



## Food Safety Information

### Appealing Inspection Decisions

This document is designed to provide information to help small and very small plants understand the process of appealing inspection decisions, including: to whom the Appeal should be directed, what documents should be included with the Appeal, when to expect a response to the Appeal, and how to make an appeal within the Public Health Information System (PHIS).

#### What is an Appeal?

An appeal is a request made to FSIS to reconsider a decision made by an inspection program employee. Any inspection decision can be appealed, but most commonly plants appeal Noncompliance Records (NRs).

FSIS regulations [9 CFR 306.5](#) and [9 CFR 381.35](#) provide that meat and poultry establishments may appeal any inspection decision, including enforcement actions taken in accordance with 9 CFR 500. FSIS regulation [9 CFR 590.310](#) provides that egg products plants may appeal any inspection decision. Any inspection decision can be appealed including:

- An NR: the plant can appeal the whole decision or part of the decision;
- sampling results;
- any enforcement action taken in accordance with the Rules of Practice, 9 CFR Part 500; and
- regulatory waiver suspension and/or withdrawal.

The regulations also provide that the appeal of the inspection decision may be granted or denied.

The appeal process is a mechanism for ensuring that any disagreements between plant managers and FSIS program personnel are reviewed. A plant may file an appeal without fear of retaliation. FSIS encourages plants to appeal decisions they believe are unfair or are not consistent with applicable standards.

#### What are the reasons for submitting an Appeal?

An FSIS inspected establishment, plant or its representative, may submit an appeal of an inspection decision to the immediate supervisor for a variety of reasons, including but not limited to, the following:

- The plant representative believes its operation was in compliance;
- The plant representative believes incorrect facts were used in the noncompliance determination;
- The plant representative believes an incorrect regulation was cited; or

- The plant representative believes other facts were not considered by the inspection program personnel (IPP) prior to the determination of the noncompliance.

The appeal process can be beneficial for both plant management and IPP. An appeal can start a conversation between plant management and inspection personnel that may lead to improved understanding of the food safety systems and associated regulations, by both parties. For example, an appeal may uncover a long held misunderstanding of a regulation by the plant or inspector that can be clarified by the appeal process.

The appeal process can also be an opportunity for IPP to inform plant management of the numerous FSIS resources that are available to plant management (e.g., compliance guidelines).

Plant management can appeal the entire NR or only a part of the NR. The plant's appeal should clearly state the particular finding or findings that the plant is appealing.

Plants can appeal particular documentation errors (e.g. incorrect regulatory citations, dates, names, or times). However, if there is no disagreement that the underlying noncompliance existed, the NR will be corrected by the program employee and reissued.

#### What is the Chain-of-Command for Appeals?

The appeal process follows the FSIS Office of Field Operations (OFO) chain-of-command.

The chain-of-command ensures that those supervisory personnel most familiar with the facts associated with the appeal evaluate the appeal first to minimize response time. The chain-of-command also allows a plant to appeal to the next highest level if unsatisfied with an appeal outcome.

Before filing a formal appeal, plant management are encouraged to discuss any concerns with the original decision maker or author of the NR. This step serves as a means to resolve the issue at the lowest possible level and to avert the need for plant management to initiate a formal appeal. If the issue cannot be resolved through this discussion, plant management can begin the formal appeals process with the immediate supervisor of the program employee that made the decision.

If the appeal is denied, the plant can continue the appeal through the chain-of-command which is explained in the corresponding section on page four (4).

**Key point:**

*The chain-of-command for appeals starts with the immediate supervisor of the program employee that made the decision.*

The OFO chain-of-command for appeals is:

1. Immediate Supervisor (e.g., Supervisory Consumer Safety Inspector (SCSI), Inspector-In-Charge (IIC), Public Health Veterinarian (PHV) or Multi-IPPs Supervisor of the person who made the original determination);
2. Frontline Supervisor (FLS) (sometimes the immediate supervisor is the FLS);
3. Deputy District Manager (DDM) / District Manager (DM);
4. Executive Associate for Regulatory Operations (EARO);
5. Deputy Assistant Administrator/Assistant Administrator for OFO; and
6. Administrator for FSIS.

The FSIS goal is to resolve an appeal at the lowest supervisory level possible. Therefore, for an appeal to be reviewed by upper levels of supervision, it must first be reviewed by all lower supervisory levels and follow the chain-of-command.

### **How is an Appeal Submitted?**

The plant may submit appeals to NRs electronically through PHIS, or it can present them either in writing or orally for any inspection decision. The FSIS program employee evaluating the appeal is not always located at the plant and was not likely present at the time the event occurred. If the appeal is not in writing (or in PHIS), FSIS will need more time to gather all the necessary facts needed to evaluate the appeal.

### **A. PHIS/ELECTRONIC SUBMITTAL**

FSIS recommends that plant management use PHIS as its mechanism to appeal NRs, whenever possible, although using PHIS is not required by regulation. Using PHIS allows plant management to create an electronic record that documents their concerns and to include any supporting documents by scanning them into the PHIS system. PHIS facilitates a timely response to the appeal and reduces the possibility of miscommunication. It also creates a record of the appeal that can be used by plant management if the plant later decides to appeal through additional supervisory levels. Only NR appeals may be submitted through PHIS for consideration. Appeals for inspection decisions other than NRs, must be oral or in writing and cannot be made through PHIS.

When plant management elects to submit appeals electronically through PHIS, they need to follow the step-by-step instructions provided in the [Establishment Management Users Guide – Public Health Information System](#). The plant management's submission should include all documents necessary for FSIS personnel to make a decision as listed on page three (3) of this document.

**Note:** NR appeals utilizing PHIS can only be made to the chain-of-command level of the DDM / DM. Appeals to the EARO, OFO Deputy Assistant Administrator, OFO Assistant Administrator, or the FSIS Administrator must be presented directly to that official (orally or in writing) and cannot be made through the PHIS system.

### **B. WRITTEN APPEALS**

An appeal can be made in writing (including email) if plant management does not submit the appeal electronically through PHIS. A written appeal allows management to explain why it believes the FSIS program employee's decision is incorrect.

Plant management will need to submit the written appeal, and any associated documents, to the immediate supervisor of the author of the NR either on paper or electronically via email. The supervisor will provide a response within the time frames listed in the appeal response timeline discussed on the next page.

### **C. ORAL APPEALS**

Oral appeals are allowable. FSIS recommends that if plant management presents an oral appeal, that the appeal is also entered into PHIS, or submitted in writing to avoid miscommunication.

## How long does the plant have to submit an Appeal after a decision is made?

The plant is not required to submit an appeal within a specific timeframe. While [9 CFR 381.35](#) does indicate that appeals from poultry establishments must be submitted within 48 hours from when the regulatory decision was made, FSIS will accept appeals from poultry plant management at any time in order to be consistent with the appeals procedure cited in [9 CFR 306.5](#) and [590.310](#). In addition, plants can appeal an NR even if it is designated as "NR Completed" in PHIS. However, if a plant decides to appeal an inspection decision, it is important to submit the appeal, and all necessary supporting information, to the immediate supervisor as soon as possible after the inspection decision has been made in order to ensure a timely response to the appeal request.

### Key Point:

*There is no specific timeframe in which an appeal must be made.*

## What documents should be submitted with the Appeal?

When plant management decides to appeal an inspection decision they need to include all the necessary supporting documents that should be considered for the FSIS supervisor to make a timely decision concerning the appeal. The following supporting information should be uploaded into PHIS or included with the written appeal:

- The original NR, if the appeal is not made through PHIS;
- A narrative explanation of why plant management disagrees with the inspection decision;
- A copy of any and all previous appeal responses from IPP; and
- Any records (HACCP, Sanitation SOP, or other prerequisite program) that may contain relevant information on the issue being appealed that may assist the supervisors in evaluating the situation under appeal.

## How long does it take for the Agency to respond to an Appeal?

FSIS recognizes that plants want a response to appeals as soon as possible, especially when an appeal involves retained product or operational restrictions. Time is needed for program employees to become familiar with the facts as an appeal moves up the chain-of-command.

FSIS provides responses as soon as possible and tries to provide responses within the timeframes below. However, because each case presents a unique set of facts that require consideration, the response times may be extended:

1. Immediate Supervisor of the author who made the original determination response - Within 2 weeks from receipt of appeal.
2. FLS response - Within 2 weeks from receipt of appeal;
3. DDM/DM - Within 2 weeks from receipt of appeal;
4. EARO response - Within 30 days from the receipt of the appeal;
5. OFO Deputy Assistant Administrator / OFO Assistant Administrator response - Within 30 days from the receipt of the appeal; and
6. FSIS Administrator response - Within 30 days from the receipt of the appeal.

If a plant does not receive a decision within the above timeframe, the plant should contact the FSIS program employee to whom the appeal was addressed to for an explanation. The plant should contact the individual at the next level of the OFO chain-of-command when unsatisfied with the explanation.

## What happens if the NR Appeal is granted?

If the FSIS program employee concludes that the appeal will be granted, the action will be noted in PHIS, following the instructions in [FSIS Directive 13000.3 Responding in PHIS to Industry Appeal of a NR](#), to remove the NR from the file, and any tags will be removed. If the appeal is submitted through PHIS, the response is to be entered into PHIS. If the appeal is outside PHIS (e.g., oral or in writing), the response is to be provided in writing to plant management and also entered into PHIS.

When the NR is rescinded officially, the plant should be given a copy of the rescinded NR documents. In some cases the NR will be modified with the appropriate changes to address the appeal. For example, if only a portion of the NR was appealed, and the FSIS supervisor agreed that the portion of the NR appealed did not describe noncompliance, the appeal would be denied but the NR would be modified to remove the specific text and the NR would be reissued.

## What happens if the NR Appeal is denied?

If the program employee denies the appeal, the plant has the right to appeal to the next level in the chain-of-command. The appeal should be made in the same manner as at the previous level. The appeal should include a copy of each lower level appeal responses and provide a narrative of why the plant management believes each lower level appeal decision was flawed. An appeal to each level in the chain-of-command follows the same process.

## Is FSIS's Appeal response written?

Yes, the FSIS response is always in writing and explains the basis for the decision. Plants will receive a written response to an appeal when it is either granted or denied. If a plant does not receive a written response, the plant should contact the FSIS program employee to whom the appeal was directed to for an explanation and to request a written response. If the plant still does not receive a written response, they are to contact the next person in the OFO chain-of-command to request the written response.

## What effect does an Appeal have on an associated NR?

If an appeal of an NR is granted, and the NR is rescinded, any association between that NR and another NR is also rescinded. If only a portion of the appeal was granted, and that granted portion included the cause used to associate the two NRs, that association is rescinded. On the other hand, if the cause used to link the two NRs is upheld, the association stands.

If a plant receives an NR and decides not to appeal, that NR later can be associated with another NR.

## Can the plant appeal a regulatory control action to have product released?

Yes. [9 CFR 500.2\(c\)](#) provides that a plant may appeal a regulatory control action, as provided in [9 CFR 306.5, 381.35](#), and [590.320](#).

## Can the plant appeal sampling results?

Yes. If the plant has reasons to believe the sampling or testing methodology was not implemented consistent with Agency policy, they may appeal the results to the supervisor of the program employee that collected the sample. The appeal process for sampling results is exactly the same as it is for other inspection decisions.

If plant management decides to appeal sampling results, they should follow the procedure for submitting an appeal orally or in writing as found on page two (2) of this

document. However, a sample result appeal cannot be made through PHIS. Plant management should include:

- The specific Laboratory Information Management System (LIMS) Direct form for the sample result being appealed. If the form is not available, plant management should include the form number, project code and collection date for the sample submission that is being appealed.
- Reason(s) that plant management believes the sample results are incorrect.
- Any documentation (e.g. photographs) which supports plant management's viewpoint.

Plant management and FSIS personnel may seek assistance from the Office of Policy and Program Development (OPPD) Risk, Innovation and Management Staff (RIMS) and the Office of Public Health Science (OPHS) personnel to provide interpretation of the issues. However, the decision to remove the sample result will be made by the supervisory chain-of command. Therefore, the interpretations provided by these offices are not to be considered as denying or granting an appeal. If the request to remove the sampling result is denied, plant management may choose to continue its appeal to the next higher level in the chain-of-command as indicated on page two (2) of this document.

## Can a Notice of Intended Enforcement Action (NOIE) or a Notice of Suspension (NOS) be Appealed?

[9 CFR 500.5 \(b\)\(4\)](#) provides that a plant may appeal the basis of either an oral or written withholding action or suspension with prior notification (i.e., NOIE). The procedure is similar to an NR appeal, but includes the following differences:

1. A plant appeals the NOIE directly to the EARO supervising the DM that signed the letter;
2. The plant must respond to the NOIE within three (3) business days ([64 FR 66546](#)) even though the NOIE, or a portion of it, is being appealed. The failure of the plant to provide corrective actions to the NOIE within three business days may result in a suspension of the plant.
3. Although not required, the appeal should be in writing, because the issues associated with the NOIE/NOS are usually too complex or extensive to be communicated orally.
4. The appeal should provide an explanation of why the plant disagrees with the NOIE/NOS findings, including the date that the NOIE/NOS was received and any documentation supporting

the explanation that management believes will assist FSIS in evaluating of the situation under appeal.

As a means to encourage open communication and good business relationships, if the plant feels the NOIE/NOS is not justified, it should discuss the NOIE/NOS with the District Office prior to submitting a formal appeal to the EARO. This step serves as a means to resolve the issue at the lowest possible level and to avert the need for the plant management to initiate a formal appeal.

NOTE: In response to an NOIE/NOS appeal, the DM may enforce the NOIE/NOS as written, rescind part of the NOIE/NOS, or rescind the entire NOIE/NOS.

The OFO chain-of-command when appealing an NOIE or NOS is the following:

1. EARO
2. Deputy Assistant Administrator/Assistant Administrator for OFO; and
3. FSIS Administrator

**Key Point:**

*Even if the plant appeals an NOIE, it must provide a response to the NOIE within three (3) business days, even if appeal decision has not been determined. The failure to provide a response within the required time period may result in a suspension of the plant.*

As is stated in [9 CFR 500.5](#), if the plant is suspended it may also request an official hearing on the matter. Details on how to request a hearing are included in the NOS letter.

**Can the plant Appeal an administrative action concerning a Waiver?**

Under [9 CFR 303.1\(h\)](#), [9 CFR 381.3\(b\)](#), and [9 CFR 590.10](#), the FSIS Administrator may, in specific cases, waive provisions of the regulations for limited periods in order to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements, provided that such waivers of the provisions of such regulations are not in conflict with the purposes or provisions of the Acts.

Most commonly, waivers are issued for new technology and through the *Salmonella* Initiative Program (SIP) in accordance with [FSIS Directive 5020.1, Verification Activities for the Use of New Technology in Meat and Poultry Establishments and Egg Product Plants](#). FSIS may revoke a waiver of regulatory requirements when a plant fails to maintain or follow its alternative procedures associated with the waiver.

The process for appealing a waiver revocation is similar to the process for NOIE appeals, as described on page four (4). The OFO supervisory chain-of-command may obtain policy and regulatory clarification from RIMS concerning the technical aspects of the appeal. Once a decision has been made the OFO chain-of-command will supply plant management with the written appeal decision.

The chain-of-command when appealing the revocation of a waiver is the following:

1. EARO
2. Deputy Assistant Administrator/Assistant Administrator for OFO; and
3. FSIS Administrator

OPPD/RIMS may withdraw the plant's waiver. Plant management may appeal the withdrawal/termination of the waiver. The process for appealing the withdrawal of a waiver is similar to the process for other appeals; however, the chain-of-command is different. When a plant's waiver is withdrawn, plant management may appeal that decision through the OPPD supervisory chain-of-command.

The chain-of-command when appealing the withdrawal/termination of a waiver is the following:

1. Deputy Assistant Administrator/Assistant Administrator for OPPD; and
2. FSIS Administrator

Appeals for a withdrawal or termination of a waiver can be oral or in writing. Written appeals are preferred to ensure a clear understanding of the issues and to expedite the appeal response.

The appeal should provide an explanation of why the plant disagrees with the withdrawal/termination including the date that the action occurred and any documentation supporting the narrative explanation that management believes will assist FSIS in evaluating the situation under appeal.

If the FSIS supervisory chain-of-command denies the appeal, plant management has the right to appeal to the next level in the chain-of-command. The contact information for the next supervisory level in the chain-of-command will be provided to plant management in the denial documentation. The appeal should be made in the same manner as at the previous level.

The appeal should include a copy of each lower level appeal responses and provide a narrative of why plant management believes each lower level appeal

decision was incorrect. An appeal to each subsequent supervisory level in the chain-of-command follows the same process.

The following checklists provide suggested questions for plant management to consider when preparing and submitting an appeal.

### Plant Checklist for Submitting an NR Appeal through PHIS.

Question	Yes	No	Notes
Have you provided a comprehensive explanation detailing: <ul style="list-style-type: none"> <li>• Why you believe your plant was in compliance</li> <li>• Which facts contained in the NR are questionable</li> <li>• Which regulations cited in the NR are not applicable</li> <li>• What facts were not considered by IPP prior to determining noncompliance</li> </ul>			
Have you included (uploaded) a copy of all pertinent documents to support your position? This could include: <ul style="list-style-type: none"> <li>• HACCP, Sanitation SOP or other prerequisite records</li> <li>• Written programs</li> <li>• Employee training materials</li> <li>• Scientific supporting documentation</li> </ul>			
Have you followed the procedures for filing an appeal through PHIS contained at: <a href="#">Establishment Management Users Guide – Public Health Information System</a>			

## Plant Checklist for Submitting a written NR Appeal, not through PHIS

Question	Yes	No	Notes
Have you determined who the NR author's supervisor is or who the next supervisor in the chain-of-command is?			
Have you provided an detailed explanation detailing: <ul style="list-style-type: none"> <li>• Why you believe your plant was in compliance</li> <li>• Which facts contained in the NR are incorrect or questionable</li> <li>• Which regulations cited by the NR are incorrect or not applicable</li> <li>• What facts were not considered by IPP prior to determining noncompliance</li> </ul>			
<ul style="list-style-type: none"> <li>• Have you included a copy of the NR that you are appealing?</li> </ul>			
Have you included (uploaded) a copy of all supporting documentation to support your explanation? This could include: <ul style="list-style-type: none"> <li>• HACCP, SSOP and/or prerequisite records</li> <li>• Plant written programs scientific supporting documentation</li> </ul>			
<ul style="list-style-type: none"> <li>• Have you included a copy of the previous appeal response to this appeal?</li> </ul>			

## **Important Links**

[FSIS Directive 13000.3 Responding in PHIS to Industry Appeal of a NR](#)

Key Agency Contacts (see Office of Field Operations)

<http://www.fsis.usda.gov/wps/portal/informational/contactus/phone/key-agency-contacts>

Interactive Knowledge Exchange (IKE) Scenarios

<http://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/workforce-training/ike-scenarios/ike-scenarios>

Small Plant Help Desk

<https://askfsis.custhelp.com/>

Public Health Information System

<http://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/phs>

Executive Orders, Small Business Protection Laws & Policies on Regulatory Decisions <http://www.fsis.usda.gov/wps/portal/fsis/topics/rulemaking/executive-orders-small-business-protection-laws-and-other-guidance>

Small Business Protection Laws

<https://www.sba.gov/>

Small Business Administration (SBA) Office of National Ombudsman

Small business owners may contact the Office of National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement actions of FSIS.

**Contact the Small Plant Help Desk by telephone at 1-877-FSISHelp (1-877-374-7435) or via email at *InfoSource@fsis.usda.gov* or contact the Office of Policy and Program Development through askFSIS at *http://askfsis.custhelp.com/* or by telephone at 1-800-233-3935.**

A photograph of three call center workers wearing headsets, smiling and looking towards the right. The woman in the foreground is the most prominent, with her hair in a bun. The background is slightly blurred.

## **SMALL PLANT HELP DESK**

A resource for small and very small plants  
Est. 12-17-2010

Knowledgeable, USDA-FSIS specialists from the Outreach and Partnership Division are available weekdays 8:00 AM to 4:00 PM EST to give you personal assistance on matters relating to the regulation of meat, poultry, and processed egg products. We can also be reached by email at [info@fsis.usda.gov](mailto:info@fsis.usda.gov).

**Call Toll-Free 1-877-374-7435**

A dark green square graphic with white text and a central image. The text 'askFSIS' is at the top, the USDA logo is in the center, and 'a policy-related question' is at the bottom. The central image shows a woman's eyes and a white hard hat.

**askFSIS**



*a policy-related question*