

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

**Finality Rule and Equitable Relief  
7-CP (Revision 3)**

**Amendment 3**

**Approved by:** Acting Deputy Administrator, Farm Programs



**Amendment Transmittal**

**A Reasons for Amendment**

In some instances under various individual program rules, DAFP has delegated authority to approve programmatic relief. This amendment makes corrections to the handbook to reflect those situations where there may be delegations of programmatic relief authority by DAFP.

Exhibit 5 has been amended to:

- update FSA-321, item 15 A
- clarify instructions for completing FSA-321.

Exhibit 12 has been amended to clarify information required for the annual finality rule report.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	1-9, 1-10 3-13, 3-14 4-1, 4-2	5, pages 1, 2 page 3 12, pages 1, 2



3 Equitable Relief and Finality Rule (Continued)

B Steps in Determining Whether Relief or Finality May Apply (Continued)

<b>Making Finality Rule and Equitable Relief Decisions</b>	
<b>Step</b>	<b>Action</b>
6	<p>If misaction/misinformation, failure to fully comply provisions, or programmatic relief may apply according to Part 3, the case shall be forwarded for determination to the State Office. If the amount of relief sought for the participant:</p> <ul style="list-style-type: none"> <li>• does not exceed \$5,000 for each case and is <b>not</b> programmatic relief, the case is within the relief authority of STC</li> <li>• does not exceed a total of \$20,000 for the participant and is <b>not</b> programmatic relief, the case is within the special relief approval authority of SED, subject to OGC concurrence, as long as all of the following apply: <ul style="list-style-type: none"> <li>• the type of case is within the special relief authority of SED as provided in Part 3</li> <li>• the total amount of such relief, that has been previously provided to the participant using this special authority for errors in that year, is not more than \$5,000</li> <li>• the total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by SED or SED’s predecessor, using this special authority is not more than \$1 million</li> </ul> </li> <li>• exceeds the authority of STC or SED * * *, the case may be submitted to DAFP, if relief is recommended by STC.</li> </ul>
7	Process case according to STC, SED, or DAFP determination, as applicable.

3 Equitable Relief and Finality Rule (Continued)

C Relief Authority Overview

The following provides a summary of finality rule and equitable relief authority.

<b>Summary of Finality Rule and Equitable Relief Authority - Not Programmatic Relief</b>		
Finality Rule	SED	Up to \$25,000 per case.
	DAFP	Cases exceeding SED authority.
Misaction/Misinformation and Failure to Fully Comply	STC	Up to \$5,000 per case.
	SED	Less than \$20,000 per participant per calendar year. <u>1/</u>
	DAFP	Cases exceeding STC or SED authority. <u>2/</u>
<u>1/</u> Providing any previous relief granted by SED in the same calendar year to that participant did not exceed \$5,000 and relief provided to similarly situated participants is not greater than \$1 million.		
<u>2/</u> If STC or SED has authority to grant relief on a case that is similar to another case that requires a decision by a higher authority, no action shall be taken on the case until a determination on the other case has been made by the higher authority.		
<b>Note:</b> Relief for a participant cannot be combined among the various granting authorities. Relief may be granted by STC, SED, or DAFP.		
<b>Example 1:</b> A participant is requesting \$24,000 in equitable relief resulting from misaction by FSA. SED cannot grant relief of \$19,000 in addition to STC relief of \$5,000, bringing the total to the requested \$24,000.		
<b>Example 2:</b> A participant is requesting \$30,000 in equitable relief in a failure to fully comply case. If SED grants \$19,999 in relief to this participant, additional relief shall not be granted by DAFP.		

**Note:** Unless specifically delegated by DAFP, only DAFP has authority to grant programmatic relief. See paragraph 43.

4-15 (Reserved)

## 46 COC Guidelines for Recommending Equitable Relief

### A Items to Review and Document

COC will review and document the basis for recommending equitable relief, including the following:

- actions by the participant that resulted in noncompliance, if applicable

**Note:** If relief is being considered under either paragraph 43 or 45, the participant's signed and dated statement is required as documentation.

- the basis for determining that a good faith effort to fully comply and substantial performance was made
- for cases of misaction/misinformation:
  - County Office employee's statement or statements indicating the incorrect information or action that resulted in the participant being out of compliance

**Notes:** This statement is to document whether erroneous information was provided.

If relief under paragraph 44 is being considered, COC must make factual findings on whether an FSA employee or representative erred or misacted and how the participant detrimentally relied on that error or misaction.

- documentation or correspondence that could have caused the participant to receive the incorrect information, such as newsletters, news articles, or letters (paragraph 42).

### B Recommendation to STC

COC will define and document the following according to Part 4:

- misaction/misinformation or failure to fully comply that occurred
- factors warranting programmatic relief authorized under the particular program
- action recommended to STC.

**47 STC Authority and Action**

**A STC Authority**

STC may grant relief up to \$5,000 per case under the provisions of the following:

- misaction/misinformation on the part of FSA employees
- failure to fully comply on the part of program participants.

**Note:** Unless otherwise specifically delegated in individual program directives or decisions by DAFP, only DAFP can approve programmatic relief.

**\*--Example:** 1-DCP contains a delegation of programmatic relief for certain late-filed enrollments. This is an example of programmatic relief delegation.--\*

**B Limitations**

Authority under this part does not apply to:

- \* \* \* cases where the participant acted on his or her own misunderstanding or misinterpretation of program provisions, notices, advice, or information
- the reinstatement of expired or terminated CRP-1's under any circumstances, regardless of the dollar amount.

**C Adverse Decision**

Cases that result in adverse decisions or partial relief by STC, must be returned to COC, who will inform the participant of appeal rights to STC or NAD. See 1-APP.

**Part 4 Documentation and Reports****71 Documentation****A Introduction**

Document each case for which the finality rule or equitable relief is determined to apply:

- in COC or STC minutes, as applicable
- on FSA-321.

**Notes:** SED determinations made according to paragraph 48 are not required to be documented in STC minutes.

In rare instances, a relief authority may render a decision on finality or equitable relief without FSA-321. This should be very rare; however, if this occurs, the absence of FSA-321 in and by itself will not be considered to be an error in the reviewing authority's relief decision.

**B Documentation for Finality Rule**

At a minimum, include the following information in COC minutes for finality rule cases:

- type of error
- effective date
- program
- program year
- farm, loan, or contract number
- producer's name
- incorrect amount paid
- amount that should have been paid.

**C Documentation for Equitable Relief**

Include the following information in COC minutes before submitting equitable relief cases to STC or SED:

- producer's name
- program year
- program

71 Documentation (Continued)

**C Documentation for Equitable Relief (Continued)**

- for cases of misaction/misinformation, both of the following:
  - incorrect action or advice conveyed by the FSA employee or representative
  - name of FSA employee or representative who erred
- action producer took based on misaction/misinformation
- farm, loan, or contract number
- incorrect amount paid
- amount that should have been paid
- for cases of programmatic relief, factors specific to the program may be specified in individual program regulations, contracts, applications, or directives.

**D Submitting FSA-321 and Documentation**

County Offices shall submit FSA-321 and documentation to the State Office according to the following.

Step	Action
1	Submit 1 copy to the State Office.
2	Keep 1 copy for County Office records.
3	Submit all pertinent documentation of the case used for the COC meeting.
4	Submit only those pages of COC minutes that document COC’s recommendation.
5	Submit a copy of the entire case file, in chronological order, to the State Office.

State Offices shall submit the entire case file, including FSA-321, in chronological order to DAFP with a recommended action of relief for all cases that exceed the authority of STC  
\* \* \*

**Notes:** FSA-321 is required for **all** specified programs for which equitable relief or application of the finality rule is requested under the provisions of this handbook.

In the rare event that FSA-321 is not prepared as required, that error in and by itself, will not be considered to be an error in the relief decision.

Reviewing authorities detecting a missing FSA-321 may:

- remand the case for preparation of FSA-321
- document the omission of FSA-321 together with a decision why a decision can be made without FSA-321 (this should be rare).

FSA-321, Finality Rule and Equitable Relief

A Completing FSA-321

Complete FSA-321 according to the following.

Item	Instructions
1 and 2	Enter State and county name.
3	No entry is necessary. A control number will be automatically entered when the web-based FSA-321 becomes available and the manually prepared FSA-321 is loaded in the web-based application.
4	Enter the program year in which finality rule, misaction/misinformation, failure to fully comply, or programmatic relief applies.
5	Enter the program in which finality rule, misaction/misinformation, failure to fully comply, or programmatic relief occurred.
6	Enter the reference number, such as farm number, contract number, or loan number, as applicable.
7	Check the applicable box.
8 through 10	<p>Complete for all finality rule, misaction/misinformation, failure to fully comply, and programmatic relief cases.</p> <p><b>*--Notes:</b> For item 9A, summarize the matter. If misaction/misinformation is checked in item 7, attach a statement signed and dated by the producer.--*</p> <p>For item 9B, if misaction/misinformation is checked in item 7, enter name of FSA employee or representative. Do <b>not</b> enter, "County Office" or "Unknown". This is a <b>required</b> entry. See paragraph 44.</p>
11A and 11B	Complete for finality rule cases only.
12A	<p>For:</p> <ul style="list-style-type: none"> <li>• *--finality rule, enter the total amount of the payment subject to finality. Do not enter an amount if this erroneous payment was not made--*</li> <li>• misaction/misinformation or failure to fully comply, enter the incorrect amount paid or to be paid because of the misaction/misinformation or failure to fully comply</li> <li>• programmatic relief, ENTER "N/A".</li> </ul>
12B	<p>For:</p> <ul style="list-style-type: none"> <li>• finality rule, enter the amount that should have been paid if the error had not occurred</li> <li>• misaction/misinformation or failure to fully comply, enter the correct amount that should have been paid or should be paid if misaction/misinformation or failure to fully comply had not occurred</li> <li>• *--programmatic relief, enter the amount that would have been paid if programmatic relief is not approved.--*</li> </ul>
12C	Enter the difference between items 12A and 12B.

FSA-321, Finality Rule and Equitable Relief (Continued)

A Completing FSA-321 (Continued)

Item	Instructions
13A and 13B	<p>Complete for misaction/misinformation, failure to fully comply, and programmatic relief cases only.</p> <p><b>Note:</b> Provide a summary for this item, but provide details as applicable in an attachment or excerpt of minutes.</p>
*--13C	<p>If programmatic relief is being requested in item 5, affirm whether or not program relief requirements have been met according to individual program rules.--*</p>
14A	<p>Complete for all finality rule, misaction/misinformation, failure to fully comply, and programmatic cases.</p>
14B through 14D	<p>The COC chairperson shall:</p> <ul style="list-style-type: none"> <li>• sign</li> <li>• enter title</li> <li>• enter applicable date of COC minutes.</li> </ul>
15A	<p>Complete for STC action only.</p>
15B	<p>Complete for SED action only.</p>
15C through 15E	<ul style="list-style-type: none"> <li>• SED shall sign for finality rule, misaction/misinformation, or failure to fully comply (see subparagraph 3 C for relief authority)</li> <li>• STC shall sign for misaction/misinformation or failure to fully comply <b>only</b> (see subparagraph 3 C for relief authority)</li> <li>• enter title and date signed.</li> </ul>
16A through 16C	<p>For finality rule only, enter payment number date, and amount of refund to the producer as a result of this determination. Enter information only if a refund is owed to the producer as a result of an erroneous collection of unearned benefits.</p>
17A through 17C	<p>For OGC concurrence on special relief approval authority only.</p> <p><b>Note:</b> Enter information only if SED invokes special relief authority. Special relief applies to misaction/misinformation and failure to fully comply.</p>
18A through 18C	<p>For cases of DAFP approval only.</p> <p><b>Note:</b> In certain cases, DAFP's signature may not be annotated on FSA-321. In that case, a memorandum will serve as evidence of DAFP's action.</p>

FSA-321, Finality Rule and Equitable Relief (Continued)

B Example of FSA-321

The following is an example of FSA-321.

This form is available electronically.

<b>FSA-321</b> (09-28-11)		USDA-FSA	1. State Name 41	2. County Name 641	3. Control Number	4. Program Year 2011
<b>FINALITY RULE AND EQUITABLE RELIEF</b>			5. Program Direct and Counter Cyclical Program		6. Reference Number FSN 2222	
7. Type of Request: (Choose one below): Finality Rule <input type="checkbox"/> Misaction/Misinformation <input checked="" type="checkbox"/> Failure to Fully Comply <input type="checkbox"/> Programmatic Relief <input type="checkbox"/>						
8. Participant's Name and Address (Including Zip Code) Arch Stanton 277 W Sand Hill Ct Riverside, CA 91360-7101						
9A. Fully Describe the Error See the attached statement.						
9B. Who Made the Error? Mary Carillo				9C. Who Discovered the Error? (OIG, COR, Producer, Etc.) COR		
10. State the Circumstances Under Which the Discovery Was Made COR Report August 19, 2011						
11A. Finality Rule Effective Date (MM-DD-YYYY)				11B. Date Discovered (MM-DD-YYYY) 08-19-2011		
12A. Incorrect Amount \$ 8,000		12B. Correct Amount \$ 2,000		12C. Difference Between Items 12A and 12B \$ 6,000		
13A. For cases of misaction/misinformation or failure to fully comply, specify the action the participant took, or failed to take, as a result of misaction/misinformation that was detrimental to the participant, or how the participant otherwise failed, in good faith, to fully comply with the requirements of the program. For programmatic relief, explain how either lateness or failure to meet program requirements is not adverse to the operation or integrity of the program. Please see attached statement.						
13B. All requirements for relief have been met in accordance with 7-CP? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>				13C. For programmatic relief, have all program requirements been met in accordance with the program identified in Item 5? YES <input type="checkbox"/> NO <input type="checkbox"/>		
14A. Recommendation and basis for recommendation:						
14B. Signature (COC Representative)			14C. Title		14D. Date of COC Minutes (MM-DD-YYYY)	
15A. STC Action (Choose One) <input type="checkbox"/> requirements for equitable relief met; case within STC authority <input type="checkbox"/> requirements for equitable relief met; approval by DAFP recommended <input type="checkbox"/> requirements for relief not met						
15B. SED Action (Choose One) <input checked="" type="checkbox"/> relief granted under special authority, subject to OGC concurrence <input type="checkbox"/> DAFP approval recommended <input type="checkbox"/> finality rule applies						
15C. Signature (SED or STC) /s/ Mary Jones			15D. Title SED		15E. Date (MM-DD-YYYY) 09-12-2011	
16A. Payment Number			16B. Date of Payment (MM-DD-YYYY)		16C. Amount of Refund \$	
<b>For Cases of SED Request for Special Relief Approval Authority Only</b>						
17A. OGC Signature /s/ John Smith			17B. OGC Action <input checked="" type="checkbox"/> Concurs <input type="checkbox"/> Does not concur		17C. Date (MM-DD-YYYY) 09-12-2011	
<b>For Cases of DAFP Authority Only</b>						
18A. DAFP Signature			18B. IGC Action <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove		18C. Date (MM-DD-YYYY)	

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.



**Example Format for Reporting the Annual FSA-321 for Finality Rule (PA-129R)**

The following is an example for reporting the annual FSA-321 for finality rule only.

<b>PA-129R</b>				
State - <u>Vermont</u>			Report Date - <u>January 3, 2011</u>	
<b>County</b>	<b>Payment Type</b>	<b>Number of Cases</b>	<b>Amount Approved</b>	<b>Approval Authority</b>
Addison	LDP	1	\$19,000	SED
Addison	NAP	2	\$5,500	SED
Addison	NAP	2	\$65,500	DAFP
Bennington	LDP	3	\$65,500	SED
Caledonia	CDP	1	\$25,500	DAFP
<b>Negative reports for all other counties</b>				

**Example Format for Reporting the Annual FSA-321 for Finality Rule (PA-129R) (Continued)**

The following provides instructions for the annual finality rule report only.

Item	Instructions
County	Enter the name of the administrative County Office. A separate line item shall be used for each program or approval authority.
Payment Type	Enter the program listed on FSA-321.
Number of Cases	Multiple cases may be included on the same line item if the program and approval authority are the same.  Include cases where the FSA-321 relief request was denied or partially approved.
Amount Approved	*--Enter the dollar amount that the program participant was permitted to--* retain because of the finality rule.
Approval Authority	Must be either SED or DAFP.  STC does <b>not</b> have finality rule approval authority.  Include finality rule cases approved through NAD decisions.
<b>Additional Clarification</b>	
<ul style="list-style-type: none"> <li>• This report shall be submitted to PECD annually by January 3 for relief granted during the previous calendar year.  <b>Example:</b> Relief granted during calendar year 2011 for a 2010 program applicant shall be included on the 2011 annual report.</li> <li>• This report shall include all SED or DAFP finality rule decisions documented on FSA-321, including cases where the request has been denied.</li> <li>• This report includes cases where the finality was determined to apply during the previous calendar year.  <b>Example:</b> If the finality rule is determined to apply during calendar year 2011 to a case involving a 2010 program payment, the case shall be included on the 2011 annual report.</li> </ul>	