

# Navigating Amendments to Your USDA Signed Agreement per Executive Orders: Options and Actions

*Disclaimer: This resource is for educational purposes only. No attorney-client relationship is formed by the reading of this document or by taking action based on reading it.*

**Has USDA contacted you about amending a signed agreement or grant that you hold?** If you are feeling anxious and uncertain, you are not alone. A community of supporters is here to share our collective knowledge.

## **Amendments are not uncommon.**

Most project agreements with USDA allow for amendments. Amendments are possible so a project can fulfill its objectives despite changing circumstances. That said, it's unusual for an agency to seek an amendment as a result of an Executive Order. What we're seeing now is unusual, which makes it unpredictable.

## **Amendments are at the agreement of both parties.**

Generally, after you have a signed agreement, any changes have to be mutually agreed upon. However, USDA has shown a willingness to terminate signed agreements that they feel are not in compliance with Executive Orders. It is possible an agency may choose to exercise that power if amendments they see as necessary are not secured.

## **What you can do:**

This isn't an easy position to be in. As business owners and nonprofit directors, we expect contracts to be honored. We know the law is there to hold each side to their commitments as signed. However, we also know the implications of lost contracts and the difficulty of legal enforcement in this environment can weigh heavily. We each must consider our needs, values, and community in our minds as we choose an option that feels right to us.

## **Explore Options**

**Option 1. Send an inquiry letter requesting clarification and assurance about the amendment opportunity.**

**Will I lose my contract if I don't agree to amend?** We don't know. Experience says the USDA is willing to terminate contracts, although the legal legitimacy of these actions are uncertain.

**WHAT changes does the USDA want me to make?** It is hard to say. Communication from USDA has been unclear and inconsistent. The agency states a desire for consistency with the Executive Orders - but what the EOs mean and how the USDA believes to apply them to individual contracts is difficult to discern.

**HOW does USDA want me to amend my agreement?** We don't know. Communication from USDA may highlight examples of how a contract could be amended. But these examples may not apply, and may not be acceptable for the project's overall goals.

You don't have to wait in silence. You can **send an inquiry letter** to seek clarity and document your concerns.

**How this option works:** One of the simplest things we can do when things are uncertain is to request clarification. In this case, producers and grant holders can send a letter asking specific questions: 1) Does the agency believe an amendment is necessary to bring the project into compliance with the EO or agency priority? 2) If the agency believes it is necessary, what project attributes does the agency believe need to be modified? 3) Is an extension of the deadline available for more time to craft a modification?

**What might occur:** The chances of USDA or regional office being able to read and respond to an individual letter are not high, especially considering the stress on USDA staff persons right now. We fully admit that a letter is likely to not get a response before the deadline. However, a clarification letter can still be effective. Here's how:

The letter provides evidence that the author:

1. Took good faith efforts to seek clarification as necessary to respond and
2. Was aware of deadline and endeavored to meet it, and
3. Could not adequately respond with the limited information available.

**If your contract is terminated, You have the right to appeal**—a letter seeking clarity may support your arguments on appeal.

**Who cares?** The courts might care. Let's say that the letter goes without a response, and the producer/organization is not able to amend their project. As a result, the project could be terminated by the agency for being inconsistent with the EOs or agency priorities. Then, the producer or organization can seek an administrative appeal. As part of the appeals process, **the individual can point to written documents on file with the agency that they considered the agency's request for changes but were unable to move forward with the information available.**

The outcome of any appeal is uncertain, but we can say that the producer or organization is better off with the evidence that they attempted to comply than without.

**Need help writing an inquiry letter?** We have a sample letter at the end of this resource, which is specific to REAP funding. Consider it as inspiration for crafting your own.

**Option 2.  
Do nothing**

This option doesn't need much explanation.

**How this option works:** Every contract holder has the right to ignore the USDA's request for amendments and, in so doing, let the opportunity pass.

**What might occur:** We can presume the USDA will continue moving the project through any review processes that's occurring, but as highlighted in the sidebar, we do not know.

### Option 3. Use the amendment opportunity to clarify consistency with the EOs and agency priorities

**How this option works:** Being called an opportunity to “amend” it’s easy to assume that the substance of the project would need to change. However, contract holders may consider using the amendment opportunity to clarify why the project is already consistent with the EOs and the agency priorities.

**What might occur:** The agency may be more likely to recognize the project’s pre-existing alignment and allow for the project’s continuance, as originally agreed.

### Option 4. Take the opportunity to amend to become more consistent

**How this option works:** Contract holders are free to make their own analysis of how the EOs and agency priorities align with its project and propose changes that might enhance alignment.

**What might occur:** If the changes proposed bring the project into what the USDA believes as stronger alignment, the amendments will presumably be approved and the project will continue.

We are left to guess because of the USDA’s lack of clarity. So, we can only assume that the opportunity to amend is being offered because the agency suspects some contracts are out of alignment with EOs or agency priorities.

We are also left to assume that the agency will review projects for alignment and move to terminate those that they believe are not, as the agency has done in the recent past.

**HOWEVER, these are unprecedented situations. We DO NOT KNOW what USDA will do in each case or when any of these options are taken.**

**No matter the option chosen... Keep records** of your agreement, prior reporting, all letters, emails, calls, or USDA updates. Know the terms of your agreement and stay in compliance with them.

## You Are Not Alone

We know this is a challenging time. If you’re confused, uncertain, or feeling stuck, that’s okay. Reach out to us or others below. **We are here to help.**

*Nationwide:* **Farm Commons:** [info@farmcommons.org](mailto:info@farmcommons.org)

**Farmers Legal Action Group (FLAG):** [lawyers@flaginc.org](mailto:lawyers@flaginc.org)

*Northeast:* **Legal Food Hub, Conservation Law Foundation:** [legalfoodhub@clf.org](mailto:legalfoodhub@clf.org)

## Sample Inquiry Letter Regarding Amendments

*(Note: language in this letter is related to REAP funding. Be sure to tailor the letter to the program and notification/letter you received from USDA regarding amendments)*

### **[Farm/Business Name]**

[Individual's name]

[Address]

[City, State, ZIP]

[Email Address]

[Phone Number]

### **[Send to USDA office/official that sent letter requesting amendment**

**E.g., for REAP: Local Energy Coordinator - [select from this list](#)**

[Title]

[USDA Agency Name]

[Office Address]

[City, State, ZIP]

[Date]

**Subject:** Request for Written Confirmation of Compliance with [REAP Grant] Terms and Executive Order Alignment

**Dear [Local Energy Coordinator],**

I am writing in response to [refer to notification from USDA requesting amendments– e.g., “to the USDA’s March 25 letter regarding the alignment of REAP projects with President Trump’s January 20 Executive Order Declaring a National Energy Emergency (Executive Order 14156)].

As an initial matter, I want to confirm my understanding that [farm/business/organization name as written on contract/ grant award] is currently in compliance with all terms and conditions of our existing agreement, [Grant Name & Number].

We also strongly believe that our project, which focuses on [insert a brief description of the project, e.g., for REAP, renewable energy installation, energy efficiency improvements, etc.], is aligned with Executive Order [E.O. number or name] goals of, among other things, [quote central goals of E.O.,

e.g., E.O. 1456 referred to in REAP: ensuring “a reliable, diversified, and affordable energy supply to drive our Nation’s manufacturing, transportation, agriculture, and defense industries, and to sustain the basics of modern life and military preparedness. For example, the [improvements/system resulting from the project] helps reduce electricity consumption and increase energy independence, saving money that can be reinvested in our [farm/business] and our community].

Finally, to the extent that USDA believes there are any aspects of our current project that do not align with the Executive Order or your [ date or name of letter requesting amendments], we are willing to consider any proposed modifications that USDA thinks are required to ensure consistency. We would appreciate receiving clear instructions, including the specific language to be included for any proposed modifications.

We appreciate your guidance in this matter and look forward to your timely response. [Add a time for response, if there is a deadline. E.g., for REAP: “As we must propose changes through the online form by April 24, we respectfully request that you provide a written response by April 20]. Should any modifications be necessary, we are committed to making them in a way that continues to meet both our project goals and USDA’s current objectives and expectations.

Thank you for your attention to this request. We are confident that, with your assistance, we can ensure that our project remains fully compliant and aligned with all relevant policies.

**Sincerely,**

[Your Name]

[Title]

[Farm/Business Name]

[Signature]