

Preparing for a USDA NAD Hearing

This resource is designed to help farmers and organizations prepare for a National Appeals Division (NAD) hearing. It offers a practical roadmap for what to expect before, during, and after the hearing, with a focus on where your time and energy will be most valuable.

The NAD appeals process can feel intimidating—especially if you are representing yourself. The insights shared here come from farmers and attorneys who have been through the NAD process. **You do not need to be a lawyer or have a lawyer to prevail—but preparation, organization, and clarity can make all the difference.**

This resource is intended for farmers and organizations that have already filed a NAD appeal. If you have not yet filed a NAD appeal and are looking for guidance on whether to appeal, filing deadlines, and how to submit an appeal, check out our resource: [USDA Signed Agreement Protection: File NAD Appeals](#) (includes sample NAD appeal letters) or visit the [NAD website](#) for official instructions.

What to Expect Before the Hearing

You've filed a NAD appeal, now what?

By filing on-time you've preserved your rights. The next step is to build and present your case. Now is the time to organize your evidence, refine your arguments, and prepare for the hearing.

If you feel you need legal support at some point during the NAD process, reach out to one of us, and we can connect you with an attorney.

Nationwide:

> Farmers' Legal Action Group (FLAG): lawyers@flaginc.org

> Farm Commons: info@farmcommons.org

Northeast:

> Legal Food Hub, Conservation Law Foundation: legalfoodhub@clf.org

Acknowledgments

Special thanks to the reviewers:

- > Lindsay Keuhn, senior staff attorney at FLAG
- > Ben Apple, staff attorney at FLAG
- > John Schiffhauer, pro bono counsel with L4GG
- > Sophia Kruszewski, deputy policy director at NSAC
- > Julia Asherman, owner of Rag & Frass Farm

Their direct experience and insight helped shape and improve this guide. Responsibility for the final content rests with Farm Commons.

NAD acknowledges the appeal (usually within 1-2 weeks)

Within a few days to a week, NAD will confirm that it has received and accepted your appeal and assign a Hearing Officer/Administrative Judge (which we refer to as “judge” throughout this guide). NAD then notifies the USDA agency (NRCS, FSA, etc.).

Formal notices

Throughout the appeals process, NAD will send out many formal notices with helpful information, instructions, and deadlines.

Be sure to read through them carefully.

The agency record (often within 10 days)

Upon receiving notice of the appeal from NAD, the agency must submit an **official agency record**. This record is supposed to include all the documents and materials related to the agency’s decision.

What to do when you receive the agency record

- Read it carefully,
- Note what’s missing (you’ll have a chance to ask for additional documents),
- Highlight anything that is incorrect or unsupported, and
- Flag anything where the agency relies on:
 - Criteria not found in the applicable rules.
 - Internal preferences presented as requirements,
 - Assumptions contradicted by documents, or
 - Any other information that differs from your experience.

Farmers and organizations report that NAD judges typically require the agency to upload the agency record electronically to the Box file-sharing platform (Box.com), and that appellants with existing Box accounts are granted access automatically. However, there is often no separate email or clear notification that the record is available. For this reason, it is advisable to set up a Box account at the outset. For details, visit the [Box website](#). It’s important to check your account regularly for new links or documents related to your case.

If you do not receive a copy of the agency record, you may request one from the agency in writing (email is sufficient). The agency is required by regulation to provide it within 10 days of receiving a written request.

Pre-hearing conference call (often within 2–3 weeks)

The judge will hold a “pre-hearing” telephonic conference call to explain the hearing process and ensure the judge and both parties have a clear understanding of the issue(s) on appeal. The judge will typically schedule a hearing date if one hasn’t already been set. Hearings must be scheduled within

45 days of being assigned to a judge. However, you may waive that requirement and schedule it later.

During the pre-hearing, you will have an opportunity to indicate whether you prefer an in-person hearing, a telephone conference, or a videoconference. Judges may have logistical preferences, but they typically consider the parties' requests, so it's helpful to clearly share what format works best for you. If you request an in-person hearing, the judge will usually attend in person at a local USDA office, where you will also have to travel.

The judge will also answer questions and discuss logistical matters, including establishing whether mediation, bankruptcy, interested third parties, or accessibility needs must be addressed. **It's advantageous to be proactive and use the pre-hearing conference call to ask clarifying questions about:**

- Exhibit and witness deadlines
- Formatting and submission requirements (e.g., how to label exhibits)
- Deadlines for introducing new evidence
- Whether written closing statements will be allowed post-hearing
- Whether evidence regarding equitable relief is relevant in your case (see explanation below)
- Requesting additional documents, particularly if you believe the agency has relevant documents not included in the initial agency record

Be sure to note the dates and time zones and meet the deadlines.

Which is better: in-person, by telephone, or videoconference?

It's best to choose what makes you feel most comfortable and confident.

Keep in mind:

- Agency staff often have travel constraints, so even in an in-person hearing, agency representatives may appear by phone or video.
- In telephone hearings, it can sometimes be difficult to tell who is speaking, especially when multiple participants are on the line.

Special note: You also have the option of "**record review**"-- which is when the judge makes a decision based solely on the agency record and written submissions (i.e., without testimony). However, this is only recommended in very rare cases where the facts are absolutely clear.

What if a conflict or emergency prevents you from meeting a deadline? You can always ask for more time. The important thing is to communicate your need to reschedule professionally and proactively. You can email the judge, cc'ing the agency representative. They may not honor your request, but they might, and there is no penalty for asking.

How to Prepare for the Hearing

In the weeks leading up to the hearing, spend your time wisely by building your case, developing your arguments, and organizing the evidence.

Your job in the hearing is to keep pulling the judge back to the evidence, the governing rules, and the specific error the agency made in *your* case.

The burden of proof is on you, the appellant. You must show, by a preponderance of the evidence, that the agency misapplied the law or failed to follow its rules. In other words, **you must show that it's more likely than not that the agency acted unlawfully.**

Here are some strategies to guide you:

Build a simple theory of the case

The core issue in most cases is whether the agency's "adverse decision"—what you are appealing—was correct under the law. Your theory of the case should concisely explain how the agency applied the law incorrectly or failed to follow its own rules in your specific situation.

When building your theory, focus on **how the agency's action affected you**, based on your facts and record, rather than challenging a policy or practice in the abstract. Be sure to tie your theory to a **particular statute, regulation, policy, handbook provision, or contract term.**

Big Picture: What NAD Is (and Isn't)

NAD's core question:

Did the agency follow its own rules and apply the law correctly in your case?

NAD decides whether:

- The agency followed applicable statutes, regulations, notices, and contract terms
- The agency relied on criteria that do not exist in the rules
- The agency ignored, skipped, or misapplied required procedures

NAD generally does not decide whether:

- Across-the-board USDA policies or broad program changes that apply to everyone are unlawful (often called matters of "general applicability")
- The agency's policy is fair or wise
- The outcome feels unjust or unfair
- Discrimination occurred (unless it is directly tied to an agency rule violation that NAD has authority to review)

NAD Pitfalls to Avoid

- **Missing the 30-day deadline** to appeal
- **Framing your appeal as a challenge to a broad or nationwide policy** (rather than how the agency misapplied the rules in *your specific case*)
- **Framing the merits of your case around fairness or hardship** (rather than organizing those facts separately for equitable relief)
- **Going into the hearing without preparing**, including:
 - A clear timeline of events
 - Organized exhibits
 - A simple explanation of how the agency violated its own rules or procedures.
- **Assuming the judge will "connect the dots" for you**



Developing a simple theory of the case can help you stay focused when the hearing feels stressful. You can always refer back to your theory.

Examples of a simple theory of the case:

- *“NRCS terminated my contract even though neither the regulation nor my contract requires X.”*
- *“When deciding my eligibility, the agency relied on criteria that do not appear in governing rules.”*
- *“The agency failed to consider the required factors or follow the required steps when deciding to terminate my contract.”*
- *“NRCS denied my eligibility based on a requirement that does not exist in the regulation.”*
- *“The agency terminated my contract without following the procedures required by the program rules.”*

Organize your arguments and evidence: merits vs. remedies

As you prepare for the hearing, it’s helpful to intentionally separate your case into two distinct categories:

1. Merits –How was the agency’s decision legally incorrect in your case?

This is the core of your case. The merits focus on whether the agency:

- Followed the applicable statutes, regulations, notices, or contract terms and
- Applied the rules correctly to *your* situation.

Your theory of the case, exhibits, and testimony should first and foremost focus on the merits.

2. Remedies / equitable relief – Is relief still appropriate to prevent unfair harm (even if the agency correctly applied the rules)?

Equitable relief is a separate issue from whether the agency followed the rules. It is only available for certain programs and situations.

The legal criteria for equitable relief come from 7 U.S.C. § 7996, which requires that the “participant” (i.e., farmer or organization):

1. Was determined to be **not in compliance** or **ineligible** under a covered USDA program, AND

2. Either:

- Relied in good faith on the agency's advice or actions to their detriment, **or**
- Made a good-faith effort to comply with program requirements but still failed to meet them.

Equitable relief is most commonly available when the agency correctly applied the rules (meaning NAD decides in favor of the agency), yet strict enforcement of those rules would cause unfair harm given the participant's good-faith efforts or reliance on the agency's advice or commitment.

In contrast, when a participant wins on the merits (meaning, **NAD finds the agency was wrong**), the participant is generally treated as having been in compliance all along. In that situation, equitable relief is typically unnecessary. It may be relevant in very narrow circumstances where, even if a favorable decision was fully implemented, the participant would still be treated as not in compliance or ineligible due to timing issues (such as closed eligibility windows or expired funding), and has suffered unfair harm as a result of your good-faith efforts to comply or reliance on the agency's actions.

The details and nuances of equitable relief can seem overwhelming and confusing—especially because, at this stage, you don't yet know whether you will win or lose on the merits. What matters right now is recognizing that equitable relief might apply in your case and being sure to introduce all essential facts, supporting evidence, and arguments during the hearing .

Why must you introduce equitable relief evidence at the hearing? The primary role of NAD judges is to develop the administrative record. NAD judges do not have the authority to grant equitable relief; only the NAD Director does. However, the Director may generally consider only information already in the administrative record.

Whether equitable relief is available depends on the specific program and whether the statute governing that program allows it.

NAD's authority to offer equitable relief comes from [7 U.S.C. §7996](#), which applies to many "covered programs" administered by USDA (such as conservation, loan, disaster, and similar benefit programs). If you are unsure whether equitable relief may be available in your case, you can clarify with the judge at the pre-hearing.



That means, if you believe equitable relief might be relevant in your case, you must introduce supporting evidence during the hearing so it becomes part of the official record.

Evidence relevant to equitable relief may include:

- financial hardship or losses,
- reliance on the agency's approvals, advice, or signed agreements,
- timing and seasonality (planting windows, ranking cycles, funding periods),
- irreversible or sunk costs, and
- opportunities that you would have pursued but did not because you relied on the agency's actions or advice

But keep this evidence separate. These facts do not establish that the agency violated the law (merits of your case). However, they may be essential to preserving your ability to request equitable relief later. For more details on when and how to formally request equitable relief, see the section *Requesting Equitable Relief* below.

How to present this evidence at the hearing. At the hearing, lead with rules and evidence to establish that the agency acted unlawfully and was wrong on the merits. Then, introduce evidence relevant to equitable relief. When you do, it can be helpful to explicitly explain: "I'm offering this information to document reliance and hardship relevant to equitable relief." Being explicit helps keep the record clear and avoids confusion about the purpose of this evidence.

Create a clear chronology (ideally one page)

Creating a clear timeline of what happened can help you stay organized. Include:

- Dates of key events
- Who said what
- What you requested
- What the agency decided
- What documents prove each point

A chronology can also help the judge quickly understand the story, especially if the agency's testimony is vague and could distort or confuse the facts.

Prepare exhibits and witnesses

Before the hearing, all parties will typically be required to identify the documents(exhibits) and witnesses they plan to rely on. The judge will set deadlines for doing so, usually during the pre-hearing conference call.

In many cases, you may be allowed to supplement or update your exhibits and witness list as the hearing approaches. There may also be an opportunity to submit relevant evidence during and after the hearing, if permitted by the judge. Pay close attention to the judge's instructions and deadlines. If you're unable to meet deadlines, request an extension by email to the judge, copying the designated USDA representative, in a professional and timely manner.

Exhibits. Label and organize your documents so the judge can follow along easily. Be sure to follow any instructions the judge provides (e.g., labeling exhibits with letters, page numbering, and not including documents the agency already includes). Keep exhibits focused. More is not always better. Example:

- *Appellant Exhibit A: Contract or program agreement (highlight relevant sections)*
- *Appellant Exhibit B: The adverse decision (agency letter/notice you're appealing)*
- *Appellant Exhibit C: Email chain showing agency rationale*
- *Appellant Exhibit D: Applicable regulation/policy excerpt*
- *Appellant Exhibits E: Document showing proof of compliance or performance*
- *Appellant Exhibits F: Document showing payments or proof of damages*
- *Appellant Exhibit G: Timeline (chronology)*

Witnesses. Identify any witnesses that may be able to provide testimony to support your case, including:

- You (almost always)
- A neutral person, not related to you, who can confirm your testimony (not necessary but helpful)
- A technical expert, service provider, or partner (if they help you tell your story, or help you explain why the agency erred)
- Sometimes: specific agency witness(es) that the agency does not identify in its own witness list (you may question them)



Ask yourself: “**What does each witness prove?**” It’s ideal to only call on witnesses who you know will add a key element to strengthen your case. Do not call witnesses “just because.” More is not always better.

Plan your hearing’s opening and closing statements (and read from a script if helpful)

It can be nerve-racking to present arguments in front of a judge, even for experienced litigators. Here’s a strong strategy to help keep calm:

- Write a short **opening statement script** (2–4 minutes): what happened, what rule applies, what the agency did wrong, and what you want.
 - *If you plan to request equitable relief, briefly note in your opening statement that you will address hardship or reliance after first showing how the agency acted unlawfully and was wrong on the merits.*

- Write a short **closing statement script** (1–3 minutes): repeat your rule + your evidence + your requested outcome. Repetition is helpful.
 - *While a closing statement is helpful in reminding the judge of your theory of the case, it is not technically required. The agency often declines to issue a closing statement and instead files a written post-hearing closing statement.*

Preparing a script can help reduce stress, minimize emotional reactions, and ensure you cover the essentials. You can read directly from these scripts during the hearing.

What matters most is getting clear arguments into the administrative record.

Key takeaways from those who’ve been through a NAD hearing:

- Connect everything to laws and regulations
- Point to specific evidence that supports your story and arguments
- Point out places where the agency record is lacking / additional information is needed
- Be organized
- Be precise
- Repeat key points

You do not need to be a lawyer to prevail, but you need to be prepared.

During the Hearing

What the hearing feels like

NAD hearings are designed to be accessible to non-lawyers. NAD judges are lawyers who understand the process and are familiar with the applicable general laws. While their styles and temperaments vary, they will help guide appellants through the process—especially when farmers or organizations are representing themselves.

NAD hearings are less formal than court proceedings. Formal rules of evidence do not apply in an NAD hearing the same way as in a court. For example, the judge will usually permit hearsay evidence (i.e., “she said..., he said...,” etc.).

NAD judge styles vary. Some judges are very engaged and prepared, while others may take a more formal or agency-deferential approach and even be disengaged. This variation is normal; after all, they are humans with varying styles and personalities. The best strategy is to stay focused on your evidence and the governing rules and not take the judge’s tone or questioning personally.

Your best protection is preparation, clarity, and documentation. This circles back to preparing a clear theory of the case, chronology, and opening and closing arguments with exhibits and witnesses to tie it all together.

Tone matters. Judges often respond best to presentations that are calm, organized, logical, and unemotional. This does not mean minimizing the harm done—it means presenting your harm and frustration through facts, rules, and reason.

Cross-examining agency witnesses

You’ll have the opportunity to ask the agency’s witnesses questions. Your goal is to pin down facts. This can be decisive to your case. It can also be challenging!

Agency witnesses may answer questions in ways that feel vague, incomplete, or overly cautious. This can be frustrating and may pull you off track if you’re not prepared. This can be part of their strategy.



Bringing your own strategy helps you stay focused. The purpose of cross-examination is not to argue with the witness, but to use carefully structured questions to highlight what the record shows– including inconsistencies or missing information– in a way that is more persuasive than simply stating those points yourself.

Helpful techniques for cross-examination include:

- Asking short, single-fact questions
- Asking direct questions you know the answer to
- Asking yes/no questions when possible
- Repeatedly returning to the regulation or policy text
- Persisting, while keeping a calm yet firm tone

Once you get the agency’s witness list, it could be helpful to develop 5-10 short, single-fact questions for each witness. Examples of “pin it down” questions:

- *“Where in the contract/regulation/policy does it say that?”*
- *“NRCS approved this practice on [date], correct?”*
- *“Is 65% listed as an eligibility requirement–yes or no?”*
- *“Is it correct that I completed the practice and submitted documentation on [date]?”*
- *Compound example:*
 - *“So your decision relied on ____, correct?”*
 - *____ is not listed in ____ (cite rule), correct?”*

If the witness avoids answering, calmly repeat or rephrase the question. It’s reasonable to stay focused and be persistent when seeking a clear yes-or-no response. Agency witnesses are expected to answer questions directly during a hearing, and it’s inappropriate to dismiss a question.

The judge will also often ask agency witnesses questions and follow-up questions. Particularly, if a witness appears evasive or nonresponsive, the judge may intervene to clarify or redirect the testimony.

After the Hearing

Post-hearing submissions

The judge may allow **post-hearing written arguments, or “closing statements”** from both you and the agency, or even accept additional documents as evidence. Be sure to watch and meet deadlines. If post-hearing submissions or written briefs are allowed, it’s best to submit something. Even short written summaries can be powerful in reiterating your theory of the case, main evidence, and arguments.

Farmers and organizations report that the agency often presents their closing statements in writing rather than orally at the hearing. If this happens in your case, it’s important to read their closing statements in case they raise anything new or inaccurate. You may then submit a response, which the judge will read and include in the administrative record.

Decision

NAD judges are required to issue their decisions within 30 days of the record closing (i.e., after the final deadline for post-hearing submissions).

Favorable decision

If you win, the judge may:

- Find that the agency’s decision was erroneous or contrary to law,
- Reverse the adverse decision, and/or
- Remand the matter to the agency for reconsideration consistent with the decision.

Does NAD award monetary damages?

Not exactly. That said, there are situations where NAD will award monetary compensation as “equitable relief.” **For equitable remedies, you must generally take an additional step by requesting a Director Review within 30 days of receiving a decision.** For more on how this works, see the following section on “requesting equitable relief.”

A NAD Hearing Officer’s written determination includes findings of fact, analysis of the governing statutes and regulations, and conclusions explaining whether the agency erred. The determination resolves the legal correctness of the adverse decision. It does not instruct the agency how to perform specific corrective actions.



If neither party seeks Director Review within the allowed time, the judge's determination becomes USDA's final administrative decision. Federal law requires the agency to implement that final determination and take the actions necessary to give it effect within 30 days. 7 U.S.C. § 7000(a), 7 U.S.C. § 6991(8)

Federal law also establishes the effective date of a NAD determination as:

- the date you filed the application,
 - the date of the transaction or event at issue, or
 - the date of the original adverse decision (whichever applies).
- 7 U.S.C. § 6998(e)

This backdating of the decision often means the agency must treat you as eligible or compliant for the original program period, even if a program window has closed or funds have been allocated by the time NAD issues its decision. In many cases, this backdating fully fixes the harm (for example, allowing resumption of payments, reinstatement of eligibility, or reconsideration of termination) as if the denial never occurred.

However, NAD is not a court and does not have enforcement powers. If an agency delays or fails to implement the decision, **NAD cannot compel performance or compliance directly**. If the agency does not act consistently with a favorable NAD decision, additional steps—such as filing an additional NAD appeal based on “failure to act” or filing a lawsuit in federal district court—may be necessary.

Favorable decision, but the agency seeks Director Review

While a favorable decision can feel like a victory, there may still be hurdles to come. If you prevail, the agency has **15 business days** to file for Director Review to challenge the judge's decision.

If the agency files this request, you will have 5 business days to file a response about why the favorable decision should be upheld. At this point, it is best to also request **equitable relief** (see below) in case the Director overturns the favorable decision. You may submit additional arguments, but the Director may decline to consider new evidence.



Director Review is typically based on the existing administrative record, which includes the initial agency record, hearing transcript, exhibits, and any written submissions. It can also be based on a failure to consider certain facts.

Upon receiving a request, the Director has 10 business days to issue a decision. The Director's decision will either reverse, modify, uphold, or remand the decision (send it back to the judge). In the case of remand, the Director will direct the NAD judge to reconsider or make further factual findings to inform a new determination.

If the Director overturns the favorable decision, then the Director will also address any request for equitable relief you submitted in your response.

Favorable decision, but the agency still does not comply

Unfortunately, this happens. Farmers and organizations report that agencies often ignore NAD decisions entirely, delay implementation, or implement them in ways that defeat the remedy.

If the agency delays or fails to fully implement a favorable decision, be sure to document noncompliance in writing (e.g., emails, letters, dates).

You should also consider filing a new NAD appeal based on "failure to act"—especially when delay would make your remedy meaningless (e.g., eligibility/ranking timelines, seasonal windows). Again, the agency has 30 days to fully implement a favorable decision. If you believe the agency has failed to do this, you may file a new NAD appeal based on the agency's 'failure to act.' This new appeal would need to be filed within 30 calendar days of when you knew—or should have known—that the agency failed to implement the initial decision.

Judicial review in a federal district court is available to enforce NAD decisions. If the agency is openly refusing to comply, or you otherwise need enforcement (not just another administrative ruling), you may be able to file a lawsuit in federal district court. *This type of legal action is outside the scope of this resource. Legal counsel is strongly recommended.*

Unfavorable decision

If you lose, you generally have 30 days to request Director Review. If you make this request, you will need to explain why the judge's determination was



erroneous, for example, that it failed to consider all relevant facts or apply the law correctly. The NAD Director will review the existing administrative record and will either affirm, modify, or reverse the judge's decision or remand the case for further deliberation by the NAD judge. In some cases, the Director may allow or request additional written submissions. Again, pay close attention to any notices or deadlines.

If the NAD Director also rules against you, you have “**exhausted your administrative remedies.**” This essentially means that you may file a lawsuit challenging the agency's decision in federal district court. Federal court review is usually limited to the administrative record, and strict deadlines apply. *At this point, legal counsel is strongly recommended.*

Requesting equitable relief (critical step but often missed)

Equitable relief is a powerful but often misunderstood part of the NAD process. It is separate from whether the agency's decision was legally correct. Some farmers and organizations lose on the merits but may still qualify for equitable relief. Others win on the merits but later discover that—even if the decision is implemented—their harm is not fixed. This is when equitable relief might arise.

What is equitable relief?

Equitable relief is the authority Congress gave USDA to provide relief to “participants” of certain programs who are determined to be **not in compliance or ineligible**, but who nevertheless acted in good faith. The NAD Director may grant equitable relief under 7 U.S.C. § 7996 for many “covered programs” administered by USDA (including conservation, loan, disaster, and similar benefit programs).

To qualify for equitable relief, a participant generally must:

- be determined to be **not in compliance or ineligible**, and
- either:
 - have **relied in good faith** on USDA's advice or actions to their detriment, **or**
 - have **made a good-faith effort to comply** with program requirements, even if ultimately found ineligible or noncompliant.

Depending on the program and facts, equitable relief may include:

- extending a contract or performance period after agency-caused delay,
- allowing late performance due to agency misinformation or error,
- preserving eligibility for ranking or enrollment cycles that would otherwise be missed,
- waiving penalties or refund requirements caused by circumstances beyond the participant's control, and
- in limited circumstances, allowing payment or compensation when a participant reasonably and detrimentally relied on agency approvals.

Equitable relief is not the same as court-awarded monetary damages. It is designed to address situations where a participant is technically out of compliance or ineligible, but the record shows good-faith reliance or good-faith effort to comply. It's about fairness.

When equitable relief may be relevant

Most often, equitable relief becomes relevant when a participant loses on the merits. That is, when NAD finds the agency correctly applied the rule and the participant is determined to be noncompliant or ineligible, but strict application of the rule results in an unfair harm or consequence.

In limited circumstances, equitable relief may also be relevant even when a participant wins on the merits—typically where a favorable decision alone does not fully remedy the harm because of timing issues or because the participant took actions in reliance on the agency's decision that cannot realistically be undone (e.g., incurring costs, missing enrollment opportunities, or making business decisions that cannot be reversed). These situations are uncommon and depend heavily on the facts and the specific program authority.

When in doubt, it is a good idea to request equitable relief. The process is relatively straightforward.

When and how to request equitable relief

Before and during the hearing: build the record of evidence

If you think equitable relief might be relevant and you intend to seek it, be sure to notify the NAD judge as early as possible—either in the initial appeal filing, during the pre-hearing, or at the latest, at the hearing. This allows the judge to

make factual findings relevant to your request, such as documentation of reliance, financial costs, opportunity losses, or timing constraints.

Present evidence during the hearing showing:

- good-faith efforts to comply,
- reliance on USDA approvals, advice, or agreements,
- financial losses or hardship,
- timing or seasonality constraints, and
- irreversible or sunk costs.

This ensures the evidence becomes part of the official administrative record.

After the hearing: formally request Director Review

The time to formally request equitable relief comes **after** receiving a NAD determination from the judge. At that point, you must submit **a personally signed “Request for Director Review” and clearly state that you are seeking equitable relief. You have 30 days to request Director Review.**

In that request, you should:

- Explain whether you lost or won on the merits,
- Describe why equitable relief is still necessary to prevent unfair harm, and
- Identify the specific relief you request (deadline extensions, preserved eligibility, waiver of penalties, etc.).

If the record does not already contain enough evidence, the Director may remand the case for additional factual findings– but only if equitable relief was raised during the hearing.

Additional Resources

- [The National Appeals Division Guide](#)
- [NAD Correspondence Manual](#)
- [NAD YouTube video](#)
- [Search NAD decisions](#)

Key takeaway on equitable relief

- Requires a separate, intentional step through Director Review.
- Most often, equitable relief is relevant when you lose on the merits but acted in good faith.
- In more limited situations, it may also apply when you win on the merits but the decision does not fully fix the harm.
- If you are unsure whether to request Director Review for equitable relief, consider consulting an attorney as soon as possible after you receive the NAD judge’s determination
- You have only 30 days to request Director Review.
- Failing to request Director Review when equitable relief is needed may permanently close the door to that relief.