

# USDA Contract Freezes: Filing an NAD Appeal or Demand Letter

**This resource is written for farmers and ranchers nationwide who have a signed contract with USDA NRCS under the EQIP or CSP program for environmental improvements and want more information on the mechanics of filing a National Appeals Division (NAD) appeal. This resource includes sample letters.**

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***Disclaimer:** Farm Commons is offering this resource to provide farmers with educational resources as they make their own decisions about how to respond to USDA's funding freeze. This resource does not provide legal advice and is not an offer to provide legal services. No attorney-client relationship is formed by the reading of this document.*

*Farm Commons is not currently involved in any litigation on the USDA's funding freezes. Unprecedented executive actions are occurring at unprecedented speed. The legal issues involved are complex, everchanging, and uncertain. The information we provide here is based on our current knowledge and understanding as well as ongoing conversations with lawyers and organizations. As the situation and our understanding continues to evolve, we will update this resource. Please seek the advice of a lawyer before deciding which action step is best for your situation.*

*No specific outcome is guaranteed as a result of filing an NAD appeal as described in this resource.*

***If you have received a written notification from the USDA terminating your contract, please contact us as soon as possible at [info@farmcommons.org](mailto:info@farmcommons.org) or 218 302 4030. Filing an NAD Appeal may be immediately necessary to preserve your right to be heard on appeal.***

## Weighing your options

**Challenging the USDA's decision to freeze a farmer's contract may be a powerful step in joining solidarity with other farmers and in resisting efforts to dismantle critical programs within the USDA.** Another advantage is that farmers could gain clarity on the status of their contract and protect their legal rights to bring a future lawsuit, should it come to that. If farmers wait, they might be told it's too late. That's because farmers must file an appeal with the USDA's National Appeals Division (NAD) within "30 days" of receiving an "adverse decision." If farmers don't take this step, they may waive their rights to later file a lawsuit in court.

**That said, this process requires time, paperwork, and stress. The outcome is not guaranteed.** Farmers' requests might be denied. Farmers could be told that it's fine for the USDA to freeze the contract. Farmers could be told that they have yet to receive a concrete "adverse decision" and must wait to bring a challenge. If the NAD process provides this outcome, it is likely farmers would still be able to challenge such decisions in court. But, it takes time and the outcome is uncertain.

**Whether or not to file an NAD appeal is a big decision, and it's each farmer's decision.** Either way, Farm Commons understands and is here to support producers during these challenging times.

For background and details about the "30-day" trigger and what "adverse decision" means, see our other resource, ***USDA Contract Freezes & Terminations: Legal Action Steps for Farmers with Signed EQIP and CSP Contracts.***

**Should farmers choose to move forward, here are pathways with significant opportunity to gain clarity, *minimize legal risk, and preserve legal rights***

### **Pathway 1: File an NAD Appeal.**

- **This pathway has the greatest impact if a farmer has received written notification from the USDA of a funding freeze on their contract.**
- **Farmers must act fast.** You may only have 30 days to file an NAD appeal from the date you receive this written notice.

- This pathway outlines **steps for filing the NAD appeal** and includes a **Sample NAD Appeal letter**.

**Pathway 2: Send a Demand Letter to your USDA contract administrator.**

- **This pathway has the greatest impact if a farmer has not received written notice regarding the status of your contract.** Perhaps the farmer learned their contract is frozen through a phone call with a USDA employee or through word of mouth. Or, farmers may not have heard anything.
- **Sending a demand letter now allows farmers to take proactive steps to get written clarification on the status of their contract.** If you receive a written clarification or decision that is unfavorable (a freeze or a termination), you then have the option to file a NAD appeal within 30 days. If the USDA fails to respond to your letter within a reasonable time, you may also have the option to file an NAD appeal based on “constructive denial.”
- This pathway **outlines the steps for sending a demand letter** and provides a **Sample Demand Letter** and a **Sample Follow-Up NAD Appeal Letter** should you receive an adverse decision in response.

**Choosing a Pathway**

At this time, we have yet to hear of farmers receiving a formal “adverse decision” letter that explicitly notifies them of their NAD appeal rights. Again, we do not know for certain whether simply receiving written notice from the USDA that your funds have been frozen will trigger the “30-day” clock for filing a NAD appeal.

For this reason, the letters we’ve designed are for farmers facing ambiguity regarding their funding status, particularly when and whether funds will be available and whether they need to fulfill their obligations on the contract in the meantime.

Whether farmers appeal their funding issue to NAD or first work directly with their contract administrator to gain clarity is a decision for the farmer themselves.. Appealing to NAD before an adverse decision is reached may result in NAD telling the farmer that the appeal isn’t yet timely because there is no final adverse decision. However, if the farmer has any written notification from the USDA that their funds are being frozen, this could likely be an adverse

decision triggering the 30-day clock, and filing an appeal might be the safest route to protect the farmer's legal rights.

Let's get into detail on these two pathways.

## **Pathway 1. File an NAD Appeal**

**Why?** Filing a NAD appeal is a necessary first step in protecting your legal rights. You must bring a NAD appeal within 30 days of receiving an "adverse decision," or you waive your right to appeal that decision and potentially any future legal challenge. Filing the NAD also forces the USDA to make a decision to provide you with clarity and assurance to move forward accordingly.

**How?** The [NAD website](#) provides information and instructions to support you in bringing an NAD appeal. Here's a breakdown of the Steps.

**Step 1.** Confirm that your contract terms specify that you can file an NAD appeal. You will need to review your contract and find the "Rights to Appeal" section. **Does it directly refer to 7 CFR Part 11, National Appeals Division?** If so, you can file an NAD appeal once you receive an adverse decision.

**Example.** As an example, section 11 of an EQIP contract that we've seen explicitly says: "The participant may appeal an adverse decision under this contract in accordance with the appeal procedures set forth at 7 CFR Part 11, "National Appeals Division," Subpart A, and part 614, "NRCS Appeal Procedures."

**Informal Review Option.** Some contracts, including this EQIP contract, allow you to request an informal review process with the agency (here, NRCS) that issued your contract before filing an NAD appeal. If your contract gives you this option, you can certainly take it. However, we recommend a formal review through NAD Appeal over the informal review. The NAD Appeal process will likely be more efficient and result in a more comprehensive analysis. We also believe it may result in a more consistent decision for farmers nationwide, which could benefit the community. If you choose to file an informal appeal, you can still use the Sample NAD Appeal Letter as a guide. Be sure to modify the language and address accordingly and send it to the respective office specified in your contract.

**List of USDA agencies subject to the NAD process:** Commodity Credit Corporation (CCC); Farm Service Agency (FSA<sup>\*\*\*</sup>); Federal Crop Insurance Corporation (FCIC), Natural Resources Conservation Service (NRCS); Risk Management Agency (RMA); Rural Business-Cooperative Service (RBS); Rural Development (RD); Rural Housing Service (RHS); and Rural Utilities Service (RUS). <sup>\*\*\*</sup>There is an exception for FSA. The NAD Regulations explicitly state that if you receive an adverse decision at the field service office level of FSA, and it's not related to farm credit programs, you must first file an informal review with them prior to filing an NAD appeal. **The bottom line is: be sure to look at your contract.**

**Step 2.** Gather your supporting documents, including the USDA contract, the written notification you received (e.g., email or letter), any other correspondence regarding the contract, including phone logs, and documents showing receipts for payment or other proof of any harm you've incurred from the funding freeze or will inevitably incur if it continues.

**Step 3.** Prepare a detailed letter describing the reason for bringing the appeal. Explain why you disagree with the USDA's decision to freeze your funding and describe how you have been harmed as a result. You can use the **Sample NAD Appeal Letter** to provide a legal framework. We encourage you to stick to these legal terms. However, providing specific details about the financial hardship or other harms you have or may incur as a direct result of the USDA's decision to freeze your contract will strengthen your case. For example, explain how farming requires significant financial commitment in an unforgiving timeframe and why you need to initiate the contracted activities now to prepare for your upcoming season. Also, include details of any contracts or arrangements you have with others (employees, contractors) that are threatened as a direct result of the funding freeze. For example, if you are on the hook to make payments, explain how this leaves you financially vulnerable if you do not receive USDA payments within the time specified in your contract. Provide specific dollar amounts if you have them.

**Step 4.** Fill out the **USDA National Appeals Division Appeal Request Form**, available [here](#).

**Step 5.** Sign the letter and Request form and mail them to the regional office closest to you. Alternatively, you can e-file an NAD Appeal through the NAD website here. Prepare all the above materials beforehand. You will then need to

set up an NAD e-file account application and simply follow the prompts to request an appeal on the online portal.

## **Pathway 2. Send a Demand Letter to your USDA contract administrator.**

**Why?** This proactively forces the USDA to issue a written decision. You could gain more clarity so you can make financial and other decisions regarding your obligations under the contract accordingly. If the USDA's response is unfavorable, or they fail to respond within a reasonable time, you may then have the option to file an NAD appeal to challenge this "adverse decision."

**How?** There isn't a formal process for a "demand letter" like the one we've designed. Here are some steps to guide you through the process.

**Step 1.** Gather your contract and supporting documents, including phone logs of conversations you've had with USDA employees about your contract, any other correspondence you've had with the USDA regarding the contract, and documents showing receipts for payment or other proof of any harm you've incurred from the funding freeze or will inevitably incur if it continues.

**Step 2.** Prepare a detailed letter describing your situation. If you have received verbal notification that your contract has been frozen, refer to the conversation and explain why you disagree with the USDA's decision. If you have not heard anything, request clarification on the status of your contract. You can specifically ask when payments will resume, request a contract extension for the time period the funds are frozen, and request the USDA to waive any penalties if you are unable to fulfill your obligations under the contract while the funds are frozen (i.e., due to financial hardship and uncertainty of reimbursement). It's crucial that you provide a time period for them to respond. We suggest "14 days." This will force them to respond efficiently to provide you clarity as the farming season is approaching. Also, if you do not hear from them within this period, you may then have the option of submitting an NAD Appeal. Failure to respond within a reasonable time can be considered "constructive denial" for purposes of an NAD Appeal.

You can use our **Sample Demand Letter** to provide a legal framework. We encourage you to stick to these legal terms. However, providing specific details about the financial hardship or other harms you have or may incur as a direct result of the USDA's decision to freeze your contract will strengthen your case. For example, explain how farming requires significant financial commitment in an unforgiving timeframe and why you need to initiate the contracted activities now to prepare for your upcoming season. Also, include details of any contracts or arrangements you have with others (employees, contractors) that are threatened as a direct result of the funding freeze. For example, if you are on the hook to make payments, explain how this leaves you financially vulnerable if you do not receive USDA payments within the time specified in your contract. Provide specific dollar amounts if you have them.

**Step 3.** Send your demand letter. We suggest you send the letter to your contract administrator and the State Conservationist (for NRCS denials, for other agencies, direct a copy of the letter to the agency Director). While you may email the letter with return receipt, we highly recommend you send it by certified mail to make it more official.

**Step 4.** If you receive an unfavorable response to your demand letter or you receive no response within the time period you specified, you have the option to file an NAD Appeal. Both situations could be considered an "adverse decision," which triggers the 30-day clock for filing an NAD Appeal. Therefore, you must file the NAD Appeal within "30 days" of receiving the response letter from the USDA or "30 days" from the date the 14-day period expires. If you reach this point, follow the steps in Pathway 1 for Filing an NAD Appeal. However, use the **Sample Follow-Up NAD Appeal Letter** to guide you when you reach Step 3, *prepare a detailed letter*.

*Initiating this comes with risks. To help you assess the risks, please refer to our resource, **USDA Contract Freezes & Terminations: Legal Action Steps for Farmers**, or contact an attorney for advice.*

### **Sample NAD Appeal Letter**

**[Farmer's Name]**

[Farmer's Address]

[City, State, Zip]



[Email Address]  
[Phone Number]

**[Choose applicable region]:**

Eastern Regional Office (ERO)  
Post Office Box 68806  
Indianapolis, Indiana 46268-0806

Southern Regional Office (SRO)  
Post Office Box 1508  
Cordova, Tennessee

Western Regional Office (WRO)  
13922 Denver West Parkway Suite 100-NAD  
Lakewood, CO

[DATE]

**Subject: Appeal of Adverse Decision Regarding [EQIP/CSP] Contract**

Dear Sir or Madam,

I am writing to formally appeal the adverse decision made by the USDA, as outlined in the letter dated **[Insert Date]**, regarding my **[EQIP/CSP]** contract. According to the notice, the [funding for the contract has been frozen/terminated].

**[Briefly explain what the written notice says, or directly quote relevant parts].**

The ambiguity of my contract's status makes me uncertain whether I am required to fulfill the obligations outlined in the contract. I fear that I will incur costs and will not be reimbursed, which will directly cause financial hardship and adversely impact my farm operation. These costs include [provide details of conservation measures you are obligated to take, the timeframe, and the costs involved].

If I am not able to fulfill the contract's requirements due to foreseeable financial hardship, the USDA's decision to freeze payments on my contract is the direct



cause. I should not be held liable for non-performance due to circumstances beyond my control.

I respectfully request an evidentiary hearing on the USDA's adverse decision, including the freeze on payments, which I believe constitutes an unlawful agency action impeding my ability to comply with the contract. I request that the payment be resumed immediately. I also request a contract extension for the time period in which the payments were frozen. In addition, I request that any non-performance penalties be waived, including the right for the USDA to terminate my contract based on non-performance.

Please find attached all relevant documentation supporting my appeal. Please let me know if you require any additional information. I look forward to your prompt response.

Sincerely,  
[Farmer's Name]

## Sample Demand Letter

**[Farmer's Name]**

[Farmer's Address]

[City, State, Zip]

[Email Address]

[Phone Number]

**U.S. Department of Agriculture**

**[Office of Contract Administrator]**

Natural Resources Conservation Service (NRCS)

[Address of Relevant Office]

[City, State, Zip]

**U.S. Department of Agriculture**

**[State Conservationist]**

[Address of Relevant Office]

[City, State, Zip]

[DATE]

**Subject: Request for Written Explanation Regarding Freeze on [EQIP/CSP]  
Contract Payments**

Dear **[contact name of your administrator or "Sir or Madam" if you don't know]**,

I am writing to request a formal written explanation regarding the **[freeze on payments]** for my **[EQIP/CSP]** contract **[insert date and contract or recipient number for their direct reference]**, as I have not received any communication or notice regarding the status of my contract funds. **[Or describe the phone conversation, including name, date, and summary of what you heard].**

The ambiguity of the status of my contract makes me uncertain as to whether I am required to fulfill the contractual obligations outlined in the agreement. I fear that I will incur costs and will not be reimbursed, which will adversely impact my farm operation. These costs include [provide details of conservation

measures you are obligated to take, the timeframe, as well as the costs involved].

Please provide a clear explanation of whether the contract is still in effect, and if so, when we can expect the funding to be reinstated or any further instructions for continuing with the contract. I request a contract extension for the period of time that the funds on my contract are frozen. I further request that any non-performance penalties be waived.

I ask for your written response within **[insert reasonable time frame, e.g., 14 days]** to allow us sufficient time to assess the situation and proceed accordingly. Should the freeze continue or a denial be issued, I may need to file an appeal to NAD.

Please find attached all relevant documentation supporting my appeal. Please let me know if you require any additional information. I look forward to your prompt response.

Thank you for your prompt attention to this matter.

Sincerely,  
**[Farmer's Name]**

## **Sample Follow-Up NAD Appeal Letter**

### **[Farmer's Name]**

[Farmer's Address]

[City, State, Zip]

[Email Address]

[Phone Number]

### **[Choose applicable region]:**

Eastern Regional Office (ERO)

Post Office Box 68806

Indianapolis, Indiana 46268-0806

Southern Regional Office (SRO)

Post Office Box 1508

Cordova, Tennessee

Western Regional Office (WRO)

13922 Denver West Parkway Suite 100-NAD

Lakewood, CO

**[Date]**

### **Subject: Appeal to NAD Regarding Freeze on [EQIP/CSP/AMA] Contract**

Dear Sir or Madam,

I am appealing the [**denial/constructive denial**] of my request regarding the freeze on my [**EQIP/CSP**] contract, as detailed in my prior correspondence with USDA, which was dated [**insert date**].

As I expressed in my prior correspondence, the USDA's decision to freeze the funding for my contract is causing direct financial harm and adversely impacting my farm operation. The ambiguity of my contract's status makes me uncertain whether I am required to fulfill the obligations outlined in the contract. I fear that I will incur costs and will not be reimbursed, which will directly cause financial hardship and adversely impact my farm operation.

These costs include [provide details of conservation measures you are obligated to take, the timeframe, and the costs involved].

I respectfully request an evidentiary hearing on the USDA's adverse decision, including the freeze on payments, which I believe constitutes an unlawful agency action impeding my ability to comply with the contract. I request that the payment be resumed immediately. I also request a contract extension for the time period in which the payments were frozen. In addition, I request that any non-performance penalties be waived, including the right for the USDA to terminate my contract based on non-performance.

Attached are all relevant documents supporting my appeal. Please let me know if you require any additional information.

Sincerely,

**[Farmer's Name]**