



U.S. Department of Agriculture



Office of Inspector General  
Southwest Region

# Audit Report

## Farm Service Agency Tracking Finality Rule and Equitable Relief Decisions

Report 03601-44-Te  
March 2006



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL



Washington D.C. 20250

March 27, 2006

REPLY TO

ATTN OF: 03601-44-Te

TO: Teresa C. Lasseter  
Administrator  
Farm Service Agency

ATTN: T. Mike McCann  
Director  
Operations Review and Analysis Staff

FROM: Robert W. Young /s/  
Assistant Inspector General for Audit

SUBJECT: Tracking Finality Rule and Equitable Relief Decisions

This report presents the results of our audit of the Farm Service Agency's (FSA) management controls for tracking and reporting finality rule and equitable relief decisions. FSA's February 28, 2006, written response to the draft report is included as exhibit D, with excerpts and the Office of Inspector General's (OIG) position incorporated into the relevant Findings and Recommendations sections of the report.

Based on the information in your response, we have reached management decision for Recommendations 1 and 4. Please follow Departmental and your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer, Director, Planning and Accountability Division (OCFO/PAD). Regulation requires final action to be taken within 1 year of each management decision to prevent being listed in the Department's annual Performance and Accountability Report.

Documentation and/or actions needed to reach management decisions for Recommendations 2, 3, and 5 are described in the OIG Position sections of the report. In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective actions taken or planned and the timeframes for implementation for those recommendations for which management decisions have not been reached. Please note that the regulation requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from report issuance.

We appreciate the courtesies and cooperation extended to our staff during this review.

# Executive Summary

## Farm Service Agency Tracking Finality Rule and Equitable Relief Decisions (Audit Report 03601-44-Te)

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### Results in Brief

The U.S. Department of Agriculture's Farm Service Agency (FSA) pays billions of dollars annually to farmers participating in its programs. Occasionally, because of errors, program participants are paid too much. Specific rules—known as the “finality rule” and “equitable relief”—have been designed to allow for the forgiveness of repayment in those cases where producers acted in good faith, but FSA or the producer erred.<sup>1</sup> Our objective was to determine whether FSA's controls were adequate to ensure that finality rule and equitable relief determinations are tracked and accounted for properly.

We found that FSA lacked adequate management controls to track and report equitable relief and finality rule determinations.

*Equitable relief*—Beginning under the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), States were required to submit annual reports of equitable relief to the FSA National Office, and the national office, in turn, was required to report to Congress. For the 2003 calendar year, the national office received reports from all 51 State offices.<sup>2</sup> However, the reported data was inaccurate and incomplete. These reports showed a total of \$694,629 in approved equitable relief, but we determined that 29 of the 51 reports submitted to the national office were inaccurate and incomplete. This data later contributed to the inaccuracy and incompleteness of the Secretary's report to Congress.<sup>3</sup> For calendar year 2003, based on our review of the State reports of equitable relief submitted to the national office and on our detailed review of equitable relief determinations in three States, we found that the approved equitable relief reported to Congress was understated by at least \$1,894,254. (See exhibit B.)

*Finality Rule*—Since the 2002 Farm Bill, FSA has changed its procedures for reporting improper payments forgiven due to the finality rule. Prior to 2003, FSA State offices reported finality rule determinations through an automated form. In 2003, FSA did not require State offices to report finality determinations at all, though some included final rule determinations on the State's Annual Report of Equitable Relief. (For calendar year 2003, based on our review of the State reports submitted to the national office and on our detailed review of finality rule determinations in three States, we identified \$165,660 in finality rule determinations for 2003. (See exhibit C.)) More recently,

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<sup>1</sup> For additional clarification, see Background.

<sup>2</sup> The 51 State offices consist of the United States and Puerto Rico.

<sup>3</sup> See exhibit B.

FSA has required that finality rule determinations be reported, but has not established reliable controls for ensuring the accuracy and completeness of this information.

Moreover, we found that FSA was not analyzing its equitable relief and finality rule requests to identify weaknesses in program delivery that could be remedied to prevent future needs for relief. Neither the national office nor the three State offices reviewed had analyzed the over \$2.7 million of such approved 2003 determinations. (See exhibit A.) Consequently, no plans had been developed to reduce the likelihood of future errors from occurring.

National office personnel explained that FSA had not emphasized reporting equitable relief and finality rule determinations because it was instead working to develop a system of reporting improper payments as required by the Improper Payments Information Act of 2002 (IPIA). Despite the provisions of law that FSA annually report to Congress on equitable relief activity, FSA officials said any time spent developing a tracking and reporting process for finality rule and equitable relief would be a duplication of effort, and the same purpose would be served by complying with IPIA. We noted, however, that reporting equitable relief and finality rule determinations and reporting improper payments for IPIA serve different purposes. While IPIA requires agencies to report *estimated* improper payments, a clear and accurate summary of equitable relief and finality rule determinations would represent a precise statement of *actual* improper payments for which relief is requested.

## **Recommendations In Brief**

FSA should develop a plan to implement an automated system to accurately track finality rule and equitable relief determinations. In the interim, FSA should establish and implement controls to ensure that all manual reports are submitted and that they contain complete and accurate information. The finality rule and equitable relief data should be shared with FSA's Financial Management Division.

In addition, FSA should establish and implement controls to ensure that finality rule and equitable relief cases are analyzed to improve program integrity.

## **Agency Response**

FSA concurred with the findings and recommendations. FSA has developed tracking program requirements. The completion of development, testing, and deployment of the tracking software is projected for August 31, 2006. Also, FSA will amend its *Handbook 7-CP* to ensure State reports are complete and accurate, and require FSA State offices to annually report on actions to address any weakness in program delivery. Further, FSA will require a copy

of the summary reports for both finality rule and equitable relief be submitted to the Financial Management Division.

**OIG  
Response**

We agree with the actions taken and accept management decision on two recommendations based on the developed plans for the automated tracking system. However, to reach management decision for the other three recommendations, we need documentation showing that FSA has amended its handbook to include the other actions.

## ***Abbreviations Used in This Report***

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DAFP	Deputy Administrator for Farm Programs
FSA	Farm Service Agency
IPIA	Improper Payments Information Act of 2002
OCFO/PAD	Office of the Chief Financial Officer, Director, Planning and Accountability Division
OIG	Office of Inspector General
OMB	Office of Management and Budget
SED	State Executive Director
STC	State Committee
2002 Farm Bill	Farm Security and Rural Investment Act of 2002

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# ***Background and Objective***

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## **Background**

Statutory authority for relief based on incorrect action or information of Farm Service Agency (FSA) personnel was provided in section 326 of the Food and Agricultural Act of 1962, as amended. Generally speaking, an overpayment to a farmer was forgiven if the Secretary of Agriculture determined that a hardship existed. Currently, relief determinations are made under the provisions of finality rule and equitable relief.

### Finality Rule—

In 1990, the Food, Agriculture, Conservation, and Trade Act established the finality rule. According to this act, the decisions of FSA's State and county committees, or employees of the committees, which were made in good faith in the absence of misrepresentation, false statement, fraud, or willful misconduct by the farmer, are final in 90 days, and no action should be taken to recover an erroneous overpayment unless the farmer had reason to believe that the payment was in error. According to its legislative history, this provision was intended to protect a farmer from the hardship of having to repay large amounts of money long after the payments were received. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 made changes to the finality rule, including establishing the start of the 90-day period as the date the farmer files an application for benefits. The finality rule applies to all FSA and Commodity Credit Corporation programs that provide payments to farmers.

Under these acts, finality rule determinations were reported on an automated form in order to arrive at a nationwide total of improper payments forgiven; however, when equitable relief was enacted by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the automated reporting mechanism was dropped, and States were not required to include finality rule determinations in their manual reporting of equitable relief cases to the national office. During our review, FSA revised its handbook and reinstated the requirement for State offices to submit an annual report of finality rule determinations to the national office.<sup>4</sup> However, that reporting must be accomplished manually, as no automated system yet exists.

### Equitable Relief—

The 2002 Farm Bill repealed section 326 of the Food and Agricultural Act of 1962 and provided new authority for equitable relief. Under the bill, equitable relief may be authorized for participants who are determined to be out of compliance with the requirements of covered programs and, thereby, ineligible for a loan, payment, or other benefit under a covered program, if either of the following applies:

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<sup>4</sup> FSA Handbook 7-CP (revision 2), amendment 2, paragraph 83C, dated March 6, 2004.



- The participant, acting in good faith, relied on the action or advice of an authorized FSA representative to the detriment of the participant (either due to misaction or misinformation).
- The participant failed to comply fully with the requirements of the covered program, but made a good-faith effort to comply with the requirements (failure to fully comply).

In addition, the 2002 Farm Bill requires, not later than February 1 of each year, that the Secretary of Agriculture shall submit to the Congressional Agriculture Committees a report that describes for the previous year the number of requests for equitable relief and the dispositions of the requests.<sup>5</sup>

In order to meet the statutory reporting time for the Secretary’s report to the Congressional Agriculture Committees, FSA requires each State office to submit an annual report of the total number of requests for equitable relief and the disposition of the requests. Reports must be submitted by January 10 of the current year. Negative reports are required.<sup>6</sup>

Table 1 provides a comparative overview of the basis for relief under the finality rule and equitable relief provisions.

Type of Relief	Basic Provisions
Finality Rule	<ul style="list-style-type: none"> <li>• An error was made by FSA, which resulted in an overpayment to a program participant.</li> <li>• At least 90 days have passed since the participant filed the program application, including any required supporting documents.</li> <li>• There was no error or misrepresentation by the participant.</li> <li>• The participant had no reason to know an error had been made.</li> </ul>
Misaction/ Misinformation (Equitable Relief)	<ul style="list-style-type: none"> <li>• A program participant made an error, but the error was the result of the detrimental, good-faith reliance of the participant on an error made by FSA.</li> <li>• There was no misrepresentation by the participant.</li> <li>• The participant had no reason to know there was an error.</li> <li>• The error caused a failure by the participant to meet the requirements of the applicable program.</li> </ul>
Failure to Fully Comply (Equitable Relief)	<ul style="list-style-type: none"> <li>• FSA did not make an error that caused the failure of the participant to fully comply with the requirements of the applicable program.</li> <li>• The participant who did not meet the requirements of the applicable program made an error, but the participant made a good-faith effort to fully comply.</li> </ul>

Table 1

<sup>5</sup> 2002 Farm Bill, section 1613.

<sup>6</sup> FSA Handbook 7-CP (revision 2), amendment 1, paragraph 83B, dated September 26, 2003.

Table 2 describes the authority of FSA State Committees (STC) and State Executive Directors (SED) to approve equitable relief and finality rule requests.

<b>Summary of Finality Rule and Equitable Relief Authority</b>		
Finality Rule	SED	Up to \$25,000 per case
	DAFP*	Cases exceeding SED authority
Misaction/Misinformation and Failure to Fully Comply (Equitable Relief)	STC	Up to \$5,000 per case
	SED	Less than \$20,000 per participant per calendar year <sup>1/</sup>
	DAFP	Cases exceeding STC or SED authority <sup>2/</sup>
* DAFP – Deputy Administrator for Farm Programs		
<sup>1/</sup> 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.		
<sup>2/</sup> “If STC or SED has authority to grant relief on a particular case that is similar to another case, that requires a decision by STC, SED, or DAFP shall take no action on the case under [their] authority until DAFP makes a determination.”		

Table 2

### Improper Payments Information Act of 2002—

Although it is not directly related to FSA’s equitable relief and finality rule, the Improper Payments Information Act of 2002 (IPIA) nonetheless adds impetus to properly tracking all FSA finality rule or equitable relief case determinations. Specifically, IPIA requires the head of each agency to annually review all programs and activities the agency administers to identify those that may be susceptible to significant improper payments. The Office of Management and Budget (OMB) issued initial guidance for implementing the IPIA on May 21, 2003. This guidance required each agency to report the results of its estimates for improper payments and corrective actions in the Management Discussion and Analysis section of the U.S. Department of Agriculture’s Performance and Accountability Report for fiscal years ending on or after September 30, 2004. OMB also defined a threshold for significant improper payments<sup>7</sup> and specified that, if programs or activities exceeded this threshold, agencies must develop a statistically valid estimate to report to Congress, as well as a plan to lessen future occurrences.

IPIA requires agencies’ reports on actions to reduce improper payments to include:

- (1) a discussion of the causes of the improper payments identified, actions taken to correct those causes, and results of the actions taken to address those causes;

<sup>7</sup> OMB defined significant improper payments as annual erroneous payments exceeding both 2.5 percent of program payments and \$10 million. (See OMB Memorandum M-03-13, dated May 21, 2003.)

- (2) a statement of whether the agency has the information systems and other infrastructure it needs in order to reduce improper payments to minimal cost-effective levels;
- (3) if the agency does not have such systems and infrastructure, a description of the resources the agency has requested in its budget submission to obtain the necessary information systems and infrastructure; and
- (4) a description of the steps the agency has taken to ensure that agency managers (including the agency head) are held accountable for reducing improper payments.

**Objective**

Our objective was to determine whether management controls were adequate to ensure that FSA properly tracks and accounts for all finality rule or equitable relief case determinations.

# **Findings and Recommendations**

## **Section 1. Finality Rule and Equitable Relief Determinations**

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### **Finding 1**

#### **FSA Should Improve Its Controls for Tracking and Reporting Finality Rule and Equitable Relief Determinations**

FSA lacks adequate controls for tracking and reporting equitable relief and finality rule determinations. FSA officials told us they felt that meeting IPIA requirements would mean that tracking and reporting equitable relief and finality rule determinations would be an unnecessary duplication of effort. Since FSA focused its attention on satisfying the requirements of IPIA, the agency neither emphasized the reporting requirements for equitable relief nor considered it important to track finality rule determinations. As a result, FSA has not systematically identified or addressed the problems precipitating equitable relief and finality rule determinations, and has instituted no corrective actions to prevent those problems from recurring.

The FSA handbook<sup>8</sup> states the requirements for documenting and submitting annual reports of equitable relief from the counties to the States and from the States to the national office. It requires county offices to document and recommend both finality rule and equitable relief cases on Form FSA-321 Manual, “Finality Rule and Equitable Relief.” The FSA-321 Manuals and applicable county committee minutes are then sent to the State offices. Each State office is required to compile all the county submissions into an Annual FSA-321 Manual and submit it to the FSA National Office by January 10 of the current year. The Annual FSA-321 Manual is not an official form; instead, it is a summary report listing all the equitable relief cases reported by the counties. Although the State offices may approve cases within their dollar limits, States must refer other cases to the national office for approval. Prior to 2003, finality rule determinations were reported through an automated system; however, that requirement was withdrawn in 2003 and finality rule determinations were not required to be reported on the Annual FSA-321 Manual (report of equitable relief) to the national office.

FSA has since revised its handbook to include finality rule determinations in the reports to the national office. In further revisions to the handbook, the names of the annual reports on equitable relief and finality rule were changed to “Annual FSA-321,” and the form FSA-321 Manual was changed to “FSA-321.” FSA *Handbook 7-CP* (revision 2), amendment 3, dated June 3, 2005, notes that the FSA-321 Manual is obsolete. Further, the amendment notes that the form can only be completed manually, “until the

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<sup>8</sup> FSA *Handbook 7-CP* (revision 2), amendment 1, paragraphs 82 and 83, exhibits 5 and 11, dated September 26, 2003.

web-based application is available” – indicating that FSA has plans to automate the FSA-321.

We found that FSA lacked adequate controls for ensuring that the annual reports on equitable relief contained accurate and complete information. The collective 2003 annual report of all 51 State offices showed approved equitable relief determinations totaling \$694,629. However, when we reviewed each of the individual State reports, we found that 29 of the 51 reports submitted to the national office were incomplete: 19 of the 29 reports listed only equitable relief determinations made by the SED; another 9 reports submitted incomplete information (for example, not all counties were accounted for); and 1 report otherwise did not include \$9,914 for equitable relief.<sup>9</sup> (Moreover, we found that four State reports included finality rule determinations totaling \$144,885. However, such finality rule cases were clearly delineated on the reports, and only \$2,418 in finality rule was ultimately erroneously included by FSA in the equitable relief report to Congress.)<sup>10</sup> Our detailed review of records at the Arkansas, Florida, and Texas FSA State Offices, disclosed that Arkansas and Texas had equitable relief cases of \$11,141 and \$1,873,199, respectively, despite the fact those two States had submitted negative reports to the national office. In sum, based on our review of all the States’ reports to the national office and on our detailed review at the three State offices, we found the amount of approved equitable relief determinations for 2003 reported to Congress was significantly understated by at least \$1,894,254. (See exhibit B.)

#### State Office Reports of Equitable Relief Were Understated—

Both Arkansas and Texas submitted annual reports understating the amount of equitable relief they had approved.<sup>11</sup> Although their reports showed that no equitable relief had been approved for the year, we found that 19 cases of approved equitable relief were documented in the STC minutes for 2003—15 cases in Texas totaling \$572,693, and 4 cases in Arkansas totaling \$11,141.

Moreover, FSA State office officials had not prepared FSA-321s for an additional five cases totaling \$1,300,506 in Texas and had not recorded these cases in the STC minutes under the equitable relief determinations subheading. Although the State office had granted relief for noncompliance on Conservation Reserve Program agreements, it had not properly classified these cases as “failure to fully comply” under the equitable relief provisions. State office officials acknowledged that the cases should have been classified as “failure to fully comply” under the equitable relief provisions, and reported accordingly. Therefore, in all, Texas should have reported 20 cases totaling \$1,873,199 of equitable relief for 2003.

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<sup>9</sup> See exhibit B.

<sup>10</sup> See exhibit C.

<sup>11</sup> See exhibit B.

Equitable relief was not reported fully and accurately due to problems at the State and national levels. Program officials at both the Texas and Arkansas State Offices were unaware of the requirement to submit the annual reports for all equitable relief cases they had processed during the year. During the entrance conference at one of the State offices, an official stated it was the first time he had heard that a report listing all equitable relief requests was required. The official further stated that national training given on the 2002 Farm Bill had included about a 10-minute discussion on equitable relief; however, there was no mention of any annual report. This official also said that he tries to stay fully aware of any requirements to submit reports, but had simply not read this procedure in the handbook. Additionally, the national office did not follow up to see if Texas' and Arkansas' zero reports of equitable relief were correct, even though some equitable relief cases from those States previously had been elevated to DAFP for determination. The existence of these elevated cases should have indicated that reports of no equitable relief in those States were inaccurate.

Our review of the Florida State FSA Office—which showed the most cases of relief on the national office's summary report—found that Florida was late submitting its report and that the report contained duplicate reporting for one county that totaled approximately \$80,000. This error was discovered when the State office was reviewing its files the week before we arrived, yet the State office did not notify the national office of the error.

#### Controls for Reporting of Finality Rule Determinations Inadequate—

Although FSA had previously required its State offices to report finality rule determinations to the national office, that requirement was withdrawn in 2003. There was no requirement that FSA report finality rule determinations to Congress.

Prior to the 2002 Farm Bill, FSA entered finality rule and misaction/misinformation data into an automated FSA-321. The handbook<sup>12</sup> required an automated finality rule summary report (PA-129R), on the FSA-321s, to be transmitted quarterly. However, after the equitable relief provisions were implemented, the automated FSA-321 was not revised to accommodate the new equitable relief provisions, and the agency stopped using the automated system. In FSA's handbook, instructions are provided for completing the FSA-321 Manual. It states that only the FSA-321 Manual is available to record finality rule and equitable relief.<sup>13</sup>

FSA officials explained that they did away with the automated FSA-321 in 2003 because it had become outdated, inaccurate, and cumbersome. Specifically, FSA found it hard to keep the agency's ever-changing program

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<sup>12</sup> FSA Handbook 7-CP (revision 1), amendment 1, paragraph 84A, dated November 12, 1996.

<sup>13</sup> FSA Handbook 7-CP (revision 2), amendment 1, exhibit 5, dated September 26, 2004.

codes up to date for that system, and they had trouble trying to “boil-down” applicable reason codes/causes of overpayments. In addition, FSA found the system (inappropriately) netted underpayments (entered as negative amounts) and overpayments to arrive at total relief amounts, i.e., the system calculated total relief as the difference between such underpayments and overpayments. FSA recognized the inaccuracies of the automated FSA-321 and began work to develop a new web-based system to track relief decisions. Until such time as the new web-based system could be deployed, rather than continue use of the existing automated FSA-321 with its inefficiencies and errors, FSA opted to require the States submit manual reports of equitable relief to fulfill the Congressional reporting requirements.

Despite the fact that State offices were not required to report finality rule determinations to the national office for 2003, some State offices did so anyway, but the data was not consistent, accurate, or complete. On the individual State equitable relief reports for the year, 4 State offices reported 12 finality rule cases totaling \$144,885. (See exhibit C.)

The Office of Inspector General (OIG) staff concluded that there was confusion surrounding whether, and how, finality rule determinations should be submitted. During our review, FSA revised its handbook<sup>14</sup> and reinstated the requirement for State offices to annually report finality rule determinations to the national office. However, the revision does not provide adequate oversight controls for the FSA National Office to ensure that State offices submit the required reports and that the State office reports are accurate and complete. Furthermore, the handbook revision does not provide controls for the State offices to ensure that counties have documented and submitted all finality rule cases, including negative reports.

FSA’s Financial Management Division is developing a system to track erroneous payments. Officials of FSA’s Production, Emergencies, and Compliance Division, Compliance Branch, stated it is thought that such process would provide much of the information that would be sought for a finality rule/equitable relief report. The Compliance Branch will be looking to develop an automated system for FSA-321 data; however, due to perceived duplication, it is holding off, pending discussions with the Financial Management Division.

#### IPIA Reporting Requirements Differ from Equitable Relief and Finality Rule—

FSA officials explained that they had been working to comply with the reporting requirements of IPIA and that this effort had taken precedence over developing an adequate system for ensuring that equitable relief and finality rule determinations were reported accurately and completely. By

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<sup>14</sup> FSA Handbook 7-CP (revision 2), amendment 2, paragraph 83C, dated March 26, 2004.

fulfilling IPIA's requirements, they believed they would have eliminated the need for a more effective system for reporting equitable relief and finality rule determinations, as they felt the two requirements were redundant.

However, the legislated IPIA and equitable relief reporting requirements are distinct, and serve different, but complementary, aims. Whereas IPIA requires that agencies report to Congress *estimated* improper payments, the 2002 Farm Bill requires that FSA report to Congress the *actual* number of equitable relief cases and their disposition.

By failing to carefully track and accurately report equitable relief and finality rule determinations, FSA is not availing itself of a useful source of data concerning ways to improve program integrity, and thus reduce improper payments. FSA's equitable relief provisions do acknowledge that FSA should work to prevent future needs for relief. Specifically, the handbook notes that extending unearned benefits to producers due to the action or advice of an employee is expensive, and corrective action should be taken to avoid such expenses.<sup>15</sup> The handbook requires that the SED should have a plan prepared to identify such weaknesses in program delivery. However, we found that none of the three States we reviewed had such a plan. Even if these plans had been developed, the requirement does not include consideration of finality rule determinations. OIG maintains that such plans should address weaknesses brought to light through analyses of both finality rule and equitable relief cases. (Over \$2.7 million of 2003 approved equitable relief and finality rule cases were identified in this audit. See exhibit A.)

Furthermore, OMB's *Circular A-123*, "Management's Responsibility for Internal Control," states that agency managers should continuously monitor and improve the effectiveness of internal control associated with their programs. A systematic process should be in place to evaluate and correct identified deficiencies. Agency managers and staff should be encouraged to identify control deficiencies, as this reflects positively on the agency's commitment to recognizing and addressing management problems.

We conclude that FSA needs to develop and implement effective controls for ensuring that it accurately and completely tracks and reports equitable relief and finality rule determinations. In addition, the agency should institute a process to analyze the gathered data and to implement corrective action to prevent the recurrence of any problems identified.

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<sup>15</sup> FSA *Handbook 7-CP* (revision 2), amendment 1, paragraph 71, dated September 26, 2003.



## **Recommendation 1**

Develop a plan to implement an automated system to track and account for requests for finality rule and equitable relief determinations.

### **Agency Response.**

FSA is currently developing an automated system to record, track, and report all program overpayment determinations due to finality rule and equitable relief (misaction/misinformation and failure to fully comply).

Through this system, FSA will have the capability to access and review all relief determinations. Using web-based, real-time data, FSA, at the national level, will have the ability to analyze and monitor relief activities by FSA State and county offices. The national office will be able to identify the number of requests, the dollar values associated with each request, the basis for relief, and the approving official. That data will be used to determine if there are any weaknesses in program delivery. It also will serve as a basis to take corrective action in order to lessen future incidence of recurring errors.

Tracking-program requirements have been completed and provided to FSA's Kansas City computer center for software development. The completion of development, testing, and deployment of the tracking software in FSA field offices is anticipated by August 31, 2006.

### **OIG Position.**

We concur with the management decision for Recommendation 1. In our opinion, final action was completed when FSA developed the tracking-program requirements and provided the plan to FSA's Kansas City computer center for software development. For acceptance of final action, FSA needs to provide OCFO/PAD documentation of this action.

## **Recommendation 2**

Until such time as the automated system in Recommendation 1 can be deployed, establish and implement controls for the FSA National Office to ensure that all State offices submit an Annual FSA-321 Manual report that is accurate and complete.

### **Agency Response.**

In 2005, FSA initiated a program manager position to implement the administration of the agency's relief provisions. Responsibilities include the tracking of annual reports, reviews for accuracy, coordinating followup activity regarding questionable data, and summarizing totals for agency use and the annual reporting requirements to Congress.

All FSA State offices submitted manual summary reports for both the finality rule and equitable relief for the 2005 calendar year as required by exhibit 1 of *Handbook 7-CP*. The 2005 annual reports were reviewed by the FSA specialist to uncover noticeable errors or trends. State offices were contacted by phone regarding clarification, discrepancies, or irregularities within their 2005 report to increase accuracy.

Based upon the knowledge gained by the national office review, the instructions and guidance to FSA State offices will be clarified and expanded upon within *Handbook 7-CP* for the 2006 reports. It is anticipated that 2006 will be the final year a manual reporting process will have to be utilized.

**OIG Position.**

We agree with the planned action for Recommendation 2. However, to reach management decision, we need documentation showing that FSA *Handbook 7-CP* has been revised for the 2006 reports.

**Recommendation 3**

Establish and implement controls to ensure that informational copies of the FSA National Office's compiled reports for equitable relief and finality rule cases are submitted to the Financial Management Division for IPIA purposes.

**Agency Response.**

On an annual basis, FSA will provide a copy of the summary reports for both equitable relief and finality rule to the Financial Management Division.

**OIG Position.**

We agree with the planned action for Recommendation 3. However, to reach management decision, we need documentation showing that FSA *Handbook 7-CP* has been amended to require the submission of a copy of the summary reports for both finality rule and equitable relief to the Financial Management Division.

**Recommendation 4**

Establish and implement controls for the FSA State offices to ensure that all county offices properly document and report all finality rule and equitable relief cases on the FSA-321.

### **Agency Response.**

All finality rule and equitable relief cases require approval by one of the following:

- FSA STC
- SED
- DAFP

FSA procedure requires all approvals of relief requests to be documented with a signature on the FSA-321. The implementation of the automated FSA-321 tracking system, including relief criteria validity checks, will ensure all cases are documented and properly reviewed before relief is granted.

### **OIG Position.**

We concur with the management decision for Recommendation 4. For acceptance of final action, provide OCFO/PAD documentation that the automated FSA-321 tracking system is operational.

## **Recommendation 5**

Establish and implement controls to ensure that each finality rule or equitable relief case is analyzed to identify the causes of the improper payments, and that actions are taken to correct those causes.

### **Agency Response.**

Paragraph 71 of *Handbook 7-CP* provides field office direction to analyze relief cases and take corrective action. It also instructs FSA State Executive Directors to develop a “Plan of Corrective Action” to address any weakness in program delivery. FSA procedure currently requires additional training or disciplinary action when appropriate.

The annual reporting requirement will be updated to require the submission of analysis and actions taken by FSA State offices in response to that requirement for national review. The plan of corrective action will be expanded to include finality rule cases as recommended by OIG through an amendment to *Handbook 7-CP*.

### **OIG Position.**

We agree with the planned action for Recommendation 5. However, to reach management decision, we need documentation showing that FSA *Handbook 7-CP* has been amended to include the updated and expanded requirements listed above.

# Scope and Methodology

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We conducted a nationwide audit of all cases for which finality rule or equitable relief was approved or denied during calendar year 2003 by any approving authority, if the basis for relief occurred on or after May 13, 2002. We performed the audit at the FSA National Office, three State offices, and a total of seven county offices, as shown below in table 3. We conducted fieldwork from January 2004 through May 2005.

<i>STATE</i>	<i>COUNTY</i>
<b>Arkansas</b>	<b>Crittendon</b> <b>Monroe</b>
<b>Texas</b>	<b>Pecos</b> <b>Fort Bend</b>
<b>Florida</b>	<b>Osceola</b> <b>Orange</b> <b>Pasco</b>

Table 3

We judgmentally selected FSA State and county offices for review based on the information provided to us on the annual report of equitable relief compiled by the FSA National Office for the 2003 calendar year. Texas and Arkansas reported zero dollars and requests of equitable relief. Meanwhile, Florida had the most cases reported, a total of 90. (See exhibit B.)

The Texas county offices were both selected because the STC minutes contained equitable relief requests from the county offices; however, the counties had not submitted FSA-321s. Rather, the State office had prepared FSA-321s when it elevated the requests to DAFP. The two Arkansas counties were selected because they had the largest dollar amounts in equitable relief requests in the State. The 3 counties in Florida were selected because they contributed the most requests to the 90 total cases reported to the FSA National Office and, in turn, all shared the same county executive director at the time of the requests.

To assess the management controls over tracking and reporting finality rule and equitable relief decisions, we reviewed pertinent Federal legislation and regulations, agency policies and procedures, prior OIG reports, and Government Accountability Office reports. We reviewed FSA's report on equitable relief for 2003 submitted to Congress and the supporting State reports submitted to the FSA National Office. At the three State offices selected for detailed review, we compared the State reports to information in the STC minutes regarding finality rule and equitable relief cases.

We also reviewed FSA State and county office files pertaining to such relief requests and interviewed FSA officials as needed to satisfy the audit objective.

This audit was performed in accordance with generally accepted Government auditing standards.

# Exhibit A – Summary of Monetary Results

FINDING NUMBER	RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
1	5	Analysis Of Approved Equitable Relief And Finality Rule Cases Could Reduce Waste	\$2,754,543	Funds To Be Put To Better Use - Management Or Operating Improvement/Savings
<b>TOTAL</b>			<sup>A</sup> <b>\$2,754,543</b>	

A=	Equitable Relief Reported To Congressional Agriculture Committees	\$694,629	
	Finality Rule Erroneously Included In Equitable Relief Reported To Congressional Agriculture Committees	2,418	\$697,047
	Equitable Relief Reported Neither To FSA National Office Nor To Congress, But Identified By OIG (see exhibit B)		1,894,254
	Finality Rule Not Reported To FSA National Office, But Identified By OIG		20,775
	Finality Rule Erroneously Included In State Reports Of Equitable Relief To The FSA National Office (But Not Reported To Congressional Agriculture Committees)		142,467
<b>Total Approved Equitable Relief and Finality Rule Determinations Identified During the Audit</b>			<b>\$2,754,543</b>

# Exhibit B – 2003 Reports of Equitable Relief

State	Number of Approved Equitable Relief Cases Reported	Approved Equitable Relief Determinations Reported on State's Annual Report (\$ Rounded)	Report in Accordance with FSA Handbook 7-CP, Exhibit 11	Approved Equitable Relief Determinations Reported to Congressional Agriculture Committees (\$ Rounded)	2003 Equitable Relief Identified by OIG and Not Reported to Congressional Agriculture Committees (\$ Rounded)
Alabama	1	\$1,093	Yes	\$1,093	
Alaska	0	0	No <sup>A</sup>	0	
Arizona	0	0	Yes	0	
Arkansas	0	0	No <sup>A</sup>	0	\$11,141
California	3	9,459	No <sup>A</sup>	9,459	
Colorado	4	12,324	Yes	12,324	
Connecticut	0	0	No <sup>A</sup>	0	
Delaware	0	0	No <sup>A</sup>	0	
Florida & Virgin Islands	90	174,521	Yes	174,521	
Georgia	44	21,795	Yes	21,795	
Hawaii	0	0	No <sup>A</sup>	0	
Idaho	30	83,181	No <sup>B</sup>	83,181	
Illinois	1	733	No <sup>A</sup>	733	
Indiana	9	4,385	No <sup>A</sup>	4,385	
Iowa	0	0	No <sup>A</sup>	0	
Kansas	22	25,594	Yes	15,680	9,914 <sup>C</sup>
Kentucky	0	0	No <sup>A</sup>	0	
Louisiana	0	0	No <sup>A</sup>	0	
Maine	0	0	No <sup>B</sup>	0	
Maryland	1	0	No <sup>B</sup>	0	
Massachusetts	0	0	No <sup>A</sup>	0	
Michigan	0	0	No <sup>A</sup>	0	
Minnesota	0	0	Yes	0	
Mississippi	0	0	No <sup>B</sup>	0	
Missouri	0	0	No <sup>A</sup>	0	
Montana	9	3,051	Yes	3,051	
Nebraska	1	395	Yes	395	

State	Number of Approved Equitable Relief Cases Reported	Approved Equitable Relief Determinations Reported on State's Annual Report (\$ Rounded)	Report in Accordance with FSA Handbook 7-CP, Exhibit 11	Approved Equitable Relief Determinations Reported to Congressional Agriculture Committees (\$ Rounded)	2003 Equitable Relief Identified by OIG and Not Reported to Congressional Agriculture Committees (\$ Rounded)
Nevada	1	\$436	No <sup>A</sup>	\$436	
New Hampshire	0	0	No <sup>A</sup>	0	
New Jersey	12	13,072	Yes	13,072	
New Mexico	0	0	Yes	0	
New York	0	0	Yes	0	
North Carolina	0	0	No <sup>B</sup>	0	
North Dakota	27	40,130	Yes	40,130	
Ohio	2	600	No <sup>A</sup>	600	
Oklahoma	0	0	No <sup>B</sup>	0	
Oregon	0	0	No <sup>B</sup>	0	
Pennsylvania	7	3,562	Yes	3,562	
Puerto Rico	0	0	No <sup>A</sup>	0	
Rhode Island	0	0	No <sup>B</sup>	0	
South Carolina	13	8,470	Yes	8,470	
South Dakota	0	0	Yes	0	
Tennessee	1	9,790	No <sup>A</sup>	9,790	
Texas	0	0	No <sup>B</sup>	0	1,873,199
Utah	0	0	Yes	0	
Vermont	9	273,643	Yes	273,643	
Virginia	0	0	Yes	0	
Washington	4	6,180	Yes	6,180	
West Virginia	0	0	Yes	0	
Wisconsin	4	12,129	Yes	12,129	
Wyoming	0	0	Yes	0	
<b>TOTALS</b>	<b>295</b>	<b>\$704,543</b>		<b>\$694,629<sup>D</sup></b>	<b>\$1,894,254</b>

Yes 23 State offices submitted annual reports in accordance with the Handbook. However, the correct total for Kansas was not reported to Congressional Agriculture Committees. (See note C.)

No<sup>A</sup> 19 State offices listed only determinations made by the SED.

No<sup>B</sup> 9 State offices' reports were incomplete (i.e., all counties not accounted for).

C The National Appeals Division approved this amount at a later date; however, the FSA National Office did not account for it when a revised report was submitted by the State office.

D Amount reported to the Congressional Agriculture Committees (less the \$2,418 of Finality Rule).

E Amount of approved Equitable Relief not reported to the Congressional Agriculture Committees.



## **Exhibit C – 2003 Finality Rule Cases Identified by Audit**

<b>State</b>	<b>Number of Finality Rule Cases</b>	<b>Amount of Finality Rule Cases (\$ Rounded)</b>	<b>How Identified</b>
California	9	\$77,240	Included on State's Annual Report of Equitable Relief
Kansas	1	12,206	Included on State's Annual Report of Equitable Relief
North Carolina	1	53,021	Included on State's Annual Report of Equitable Relief
North Dakota	1	2,418	Included on State's Annual Report of Equitable Relief <sup>1</sup>
<b>Sub-Total</b>	<b>12</b>	<b>\$144,885</b>	
Texas	18	20,775	Identified by State Agency During OIG's Review
<b>TOTAL</b>	<b>30</b>	<b>\$165,660</b>	

<sup>1</sup> This case was erroneously included in FSA's 2003 report to Congress on Equitable Relief.

# Exhibit D – Agency Response

United States  
Department of  
Agriculture

Farm and Foreign  
Agricultural  
Services

Farm Service  
Agency

Operations Review  
and Analysis Staff


Audits,  
Investigations, and  
State and County  
Review Branch

1400 Independence  
Ave., SW  
STOP 0540  
Washington, DC  
20250-0540



**TO:** Director, Farm and Foreign Agriculture Division  
Office of Inspector General

FEB 28 2006

**FROM:** Philip Sharp, Chief   
Audits, Investigations, and State and County Review Branch

**SUBJECT:** Agency's Response to Audit 03601-0044-TE, Farm Service  
Agency Tracking Finality Rule and Equitable Relief Decisions

## Recommendation 1

The Farm Service Agency (FSA) is currently developing an automated system to record, track, and report all program overpayment determinations due to finality rule and equitable relief (misaction/misinformation and failure to fully comply).

Through this system, FSA will have the capability to access and review all relief determinations. Using web-based real time data, FSA, at the National level, will have the ability to analyze and monitor relief activities by FSA State and county offices. The National Office will be able to identify the number of requests, the dollar values associated with each request, the basis for relief, and the approving official. That data will be used to determine if there are any weaknesses in program delivery. It will also serve as a basis to take corrective action in order to lessen future incidence of recurring errors.

Tracking program requirements have been completed and provided to FSA's Kansas City computer center for software development. The completion of development, testing, and deployment of the tracking software in FSA field offices is anticipated by August 31, 2006.

## Recommendation 2

In 2005, FSA initiated a program manager position to implement the administration of the Agency's relief provisions. Responsibilities include the tracking of annual reports, reviews for accuracy, coordinating follow-up activity regarding questionable data, and summarizing totals for Agency use and the annual reporting requirement to Congress.

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**Director, Farm and Foreign Agriculture Division**

**Page 2**

All State FSA offices submitted manual summary reports for both the finality rule and equitable relief for the 2005 calendar year as required by Exhibit 1 of Handbook 7-CP. The 2005 annual reports were reviewed by the FSA specialist to uncover noticeable errors or trends. State offices were contacted by phone regarding clarifications, discrepancies, or irregularities within their 2005 report to increase accuracy.

Based upon the knowledge gained by the National Office review, the instructions and guidance to State FSA offices will be clarified and expanded upon within Handbook 7-CP for the 2006 reports. It is anticipated that 2006 will be the final year a manual reporting process will have to be utilized.

**Recommendation 3**

On an annual basis, FSA will provide a copy of the summary reports for both equitable relief and finality rule to the Financial Management Division.

**Recommendation 4**

All finality rule and equitable relief cases require approval by one of the following:

- FSA State Committee
- State Executive Director
- Deputy Administrator for Farm Programs

Reference – Chart of Relief Authority – Handbook 7-CP, Subparagraph 3C

FSA procedure requires all approvals of relief requests to be documented with a signature on the FSA-321. The implementation of the automated FSA-321 tracking system, including relief criteria validity checks, will ensure all cases are documented and properly reviewed before relief is granted.

**Recommendation 5**

Paragraph 71 of Handbook 7-CP provides field office direction to analyze relief cases and take corrective action. It also instructs FSA State Executive Directors to develop a “Plan of Corrective Action” to address any weakness in program delivery. FSA procedure currently requires additional training or disciplinary action when appropriate.

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**Director, Farm and Foreign Agriculture Division**  
**Page 3**

The annual reporting requirement will be updated to require the submission of analysis and actions taken by State FSA offices in response to that requirement for National review. The plan of corrective action will be expanded to include finality rule cases as recommended by OIG through an amendment to Handbook 7-CP.

