Banks may extend credit between and including October 1, 1999, and April 7, 2000, or such later date as determined by the Board, under a special liquidity facility to ease liquidity pressures during the century date change period. This type of credit is available only to eligible institutions. This type of credit is granted at a special rate above the basic discount rate and other market rates for funds, is available for the entire length of the period, and is not subject to the conditions regarding specific use or exhaustion of other liquidity sources as is adjustment credit under paragraph (a) of this section.

In § 201.6, paragraph (d) is revised to read as follows:

§ 201.6 General requirements.

(d) Indirect credit for others. Except for depository institutions that receive credit under the Special Liquidity Facility described in § 201.3(e), no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve bank extending credit.

In § 201.7, the introductory text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 201.7 Branches and agencies.

(b) This part applies to a United States branch or agency of a foreign bank in the same manner and to the same extent as an eligible institution if the foreign bank is in sound financial condition in the judgment of the lending Federal Reserve Bank.

In § 201.52, the heading is revised and a new paragraph (c) is added to read as follows:

§ 201.52 Other credit for depository institutions.

(c) Special liquidity facility. The rate for credit extended to eligible institutions under the special liquidity facility provisions in § 201.3(e) is equal to the targeted federal funds rate plus 1.5 percentage points on each day the credit is outstanding.


Jennifer J. Johnson,
Secretary of the Board.

FARM CREDIT ADMINISTRATION

12 CFR Part 602

RIN 3052—AB84

Releasing Information

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This final rule amends FCA regulations on the release of information under the Freedom of Information Act (FOIA) to:

Reflect new fees and make it easier for the public to get FCA records;

Revise the procedures for requests for testimony by FCA employees on official matters and for producing FCA documents in litigation when FCA is not a named party; and

Add procedures for getting records in public rulemaking files.

We designed this regulation to be concise and easy to understand.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the Federal Register during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

John Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102—5090, (703) 883—4498, TDD (703) 883—4444, or Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102—5090, (703) 883—4020, TDD (703) 883—4444.

SUPPLEMENTAL INFORMATION: We received no comments from the public on our proposed rule published March 8, 1999 (64 FR 10054). The revisions to part 602 are now final. We have added two tables to the final regulation to make it easier for readers to view the types and amounts of fees we charge requesters.

List of Subjects in 12 CFR Part 602

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, part 602, of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 602—RELEASING INFORMATION:

Subpart A—Information and Records Generally

602.1 Purpose and scope.

602.2 Disclosing reports of examination.

Subpart B—Availability of Records of the Farm Credit Administration 602.3 Definitions.

602.4 How to make a request.

602.5 FCA response to requests for records.

602.6 FOIA exemptions.

602.7 Confidential business information.

602.8 Appeals.

602.9 Current FOIA index.

Subpart C—FOIA Fees 602.10 Definitions.

602.11 Fees by type of requester.

602.12 Fees.

602.13 Fee waiver.

602.14 Advance payments notice.

602.15 Interest on unpaid fees.

602.16 Combining requests.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA is Not a Named Party 602.17 Policy.

602.18 Definitions.

602.19 Request for testimony or production of documents.

602.20 Testimony of FCA employees.

602.21 Production of FCA documents.

602.22 Fees.

602.23 Responses to demands served on FCA employees.

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

Subpart E—Release of Records in Public Rulemaking Files

602.25 General.


Subpart A—Information and Records Generally

§ 602.1 Purpose and scope.

This part contains FCA’s rules for disclosing our records or information; processing requests for records under the Freedom of Information Act (5 U.S.C. 552, as amended)(FOIA); FOIA fees; disclosing otherwise exempt information in litigation when FCA is not a party; and getting documents in public rulemaking files. Part 603 of this chapter tells you how to get records about yourself under the Privacy Act of 1974, 5 U.S.C. 552a.

§ 602.2 Disclosing reports of examination.

(a) Disclosure by FCA. Reports of examination are FCA property. We prepare them for our confidential use and the use of the institution examined.

We do not give reports of examination to the public. Except as provided in this section, only the Chairman or the
Chairman's designee may consent to disclosing reports of examination of Farm Credit System institutions and other institutions subject to our examination. You may send a written request to our General Counsel that explains why we should give permission.

(b) Disclosure by Farm Credit System institutions. An institution that we have examined may disclose its report of examination to its officers, directors, and agents, such as its attorney or accountant, if they agree to keep the report confidential. In addition, banks may disclose their reports of examination to their affiliated associations, associations may disclose their reports to their supervisory bank, and service corporations may disclose their reports of examination to the institutions that own them. An institution may not disclose these institutions’ reports of examination to any other person without our written permission.

(c) Disclosure to governmental entities. Without waiving any privilege, we will disclose reports of examination to other Federal government entities:

(1) In response to a Federal court order;
(2) In response to a request of either House or a Committee or Subcommittee of Congress; or
(3) When requested for confidential use in an official investigation by authorized representatives of other Federal agencies.

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.3 Definitions.

Appeal means a request under the FOIA asking for the reversal of a decision.

Business information means trade secrets or other commercial or financial information that is privileged or confidential.

Business submitter means any person or entity that gives business information to the Government.

FOIA request means a written request for FCA records, made by any person or entity that either directly or indirectly invokes the FOIA or this part.

Record means all documentary materials, such as books, papers, maps, photographs, and machine-readable materials, regardless of physical form or characteristics (for example, electronic format) in our possession and control when we receive your FOIA request.

§ 602.4 How to make a request.

(a) How to make and address a request. Your request for records must be in writing and addressed to the FOIA Officer, Farm Credit Administration. You may send it:

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102–5090;
(2) By facsimile to (703) 790–0052; or
(3) By E-mail to “foiaofficer@fca.gov.”

(b) Description of requested records. You must describe the requested records in enough detail to let us find them with a reasonable effort. If the description is inadequate, we will ask you to provide more information and the 20-day response period under § 602.5(a) will not begin until we receive your reply.

(c) Faster response. You may ask for a faster response to your FOIA request by giving us a statement, certified to be true, that you have a “compelling need.” The FOIA Officer will tell you within 10 calendar days after receiving the request whether we will respond to it faster. If so, we will respond to your request as soon as we can. A compelling need means:

(1) Someone's life or physical safety may be in danger if we do not respond to the request faster;
(2) You urgently need to tell the public about Federal government activity as a representative of the news media;
(3) Request for personal information. If you or your representative requests your personal information, we may require you to give us a notarized request, identify yourself under penalty of perjury, or provide other proof of your identity.
(4) Fees. When making a request, you may tell us the most you are willing to pay. Our charges are in the fee tables in §§ 602.11 and 602.12.

(d) Referrals. If you ask for records we have that another Federal agency originated, we will refer the request to the originating agency and tell you about the referral. If you should have sent your request to another Federal agency, we will refer the request to that agency and so advise you.

§ 602.6 FOIA exemptions.

(a) FCA disclosure. FCA may disclose business information from a business submitter only under this section. This section will not apply if:

(1) We decide the business submitter has no valid basis to object to disclosure;
(2) The information has been published lawfully or made available to the public;
(3) Law (other than the FOIA) requires disclosure of the information.

(b) Notice by FCA. When we receive a request for confidential business information, the FOIA Officer will promptly notify the business submitter in writing that the responsive records may be free from disclosure under the FOIA. We will give the business submitter a reasonable time to object to the proposed disclosure of the responsive records and tell the requester whenever:

(1) The business submitter has in good faith labeled the information a trade secret or commercial or financial information that is privileged or confidential. We will provide such notice for 10 years after receiving the information unless the business submitter justifies the need for a longer period; or
(2) We believe that disclosing the
information may result in commercial or
financial injury to the business
submitter.

(c) Objection to release. A business
submitter who objects to our releasing
the requested information should tell us
in writing why the information is a
trade secret or commercial or financial
information that is privileged or
confidential.

(d) FCA response. (1) We will
consider carefully a business submitter’s
objections. If we decide to disclose
business information over the
submitter’s objection, the FOIA Officer
will explain to the submitter in writing
why we disagree with the submitter’s
objection and describe the business
information to be disclosed.

(2) We will tell the requester and the
submitter the proposed disclosure date
at the same time.

(3) If a submitter sues to prevent
release, we will promptly tell the
requester and will not disclose the
business information until after the
court’s decision.

(4) If a requester sues to compel
disclosure, we will promptly tell the
business submitter.

§ 602.8 Appeals.

(a) How to appeal. You may appeal a
total or partial denial of your FOIA
request within 30 calendar days of the
date of the denial letter. Your appeal
must be in writing and addressed to the
Director, Office of Resources
Management (ORM), Farm Credit
Administration. You may send it:

(1) By mail to 1501 Farm Credit Drive,
McLean, Virginia 22102-5090;
(2) By facsimile to (703) 893-2608; or
(3) By E-mail to foiaappeal@fca.gov.

(b) FCA action on appeal. Within 20
business days of receiving your appeal,
the ORM Director will tell you, in
writing, whether we have granted or
denied it. If you send your appeal to the
wrong address, the 20-day response
time will not begin until the ORM
Director receives your appeal.

(c) Unusual circumstances. In
unusual circumstances, the ORM
Director may extend the 20-day
response time by telling you in writing
why we need more time and the date we
will mail you our response. All
extensions, including any extension of
the response time for the first request,
may not total more than 10 business
days.

§ 602.9 Current FOIA index.

FCA will make a current index
available for public inspection and
copying, as required by the FOIA. We
will give you an index for the cost of
copying it. Because we rarely receive
requests for an index, we have not
published one in the Federal Register.

Subpart C—FOIA Fees

§ 602.10 Definitions.

Commercial use request means an
information request by an individual or
entity seeking information for a use or
purpose that furthers the commercial,
trade, or profit interests of that
individual or entity.

Direct costs means the costs FCA
incurs in searching for and reproducing
documents to respond to a FOIA
request. For a commercial use request,
also means the costs we incur in
reviewing documents to respond to the
request. Direct costs include the pro-
crated cost of the salary of the employee
performing the work (based on the basic
rate of pay plus 16 percent to cover
benefits) and the cost of operating
reproduction equipment. They do not
include overhead expenses.

Educational institution means a
preschool, a public or private
elementary or secondary school, an
institution of undergraduate or graduate
higher education, an institution of
professional education, or an
institution of vocational education that
runs a program of scholarly research.

Noncommercial scientific institution
means a nonprofit institution that
conducts scientific research that is not
intended to promote any particular
product or industry.

PAGES mean 8-1/2 × 11 inch or 11 ×
14 inch paper copies.

Representative of the news media
means any person actively gathering
news for an entity that publishes or
broadcasts news to the public.

§ 602.11 Fees by type of requester.

Depending on your identity and the
purpose of your request, the FCA may
charge you the direct costs of searching
for responsive records, reviewing the
records, and reproducing them. If
necessary, we will seek clarification
before classifying the request.

(a) Educational institutions and
noncommercial scientific institutions.

We charge for reproduction costs
only. The first 100 pages are free. You
must show that the request is
sanctioned by an educational or
noncommercial scientific institution
and that you seek the records for
scholarly or scientific research, not for
a commercial use.

(b) Representatives of the news media.

We charge fees for reproduction costs
only. The first 100 pages are free. You
must be a representative of the news
media, and the request must not be
made for a commercial use. A request
for records supporting news distribution
is not a request for a commercial use.

(c) Commercial use. We charge the
direct cost for search, review, and
reproduction. Commercial use
requesters are not entitled to free search
time or free reproduction. We will
charge you even if we do not disclose
any records.

(d) All others. The first 2 hours of
search time and the first 100 pages of
reproduction are free. After that, we
will charge you for search and reproduction
costs. We will charge you for a search
even if we do not disclose any records.

(e) Fee table. The fee information in
paragraphs (a) through (d) of this section
is presented in the table to this
paragraph. You may apply for a waiver
if your request is not mostly in your
commercial interest and the disclosure
is in the public interest. See § 602.13.

<table>
<thead>
<tr>
<th>Type of requester</th>
<th>Search time</th>
<th>Review time</th>
<th>Reproduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational</td>
<td>No Charge</td>
<td>No charge</td>
<td>First 100 pages free, $0.15 a page after that.</td>
</tr>
<tr>
<td>Noncommercial scientific users</td>
<td>No Charge</td>
<td>No charge</td>
<td>First 100 pages free, $0.15 a page after that.</td>
</tr>
<tr>
<td>News media</td>
<td>All direct costs</td>
<td>All direct costs</td>
<td>$0.15 a page.</td>
</tr>
<tr>
<td>Commercial Users</td>
<td>All direct costs</td>
<td>All direct costs</td>
<td>$0.15 a page.</td>
</tr>
</tbody>
</table>

Review means looking at documents
found in response to a FOIA request to
decide whether any portion should be
withheld. It does not include the time
spent resolving legal or policy issues.

Search means time spent looking for
material responsive to a FOIA
request, including page-by-page or line-
by-line identification of material within
documents.
§ 602.12 Fees.  
(a) FCA may charge:  
(1) For manual searches for records and for review, the pro-rated cost of the salary of the employee doing the work.  
(2) For computer searches for records, the direct costs of computer search time and supply or material costs.  
(3) For each page made by photocopy or similar method, fifteen cents a page, and for other forms of copying, the direct costs.  
(4) The direct costs of elective services, such as certifying records as true copies or sending records by special methods.  
(b) We will not charge fees when total assessed fees are less than $15.00.  
(c) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to the Treasury of the United States.  
(d) We treat a request about yourself under Privacy Act fee rules.  
(e) The information in paragraphs (a) and (b) of this section is presented in the table to this paragraph. Direct costs means the costs FCA incurs in searching for, reviewing, and reproducing documents to respond to a request. Direct costs include pro-rated salary and reproduction costs. We will not charge fees when they total less than $15.00.

FEE TABLE—Continued

<table>
<thead>
<tr>
<th>Type of requester</th>
<th>Charges for</th>
<th>Reproduction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Search time</td>
<td>Review time</td>
</tr>
<tr>
<td>All others*</td>
<td>First 2 hours free, all direct costs after that.</td>
<td>No charge</td>
</tr>
</tbody>
</table>

* You are responsible for fees even if we do not disclose any records.

§ 602.13 Fee waiver.  
We may waive or reduce fees if disclosure is not mostly in your commercial interest but, instead, is in the public interest because it will advance public understanding of the Federal government’s operations or activities.

§ 602.14 Advance payments—notice.  
(a) If fees will be more than $25.00 and you have not told us in advance that you will pay estimated fees, we will tell you the estimated amount and ask that you agree to pay it. Except as noted in this section, we will begin processing the FOIA request when we receive your agreement to pay.  
(b) If estimated fees exceed $25.00 and you have a history of promptly paying fees charged for information requests, we may respond to your request based on your agreement to pay.  
(c) If estimated fees exceed $25.00 and you have no history of paying fees, we may require you to pay in advance.  
(d) If you have previously failed to pay fees for information requests or paid them late, you must pay any fees still owed, plus interest calculated under § 602.15, and the estimated fees before we will respond to a new or a pending request.  
(e) If we require advance payment or an advance agreement to pay, we will not consider your request to be received and will not respond to it until you meet the requirement.  

§ 602.15 Interest on unpaid fees.  
If you fail to pay fees on time, FCA may charge you interest starting on the 31st calendar day following the date we bill you. We will charge you interest at the rate allowed by law (31 U.S.C. 3717) on the billing date.

§ 602.16 Combining requests.  
You may not avoid paying fees by filing multiple requests at the same time. When FCA reasonably believes that you, alone or with others, are breaking down a request into a series of requests to avoid fees, we will combine the requests and charge accordingly. We will assume that multiple requests within a 30-day period have been made to avoid fees.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA is Not a Named Party

§ 602.17 Policy.  
(a) The rules in this subpart preserve the confidentiality of FCA’s documents and information, conserve employees’ time for official duties, uphold fairness in litigation, and help the Chairman decide when to allow testimony and to produce documents. This subpart does not affect access to documents under the FOIA or the Privacy Act. See subpart B of this part and part 603 of this chapter.  
(b) Generally, we will not produce documents voluntarily and employees will not appear as witnesses voluntarily in any legal proceeding. However, in limited circumstances, the Chairman may allow the production of documents or testimony when the Chairman decides it would be in the best interest of FCA or the public. All privileged documents produced under this subpart remain our property. Any employee having information or privileged documents may disclose them only as allowed by the Chairman.

§ 602.18 Definitions.  
Court means any entity conducting a legal proceeding.  
Demand means any order, subpoena, or other legal process for testimony or documents.  
Direct costs means FCA’s costs to search for, review, and reproduce documents to respond to a request. Direct costs include the pro-rated cost of the salary of the employee performing the work (based on the basic rate of pay plus 16 percent to cover benefits) and the cost of operating reproduction equipment.  
Document means any record or other documentary materials, such as books,
papers, maps, photographs, and machine-readable materials, regardless of physical form or characteristics (for example, electronic format) in our possession and control when we receive the request.

Employee means any present or former FCA employee, any present or former FCA Board member, any present or former Federal Farm Credit Board member, any present or former FCA-appointed receiver or conservator, and any present or former agent or contractor.

FCA Counsel means the General Counsel, a Department of Justice attorney, or counsel authorized by FCA to act for the FCA or an employee.

General Counsel means the FCA’s General Counsel or designee.

Legal proceeding means any administrative, civil, or criminal proceeding, including a discovery proceeding, before a court when FCA is not a named party and has not instituted the legal proceeding.

§ 602.19 Request for testimony or production of documents.

(a) How to make and address a request. Your request for an employee’s testimony about official matters or the production of documents must be in writing and addressed to the General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) Your request must contain the following:

(1) Title of the case;
(2) Forum;
(3) Your interest in the case;
(4) Summary of the litigation issues;
(5) Reasons for the request;
(6) Why the confidential information is important; and
(7) An explanation of why the testimony or document you want is not reasonably available from another source. If you want testimony, you must also state how you intend to use the testimony, provide a subject matter summary of the requested testimony, and explain why a document could not be used instead.

(c) The General Counsel may ask you to limit your request to make it less burdensome or to give us information to help us decide if providing documents or testimony is in the public interest.

§ 602.20 Testimony of FCA employees.

(a) An employee may testify only as the Chairman approves in writing. Generally, an employee may testify only by deposition or written interrogatory. An employee may give only factual testimony and may not give opinion testimony.

(b) If, in response to your request, the Chairman decides that an employee may testify, you must serve the employee with a subpoena under applicable Federal or State rules of procedure and at the same time send a copy of the subpoena by registered mail to the General Counsel.

(c) Normally, depositions will be taken at the employee’s office, at a time convenient to the employee and the FCA. FCA counsel may represent FCA’s interests at the deposition.

(d) If you request the deposition, you must give the General Counsel a copy of the deposition transcript at no charge.

§ 602.21 Production of FCA documents.

(a) An FCA employee may produce documents only as the Chairman allows.

(b) Before we will release any documents, the requesting party must get an acceptable protective order from the court before which the action is pending that will preserve the confidentiality of the documents to be released.

(c) On request, we may provide certified or authenticated copies of documents.

§ 602.22 Fees.

(a) For documents released under this subpart, FCA will charge:

(1) The direct costs of searching for responsive records, including the use of a computer, reviewing the records, and reproducing them. We also will charge for the direct costs of any other services and materials that we provide at your request.

(2) Fifteen cents a copy for each page made by photocopy or similar process.

(3) The direct costs for each certification or authentication of documents.

(b) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to FCA. We will waive fees of $15.00 or less. We will send the documents after we receive your payment.

§ 602.23 Responses to demands served on FCA employees.

(a) An employee served with a demand or a subpoena in a legal proceeding must immediately tell the General Counsel of such service, the testimony or documents described in the demand, and all relevant facts.

(b) When the Chairman does not allow testimony or production of documents, FCA Counsel will provide the regulations in this subpart to the party or court issuing the demand and explain that the employee may not testify or produce documents without the Chairman’s prior approval.

(c) If the court rules the employee must comply with the demand regardless of the Chairman’s instructions not to do so, the employee must respectfully refuse to comply.

(d) FCA’s decision under this subpart to comply or not to comply with any demand is not a waiver, an assertion of privilege, or an objection based on relevance, technical deficiency, or any other ground. We may oppose any demand on any legal ground.

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

If you are not an employee and are served with a demand or a subpoena in a legal proceeding directing you to produce or testify about an FCA report of examination, other document created or adopted by FCA, or any related document, you must object and immediately tell the General Counsel of such service, the testimony or documents described in the demand, and all relevant facts. You also must object to the production of any documents on the basis that they are FCA’s property and cannot be released without FCA’s consent. You should tell the requester the production of documents or testimony must follow the procedures in this part.

Subpart E—Release of Records in Public Rulemaking Files

§ 602.25 General.

FCA has a public rulemaking file for each regulation. You may get copies of documents in the public rulemaking file by sending a written request to the Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. We will charge fifteen cents a copy for each page. We will waive fees of $15.00 or less.

Dated: July 21, 1999.

Vivian L. Portis,
Secretary,
Farm Credit Administration Board.

[FR Doc. 99–19584 Filed 7–30–99; 8:45 am]

BILLING CODE 6705–01–P