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# PURPOSE

## This document describes the procedure for receiving and maintaining records to resolve appeals from entities regulated by the Minnesota Department of Agriculture (MDA), Food and Feed Safety Division (FFSD) regarding regulatory interpretations and compliance actions including inspection findings, penalties, fees, and citations.

# SCOPE

## This procedure includes the handling of appeals for the Food and Feed Safety Division. This procedure does not address the process for handling food or feed consumer complaints. The procedure for handling food consumer complaints can be found in *FFSD.SOP.30.15 – FFSD Consumer Complaint SOP.* This procedure also does not covercomplaints received from industry related to the conduct of an individual FFSD staff member. This information can be found in *FFSD.SOP.30.29 – FFSD Staff Complaint SOP*.

# BACKGROUND

## The ability to appeal actions taken by the department is provided in Minnesota Statute and notification of the right to appeal is a component of due process. Specific timeframes, criteria and requirements for the appeal of FFSD actions can be found in the following sections of Minnesota Statute:

 Minnesota Statute 17.983

Minnesota Statute 25.43 Subdivision 5

 Minnesota Statute 28A.085

 Minnesota Statute 34A.06 Subdivision 1

Minnesota Statute 34A.06 Subdivision 2

Minnesota Statute 34A.07

 Minnesota Statute 34A.08

## It is important to have a formalized process for resolving and tracking appeals for actions taken by the department. This process ensures that appeals from regulated entities are followed up in a consistent manner, with input by other pertinent staff; and allows for a fair and objective resolution. Maintaining a record keeping system provides historical data regarding disputes of code interpretation, penalties, fees and citations. Addressing complaints from industry is one of the required program elements in Standard 3*-*Inspection Program, of the Manufactured Food Regulatory Program Standards and Animal Food Regulatory Program Standards. The procedures for reviewing and tracking appeals outlined in this SOP also apply to appeals of actions taken by and for the Retail Food Program and Produce Safety Program.

# RESPONSIBILITY

## All Inspection Staff – All Inspection Staff will provide submitted information or correspondence that may potentially contain an appeal of Division actions to the Compliance Unit Supervisor and copy the supervisor and program manager.

## Compliance Unit Supervisor (Supervisor) - The Supervisor will review submitted information for appeal criteria, generate the Appeal ID, track the appeal review and response in the SP tracking system, schedule Appeal Review Group meetings, participate in the Appeal Review Group, send appeal acknowledgement letters, and coordinate the drafting and finalizing of written appeal responses.

**Department Counsel** – Department Counsel will participate in the Appeal Review Group and assist in preparing the written appeal response as requested by the Compliance Unit Supervisor.

## Division Director – The Division Director will participate in the Appeal Review Group, assist in preparing and reviewing the written appeal response as requested by the Compliance Unit Supervisor, and coordinate the review and response of further appeal communications.

## Program Manager - The Program Manager will participate in the Appeal Review Group and assist in preparing and reviewing the written appeal response as requested by the Compliance Unit Supervisor.

# DEFINITIONS

## Appeal: An appeal is a request for a legal determination brought before an appropriate authority for review of the act, citation, order, or ruling made by Food and Feed Safety Division (FFSD). Examples may include, but are not limited to, orders issued on an inspection report, interpretation of a regulation, timeframe for compliance, and fees or penalties assessed due to a field compliance action or enforcement action.

## Appeal ID: The numerical combination of the calendar year followed by the sequential order in which the appeal was received within the calendar year. For example, the first appeal received in 2016 would have an appeal id of 2016-1.

**Appeal Review Group:** Consists of the Division Director, associated Program Manager(s), Compliance Supervisor and Department Counsel.

# PROCEDURES

## Receive Notification – All Inspection Staff

## Submit all written appeals to the FFSD Compliance Unit Supervisor, and copy the Compliance Unit email mda.ffsdcompliance@state.mn.us, Supervisor, and applicable Program Manager immediately upon receipt.

## If a verbal appeal is received from a facility, instruct the facility to submit the notification in writing to the division. Refer to the document, *Submitting An Appeal – Information for Facilities* and provide to the facility.

## Appeal Tracking – Compliance Unit Supervisor

## Determine if submitted material is potentially an appeal. Review the submittal for the following items as available when making the determination:

## Meets appeal criteria described in MS 17.983 and/or MS 34A.08 Minnesota Statute 17.983,Minnesota Statute 25.43 Subdivision 5, Minnesota Statute 28A.085, Minnesota Statute 34A.06 Subdivision 1, Minnesota Statute 34A.06 Subdivision 2, Minnesota Statute 34A.07, Minnesota Statute 34A.08;

## Submitted in writing (note, email, letter, etc.);

## Identifies the penalty, fee, order or citation being contested and state the grounds for contesting it;

* + - 1. Timeframe of submission from the appellant: Refer to the appropriate section of statute listed above;
		1. When the submission does not meet applicable criteria, forward to the appropriate Program Manager for follow up and end the review.
			1. Attach correspondence in USA Food Safety (USAFS) and add an internal note.
			2. Forward documentation by email to the Program Manager.

## When the submission appears to meet the applicable criteria, begin appeal tracking within three (3) business days of receipt by completing the following:

## Create the Appeal ID (See definitions)

## Enter the appeal information into the SharePoint (SP) appeal tracking system.

## Note: SP will automatically notify program manager, supervisor, and inspector upon creation of item in list by email.

## Collect documents related to the appeal to include the original appeal, inspection report(s), applicable regulations, comparable cases or facility reports, current applicable program SOP’s and/or guidance documents and add to SP tracking system. Discuss with applicable Inspector, Inspection Supervisor and/or Manager to clarify specifics related to the situation if needed.

## Schedule a meeting for the appeal review group to occur within two (2) weeks when schedules permit. Include a link to the SP tracking list when setting up the meeting.

* + 1. If the review of the appeal will not occur within five (5) business days of receipt, prepare and send an acknowledgement letter to the submitter using the *Acknowledgment of Complaint-Appeal Receipt Template.*

## Determination of Appeal Response – Appeal Review Group

* + 1. During the scheduled meeting, review all applicable evidence and considerations including the following:
			1. Submitted appeal documentation
			2. Time frame of appeal submission
			3. Applicable regulations
			4. Public Health significance
			5. Current applicable SOP and guidance documents
			6. Comparable facilities or situations
			7. Extenuating circumstances
			8. Current applicable SOP or guidance documents
			9. Scientific documentation submitted
			10. Compliance status with orders issued.
		2. Confer with other program staff and/or other agencies as appropriate (FDA, USDA, etc.).
		3. Determine the appropriate response(s) based on the factual information and findings from the review:

Gather additional information prior to a final determination, when necessary (contact with submitter, other agencies, etc.),

Review by Department Hearing Officer (specific to reinspection fees issued under MS 28A.085 subd. 5),

Proceed to contested case hearing (Valid order/observation/action),

Amend action (valid observations, potential changes to order, regulatory reference or compliance dates),

Settlement agreement,

Rescind action (invalid observation, no authority, etc.).

## Communication of Determination – Compliance Unit Supervisor

* + 1. Coordinate the drafting of a written response to the appeal based on the determination of the appeal review group.
		2. Submit the appeal response to Department Legal Counsel, applicable Program Manager and Division Director for review and final approval.
		3. Request that the USAFS Administrator amend the inspection report in USAFS in accordance with the appeal determination to rescind an order or orders, issue a new compliance date, etc. Refer to *FOOD.WI.30.70 – Amending Inspection Reports in USAFS WI*. Provide USAFS Administrator with the effective date of the rescinded orders or the new compliance date for an issued order.
		4. Mail and/or e-mail the appeal response letter and an amended inspection report, if applicable, using delivery confirmation services. Copy the appeal review group.
			1. Attach the appeal response letter to the applicable maintenance page in USAFS as applicable to the appeal
		5. When applicable, void invoices for rescinded fees by emailing the following documentation to Finance & Budget:
			1. Copy of the invoice(s),
			2. Copy of the written appeal response which includes reason for the adjustment or void of the invoice

## Further appeal of Appeal Response Determinations – Division Director

* + 1. Include the MDA Commissioner as appropriate using appeal documentation provided by the Program staff and the Compliance Unit staff if there are further appeals of the appeal response determination.

## Maintenance of Records – Compliance Unit Supervisor

## While the appeal review and response is active, maintain copies of all pertinent documentation and meeting notes in the SP tracking list.

## Add all formal correspondence sent to the submitter to USAFS as documents are finalized and mailed.

## When the appeal review and response is complete, close out the appeal id by completing the following actions:

## Update the SP tracking list status to “Closed”

## Combine all appeal documentation into a single pdf and attach to the facility in USAFS.

# RELATED DOCUMENTS (includes References, Attachments)

Industry Appeals Flow Chart

Acknowledgment of Complaint-Appeal Receipt Template

Submitting an Appeal – Information for Facilities

FOOD.WI.30.70 – Amending Inspection Reports in USAFS WI

FFSD.30.15 – FFSD Consumer Complaint SOP

FFSD.SOP.30.29 – FFSD Staff Complaint SOP

# EQUIPMENT/MATERIALS NEEDED

## N/A

# SAFETY

## N/A

# CIRCULATION

This document is provided to the following: FFSD Inspection Program Staff, Compliance Unit Supervisor, and the Division Director. The current version will be stored electronically on the FFSD document control site.