

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

<b>Finality Rule and Equitable Relief 7-CP (Revision 3)</b>	<b>Amendment 6</b>
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**Approved by:** Acting Deputy Administrator, Farm Programs



**Amendment Transmittal**

**A Reasons for Amendment**

Paragraphs 17, 18, and 19 have been amended to clarify procedure for administering finality rule provisions.

Exhibit 5 has been amended to update FSA-321 to conform to policy about the inapplicability of finality or when an exception to the finality rule applies. COC's do not have to submit FSA-321 to the State Office if COC believes finality is inapplicable or if COC determines there is an exception to the finality rule.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	2-5 through 2-10	5, page 3



17 **When Finality Rule Applies (Continued)****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 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 could be determined

**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.

A participant will be considered to be put on notice of errors or mistakes on receipt of any information about the error or mistake. This information may be important 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.--\*

## 18 When Finality Rule Does Not Apply

### A Inapplicable Functions and Decisions

The finality rule does not apply to:

- functions performed under Consolidated Farm and Rural Development Act, Section 376, as amended, for FLP's
- decisions made by NRCS, CMA's, or other entities not under the jurisdiction of STC's, COC's, or area committees, or employees of those committees.

### 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.

Clean hands means:

- the erroneous decision cannot have been the result or be based, in whole or in part, on any incorrect or inaccurate information of the applicant or participant
- more than 90 calendar days has passed from the date of application (subparagraph D)
- 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 finality rule does not apply if an erroneous determination is made in good faith based on incorrect information, mistakes, erroneous data, or wrongdoing by or on behalf of the participant. Wrongdoing includes, but is not limited to, any of the following:

- false statement
- fraud
- misrepresentation
- willful misconduct.

**Example:** An individual received payment based on his or her representation that he or she was a tenant on a farm participating in DCP. If FSA were to later discover that this representation was inaccurate, the individual would not have protection 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.

**18 When Finality Rule Does Not Apply (Continued)****C Reason to Know**

The finality rule does not apply if the participant had reason to know that a determination was erroneous. See Exhibit 2 for the definition of “reason to know”.

**D Nonfinal Determinations**

The finality rule does not apply if a determination is not considered final. Preliminary determinations or determinations that involve issuing advance payments do not have finality provisions. 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 subparagraphs 17 D and 19 B for further information.--\*

- determination has been appealed
- determination has been modified by the FSA Administrator or the Executive Vice-President of CCC
- determination cannot become final because the participant was put on notice that an error has been discovered according to subparagraph 17 D
- individual program provisions or forms provide that the determination is a preliminary determination.

**\*--E Documenting Inapplicability of Finality**

COC will follow subparagraph 19 A to document when finality does not apply to an overpayment that has been disbursed.--\*

19 Finality Rule Required Action

A Action When Finality Rule Applies

The following provides instruction about appropriate action when the originating authority has determined that the finality rule applies in a particular case. Finality rule cases may be originated at the county or State level.

**Note:** See paragraph 17 for further information on the applicability of the finality rule.

<b>IF the benefit or payment resulting from an erroneous determination has...</b>	<b>THEN...</b>	
not been disbursed	follow these steps.	
	<b>Step</b>	<b>Action</b>
	1	Do not disburse the incorrect payment 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 has been previously notified, in writing, of an erroneous determination, send a letter to the participant: <ul style="list-style-type: none"> <li>• describing the error in that previous decision</li> <li>• explaining why the error is being corrected</li> <li>• informing the participant of his or her appeal rights according to 1-APP.</li> </ul>
	5	Place the County Office copy of the letter in the applicable program folder.
been disbursed	*--follow these steps.	
	1	If there is a suspicion that the finality rule might apply to an overpayment, or in response to a timely request by a participant to apply the finality rule to an overpayment, COC will review and determine if the case meets the requirements of paragraph 17 to be considered eligible for application of the finality rule.  If: <ul style="list-style-type: none"> <li>• no, go to step 2</li> <li>• yes, go to step 3.--*</li> </ul>

19 Finality Rule Required Action (Continued)

A Action When Finality Rule Applies (Continued)

IF the benefit or payment resulting from the erroneous determination has...	THEN...	
been disbursed (Continued)	Step	Action
	2	<p>*--Document why finality does not apply or what exception to the finality rule applies according to paragraph 18 and proceed with all of the following as applicable.</p> <ul style="list-style-type: none"> <li>• If the participant has not already been notified in writing of the overpayment error, notify the participant in writing of the overpayment decision and error. See subparagraph 17 D for further information on timely notification of finality rule applicability.</li> <li>• Correct the error according to the applicable program instructions or 58-FI.</li> <li>• Record, on the County Office copy of the letter, the reason the finality rule does not apply, and file in the applicable program folder.</li> <li>• Document the decision in COC or STC minutes, as applicable.--*</li> </ul>
	3	Document each case in COC or STC minutes, as applicable, and on FSA-321. See Exhibit 5.
	4	Sign FSA-321 and forward to SED for final approval or disapproval. See subparagraph 71 D for additional documentation information.
	5	<p>If approved by SED, provide written notice of the error to the participant.</p> <p><b>Note:</b> See subparagraph B for action to be taken if not approved by SED.</p> <p>Written notice shall provide that:</p> <ul style="list-style-type: none"> <li>• refund of any overdisbursement associated with the erroneous decision is not required</li> <li>• the erroneous decision shall remain in effect for the year the error is communicated to the participant, and for any applicable prior years</li> <li>• the erroneous decision will not remain in effect for any other year or program.</li> </ul> <p><b>Note:</b> See Exhibit 6 for an example of the finality rule approval letter.</p>

19 Finality Rule Required Action (Continued)

**B Action When Finality Rule Does Not Apply**

The following provides instruction about appropriate action when the originating authority has determined that the finality rule does not apply in a particular case. Finality rule cases may be originated at the county or State level.

**Note:** See paragraph 18 for further information on when the finality rule does not apply.

<b>IF the benefit resulting from the erroneous determination has...</b>	<b>THEN...</b>
been disbursed	<ul style="list-style-type: none"> <li>• immediately notify the participant, by letter, of the error</li> </ul> <p style="text-align: center;"><b>Note:</b> See subparagraph 18 D for further information on timely notification of finality rule applicability.</p> <ul style="list-style-type: none"> <li>• correct the error according to the applicable program instructions or 58-FI</li> <li>• record, on the County Office copy of the letter, the reason the finality rule does not apply, and file in the applicable program folder</li> <li>• document the decision in COC or STC minutes, as applicable.</li> </ul>
<b>not</b> been disbursed	<ul style="list-style-type: none"> <li>• correct the error according to the applicable program instructions and disburse the correct amount, if any</li> <li>• immediately notify the participant, by letter, of the correct determination.</li> </ul> <p style="text-align: center;"><b>Note:</b> If the erroneous decision was issued, indicate in the letter that the erroneous determination is superseded by the correct determination.</p>

**Note:** The participant does not need to be notified by letter of the inapplicability of the finality rule to a determination, if the participant has not been issued an incorrect determination. Finality only potentially applies to determinations that were issued.

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

B Example of FSA-321

The following is an example of FSA-321.

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This form is available electronically.			
<b>FSA-321</b> (08-01-12)  <b>FINALITY RULE AND EQUITABLE RELIEF</b>	USDA-FSA 1. State Name Arizona	2. County Name Pinal	3. Control Number 4. Program Year 2010
	5. Program Direct and Counter Cyclical Payment Program		6. Reference Number 2451
7. Type of Request: (Choose one below): Finality Rule <input type="checkbox"/> Misaction/Misinformation <input checked="" type="checkbox"/> Failure to Fully Comply <input type="checkbox"/> Programmatic Relief <input checked="" type="checkbox"/>			
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? Bob Carrillo		9C. Who Discovered the Error? (OIG, COR, Producer, Etc.) COR	
10. State the Circumstances Under Which the Discovery Was Made COR report dated August 19, 2011			
11A. Finality Rule Effective Date (MM-DD-YYYY)		11B. Date Discovered (MM-DD-YYYY) 08-19-2011	
12A. Incorrect Amount \$ 8,000	12B. Correct Amount \$ 2,000	12C. Difference Between Items 12A and 12B \$ 6,000	
13A. For cases of misaction/misinformation or failure to fully comply, specify the action the participant took, or failed to take, as a result of misaction/misinformation that was detrimental to the participant, or how the participant otherwise failed, in good faith, to fully comply with the requirements of the program. For programmatic relief, explain how either lateness or failure to meet program requirements is not adverse to the operation or integrity of the program. Please see attached statement.			
13B. All requirements for relief have been met in accordance with 7-CP? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		13C. For programmatic relief, have all program requirements been met in accordance with the program identified in Item 5? YES <input type="checkbox"/> NO <input type="checkbox"/>	
14A. Recommendation and basis for recommendation: See attached statement.			
14B. Signature (COC Representative) /s/ Frank Gray	14C. Title CED	14D. Date of COC Minutes (MM-DD-YYYY) 11-13-2011	
15A. STC Action (Choose One) <input type="checkbox"/> requirements for equitable relief met; case within STC authority <input type="checkbox"/> requirements for equitable relief met; approval by DAFP recommended <input type="checkbox"/> requirements for relief not met			
15B. SED Action (Choose One) <input checked="" type="checkbox"/> relief granted under special authority, subject to OGC concurrence <input type="checkbox"/> finality rule applies and is either approved or DAFP approval recommended <input type="checkbox"/> finality rule inapplicable or exception applies			
15C. Signature (SED or STC) /s/ Mary Smith	15D. Title SED	15E. Date (MM-DD-YYYY) 01-15-2012	
16A. Payment Number	16B. Date of Payment (MM-DD-YYYY)	16C. Amount of Refund \$	
<b>For Cases of SED Request for Special Relief Approval Authority Only</b>			
17A. OGC Signature /s/ Bill Belt	17B. OGC Action <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Does not concur	17C. Date (MM-DD-YYYY) 01-23-2012	
<b>For Cases of DAFP Authority Only</b>			
18A. DAFP Signature	18B. Action <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove	18C. Date (MM-DD-YYYY)	
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