FSA
HANDBOOK

Finality Rule and Equitable Relief

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

7-CP
(Revision 4)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Finality Rule and Equitable Relief 7-CP (Revision 4)	Amendment 4

Approved by: Acting Deputy Administrator, Farm Programs

Amendment Transmittal

A Reasons for Amendment

Subparagraphs 16 B, 41 A, 44 B, 45 B, and 48 A have been amended to incorporate updated regulatory language consistent with an FR amendment on July 16, 2015 (80 FR 41998). The amendment applies to **all** decisions made for issues or actions without regard to date of issue because the regulatory changes were a clarification and **not** a change in policy about finality or relief.

Subparagraph 16 C has been removed because the content was no longer applicable.

Subparagraph 17 A has been amended to add a note.

Subparagraph 17 B has been amended to instruct offices that if a payment has not been issued before an error was discovered, finality does **not** apply.

Subparagraph 17 C has been amended to update the example and provide clarification on payments not yet issued.

Subparagraph 18 B has been amended to update the example.

Subparagraph 19 B has been amended to clarify applicability of finality.

Subparagraph 22 C has been amended to clarify a situation for NAP coverage.

Subparagraph 41 A has been amended to provide additional examples of issues for which equitable relief provisions are **not** applicable.

Subparagraph 45 C has been amended to clarify when failure to fully comply provisions apply to equitable relief.

Amendment Transmittal (Continued)

Page Control Chart		
TC	**Text**	**Exhibit**
	2-1 through 2-6 2-9, 2-10 2-13, 2-14 3-1, 3-2 3-5, 3-6 3-9, 3-10 3-15, 3-16	1, pages 1, 2

Table of Contents

Page No.

Part 1 General Information

1	Overview	1-1
2	Sources of Authority and Related References	1-2
3	Equitable Relief and Finality Rule	1-3
4	Submitting Requests to the Washington, DC, National Office	1-8
5-15	(Reserved)	

Part 2 Finality Rule

16	Finality Rule General Information	2-1
17	When Finality Rule Applies	2-3
18	Exceptions to Finality Rule	2-5
19	Finality Rule Required Action	2-7
20	Disaster Guidelines	2-9
21	CCC Loans and LDP Guidelines	2-11
22	NAP Guidelines	2-13
23-40	(Reserved)	

Part 3 Equitable Relief Provisions

41	Applicability of Equitable Relief to Program Decisions	3-1
42	Prerequisites to Equitable Relief	3-3
43	Programmatic Relief	3-5
44	Misaction/Misinformation	3-6
45	Failure to Fully Comply	3-9
46	COC Guidelines for Recommending Equitable Relief	3-11
47	STC Authority and Action	3-13
48	Special Equitable Relief Authority for SED's	3-14
49-70	(Reserved)	

Part 4 Documentation, Reports, and General Information

71	Documentation	4-1
72	Reports	4-3
73	Preventing Future Need for Relief	4-5

Table of Contents (Continued)

Exhibits

1	Reports, Forms, Abbreviations, and Redelegations of Authority
2	Definitions of Terms Used in This Handbook
3, 4	(Reserved)
5	FSA-321, Finality Rule and Equitable Relief
6	Example of Finality Rule Letter
7-9	(Reserved)
10	Example Format for SED Report of Exercise of Special Approval Authority (PA-134R)
11	Example Format for Report of Equitable Relief (PA-135P)
12	Example Format for Report of Finality Rule (PA-129R)

Part 1 General Information

1 Overview

A Handbook Purpose

This handbook provides instructions and procedure for administering and documenting cases that may be subject to the following:

- failure to fully comply
- finality rule
- misaction/misinformation
- programmatic relief.

B Related Handbooks

This handbook provides guidance about finality rule and equitable relief activities necessary to administer programs covered by the following handbooks:

- 7-CN
- 2-CRP
- 1-DCP
- 1-ECP
- 1-EFRP
- 3-LD
- 1-LDAP
- 8-LP
- 1-NAP
- 1-SURE
- 1-TAP.

Notes: Some parts of this handbook have applicability for other program-related matters. Handle situations according to applicable program handbooks and instructions in this handbook.

See 58-FI for rules about debts and settlement procedures.

2 Sources of Authority and Related References

A Authority

The following summarize the authority for finality rule and equitable relief provisions.

Provision	Authority
Equitable Relief	7 U.S.C. 7996
Finality Rule	Department of Agriculture Reorganization Act of 1994, Section 281
Programmatic Relief	Individual program regulations, various laws, and FSA handbooks

B Federal Regulations

The regulations governing the administration of both the finality rule and equitable relief are located in 7 CFR Part 718, Subpart D.

Programmatic relief is governed by the applicable regulations for a specific program.

3 Equitable Relief and Finality Rule

A Overview

The following is the statutory basis and summary of equitable relief and finality provisions.

[7 U.S.C. 7996] (b) Equitable relief.

The Secretary may provide relief to any participant that is determined to be not in compliance with the requirements of a covered program, and therefore ineligible for a loan, payment, or other benefit under the covered program, if the participant—

(1) acting in good faith, relied on the action or advice of the Secretary (including any authorized representative of the Secretary) to the detriment of the participant; or

(2) failed to comply fully with the requirements of the covered program, but made a good faith effort to comply with the requirements.

(c) Forms of relief.

The Secretary may authorize a participant in a covered program to—

(1) retain loans, payments, or other benefits received under the covered program;

(2) continue to receive loans, payments, and other benefits under the covered program;

(3) continue to participate, in whole or in part, under any contract executed under the covered program;

(4) in the case of a conservation program, reenroll all or part of the land covered by the program; and

(5) receive such other equitable relief as the Secretary determines to be appropriate.

(d) Remedial action.

As a condition of receiving relief under this section, the Secretary may require the participant to take actions designed to remedy any failure to comply with the covered program.

Equitable relief cannot be used absent some program ineligibility/noncompliance issue or matter. Equitable relief cannot be used to extend a benefit not otherwise available to others who have complied with every eligibility or compliance requirement of a program. Equitable relief is not a new program. It is also improper to use equitable relief simply because a participant does not like the eligibility requirements or compliance provisions of a program or because a participant simply does not meet those provisions.

3 Equitable Relief and Finality Rule (Continued)

A Overview (Continued)

Recipients of equitable relief should not receive a greater benefit than participants who satisfied every eligibility provision or who met every compliance provision of a program.

Provision	Summary of Provisions
Equitable Relief Under Failure to Fully Comply Provisions	Applies only to participants who are enrolled and who are subject to compliance provisions or performance requirements. The enrolled participant or applicant must demonstrate a good faith effort to comply, but for some good reason, the participant failed to fully comply or perform as required. This provision does **not** apply to individuals or entities who simply do not apply or sign up on time and who are not subject to compliance or performance requirements. See programmatic relief. See 7 CFR 718.304 and paragraph 45.
Equitable Relief Under Misaction/Misinformation Provisions	Applies only to participants who are in a case where an authorized FSA representative provided incorrect information or advice or acted incorrectly, and where the participant detrimentally relied on that erroneous advice or action, provided that participant had **no reason** to suspect or know that the information, advice, or action of the authorized FSA representative was in error, relief may be extended to allow the participant to be considered eligible up to the extent FSA deems it appropriate and equitable. See 7 CFR 718.303 and paragraph 44.

3 Equitable Relief and Finality Rule (Continued)

A Overview (Continued)

Provision	Summary of Provisions
Programmatic Relief	At FSA's discretion, applies where individual program regulations authorize FSA to waive or modify nonstatutory deadlines or other program requirements as specifically mentioned in individual program regulations or other provisions, in either single cases or group instances, where DAFP determines it appropriate. See paragraph 43.
SED Equitable Relief	Subject to specific conditions and OGC written concurrence, SED's may grant relief under the misaction/misinformation or failure to fully comply provisions, if the: • program matter with respect to which the relief is sought is in a covered program that is operated within the State under the control of SED • total amount of relief that will be provided 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 • total amount of this relief that has been previously provided to the participant using this special authority for errors in that year, as calculated in this table, is not more than $5,000 • 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) for errors for any year under this authority, as calculated in this table, is not more than $1 million. See 7 CFR 718.307 and paragraph 48.

3 Equitable Relief and Finality Rule (Continued)

A Overview (Continued)

Provision	Summary of Provisions
Finality Rule	Under the finality rule, a participant may be allowed to keep payments that were disbursed in error, through no fault of the participant. Finality cannot apply if the error in payment is in anyway because of an erroneous misrepresentation of the participant even if the misrepresentation was unintentional. The participant cannot have had any **reason** to know or suspect the decision to approve or pay the application was in error. Applies **only** to decisions of STC's and COC's (and STC and COC employees). Does **not** apply to decisions of National Office employees, decisions of RMA or reinsured companies, or decisions of SED's. See 7 CFR 718.306 and paragraph 16.

3 Equitable Relief and Finality Rule (Continued)

B Relief and Finality Authority Overview

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

Summary of Finality Rule and Equitable Relief Authority - Not Programmatic Relief		
Finality Rule	SED	Up to $25,000 per case.
	DAFP	Cases exceeding SED authority. **1/**
Misaction/Misinformation and Failure to Fully Comply	STC	Up to $5,000 per case.
	SED	Less than $20,000 per participant per calendar year. **2/**
	DAFP	Cases exceeding STC or SED authority. **1/**

Note: Relief for a participant cannot be combined among the various granting authorities. Relief may be granted by STC, SED, or DAFP.

Example 1: 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.

Example 2: 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, the additional amount of relief is **not** available.

1/ If STC or SED has authority to act or grant relief on a case that is similar to another case that requires a decision by a higher authority, no action will be taken on the case until a determination on the other case has been made by the higher authority.

2/ 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. SED authority granted according to paragraph 48.

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

4 Submitting Requests to the Washington, DC, National Office

A Overview

DAFP has developed procedure for electronically submitting requests for equitable relief or applications of the finality rule. Where this handbook provides that a matter or issue be sent to DAFP or any of the respective divisions of DAFP, including CEPD, PECD, or PSD, State Offices will submit the file according to this paragraph.

B Electronically Submitting Requests

All requests for equitable relief or finality seeking written decision, approval, or concurrence by DAFP, CEPD, PECD, or PSD must be submitted by internal FSA e-mail from State ***--**Offices to **RA.FSA.DCWA2.DAFP**, according to the format in subparagraph C.**--***

Requests submitted according to this paragraph **must** be sent to DAFP by e-mail with an encrypted PDF attachment. Include a point of contact in the text of the e-mail, but nothing else of substance. Encrypt the attachment with the password that DAFP will provide to the field under separate cover. Call DAFP at 202-720-8513 if there are questions about the password.

C Format for Requests, Subject Line of E-Mails, and Required Attachments

The e-mail subject line **must** be formatted as follows:

- State abbreviation (for example, “AZ” for Arizona)
- responding division (for example, “PECD”)
- type of action requested, as follows:
  - “FN” for finality rule
  - “MM” for misaction/misinformation
  - “FFC” for failure to fully comply
  - “PR” for programmatic relief
  - “OTH” for combinations of equitable relief or finality
- participant’s name
- date of request (for example, “01-10-2013” for January 10, 2013).

Example: “AZ/PECD/FFC/JohnDoe/01-10-2013”

4 Submitting Requests to the Washington, DC, National Office (Continued)

C Format for Requests, Subject Line of E-Mails, and Required Attachments (Continued)

Attachments must be in PDF and encrypted. The following **must** be included in the attachments:

- FSA-321
- written narrative explaining what is at issue and what is being sought
- **all** documents required by this handbook or other FSA directive; for example, CCC-471, CCC-576, FSA-578, and program documents, as applicable
- COC or STC concurrence or approval, as applicable
- other information that may help in processing the request
- point of contact for questions about the request.

5-15 (Reserved)

Part 2 Finality Rule

16 Finality Rule General Information

A Overview

The finality rule provisions, including exceptions, apply to COC and STC decisions on applications filed by participants. Finality may occur when, because of some error, an incorrect or improper payment was inadvertently issued to a participant. Provided criteria in paragraph 17 apply, the recipient of the unintended or erroneous payment may be able to retain or keep the amount disbursed in error.

Sometimes, innocent mistakes result in overpayments. If the FSA decision or program payment was in any way the result of erroneous information provided by the participant, even innocently provided erroneous information, the participant is likely not entitled to retain unearned payments.

A decision on applicability of the finality rule in no way is a decision assigning responsibility for error or deciding "fault". Finality applies only as a result of the passage of time and only if there are **no** exceptions to its application. See subparagraph B.

B Regulatory Language

***--[7 CFR 718.306] Finality.**

(a) A determination by an FSA State or county committee (or employee of such committee) becomes final on an application for benefits and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless any of the following exceptions exist:

(1) The participant has requested an administrative review of the determination in accordance with part 780 of this chapter;

(2) The determination was in any way based on erroneous, innocent, or purposeful misrepresentation; false statement; fraud; or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or in the case of CCC programs conducted under Chapter XIV of this title, the Executive Vice President, CCC; or

(4) The participant knew or had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, the erroneous decision will be corrected according to paragraph (c) of this section.--*

16 Finality Rule General Information (Continued)

B Regulatory Language (Continued)

***--(1) If, as a result of the erroneous decision, payment was issued, no action will be taken by FSA, CCC, or a State or county committee to recover unearned payment amounts unless one or more of the exceptions in paragraph (a) of this section applies;**

(2) If payment was not issued before the error was discovered, the payment will not be issued. FSA and CCC are under no obligation to issue payments or render decisions that are contrary to law or regulation.

(c) FSA and CCC will modify and correct determinations when errors are discovered. As specified in paragraph (b) of this section, FSA or CCC may be precluded from recovering unearned payments that issued as a result of the erroneous decision. FSA or CCC's inability to recover or demand refunds of unearned amounts as specified in paragraph (b) will only be effective through the year in which the error was found and communicated to the participant.--*

*** * ***

C Relation to Other Requirements

The finality rule does **not** supersede other requirements or preclude adverse decisions based on compliance determinations or activities.

Example: A NAP participant was issued a payment based on an application for payment that was later pulled for a compliance review. On review, FSA learned the participant overstated acreage. The participant cannot retain unearned payments that are the result of incorrect or inaccurate representation later discovered to be inaccurate by FSA.

Even if finality applies, the County Office must follow established procedure for correcting errors.

D Approval Authority

SED has final authority to:

- disapprove all cases

  Note: The producer will be given appeal rights according to 1-APP, if SED does **not** approve FSA-321.

- approve cases for which the actual or projected dollar amounts considered to be in error do **not** exceed $25,000.

16 Finality Rule General Information (Continued)

D Approval Authority (Continued)

Cases exceeding SED authority must be submitted to DAFP if approval is recommended by SED.

Notes: If SED has authority to grant relief on a particular case that is similar to another case that is also currently being contemplated or considered, but requires a decision by DAFP (cases exceeding $25,000), SED will take no action on the case under their authority until DAFP makes a determination.

If the finality rule applies to a case, that case must be approved for the full amount, subject to the program's payment limitation. Partial approval is **not** available under the finality rule.

17 When Finality Rule Applies

A COC and STC Determinations

The finality rule applies only to determinations for covered programs made by COC's, STC's, or their representatives. This includes, but is not limited to, the following:

- decisions about program payments containing overpayments or incorrect amounts
- documented decisions by COC, STC, or their employees
- calculation errors that are subsequently approved.

--Notes:** See subparagraph 16 B for exceptions to finality.**--

See paragraphs 20 through 22 for guidance about specific programs.

B Application for Benefits

The finality rule applies only to payments and overpayments resulting from a COC or STC (or COC or STC representative) decision that is related to an application for benefits. The finality rule does **not** apply to the following:

- contract or loan provisions or ramifications
- information or advice of FSA representatives that is **not** a program decision
- mediation agreements
- decisions of FSA National Office officials and SED's
- decisions of RMA or reinsured companies, NRCS, FS, CMA's, DMA/LSA, or any technical service provider
- contract LA findings or conclusions

17 When Finality Rule Applies (Continued)

B Application for Benefits (Continued)

- functions performed under the Consolidated Farm and Rural Development Act, Section 376, as amended, for FLP's

•*****--payments that were not issued before the error was discovered (subparagraph 16 B).**--***

C Subsequent Year Determination

Should a determination have multi-year consequences, such as multi-year applications or base acres, the finality rule only applies to overpayments incidental or through the year in which the error was found and communicated to the participant.

Example: An error in establishing base acres on a farm is discovered more than 90 calendar *****--days after CCC-861 is approved. The participant is determined to not have any**--*** reason to suspect or know of the error. The base acres are corrected effective immediately and the participant is afforded the opportunity to re-enroll. Payments issued in error for the year that the error was discovered may be retained by the *--participant. However, if payments had not yet issued before the error was discovered, FSA will **not** issue the incorrect payments; further, subsequent**--*** year benefits, and any other program benefit that could arise following communication of the error to the participant, will be limited to correct base acres.

D Notification of Error

Employees and offices must **not** delay notifying participants of errors in applications or decisions for a determination on the possible application of **either** of the following:

- equitable relief, under any available relief authority
- finality.

As soon as an error is discovered that has resulted or could potentially result in an overpayment, FSA offices will do the following:

- immediately provide the participant with written notification of the error or mistake and advise that overpayments have been or could be determined, as applicable

  Note: The notification of error should be in writing and documented; however, if the notification of error or possible error is verbal, then the employee providing the notice will document:

  - what was conveyed
  - to whom notification was provided
  - when and how it was provided.

- advise the participant that FSA will provide the participant with a written decision about the results of any determination made relative to the error or mistake.

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 ARCPLC 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.

19 Finality Rule Required Action

A Action When Payment Has Been Disbursed

The following table provides instructions in situations when a benefit or payment resulting from an erroneous determination has been disbursed and more than 90 calendar days have passed since the determination became final. If 90 calendar days have **not** passed since the date of application, ensure that the participant is immediately notified of the error and follow these steps.

Step	Action
1	COC or STC will review whether the case meets the requirements of paragraph 17 to determine whether the finality rule may apply. If: • yes, go to step 2 • no, go to step 3.
2	COC or STC will determine whether an exception to the finality rule under paragraph 18 applies. If: • yes, go to step 3 • no, go to step 4.
3	Do the following: • if not already done, immediately notify the participant, by letter, of the error • correct the error according to the applicable program instructions or 58-FI • record, on the County Office copy of the letter, the reason the finality rule does not apply, and file in the applicable program folder • document the decision in COC or STC minutes, as applicable. **Note:** If the finality rule does **not** apply, equitable relief may still be considered under Part 3 if it can be determined that the participant is not in compliance with the requirements of a covered program.

19 Finality Rule Required Action (Continued)

A Action When Payment Has Been Disbursed (Continued)

Step	Action
4	Document each case in COC or STC minutes, as applicable, and on FSA-321. See Exhibit 5.
5	Sign FSA-321 and forward to SED or DAFP for final approval or disapproval, or to recommend approval to DAFP if amount exceeds $25,000. See subparagraph 71 D. If SED or DAFP: • disapproves, return to step 3 • approves, go to step 6.
6	Provide written notice of the error to the participant. Written notice must provide that: • refund of any overdisbursement associated with the erroneous decision is not required • the erroneous decision will remain in effect for the year the error is communicated to the participant, and for any other applicable prior years • the erroneous decision will not remain in effect for any other year or program. **Note:** See Exhibit 6 for an example finality rule approval letter.
7	The State Office will provide documentation of cases to DAFP on PA-129R, according to subparagraph 72 C. **Note:** One report containing all finality rule approvals will be submitted for each State by the deadline each year.

19 Finality Rule Required Action (Continued)

B Action When Payment Has Not Been Disbursed

The following table provides instructions in situations when a benefit or payment resulting from an erroneous determination has **not** been disbursed and more than 90 calendar days have passed since the determination became final.

Step	Action
1	Do **not** disburse the incorrect payment amount to the participant.
2	Document each case in COC or STC minutes, as applicable. Do **not** complete FSA-321 for the participant.
3	Compute the correct payment, if any, according to the applicable program procedure.
4	Disburse the payment, if any, for the correct amount only. If the participant was notified, in writing, of the determination before the error was discovered, send a letter to the participant: • describing the error in the previous determination • explaining why the error is being corrected • informing the participant of their appeal rights according to 1-APP.
5	Place the County Office copy of the letter in the applicable folder.

--Note:** If an incorrect determination has been made but has not been issued to the participant, the participant does **not** need to be notified by letter of the inapplicability of the finality rule. Finality only applies to determinations that actually were issued and then only when payments have already been issued.**--

20 Disaster Guidelines

A When Finality Rule Applies

There can be situations specific to the filing of an application for disaster benefits when the finality rule may apply. The examples, which are merely laid out here hypothetically for illustration purposes and are not determinative, include but are not limited to, instances when:

- disaster payment or extent of eligibility was based on incorrect:
  - prices in FSA's database that are **not** available to the participant in some form, such as the application calculation worksheet or other media or document

20 Disaster Guidelines (Continued)

A When Finality Rule Applies (Continued)

- figures or data that were entered into the automated system that were **not** available or evident to the participant
- county average or some other general, nonindividual yield

- correct production evidence was incorrectly used or entered into the system and not otherwise apparent to the participant
- producer provided correct information on a disaster event on the application and even though the loss was not because of an eligible disaster event or cause of loss under the program, both of the following apply:
  - claimed event occurred exactly as claimed by the participant
  - participant had no reason to question or know that the claimed event either:
    - was an ineligible cause of loss
    - failed to cause the loss.

B Effective Date

The effective date to begin counting the 90 calendar days for finality is the date at which all of the following documentation has been filed by the producer:

- program application and any required documentation
- AD-1026
- CCC-502's, CCC-902's, CCC-931, CCC-933, or other program documents required for payment issuance.

21 CCC Loans and LDP Guidelines

A When Finality Rule Applies

The finality rule may apply to a COC or STC (or COC or STC representative) decision on a loan or LDP, if no exceptions to finality apply and an error, through no fault of the participant, was made in determining eligibility of the loan collateral or producer.

Note: Assumedly, a participant has reason to know the participant's beneficial interest share, so an exception to the finality rule may apply.

B Effective Date for Loans

The effective date to begin counting the 90 calendar days for finality on decisions made on commodity loans is the date the applicable loan note and security agreement, including all required supporting documents, such as AD-1026, is signed by the loan participant.

Note: Finality does **not** relieve a loan participant of any actual or real loan obligation, notwithstanding any errors in the loan.

C Effective Date for LDP's

The effective date to begin counting the 90 calendar days for finality for a COC or STC (or COC or STC representative) decision on:

- LDP's other than field direct, is the date CCC-633 EZ, including all required supporting documents, such as AD-1026 and CCC-502's, CCC-902's, CCC-931, or CCC-933, is signed by the producer

- field direct LDP's, is the date the final production evidence is provided by the LDP participant.

21 CCC Loans and LDP Guidelines (Continued)

D When Finality Rule Does Not Apply

The following table provides some example situations of when the finality rule does **not** apply to loans or LDP's.

Note: These situations are **not** exhaustive.

WHEN...	THEN the finality rule does not apply because...
producer received a market loan gain or LDP, based on production evidence provided by the producer that was later determined to represent ineligible production or was determined to be erroneous	• the producer is **not** considered to have clean hands about the benefit (subparagraph 18 B) • the producer knew or had reason to know that the production was in error or ineligible (subparagraph 18 C).
producer provided final production evidence for a loan with marketing loan repayments or LDP that shows that the quantity is: • ineligible for the loan or LDP • less than the loan or LDP quantity	• commodity loans and LDP's are subject for spot check, and compliance determinations are **not** barred by finality **Note:** In this example, the final actual determination is made based on actual eligible production determined through compliance. • the producer knew or had reason to know that the production evidence was deficient or ineligible. **Note:** This may also be considered a misrepresentation.
loan or LDP amount was incorrect because of the incorrect loan or LDP quantity	• commodity loans and LDP's are subject for spot check, and final determinations of correct amount through compliance activities are **not** barred by finality **Note:** In this example, the final actual determination is made based on actual eligible production. The initial decision is **not** being overturned. • the producer is responsible for the loan or LDP quantity, and knew or had reason to know it was inaccurate (subparagraph 18 C) • the determination was based on incorrect information provided by the producer (subparagraph 18 B). **Note:** This may also be considered a misrepresentation.
spot check of a farm-stored loan reveals less quantity than the loan quantity **Note:** This applies even if an earlier measurement was determined to be in error.	

21 CCC Loans and LDP Guidelines (Continued)

D When Finality Rule Does Not Apply (Continued)

WHEN...	THEN the finality rule does not apply because...
producer received a loan or LDP, but was later determined ineligible because: • of a program violation committed by the producer • it was discovered that the producer was a nonresident alien	the finality rule does **not** supersede other requirements. See subparagraph 16 D.
producer received a loan or LDP based on the producer's certification that beneficial interest was retained, and FSA later determines that the producer did **not** retain beneficial interest	• the producer knew or had reason to know that their certification was inaccurate (subparagraph 18 C) • the determination was based on incorrect information provided by the producer (subparagraph 18 B). **Note:** This may be considered a misrepresentation.
the quality of the commodity delivered to CCC for settlement of loan results in deficiency due CCC	the producer is responsible for the quality and maintaining the condition of the commodity. The finality rule does **not** supersede other requirements. See subparagraph 16 D.

22 NAP Guidelines

A When Finality Rule Applies

There are a number of situations when the finality rule may apply to COC or STC (or COC or STC representative) NAP decisions. They include, but are not limited to, situations where none of the exceptions in paragraph 18 exist and:

- an FSA representative calculated NAP payments for the crop using incorrect payment factors, such as "prevented planting", "planted but not harvested", or "harvested"

  Note: In this example, the error is in the numeric factor itself, not in whether the acreage was correctly identified as "prevented planting", "planted but not harvested", or "harvested".

- an incorrect payment rate was used to calculate payments.

22 NAP Guidelines (Continued)

B Effective Date

The effective date to begin counting the 90 calendar days for finality, on a decision on NAP benefits, is the date at which all required applications and documentation have been filed by the producer.

Note: See 1-NAP for further information about application for NAP benefits.

C When Finality Rule Does Not Apply

The following table provides some situations when the finality rule does **not** apply.

Note: These situations are **not** exhaustive.

WHEN...	THEN the finality rule does not apply because...
payment was erroneously calculated because not all of the crop's production or acreage was accounted for	the decision was based on misrepresentation or incorrect information provided by the producer. **Note:** See subparagraph 18 B.
producer received NAP payments and other USDA assistance for the same crop loss	the producer knows or has reason to know: • that the producer received other USDA assistance and NAP • of the multiple benefit exclusion provision under NAP. **Note:** See subparagraph 18 C.
*****--producer had basic 50/55 NAP coverage and received payment--***** with the knowledge that the producer's crop did not suffer more than a 50 percent loss of expected production	the producer knows or has reason to know that NAP benefits cannot be paid if the crop's production loss is 50 percent or less. **Notes:** See subparagraph 18 C. This may also be considered a misrepresentation.

23-40 (Reserved)

Part 3 Equitable Relief Provisions

41 Applicability of Equitable Relief to Program Decisions

A Covered Programs

***--[7 CFR 718.301] Applicability.**

(a) This subpart is applicable to programs administered by the Farm Service Agency under chapters VII and XIV of this title, except for an agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), as amended. Administration of this subpart shall be under the supervision of the Deputy Administrator, except that such authority shall not limit the exercise of authority allowed State Executive Directors of the Farm Service Agency as provided for in §718.307.

(b) Section 718.306 does not apply to a function performed under either section 376 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), or a conservation program administered by the Natural Resources Conservation Service of the United States Department of Agriculture.

(c) The relief provisions of this part cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with every eligibility or compliance requirement of the provisions of law or regulations governing the program benefit or assistance.--*

Programs administered by FSA for which equitable relief provisions apply include a participant's not complying with or being determined ineligible under the following:

- price or income support, production or market loss assistance, disaster payment assistance, or revenue protection programs provided to participants under various program rules or authorities

- energy and/or conservation programs.

Equitable relief provisions are **not** applicable to:

- FLP's carried out under the Consolidated Farm and Rural Development Act

- ***--**requests for awards of damages, such as crop destruction or similar Tort-type claims

- persons seeking benefits or assistance **not** otherwise available under law or **not** otherwise available to others who have satisfied or complied with every eligibility or compliance requirement or regulation.

  Example: Producer had NAP coverage, but did **not** suffer a large enough loss to trigger NAP payment eligibility. Relief **cannot** be used to pay the producer because the producer is ineligible because of the level of loss. Relief **cannot** be used to create an eligibility that would **not** exist for others under NAP.**--***

41 Applicability of Equitable Relief to Program Decisions (Continued)

B Available Forms of Equitable Relief

[7 CFR 718.305] Forms of relief.

(a) The Administrator of FSA, Executive Vice President of CCC, or designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving equitable relief, the participant may be required to remedy their failure to meet the program requirement, or mitigate its affects.

42 Prerequisites to Equitable Relief

A Overview

Generally, the question of whether to consider relief rises when there has been some unintended or inequitable result because of some unintended error or oversight. Equitable relief provisions are **not** intended to be used simply because someone dislikes the result of a correct application of rules to a set of facts. Under laws and regulations, FSA may provide relief to any participant who is determined to not be in compliance with the requirements of a covered program, and **therefore**, ineligible for a loan, payment, or other benefit under a covered program. FSA has discretion to consider equitable relief in instances when unanticipated errors or results could cause an inequity to occur.

Before considering whether to recommend, approve, or deny relief, COC or STC must ensure that a program matter or extent of eligibility is at issue.

Example: A participant wants relief for a late-filed application or contract. In this instance, the application or contract must be signed and submitted to FSA before any of the following occur:

- FSA processes and acts on the application or contract
- FSA issues a decision on the application or contract
- relief can be considered.

Program participants are entitled to program payments and decisions on program payments, including decisions on whether they qualify and meet program requirements, or when they file a valid application. Relief, or even the consideration of relief by FSA, is discretionary. Participants are **not** "entitled" to relief. Relief is **not** a program, program benefit, or entitlement.

A key item to consider when deciding whether to exercise discretion to consider relief is if the relief would make the participant better off than someone who fully complied or met all program requirements, followed the rules, or qualified or satisfied all conditions for payment.

Example: If a program requires participants to report by a deadline, so that FSA may verify the accuracy of the report, granting a participant relief to report at a very late date might preclude FSA from being able to verify whether the report is accurate (in contrast with participants who filed timely reports and, as a result, those participants were found to be ineligible). Granting relief to approve a significantly later filed report could unintentionally give the late filer an advantage over participants who filed timely because the late filer's report cannot be verified.

42 Prerequisites to Equitable Relief (Continued)

A Overview (Continued)

Relief cannot be used absent some ineligibility/noncompliance with program requirements nor can relief confer a benefit that is not available to others (a "new program") who have met or comply with all program rules or requirements.

An FSA decision declining to consider relief is **not** an adverse decision. The underlying program determination about the participant's ineligibility or noncompliance, however, could be an adverse decision. If FSA exercises discretion, considers relief, and issues a relief decision, the relief decision can be appealed. The underlying program issue or decision giving use to a relief question or request may still be appealable. See 1-APP for guidance on appeals.

B Initiating Relief Requests

Requests for relief may be considered and processed according to subparagraph C when initiated:

- by the participant, COC, or STC
- as a result of findings during a request for reconsideration or appeal.

C Timing

Generally, upon receiving a decision, a participant has 30 calendar days in which to exercise review, appeal, and mediation options that may be available. If a participant chooses, for whatever reason, to **not** exercise an available option of review or appeal of the underlying program decision giving rise to ineligibility or noncompliance, the FSA decision becomes administratively final. See 1-APP. Requests for any form of equitable relief should be made during the same 30-calendar-day time period. After 30 calendar days, equitable relief can only be considered if the case is reopened under 1-APP. Reviewing authorities shall **not** reopen cases or decisions that are administratively final without express written ALS concurrence.

43 Programmatic Relief

A Overview

DAFP has authority to waive or modify deadlines or other nonstatutory requirements where FSA determines it equitable to do so and where the lateness or failure to meet the program requirement is **not** adverse to the operation or integrity of the program. Unless a specific written delegation has been made by DAFP in either a memorandum or program directive, only DAFP has programmatic relief authority.

Participants have no "right" to seek an exception under this provision. At FSA's sole discretion, under the authority laid out in the particular regulation governing the program at issue, FSA may or may not choose to exercise discretion to grant programmatic relief.

B Adherence to Individual Program Regulations, Contract Provisions, and Specific Program Directives

Availability of programmatic relief is subject to provisions of the individual program at issue including, but not limited to, the following:

- statute or law authorizing the program
- regulation
- handbooks and notices
- contract or contract appendix
- agreement, application, or program document signed by the participant.

Note: Many individual handbooks issued by DAFP already have programmatic relief provisions incorporated.

C Limitation on Using Programmatic Relief

Programmatic relief cannot be used to usurp or circumvent statute, law, or contract law.

Example: A particular program authorization specifies in law that applications must be received by September 30 to receive approval consideration or payment. Programmatic relief cannot be used to permit consideration for approval of any application received after the end of the application period specified in law.

44 Misaction/Misinformation

A Overview

Equitable relief may be considered and granted according to this paragraph to participants in covered programs that acted or failed to act based on a detrimental reliance on incorrect program information, action, or advice of an authorized FSA representative.

A finding that erroneous action or information of or from an authorized FSA representative may have occurred does **not** necessarily mean that the error warrants extending relief. As provided in subparagraph B, relief under the misaction/misinformation provisions can only apply if there was also a detrimental reliance by a participant and the participant had no reason to know or question that the action or advice of the FSA representative was in error. The provision does **not** apply to cases where a participant acted or failed to act based on the participant's own misunderstanding, lack of information or advice, or assumptions.

Note: The individual responsible for conveying the erroneous program information or who acted wrongly must be identified on FSA-321, item 9B before relief can be considered.

B Regulatory Language

***--[7 CFR 718.303] Reliance on incorrect actions or information.**

(a) Notwithstanding any other law, if an action or inaction by a participant is based upon good faith reliance on the action or advice of an authorized representative of an FSA county or State committee, and that action or inaction results in the participant's noncompliance with the requirements of a covered program that is to the detriment of the participant, then that action or inaction still may be approved by the Deputy Administrator as meeting the requirements of the covered program, and benefits may be extended or payments made in as specified in §718.305.

(b) This section applies only to a participant who:

(1) Relied in good faith upon the action of, or information provided by, an FSA county or State committee or an authorized representative of such committee regarding a covered program;

(2) Acted, or failed to act, as a result of the FSA action or information; and

(3) Was determined to be not in compliance with the requirements of that covered program.

(c) This section does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.--*

44 Misaction/Misinformation (Continued)

B Regulatory Language (Continued)

Relief under misaction/misinformation can be considered only if **all** of the following apply:

- an authorized FSA representative provided incorrect information or advice or incorrectly acted
- a participant relied, to their detriment, on that incorrect information, advice, or action
- it was reasonable for the participant to have detrimentally relied upon the erroneous information, advice, or action and the participant did **not** have any reason to know, suspect, or question that the information, advice, or action was inappropriate.

Generally, FSA's failure to publicize program information is **not** the same as providing or issuing incorrect information or misinformation. When reviewing cases, the reviewing authority must determine whether the participant demonstrated a good faith effort to comply and whether the participant had any **reason** to know that the advice or action relied on was incorrect.

Note: See Exhibit 2 for definitions of "clean hands" and "reason to know".

C Areas Not Subject to Misaction/Misinformation Equitable Relief

Equitable relief under misaction/misinformation provisions do **not** apply to the following:

- FLP's carried out under the Consolidated Farm and Rural Development Act
- programs **not** administered by FSA

  Example: NRCS has primary responsibility for EQIP. NRCS will administer EQIP without any regard to FSA's equitable relief provisions.

- cases where an FSA representative cannot be identified as having erred or provided erroneous program information or advice on which a detrimental reliance claim could possibly be made or alleged

  Example: A participant alleges that the participant asked an FSA employee if there was anything else the participant needed to sign or do before leaving the office. The participant alleges that the FSA employee responded by saying "no".

44 Misaction/Misinformation (Continued)

C Areas Not Subject to Misaction/Misinformation Equitable Relief (Continued)

FSA can only "assist" participants with enrollment. An FSA employee cannot enroll a participant's farm without the participant knowing or having reason to know that enrollment occurred. Participants are responsible for enrollment and only a participant can enroll the participant's own farm. Additionally, the deadline for enrollment may be included in published regulations and in widely publicized public forums, postings in USDA Service Centers, newsletters, internet, press announcements, etc. Therefore, in this example, the participant has "reason to know" (remember, the "reason to know" is the test; not the participant's actual degree of knowledge) of their own actions or inactions, whether they themselves personally enrolled or not, as well as having access to information about the deadline for enrollment.

In this example, while a person may interpret an FSA employee saying "no" in response to the question of whether there was anything else required as a communication from FSA that the person has already enrolled, the test under misaction/misinformation is whether there was any actual incorrect program information or advice conveyed directly to the participant by FSA, and whether the participant had any reason to know that the conveyed program information was incorrect. In this instance, FSA did **not** say or convey any incorrect information. Additionally, it appears the participant relied on the participant's own understanding of the information conveyed. If on the other hand, the FSA employee had stated that the participant had up to 3 weeks later to sign up, this communication might be considered a basis for a valid misaction/misinformation claim or request, provided the participant had no reason to question that advice or information and the participant acted to the participant's own detriment on reliance on that incorrect information (came in before COB within 3 weeks of the deadline).

- cases where the participant had reason to know or question the erroneous program information or advice

- cases where there was no detrimental reliance by the participant who was the direct recipient of incorrect program information or advice

- producers who acted based on their own interpretations, misunderstandings, assumptions, of program information or advice.

45 Failure to Fully Comply

A Overview

Relief under failure to fully comply provisions is available only to enrolled participants under covered programs who are subject to compliance with the covered program's provisions. These provisions do **not** apply to late-filed applications or failure to meet a signup deadline. Late signups or applications are generally covered under paragraph 43 or in individual program directives and regulations.

Failure to fully comply provisions are intended to allow FSA discretion to consider allowing a participant in a covered program to receive program benefits or reduced program benefits, as determined appropriate by FSA, in consideration of the participant's good faith effort to comply, rendered performance, and severity of the program violation or discrepancy.

B Regulatory Text

***--[7 CFR 718.304] Failure to fully comply.**

(a) When the failure of a participant to fully comply with the terms and conditions of a covered program precludes the providing of payments or benefits, relief may be authorized as specified in §718.305 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by FSA to have made a good faith effort to comply fully with the terms and conditions of the covered program and have performed substantial actions required for program eligibility.--*

C When Failure to Fully Comply Provisions May Apply

Relief under failure to fully comply provisions may apply if **all** of the following occur:

- ***--**participant demonstrated a good faith effort to comply and nonetheless failed to comply with or is ineligible under the current program provisions
- participant rendered substantial performance
- participant acted to remedy the failure to fully comply or ineligibility, or is prepared to**--*** mitigate the failure, if required as a condition of relief by FSA.

45 Failure to Fully Comply (Continued)

D Good Faith Effort and Substantial Performance

The good faith effort and substantial performance standard is what the participant must be found to have made or done, as applicable, to determine whether equitable relief under this subparagraph is warranted. FSA's inability to find that a participant did **not** demonstrate a good faith effort to comply or substantial performance does **not** mean that the reviewing authority has determined the participant to have acted badly or with disregard for the program.

Reviewing authorities will consider the following when analyzing if a participant in a covered program demonstrated a good faith effort to comply and rendered substantial performance:

- did the participant provide all required information timely and honestly without any misrepresentation, concealment, or intention to evade any program compliance provision
- how the participant demonstrated a good faith effort to comply
- whether the participant brought the failure to FSA's attention or if FSA learned of the program failure or discrepancy by other means
- if the failure was the result of oversight and not an intent of the participant to comply with only some of the program requirements
- the actual performance rendered by the participant toward compliance with the program's requirements
- whether a participant has a pattern of similar program discrepancies in prior years or other applications.

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.**

48 Special Equitable Relief Authority for SED's (Continued)

A Regulatory Text (Continued)

(c) ***Additional limits on the authority.*** **The authority provided under this section does not extend to:**

(1) The administration of payment limitations under part 1400 of this chapter (§§1001 to 1001 F of 7 U.S.C. 1308 *et seq.*);

(2) The administration of payment limitations under a conservation program administered by the Secretary; or

(3) Highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*) as administered under 7 CFR part 12.

--(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that requirements for granting relief under §718.303 or §718.304 have been met, that the form of relief is authorized under §718.305, and that the granting of the relief is within the lawful authority of the SED.--

(e) ***Relation to other authorities.*** **The authority provided under this section is in addition to any other applicable authority that may allow relief. Generally, the SED may, without consultation other than with OGC, decide all matters under $20,000 but those decisions shall not be subject to modification within the Farm Service Agency to the extent provided for under the rules of this section.**

48 Special Equitable Relief Authority for SED's (Continued)

B Special Relief Authority

Except for programmatic relief reserved for DAFP, SED may approve relief for cases involving either misaction/misinformation of FSA personnel under paragraph 44, or failure to fully comply by the participant under paragraph 45, subject to all of the following:

- total amount of relief being provided to the participant under this special authority is **less than** $20,000 per calendar year

  Note: Include in that calculation any loan amount, payment, or other benefit payable for that year and any other year because of the relief being approved.

- total amount of relief previously provided to the participant under this special authority is **not** more than $5,000 during the calendar year

- total amount of relief provided by SED during the calendar year to similarly situated participants under this special authority for the current year or any other year is **not** more that $1 million

  Example: Relief is requested for 80 participants under NAP for the same program year and the same misinformation basis. Requested relief for any 1 participant does **not** exceed the authority of SED, but the total requested relief for the similarly situated participants is $1.1 million. Although the relief for each of the individual participants in this example does **not** exceed the SED authority, the total amount of relief for similarly situated participants ($1.1 million) exceeds the maximum authority for similarly situated participants.

- SED has received written concurrence from OGC that:

  - grounds exist for determination that the participant has, in good faith, detrimentally relied on the actions of or information from an authorized FSA representative, or that the participant otherwise failed, in good faith, to fully comply with the requirements of the program

48 Special Equitable Relief Authority for SED's (Continued)

B Special Relief Authority (Continued)

- granting of the relief is within the lawful authority of SED.

Notes: OGC concurrence may be indicated on FSA-321 or by a separate memorandum.

If OGC does **not** concur with SED's request for the exercise of special relief authority, the request is considered void and nullified. Further, the matter **must not** be considered under any other relief provision and will **not** be forwarded to DAFP for consideration. The matter will be considered closed with regard to the exercise of discretion to equitable relief by SED under this paragraph. Communications with OGC in these instances are predecisional and must **not** be included in the participant's case file.

This special authority does **not** extend to administering:

- payment limitation and payment eligibility provisions, including average AGI limitations
- HELC and WC provisions.

Cases outside this special approval authority may be submitted to STC or DAFP for consideration.

C Adverse Decisions

As a general rule, an SED's decision to decline exercising authority to consider equitable relief is **not** an adverse decision giving rise to any sort of appeal or appealability review right.

D Report of Special Relief Approval

SED must report the exercise of the special relief approval authority according to Part 4.

49-70 (Reserved)

Part 4 Documentation, Reports, and General Information

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.

71 Documentation (Continued)

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
- 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 will submit FSA-321 and documentation to the State Office according to the following table.

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.

71 Documentation (Continued)

D Submitting FSA-321 and Documentation (Continued)

State Offices must 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).

72 Reports

A SED Report of Exercise of Special Approval Authority (PA-134R)

SED's who exercise the special relief approval authority, according to paragraph 48, must report the exercise of this authority using the format in Exhibit 10. PA-134R must be submitted:

- to PECD by FAX at 202-690-2130
- on approval of each case of relief to a participant using the special relief approval authority of SED.

It is **not** necessary to report the name or ID number of the participant receiving relief. However, PA-134R must reflect the total relief being granted to the participant using the special relief approval authority of SED. For example, if a participant is granted relief under multiple programs, each program must be listed, but the amount of relief approved will reflect the total relief approved.

72 Reports (Continued)

B Report of Equitable Relief (PA-135P)

The statute requires an annual report of the number of requests for equitable relief and the disposition of the request. Each State Office must submit PA-135P using the format in Exhibit 11.

PA-135P:

- must be submitted to PECD by FAX at 202-690-2130 by January 3 each year

  Note: Negative reports are required.

- must cover **all** cases for which equitable relief under misaction/misinformation or failure to fully comply was requested according to the provisions of this handbook.

  Notes: This includes any case for which equitable relief was approved or denied during the calendar year, by any approving authority, if the basis for relief occurred on or after May 13, 2002.

  The report does **not** include programmatic relief or cases reported under subparagraph A.

C Report of Finality Rule (PA-129R)

DAFP requires an annual report of the number of cases and amount of money to which the finality rule was applied. Each State Office must submit PA-129R using the format in Exhibit 12.

PA-129R:

- must be submitted to PECD by FAX at 202-690-2130 by January 3 each year

  Note: Negative reports are required.

- must cover **all** cases to which the finality rule was applied, according to the provisions of this handbook, during the calendar year

- must include all cases and the amount of overpayments reduced or eliminated because of finality regardless of whether the decision to apply the rule was FSA's or NAD's.

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
* **	* * *	* * *	* * *	* * *	* * *

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation (HELC) 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-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-861	Agricultural Risk Coverage - County Option (ARC-CO) and Price Loss Coverage (PLC) Contract		17
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
ARCPLC	Agriculture Risk Coverage and Price Loss Coverage Program	18
RMPR	Risk Management Purchase Requirement	3, 45

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

Redelegations of Authority

This table lists the redelegation of authority in this handbook.

Redelegation	Reference
DAFP has delegated the authority to approve or disapprove some finality rule cases to SED's.	16
DAFP has delegated the authority to approve or disapprove some equitable relief cases to STC's.	3

Definitions of Terms Used in This Handbook

Clean Hands

Clean hands mean:

- the erroneous decision must **not** have been based, in whole or in part, on any incorrect or inaccurate information provided by or on behalf of the applicant or participant
- passage of more than 90 calendar days from the date of application or decision is **not** a result of knowing inaction by an affected participant
- the participant had no reason to know or way of knowing FSA's decision or payment was in error, regardless of whether FSA knew or had reason to know the decision was in error
- the participant's conduct in the matter has **not** violated conscience or good faith.

Covered Program

Covered program means a program administered by FSA under 7 CFR, Chapters VII and XIV, with the exception of the agricultural credit programs carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

Effective Date

Effective date means the date:

- to begin counting the 90 calendar days for purposes of the finality rule
- the participant's application for benefits is considered filed according to Part 2.

Notes: The date of the erroneous decision does **not** determine the date at which to begin counting the 90 calendar days.

The application for benefits must include any required supporting documents to be considered filed.

Reason to Know

Reason to know means information was available to a participant in some form causing the participant to know, suspect, or be on notice that something was incorrect or wrong, or at least have knowledge of the correct information, regardless of whether a participant actually knew something was wrong.

Note: Under the "reason to know" standard, it is "reason" that is at issue; not knowledge.

Definitions of Terms Used in This Handbook (Continued)

Reason to Know (Continued)

Reason to know is **not** what a participant actually knew or constructively knew; rather, the standard is if a participant had **reason** to know of something. The standard is objective. Its application does **not** depend on what a particular participant being considered for relief or finality did **not** know or failed to notice.

If a participant had any reason to know or suspect that something was incorrect or wrong, regardless of whether the participant actually knew it was wrong, the participant is considered to have a "reason to know".

The "reason to know" standard applies to the participant, **not** FSA. FSA's having erred or provided incorrect information or advice does **not** automatically vest a participant with no reason to know of error or that a mistake has been made. If that were the case, there would be no standard to apply.

The reason to know standard applies to the following:

- equitable relief under the detrimental reliance provisions of misaction/misinformation (paragraph 44)

- finality rule (paragraph 16).

Generally, a participant is **not** eligible for equitable relief under misaction/misinformation, or protection under the finality rule, if the participant had any reason to know or suspect any of the following as may be applicable:

- that either information or advice of an authorized FSA representative was in error
- that a decision of FSA was wrong or in error.

In analyzing whether or not a participant had "reason to know", reviewing authorities need to consider:

- whether correct program information or advice was available in any forum or media that could have given the participant cause to question or suspect that information or advice or a decision was in error

- if the error was so large that the participant had reason to question or suspect something was not right.

The extent to which correct program information is available in a case file, various public forums, or media (statutes, public laws, published regulations, program documents signed by the participant or acknowledged as having been received) helps to establish if the participant has "reason to know".

FSA-321, Finality Rule and Equitable Relief

A Completing FSA-321

Complete FSA-321 according to the following table.

Item	Instructions
1 and 2	Enter State and county names.
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	Complete for all finality rule, misaction/misinformation, failure to fully comply, and programmatic relief cases. **Notes:** For item 9A, summarize the matter. If "Misaction/Misinformation" is checked in item 7, attach a statement signed and dated by the producer. For item 9B, if "Misaction/Misinformation" is checked in item 7, enter the name of the FSA employee or representative. Do **not** enter "County Office" or "Unknown". This is a **required** entry. See paragraph 44.
11A and 11B	Complete for finality rule cases only.
12A	For: • finality rule, enter the total amount of the payment subject to finality **Note:** Do **not** enter an amount if this erroneous payment was not made. • 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 • programmatic relief, ENTER "N/A".
12B	For: • finality rule, enter the amount that should have been paid if the error had **not** occurred • 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 • programmatic relief, enter the amount that would have been paid if programmatic relief is **not** approved.
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	Complete for misaction/misinformation, failure to fully comply, and programmatic relief cases only. **Note:** Provide a summary for this item, but provide details as applicable in an attachment or excerpt of minutes.
13C	If programmatic relief is being requested in item 5, affirm whether or not program relief requirements have been met according to individual program rules.
14A	Complete for all finality rule, misaction/misinformation, failure to fully comply, and programmatic relief cases.
14B through 14D	The COC chairperson will: • sign • enter title • enter applicable date of COC minutes.
15A	Complete for STC action only.
15B	Complete for SED action only.
15C through 15E	SED will: • sign for finality rule, misaction/misinformation, or failure to fully comply **Note:** See subparagraph 3 C for relief authority. • enter title and date signed. STC will: • sign for misaction/misinformation or failure to fully comply **only** **Note:** See subparagraph 3 C for relief authority. • enter title and date signed.
16A through 16C	For finality rule only, enter payment number, date of payment, 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.
17A through 17C	For OGC concurrence on special relief approval authority only. **Note:** Enter information only if SED invokes special relief authority. Special relief applies to misaction/misinformation and failure to fully comply.
18A through 18C	For cases of DAFP approval only. **Note:** 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.

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.

FSA-321 USDA-FSA
(08-01-12)

FINALITY RULE AND EQUITABLE RELIEF

1. State Name	2. County Name	3. Control Number	4. Program Year
Arizona	Pinal		2013

5. Program	6. Reference Number
Noninsured Crop Disaster Assistance Program	2451

7. Type of Request: *(Choose one below)*:
Finality Rule ☐ Misaction/Misinformation ☒ Failure to Fully Comply ☐ Programmatic Relief ☐

8. Participant's Name and Address *(Including Zip Code)*
Arch Stanton
5 Sandhill Cemetary
Casa Grande, AZ 85222

9A. Fully Describe the Error
See the attached statement.

9B. Who Made the Error?	9C. Who Discovered the Error? *(OIG, COR, Producer, Etc.)*
Bob Carrillo	COR

10. State the Circumstances Under Which the Discovery Was Made
COR report dated August 19, 2013

11A. Finality Rule Effective Date *(MM-DD-YYYY)*	11B. Date Discovered *(MM-DD-YYYY)*
	08-19-2013

12A. Incorrect Amount	12B. Correct Amount	12C. Difference Between Items 12A and 12B
$ 8,000	$ 2,000	$ 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?	13C. For programmatic relief, have all program requirements been met in accordance with the program identified in Item 5?
YES ☒ NO ☐	YES ☐ NO ☐

14A. Recommendation and basis for recommendation:
See attached statement.

14B. Signature *(COC Representative)*	14C. Title	14D. Date of COC Minutes *(MM-DD-YYYY)*
/s/ Frank Gray	CED	11-13-2013

15A. STC Action *(Choose One)*
☐ requirements for equitable relief met; case within STC authority
☐ requirements for equitable relief met; approval by DAFP recommended
☐ requirements for relief not met

15B. SED Action *(Choose One)*
☒ relief granted under special authority, subject to OGC concurrence
☐ finality rule applies and is either approved or DAFP approval recommended
☐ finality rule inapplicable or exception applies

15C. Signature *(SED or STC)*	15D. Title	15E. Date *(MM-DD-YYYY)*
/s/ Mary Smith	SED	01-15-2014

16A. Payment Number	16B. Date of Payment *(MM-DD-YYYY)*	16C. Amount of Refund
		$

For Cases of SED Request for Special Relief Approval Authority Only

17A. OGC Signature	17B. OGC Action	17C. Date *(MM-DD-YYYY)*
/s/ Bill Belt	☒ Concurs ☐ Does not concur	01-23-2014

For Cases of DAFP Authority Only

18A. DAFP Signature	18B, Action	18C. Date (MM-DD-YYYY)
	☐ Approve ☐ Disapprove	

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 of Finality Rule Letter

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY
CASTRO COUNTY FSA OFFICE
PO BOX 667
DIMMITT TX 79027-0667
(806) 647-2153

November 1, 20XX

Jim Johnson
484 NW 5TH ST
DIMMITT TX 79027-1716

Dear Mr. Johnson:

[*Describe the erroneous determination.*]

It has been determined that the finality rule applies to your application for payments under the 20XX Noninsured Crop Disaster Assistance Program; therefore, you will not be required to return the erroneous payment of [*payment amount*] made on [*date*].

Sincerely,

County Executive Director

Example Format for SED Report of Exercise of Special Approval Authority (PA-134R)

The following is an example format of PA-134R.

PA-134R

State - Nebraska Report Date - June 1, 2011

County	Payment Type Per Participant	Amount of Relief Requested	Amount of Relief Approved	Basis for Relief
Lincoln	NAP	$19,000	$19,000	Misaction/Misinformation.
Lincoln	LDP	$5,000	$2,000	Failure to fully comply.

Note: This report will be submitted following the approval of each case of relief to a participant using the special relief approval authority of SED.

The following table provides instructions for PA-134R.

Item	Instructions
County	Enter the name of the administrative County Office. Use a separate line item for each program and for each basis for relief listed in the last column.
Payment Type Per Participant	List the program for which relief is requested on FSA-321.
Amount of Relief Requested	Enter the dollar amount of relief requested as listed on FSA-321.
Amount of Relief Approved	Enter the dollar amount of relief approved on FSA-321. This amount: • must **not** exceed the amount requested • may be zero if the request was denied.
Basis for Relief	The basis must be either "Misaction/Misinformation" or "Failure to fully comply". **Note:** This authority does **not** apply to programmatic relief.
Additional Clarification	
• This report must be submitted to PECD immediately upon approval of each misaction/misinformation case by SED after OGC concurrence. • This report will include cases documented on FSA-321, including cases where relief was disapproved by SED. • Do **not** include finality rule cases. See Exhibit 12 for annual PA-129R. • Do **not** include cases where the final determination was made by STC, DAFP, or NAD.	

Note: Negative reports are **not** required.

Example Format for Report of Equitable Relief (PA-135P)

The following is an example of PA-135P, which includes misaction/misinformation and failure to fully comply cases only. The report does **not** include programmatic relief.

PA-135P

State - Vermont Report Date - January 3, 2011

County	Payment Type	Number of Cases	Amount of Relief Requested	Amount of Relief Approved	Basis for Relief	Approval Authority
Addison	LDP	1	$5,000	$3,500	Failure to fully comply	SED
Addison	NAP	3	$95,000	$95,000	Misinformation	DAFP
Addison	CDP	1	$4,500	$4,500	Misinformation	STC
Bennington	CRP	1	$20,000	$20,000	Misaction	SED
Caledonia	LDP	3	$12,000	$9,000	Failure to fully comply	SED
Caledonia	LDP	1	$3,500	$3,500	Misinformation	STC
Totals		**10**	**$140,000**	**$135,500**		

Negative reports for all other counties

Example Format for Report of Equitable Relief (PA-135P) (Continued)

The following table provides instructions for PA-135P.

Item	Instructions
County	Enter the name of the administrative County Office. Use a separate line item for each program, basis for relief, or approval authority.
Payment Type	Enter the program listed on FSA-321 applicable to the relief request.
Number of Cases	Multiple cases may be included on the same line item if the "County", "Payment Type", "Basis for Relief", and "Approval Authority" are the same.
Amount of Relief Requested	Enter the dollar amount of relief requested on FSA-321.
Amount of Relief Approved	Enter the dollar amount of relief approved on FSA-321. This amount: • must **not** exceed the amount requested • may be zero if the request was denied.
Basis for Relief	The basis for relief shall be listed as either "Misinformation", "Misaction", or "Failure to fully comply".
Approval Authority	The approval authority shall be listed as either "STC", "SED", or "DAFP".
Additional Clarification	
• This report must be submitted to PECD annually by January 3 for relief granted during the previous calendar year. **Example:** Relief granted during calendar year 2011 for a 2010 program applicant shall be included on the 2011 annual report. • This report will include cases documented on FSA-321 where relief was denied. • Do **not** include finality rule or programmatic relief cases. See Exhibit 12 for annual PA-129R cases. Programmatic relief is **not** reported. • Do **not** include cases where the final determination was made by NAD.	

Example Format for Report of Finality Rule (PA-129R)

The following is an example of PA-129R.

PA-129R

State - Vermont Report Date - January 3, 2011

County	Payment Type	Number of Cases	Amount Approved	Approval Authority
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
Negative reports for all other counties				

Example Format for Report of Finality Rule (PA-129R) (Continued)

The following table provides instructions for PA-129R.

Item	Instructions
County	Enter the name of the administrative County Office. Use a separate line item 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. This amount may be zero if the request was denied.
Approval Authority	Must be either "SED", "DAFP", or "NAD". **Notes:** STC does **not** have finality rule approval authority. Include finality rule cases approved through NAD decisions.
Additional Clarification	
• This report must be submitted to PECD annually by January 3 for cases where the finality was determined to apply during the previous calendar year. **Example:** 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. • This report will include all SED or DAFP finality rule decisions documented on FSA-321, including cases where the request has been denied.	