

VERMONT AGENCY OF AGRICULTURE, FOOD & MARKETS
FOOD SAFETY CONSUMER PROTECTION DIVISION
Meat Inspection Service
MONTPELIER, VT
Chuck Ross, Secretary



MIS DIRECTIVE

Adopted from FSIS Directive 13000.3 Rev. 1

13000.3
Rev. 1

11/24/16

RESPONDING IN PHIS TO INDUSTRY APPEAL OF A NONCOMPLIANCE RECORD

I. PURPOSE

A. This directive provides instructions to supervisory personnel responsible for addressing appeals from official meat and poultry establishments, identification (ID) warehouses, and other facilities where VAAFM provides inspection service. The directive provides instructions to supervisory personnel regarding how to respond to an appeal of a noncompliance record (NR) that has been presented to VAAFM by an establishment representative that has been presented orally, or in writing. The directive also provides instructions to inspection program personnel (IPP) regarding how to delete or modify an NR in PHIS.

NOTE: Appeals related to other noncompliances or enforcement actions (e.g., Notices of Intended Enforcement (NOIEs), laboratory results) are to be appealed through the applicable supervisory chain of command.

B. This directive has been revised to incorporate all the instructions into the body of the directive. In addition, clarifications have been included based on PHIS data analysis, and from trend analysis of questions submitted through askFSIS.

C. For the purposes of this directive, "supervisory personnel" refers to any personnel, at any level, that supervise IPP who conduct verification activities in official establishments or other facilities. This term includes Supervisory Public Health Veterinarians (SPHVs), Chief of Inspection, Meat Program Supervisor, Supervisory Consumer Safety Inspectors (SCSIs), Inspectors-in-Charge (IICs)

KEY POINTS:

- *Provides instruction to supervisory personnel regarding the decision process when responding to industry appeals; and how to address industry appeals submitted orally or in writing*
- *Provides instruction to IPP regarding how to delete an NR in PHIS when an appeal has been granted and how to modify a denied appeal based on instruction from the supervisor*
- *Clarifies that there is no timeframe in which VAAFM requires an appeal to be submitted by an establishment for consideration*

DISTRIBUTION: Electronic

OPI: OPPD

- *Provides instructions to IPP and supervisory personnel regarding how to get references to appeals excluded from establishment meeting agendas and weekly meeting MOIs once the appeals have been resolved*

II. CANCELLATION

FSIS PHIS Directive 13,000.3, Responding in PHIS to Industry Appeal of Noncompliance Records (July 17, 2013)

III. BACKGROUND

A. FSIS regulations [9 CFR 306.5](#) and [9 CFR 381.35](#) provide that establishments may appeal an inspection decision including enforcement actions taken in accordance with [9 CFR 500](#).

NOTE: As per the above cited regulations, appeals are to be submitted to an immediate supervisor for a determination. IPP are not to address appeals except as instructed by their immediate supervisor and explained in this directive.

B. VAAFM will accept appeals from plant management after the 48 hours cited in 9 CFR 381.35. Establishments can appeal an NR even if the NR has been designated as “NR Completed” in PHIS.

C. If an establishment decides to appeal an inspection decision it is important that it submit the appeal as soon as possible after the inspection decision has been made to ensure a timely FSIVAAFMS response. The appeal is to be submitted to IPP’s immediate supervisor, with any supporting information explaining why the appeal should be granted.

D. Under [9 CFR 306.5](#), [9 CFR 381.35](#), an inspected establishment or its representative may submit an appeal, verbally or in writing, to the immediate supervisor of any program employee for a variety of reasons, including but not limited to:

1. The establishment believes its operation was in compliance;
2. The establishment believes incorrect facts were used in the noncompliance determination;
3. The establishment believes an incorrect regulation was cited; or
4. The establishment believes other facts were not considered by the IPP prior to the determination of the noncompliance.

NOTE: IPP are to be aware that the appeals process begins with their immediate supervisor. However, as a means to encourage open communication and good business relationships, the author of the NR should be available and open to discuss any concerns regarding NRs with the establishment. Such discussions are not an appeal or part of the appeals process but instead serve as a means to resolve issues at the lowest possible level.

E. The following outlines the chain-of-command for appeal decisions:

1. Immediate Supervisor (i.e., IIC, PHV, or Meat Program Supervisor who made the original noncompliance determination or the Chief if that is the immediate supervisor);
2. Chief of Inspection;
3. Asst. Director FSCP;
4. Director FSCP;

5. Deputy Assistant; and
6. Secretary of Agriculture.

IV. IPP RESPONSIBILITIES - WHEN INSTRUCTED BY SUPERVISOR TO MODIFY AN NR IN THIS

A. Login using normal login procedures

B. Prepare to modify (i.e. edit)

1. On the left menu click “Inspection Verification”;
2. Click the “Select Establishment” option to access the Domestic Inspection page;
3. From the Domestic Inspection page, select the establishment by clicking on the adjacent radio button;
4. Once an establishment is selected, select the “Noncompliance Records” option from the left Navigation Menu under “Inspection Verification”;
5. Locate the NR requiring modification using the Appeal Status column (Appealed by Plant) and click on the “Edit” pencil icon to open the Noncompliance Record (NR) page;
6. If the status of the NR subject to appeal is “NR Completed,” when the NR page opens, the message “This Noncompliance record has been completed” displays at the top of the page with a hyperlink (if the status is “Open” skip to step 13 below);

NOTE: An NR identified as “NR Completed” is “locked” for editing and requires a justification to “unlock.”

7. Select the “Click here” hyperlink to access the “Reason to Edit” on the NR page;
8. Unlock the NR for editing by selecting a justification from the dropdown list (Mandatory field) (i.e., Instructed by supervisor) and entering additional descriptive text within the text box (e.g., appeal granted, deleting per instructions by supervisor);
9. Click the “Unlock” button to save the justification and return to the NR page;

NOTE: The “Noncompliance Finalized?” checkbox will now be blank and the General tab will show the status of the NR as Open

9. The newly added justification is displayed at the bottom of the page, with a message above the grid;
10. If the NR has been finalized, once the Noncompliance Record (NR) page opens, select the noncompliance tab and then the Edit pencil icon to open the Noncompliance page;
11. The following message will be displayed at the top of the Noncompliance page:

“This noncompliance has been finalized. To unlock it, select “Click here” and provide a justification.”

12. Select the “Click here” hyperlink to access the NR page to unlock the finalized Noncompliance;

13. Select from the dropdown list the appropriate reason and enter any additional descriptive text for the reason to Edit NR, and;

14. Click "Unlock" button and now the Noncompliance page can be modified.

C. Modify (i.e. edit) the NR

1. Once the justification has been entered as above, make the changes to the NR as required by the supervisor;
2. Once all the information has been entered, click "Save" button at the bottom of the page. Then check the "Noncompliance Finalized?" box and click "Save" button again;
3. At the bottom of the Noncompliance page will appear the Justification, Reason to Edit, Edited By, and Edited Date;
4. Click "Cancel" and it will return you to the Noncompliance Record (NR) page. If you select the Noncompliance tag, you will see the "Finalized" status of the noncompliance; and
5. To complete the NR, place a check in the "NR Completed" checkbox and click Save. This returns you to the Noncompliance Records page and the NR status will now display as "Completed".

NOTE: If the establishment has elected not to use PHIS, the next line of OFO supervisory chain-of-command is to enter the information for the establishment in PHIS.

E. If IPP observe that an NR number continues to be included on the weekly meeting MOI after the NR appeal has been resolved (e.g., the establishment chooses not to further appeal the NR), they are to inform their immediate supervisor. The supervisor is to follow the instructions in Section VI.F below to resolve the issue.

V. IPP RESPONSIBILITIES - WHEN NOTIFIED BY SUPERVISOR TO DELETE AN NR IN PHIS

A. Login using normal login procedures

B. Prepare to delete

1. Follow the instructions in Section IV. B above, to unlock the NR;
2. Once the NR is unlocked, uncheck the regulations identified on the Noncompliance page; and
3. Click "Save" and then Click "Cancel". This returns the user to the NR page.

C. Delete the NR

1. Click on the "Noncompliances" tab;
2. Select the NR to be deleted, the status should be 'open';
3. Click on the "Trash can." A warning message will appear: "This action will delete the Noncompliance. Are you sure?"
4. In the warning box click "OK" to permanently delete the noncompliance;

NOTE: This action cannot be reversed once the noncompliance is deleted

5. In the "Task Calendar," if the task is "yellow," it will now show that it is no longer noncompliant;
6. Document that the task is completed by opening it and checking "Inspection Completed" box; and
7. Click "Save" and then close. The task should now be displayed as "green" in the "Task Calendar"

NOTE: Once the electronic copy of the NR is removed from PHIS, IPP are to remove the paper NR with any associated correspondences from the government file system.

VI. SUPERVISORY PERSONNEL - GENERAL RESPONSIBILITIES

A. Supervisory personnel will receive written or oral notification from an establishment.

B. The supervisor can grant the appeal in its entirety, because they believe that the NR, as written, does not support regulatory noncompliance or they can deny the appeal because they believe that the entire NR, or some portion of it, supports regulatory noncompliance.

NOTE: Granting the appeal does not remove the NR from the PHIS system. The NR remains within the PHIS system and can still be subject to Freedom of Information Act (FOIA) requests.

C. Supervisory personnel are to respond promptly to each appeal received by doing the following.

1. Obtain all relevant factual information and review pertinent notices, directives, or regulations; and
2. Communicate the appeal decision to the establishment and to any IPP involved with the appeal.

D. VAAFM responses to appeals are to be provided as soon as possible, within the suggested timeframes below. However, because each appeal case presents a unique set of facts that require consideration, the response times may need to be extended.

1. Immediate Supervisor of IPP who made the original determination - Within 2 weeks from receipt of appeal;
2. Chief - Within 2 weeks from receipt of appeal;
3. Asst. Director - Within 2 weeks from receipt of appeal;
4. Director FSCP - Within 30 days from the receipt of the appeal;
5. Deputy Assistant Administrator - Within 30 days from the receipt of the appeal; and
6. Secretary of Agriculture - Within 30 days from the receipt of the appeal.

E. Supervisory personnel are to obtain the following information from the responsible establishment employee:

1. The original NR under appeal;
2. A narrative explanation of why establishment management disagrees with the inspection decision;
3. Any supporting documentation that establishment management believes will assist supervisory personnel in evaluating of the situation under appeal;

4. Copies of any previous VAAFM responses; and
5. Any records (e.g., HACCP, SSOP, or prerequisite program) that may contain relevant information on the issue being appealed.

NOTE: The responses to all appeals, (e.g. those provided to the establishment) are to be entered into PHIS using the following instructions and those in Section VII below.

F. Supervisors at all levels are to include the following information within their written response to the establishment when addressing an NR appeal.

1. Identify the PHIS NR number and the date the appeal was received;
2. Identify each issue under appeal, the reasons the issue(s) is under appeal and the action requested;
3. For each issue under appeal, provide the following:
 - a. Information, details and facts used to formulate and support the decision;
 - b. Identification of any misapplied policy;
 - c. The final decision; and
 - d. All actions to be taken as a result of the decision.

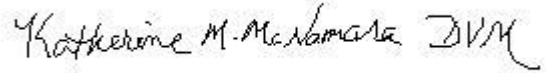
NOTE: It is important that supervisory personnel include information that supports the decision for granting or denying an appeal. However, they only need to summarize the basis for their decision when entering information into PHIS to enable data analysis of NR appeal outcomes.

G. When establishment appeals an NR but elects not to request access to PHIS (i.e., cannot submit an appeal electronically into PHIS), supervisory personnel are to do the following:

1. Log in using normal login procedures;
2. Click "Inspection Verification" then "Select Establishment";
 - a. From the left menu click "Plant Management";
 - b. Find the NR that was appealed and click the red arrow in "Response" column;
 - c. Click "Appeal";
 - d. Enter the name of the establishment representative that is making the appeal in the text field. If there is an establishment appeal in writing, the supervisor will attach either a scanned copy or if it was electronically sent, the electronic version;
 - e. Click "Save";
 - f. Click "Submit"; and
 - g. At the "Are you sure want to submit?" prompt, click "OK."
3. Follow Steps 4 and 5 in Section VI A. above to "Grant" or "Deny" the appeal.

IX. QUESTIONS

Refer questions regarding this directive to the VT Meat Inspection Office at (802)828-2426.

A handwritten signature in black ink that reads "Katherine M. McNamara DVM". The signature is written in a cursive style.

Katherine M. McNamara, DVM
Head of Service - Meat Inspection Service