testimony, documents, or information are not reasonably available from any other source. If an appearance or testimony is requested, the letter shall also set forth the intended use of the testimony, a general summary of the scope of the testimony requested, and a showing that no document could

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be provided and used in lieu of the testimony or other appearance requested.

(c) The General Counsel is authorized to consult with the requesting party or his or her counsel to: (1) Refine and limit the request so that compliance is less burdensome, or (2) obtain information necessary to make the determination described in § 602.282 of this part. Failure of the requesting party or his or her counsel to cooperate in good faith with the General Counsel to enable the Chairman to make an informed determination under this subpart may serve as the basis for a determination not to comply with the request.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.284 Scope of permissible testimony.

(a) The scope of permissible testimony by an FCA employee is limited to that set forth in the written authorization granted that employee by the Chairman.

(b) FCA employees are not authorized to give opinion testimony. The FCA, as the regulatory agency charged with the responsibility of examining, supervising, and regulating the banks and associations and other institutions organized or chartered under the Farm Credit Act of 1971, as amended, relies on the ability of its employees to gather full and complete information in order to carry out its statutory responsibilities. The use of FCA employees to give opinion testimony would hamper the FCA's ability to carry out its statutory responsibilities and would cause a serious administrative burden on the FCA's staff.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.285 Manner in which testimony is given.

(a) Authorized testimony of FCA employees will be made available only through depositions or written interrogatories. FCA employees are not authorized to appear and testify in court or to give interviews prior to a deposition or otherwise.

(b) Where, in response to a request, the Chairman determines that circumstances warrant authorizing testi-

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mony by an FCA employee, the requesting party shall cause a subpoena to be served on the employee in accordance with applicable Federal or State rules of procedure, with a copy of the subpoena sent by registered mail to the General Counsel.

(c) Normally, authorized depositions will be taken at the FCA office to which the employee is assigned, and at a time arranged with the employee that is reasonably fixed to avoid substantial interference with the performance of the employee's duties.

(d) Upon completion of the deposition of an FCA employee, a copy of the transcript of the testimony shall be furnished at the expense of the party requesting the deposition to the General Counsel for the FCA's files.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.286 Manner in which documents will be produced.

(a) An FCA employee's authorization to produce official documents is limited to the authority granted that employee by the Chairman.

(b) Prior to the release of any official documents authorized by the Chairman to be released, the requesting party shall obtain a protective order satisfactory in form to the FCA from the court before which the action is pending to preserve the confidentiality of the documents subsequently produced.

(c) Certified or authenticated copies of official FCA documents authorized by the Chairman to be released under this subpart will be provided upon request.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.287 Fees.

Unless waived or reduced, the following fees shall be charged for documents produced by the FCA in connection with requests subject to this subpart:

(a) *Searches for documents.* \$1.50 for each one-quarter hour (or fraction thereof) per employee for time spent by clerical personnel in excess of the first quarter hour and \$3.15 for each one-

quarter hour (or fraction thereof) per employee for time spent by professional or managerial personnel in excess of the first quarter hour in locating, examining, preparing or copying the documents, and for transportation of personnel and documents necessary to the search.

(b) *Copying of documents.* Ten cents per copy of each page made by photocopy or similar process. Normally, only one copy will be provided. Additional copies will be provided only upon a showing of demonstrated need.

(c) *Certification or authentication of documents.* \$3.00 per certification or authentication.

(d) *Computer searches.* Services of personnel in the nature of a computer search shall be charged for at rates prescribed in paragraph (a) of this section. A charge shall be made for the computer time involved, based upon the prevailing level of costs to the FCA and upon the particular types of computer and associated equipment and the amount of time that such equipment is utilized. A charge shall also be made for any substantial amount of special supplies or materials used to contain, present, or make available the output of computers, based upon prevailing levels of costs to the FCA and upon the type and amount of such supplies or materials that are used.

(e) *Other costs.* When other services and materials not specifically identified in this section are requested and provided, their actual cost to the FCA shall be charged.

(f) *Payment of fees.* A bill will be forwarded to the requesting party upon completion of the production. Payment shall be made by check or money order payable to the FCA.

[50 FR 7331, Feb. 22, 1985. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.288 Responses to demands served on FCA employees.

(a) Any FCA employee who is served with a demand in a legal proceeding shall immediately notify the General Counsel of such service, of the testimony or documents described in the demand and of all relevant facts.

(b) When authorization to testify or to produce documents has not been granted by the Chairman, FCA counsel

shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Chairman.

(c) If the court rules that the demand must be complied with irrespective of instructions from the Chairman not to produce the documents or disclose the information sought, the FCA employee upon whom the demand has been made shall respectfully decline to comply with the demand.

(d) A determination under this subpart to comply or not to comply with any demand shall not constitute an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The FCA reserves the right to oppose any demand on any legal ground independent of its determination under this subpart.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.289 Responses to demands served on non-FCA employees or entities.

(a) FCA reports of examinations or such other reports generated or adopted by the FCA, or any documents related thereto are the property of the FCA and are not to be disclosed to any person without the FCA's consent.

(b) If any person who has possession of an FCA report of examination or such other report generated or adopted by the FCA, or any documents related thereto is served with a demand in a legal proceeding directing that person to produce such FCA documents or to testify with respect thereto, such person shall immediately notify the FCA General Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of the FCA and cannot be released without FCA's consent and that their production must be sought from the FCA following the procedures set forth in

§ 602.283 (b) and (c) and § 602.286(b) of this part.

[51 FR 41941, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

PART 603—PRIVACY ACT REGULATIONS

Sec.

603.300 Purpose and scope.

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603.310 Procedures for requests pertaining to individual records in a record system.

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603.330 Request for amendment to record.

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603.340 Appeal of an initial adverse determination of a request to amend a record.

603.345 Fees for providing copies of records.

603.350 Criminal penalties.

603.355 Exemptions.

AUTHORITY: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C. app. 3, 5 U.S.C. 552a (j)(2) and (k)(2).

SOURCE: 40 FR 40454, Sept. 2, 1975, unless otherwise noted.

§ 603.300 Purpose and scope.

(a) This part is published by the Farm Credit Administration pursuant to the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) which requires each Federal agency to promulgate rules to establish procedures for notification and disclosure to an individual of agency records pertaining to that person, and for review of such records.

(b) The records covered by this part include:

(1) Personnel and employment records maintained by the Farm Credit Administration which are not covered by §§ 293.101 through 293.108 of the regulations of the Office of Personnel Management (5 CFR 293.101 through 293.108), and

(2) Other records contained in record systems maintained by the Farm Credit Administration.

[40 FR 40454, Sept. 2, 1975, as amended at 51 FR 41941, Nov. 20, 1986]

§ 603.305 Definitions.

For the purposes of this part:

(a) *Agency* means the Farm Credit Administration.

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* includes maintain, collect, use, or disseminate;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency including, but not limited to, that person's education, financial transactions, medical history, and criminal or employment history, and that contains that person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected;

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(g) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

[51 FR 41941, Nov. 20, 1986]

§ 603.310 Procedures for requests pertaining to individual records in a record system.

(a) Any present or former employee of the Farm Credit Administration seeking access to that person's official civil service records maintained by the Farm Credit Administration shall submit a request in such manner as is prescribed by the Office of Personnel Management.

(b) Individuals shall submit their requests in writing to the Privacy Act Officer, Office of General Counsel, Farm Credit Administration, McLean,