

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Finality Rule and Equitable Relief 7-CP (Revision 4)	Amendment 2
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Approved by: Deputy Administrator, Farm Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraphs 18 B and 45 E have been amended to make examples more generic and not program specific.

Subparagraph 46 A has been amended to add a note reminding COC's to follow 1-APP guidance when referring cases that are under appeal to higher reviewing authorities.

Paragraph 47 has been amended to:

- provide instruction on what to do with cases that will or will not be forwarded to higher reviewing authorities (subparagraph B)
- insert language reminding STC's to withhold action on similar cases as specified in paragraph 3
- clarify instruction for adverse decisions in subparagraph D.

Paragraph 73 has been amended to:

- remove subparagraphs C and D
- update procedure on recurring requests for relief.

Page Control Chart		
TC	Text	Exhibit
	2-5, 2-6 3-11 through 3-14 4-5 4-6 (remove)	1, pages 1, 2

17 When Finality Rule Applies (Continued)**D Notification of Error (Continued)**

A participant will be considered to be put on notice of errors or mistakes upon receipt of any information about the error or mistake. This information may be important for finality purposes in determining whether more than 90 calendar days has passed since the date of application before the participant was advised of potential error or mistake.

Employees and offices who fail to follow the provisions of this subparagraph could be subject to disciplinary action.

E Nonfinal Determinations

The finality rule does **not** apply if a determination is not considered final. Preliminary determinations or determinations that involve issuing advance payments are **not** subject to the finality rule. A determination will **not** be considered final if any of the following apply:

- error is discovered and communicated to the participant within 90 calendar days after the application for benefits, including any required supporting documents, has been filed

Note: See subparagraph D for further information.

- determination has been appealed
- determination has been modified by the FSA Administrator or the Executive Vice-President of CCC
- individual program provisions or forms provide that the determination is a preliminary determination.

F Documenting Inapplicability of Finality

COC will document in COC minutes and on FSA-321 when finality does **not** apply to an overpayment that has been disbursed. See Exhibit 5.

18 Exceptions to Finality Rule**A Regulatory Exceptions**

Four exceptions to the finality rule are provided under 7 CFR 718.306(a) and subparagraph 16 B.

18 Exceptions to Finality Rule (Continued)

B Clean Hands Provision

For the finality rule to apply to a COC or STC (or COC or STC representative) decision, the participant must have clean hands with respect to the application and subsequent COC or STC decision. See Exhibit 2 for the definition of “clean hands”.

The finality rule is made inapplicable by exception if an erroneous determination is based on incorrect information, mistakes, erroneous data, or wrongdoing by or on behalf of the participant, even if the participant was not aware, at the time of their application, that the information or data was false. An exception to the finality rule occurs and makes finality inapplicable if any of the following occur in the application:

- intentional or unintentional false statement
- fraud
- misrepresentation, whether purposeful or innocent
- willful misconduct.

Example: An individual received payment based on his or her representation that he or she *--was a tenant on a farm participating in DCP or some other program. If FSA--* later discovers that this representation was inaccurate, the individual is **not** protected from overpayment liability under the finality rule. This is true even if it took FSA more than 90 calendar days to determine that the representation was inaccurate.

Note: There is no “fault” provision involved in finality. Overpayments do not have to be the fault of a participant for an exception to apply. If FSA’s decision to pay money is in any way related to an incorrect representation or inaccurate certification of the participant, the participant cannot retain the unearned payment under finality.

C Reason to Know

A key test for application of the finality rule to a COC or STC (or COC or STC representative) decision is whether the participant (not FSA) had any reason to know that the FSA decision was in error. See Exhibit 2 for the definition of “reason to know”.

Note: Paragraphs 20 through 22 contain some instructions and examples of finality applicability or inapplicability. These situations and examples are illustrative only and are neither exhaustive nor determinative. Except as provided in this paragraph, for any COC or STC (or COC or STC representative) decision, offices will follow paragraphs 16 and 17.

45 Failure to Fully Comply (Continued)

E Extent of Relief

In general, relief should **not** be granted to allow a participant who failed to comply with all program requirements to receive the exact same benefit as participants who fully complied, unless the failure is not determined to be great. Relief should **not** be granted to give a participant an undue advantage over participants who fully complied with all program provisions.

Program benefits may be reduced as determined appropriate by FSA.

***--Example:** Program payments may be reduced instead of terminating an application or--* contract for a violation. The payment reduction is a form of failure to fully comply relief.

F Relation to Other Provisions

Equitable relief, under the provisions of this paragraph for a covered program and participant, cannot be used to usurp or supersede the following:

- statute or law
- relief provisions of individual programs; for example, RMPR relief provisions.

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 paragraph 44, 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

***--Note:** If COC is in the process of a reconsideration or appeal, then follow 1-APP for guidance on referring matters to higher authorities.--*

46 COC Guidelines for Recommending Equitable Relief (Continued)

A Items to Review and Document (Continued)

- 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 to the participant providing relevant information, such as newsletters, news articles, or letters.

B Recommendation to STC

COC will 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.

C Overpayment Cases

In most cases, a person or legal entity expressing difficulty with having to refund payments is insufficient grounds for considering relief. Those issues or circumstances may be relevant when applying debt settlement procedures in 58-FI.

Generally, a participant not being a party to or responsible for committing an error that led to an unearned payment being issued has no bearing on who is required to refund the unearned payment. Unearned payments generally must be recovered from persons who were issued the unearned payments.

47 STC Authority and Action

A STC Authority

Except as may otherwise be authorized in other FSA program directives, 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 Cases Referred to STC

For cases referred to STC for either STC relief or possible forwarding by STC to a higher reviewing authority, STC must first determine if the underlying program determination or participant eligibility decision is correct. If the underlying decision is **not** correct, then STC may either reverse that underlying decision or modify the decision before considering equitable relief.

If STC finds that the underlying adverse program or eligibility decision is correct (or as amended or modified by STC still is an adverse decision), STC will, according to delegated authority and instructions in this handbook, either determine that equitable relief under a specific relief type (misinformation and/or misaction, failure to fully comply, or programmatic) is:

- unwarranted, disapproved, or will not be forwarded to a higher reviewing authority for consideration, return the case to COC for further processing according to subparagraph D
- warranted, approved (if within STC authority), or will be forwarded to a higher reviewing authority according to paragraph 4, advise COC of STC approval decision or forward the case to DAFP (paragraph 4), and wait for DAFP's response.

C Limitations

Authority under this part does **not** apply to the reinstatement of expired or terminated CRP-1's under any circumstances, regardless of the dollar amount.

See paragraph 3 for authority and the prohibition of acting on similar cases when waiting for higher reviewing authority action.--*

47 **STC Authority and Action (Continued)****D Adverse Decision**

--Cases that result in a finding that the underlying program or extent of eligibility decision was correct and adverse decisions or partial relief by STC, including a decision by STC not to forward relief recommendations to higher reviewing authorities for whatever reason, must-- be returned to COC, which will inform the participant of appeal rights to STC or NAD. See 1-APP.

48 **Special Equitable Relief Authority for SED's****A Regulatory Text**

[7 CFR 718.307] **Special relief approval authority for State Executive Directors.**

- (a) *General nature of the special authority.* Notwithstanding provisions in this subpart providing supervision and relief authority to other officials, an SED without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§718.303 and 718.304 as if the SED were the final arbiter within the agency of such matters so long as:
- (1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the SED;
 - (2) The total amount of relief which will be provided to the person (that is, to the individual or entity that applies for the relief) by that SED under this special authority for errors during that year is less than \$20,000 (including in that calculation, any loan amount or other benefit of any kind payable for that year and any other year);
 - (3) The total amount of such relief which has been previously provided to the participant using this special authority for errors in that year, as calculated above, is not more than \$5,000;
 - (4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by the SED (or the SED's predecessor) for errors for any year under the authority provided in this section, as calculated above, is not more than \$1,000,000.
- (b) *Report of the exercise of the power.* A grant of relief shall be considered to be under this section and subject to the special finality provided in this section only if the SED grants the relief in writing when granting the relief to the party who will receive the benefit of such relief and only if, in that document, the SED declares that they are exercising that power. The SED must report the exercise of that power to the Deputy Administrator so that a full accounting may be made in keeping with the limitations of this section. Absent such a report, relief will not be considered to have been made under this section.

72 Reports (Continued)**D Submitting Reports to FMD**

PECD will:

- summarize the annual PA-135P and PA-129R reports
- provide a copy of the summarized annual PA-135P and PA-129R reports to FMD for Improper Payments Information Act, Pub. L. 107-300 purposes.

73 Preventing Future Need for Relief**A Background**

It can be expensive and cumbersome for FSA to extend unearned program benefits to a producer because of action or advice of an FSA employee or representative. It may also undermine program integrity. The expense includes the unnecessary administrative costs, as well as the program costs, for which there is no program benefit. It is important that COC's and STC's take corrective action to minimize unearned program benefit costs.

B Corrective Action

When a bona fide relief case occurs, corrective action must be taken to lessen future incidence of these errors. Corrective action may include, but is not limited to, the following:

- additional training by any cost-effective means available
- office procedure revision
- more serious action, if warranted.

* * *

***--C Recurring Request for Relief Because of County Office Error**

When recurring requests for relief are submitted to SED, STC, or DAFP, appropriate training or disciplinary action will be taken.--*

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

This table lists the required reports in this handbook.

Report Control Number	Title	Reporting Period	Submission Date	Negative Report	Reference
PA-129R	Report of Finality Rule	Annually	January 3	Yes	19, 72, Ex. 12
PA-134R	SED Report of Exercise of Special Approval	Case-by-Case	Upon Approval	No	72, Ex. 10
PA-135P	Report of Equitable Relief	Annually	January 3	Yes	72, Ex. 11
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Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification		20, 21
CCC-471	Non-Insured Crop Disaster Assistance Program (NAP) Application for Coverage (2010 and Subsequent Crop Years)		4
CCC-502 (Continuation)	Continuation Sheet for Leased or Owned Land		20, 21
CCC-502A	Farm Operating Plan for Payment Eligibility Review for an Individual		20, 21
CCC-502B	Farm Operating Plan for Payment Eligibility Review for a Joint Venture or General Partnership		20, 21
CCC-502C	Farm Operating Plan for Payment Eligibility Review for Corporations, Limited Partnerships or Other Similar Entities		20, 21
CCC-502D	Farm Operating Plan for Payment Eligibility Review for an Estate or Trust		20, 21
CCC-502EYR	End-of-Year Report of Payment Limitation Review		20, 21
CCC-502EZ	Farm Operating Plan for Payment Eligibility Review for an Individual		20, 21
CCC-502U	Update for CCC-502, Farm Operating Plan for Payment Eligibility Review		20, 21

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
CCC-509	Direct and Counter-Cyclical Program (DCP) Contract and Average Crop Revenue Election (ACRE) Contract		17
CCC-633 EZ	Loan Deficiency Payment (LDP) Agreement and Request		21
CCC-576	Notice of Loss and Application for Payment Noninsured Crop Disaster Assistance Program		4
CCC-902 Continuation	Continuation Sheet for Leased or Owned Land (Attach to Form CCC-902I or CCC-902E)		20, 21
CCC-902E	Farm Operating Plan for an Entity - 2009 and Subsequent Program Years		20, 21
CCC-902E Continuation	Continuation Sheet for Farm Operating Plan for an Entity - 2009 and Subsequent Program Years		20, 21
CCC-902EYR	End-of-Year Report of Payment Limitation Review		20, 21
CCC-902I	Farm Operating Plan for an Individual - 2009 and Subsequent Program Years		20, 21
CCC-902I Short Form	Farm Operating Plan for an Individual - 2009 and Subsequent Program Years		20, 21
CCC-931	Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information		20, 21
CCC-933	Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information (for 2013)		20, 21
CRP-1	Conservation Reserve Program Contract		47
FSA-321	Finality Rule and Equitable Relief	Ex. 5	4, 16, 17, 19, 44, 48, 71, Ex. 10-12
FSA-578	Report of Acreage		4

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
RMPR	Risk Management Purchase Requirement	3, 45