

Navigating USDA Disputes: A Guide to the National Appeals Division

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law

Ag Law and Taxation Blog: <https://agriculturallaw.lawprofessorsblogs.com/>

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Overview

Receiving an "adverse decision" from a USDA agency (such as a loan denial, payment rejection, or unfavorable wetland determination) can feel overwhelming. For a farmer, these decisions represent more than just bureaucratic paperwork; they impact the financial viability of the operation and the future of the farm. Fortunately, farmers and program participants have a structured, statutory path for recourse through the National Appeals Division (NAD). The NAD provides an independent forum to challenge agency actions, ensuring that program participants have a fair, structured opportunity to contest adverse determinations.

What is the NAD?

Before the establishment of the NAD, appeals of USDA decisions were handled inconsistently across the department's various agencies, leading to a patchwork of procedures that left many participants frustrated. Recognizing the need for consistency, Congress enacted the Department of Agriculture Reorganization Act of 1994, which codified the NAD at 7 U.S.C. § 6992 *et seq.*

The primary goal of the NAD is to bring efficiency, transparency, and fairness to the USDA's internal appeal process. Operating under 7 C.F.R. Part 11, it serves as an independent body, separate from the subagencies making the decisions, to ensure that participants receive a fair hearing regarding their eligibility, compliance, and program benefits.

Scope: What Can Be Appealed?

The NAD has jurisdiction over a wide range of USDA agencies. To be eligible to appeal, you must be a "participant" - a person who has applied for, or has a right to participate in or receive, a benefit from an agency. Relevant agencies and common appealable decisions include:

- **Farm Service Agency (FSA):** Program payment eligibility and loan denials.
- **Rural Development (RD):** Housing program decisions, denial of mortgage payment moratoriums, loan acceleration, and denials of grant funds.
- **Natural Resources Conservation Service (NRCS):** Wetland determinations, environmental program decisions, and conservation program enrollment denials.
- **FCIC & Risk Management Agency (RMA):** Appealable crop insurance decisions, including "Notices of Ineligibility," denial of written agreements, and large claim denials.



The Specialized Case of Crop Insurance Disputes

Handling an adverse crop insurance decision is a highly specialized process, and the correct path depends entirely on who made the determination and the nature of the dispute. These matters are governed by strict federal regulations and complex policy provisions.

1. **Disputes with Private Insurance Companies:** For disagreements regarding a claim denial or an adjustment by an Approved Insurance Provider (AIP), the claimant is generally required to follow the dispute resolution provisions outlined in the policy. This typically includes non-binding, voluntary mediation. If mediation fails or both parties decline it, the dispute must be resolved through binding arbitration under the rules of the American Arbitration Association (AAA). This process must be initiated within one year of the adverse decision; failure to do so results in a waiver of the right to dispute the decision. Furthermore, if the dispute hinges on the interpretation of an FCIC policy, both parties must obtain a formal, binding interpretation from the RMA; failure to do so can nullify an arbitration award.
2. **Disputes Directly Involving the RMA:** If the RMA itself is involved—such as in a "Good Farming Practice" determination or a case where the RMA has modified a claim—the process shifts to the NAD. The appeal must be filed with the NAD within 30 calendar days of receiving the adverse decision.

What is an "Adverse Decision"?

An adverse decision is an administrative action taken by an agency officer, employee, or committee that is contrary to the interests of a participant. This includes:

- Denials of participation in or receipt of program benefits.
- Decisions regarding compliance with program requirements.
- Determinations concerning the making or amount of payments.
- Determinations that a parcel of land constitutes a wetland or highly erodible land.
- Denials of equitable relief.
- The failure of an agency to act within a specified or reasonable timeframe.

The "General Applicability" Rule

A critical jurisdictional limitation is the "General Applicability Rule". While the NAD has authority to adjudicate decisions that are adverse as applied to an *individual* participant, it cannot adjudicate decisions based on a rule, regulation, or policy that is *generally applicable* to all participants. While the agency is required to notify you if they claim a decision is not appealable on these grounds, the NAD Director holds the final authority to determine whether a decision is truly appealable.

The Appeal Process: A Step-by-Step Guide

The NAD process is a structured administrative procedure. Understanding the timeline and evidentiary expectations is crucial for a successful outcome.



1. Filing the Appeal

The 30-day clock starts the moment you receive the adverse decision; you have exactly 30 calendar days to file a written request for an appeal. This is a formal legal filing that triggers the agency's duty to respond. Your request should clearly identify the adverse decision (attaching a copy is required) and outline specifically why the decision is incorrect. Missing this deadline may result in a permanent loss of your right to appeal.

2. Pre-Hearing Preparation

Once an Administrative Judge (AJ) is assigned, the process moves into an active phase. A prehearing conference is typically held, which serves as a vital procedural step for the parties and the AJ to identify the disputed issues of fact or law. The goal is to narrow the scope of the hearing so that the focus remains on the contested points.

3. The Hearing and Evidentiary Standards

The hearing is the core of the appeal. Crucially, the burden of proof rests on the farmer (appellant) to demonstrate by a preponderance of the evidence that the agency's decision was "erroneous". This means you must show it is "more likely than not" that your position is correct and the agency's decision was wrong, either in its application of policy or its interpretation of the facts. You are entitled to present witnesses, introduce documents, and provide testimony.

4. Determination and Finality

After the hearing, the AJ issues a written determination. If you believe the determination contains a factual or legal error, you may request a Director Review within 30 calendar days of the decision (the agency has 15 business days). If no request is filed, the AJ's decision becomes the final agency action 30 days after issuance. Once final, any subsequent legal action must be pursued in U.S. District Court.

Practical Advocacy: Mastering the Record

Success in a NAD hearing is rarely about emotion; it is about procedural precision and command of the administrative record.

- **The Agency Record:** This is the complete collection of all documents, emails, site visit reports, and correspondence the agency relied upon. You have a right to this record, and you should obtain it well in advance of the hearing. Compare the agency's facts with your own logs, receipts, and correspondence to identify any inaccuracies.
- **Precision in Argument:** Structure your argument logically: "The law requires X; the agency claimed I did Y; however, the evidence shows I actually did Z, which satisfies X".
- **Statutes vs. Handbooks:** Remember that while internal agency "Handbooks" are influential, they are not statutory law. If an agency's handbook contradicts a regulation or statute, the regulation/statute controls. Pointing out this discrepancy can be a powerful tool for your argument.



Bypassing the NAD: Is it Possible?

For most USDA disputes, the answer is "no". Congress explicitly mandated the exhaustion of administrative remedies in the 1994 Reorganization Act. You *must* exhaust all internal procedures (including the NAD) before filing an action in a court of competent jurisdiction.

While the Supreme Court's decision in *Axon*¹ allows for bypassing administrative processes in narrow cases involving *structural constitutional challenges* (e.g., whether the agency's structure itself violates the Constitution), it does not allow farmers to bypass the NAD for routine factual or statutory disputes. For a standard loan denial or payment reduction, the NAD is the mandatory first step.

Judicial Review and the Impact of *Loper Bright*

Even if you must exhaust administrative remedies, the landscape of judicial review has fundamentally shifted due to the 2024 *Loper Bright*² decision. Previously, under the *Chevron*³ doctrine, courts deferred to an agency's "reasonable" interpretation of ambiguous statutes. Under *Loper Bright*, that deference is gone. Judges are now required to exercise independent judgment to determine the "best meaning" of the law.

The practical effect is that the USDA can no longer rely on broad deference when its interpretations stretch the text of a statute. If a court finds your reading of the law more accurate than the USDA's, your interpretation prevails, regardless of how "reasonable" the agency's interpretation might have been.

Conclusion

Successfully navigating the National Appeals Division process demands more than just diligence, it requires a strategic, evidence-based approach. Because the burden of proof rests entirely on your shoulders, the ability to master the Agency Record, cite controlling regulations, and present a coherent, organized argument can be the difference between a favorable outcome and a finalized adverse decision. For farmers facing a dispute with the USDA, the procedural rules should not be viewed as mere formalities, but as the essential framework for securing the benefits and rights to which you are entitled. When the stakes are high, proactive preparation and a firm command of the process are your most powerful tools for effective advocacy.

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¹ Consolidated cases of *Axon Enterprise, Inc. v. Federal Trade Commission and Securities and Exchange Commission v. Cochran*, 598 U.S. 175 (2023).

² *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

³ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837.

