

Montana Department of Livestock
Meat and Poultry Inspection Bureau

Appeals Guideline

January 23, 2018, version – Approved by the Board of Livestock on that date

The Montana Department of Livestock (Department) administers a state meat and poultry inspection program that must be “at least equal to” the provisions of the Federal Meat Inspection Act. See [21 U.S.C. 661](#). The Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture administers the Federal rules applicable to the inspection and enforcement actions. Certain Federal regulations were adopted as state rules by the Department. See [ARM 32.6.712](#). The Department administers these rules through its Meat and Poultry Inspection Bureau (MPI).

The rules provide a right of appeal from a decision of an MPI employee to that employee’s immediate supervisor. [9 CFR 306.5](#). This Guideline discusses the process for how the Department handles the appeals.

The appeal process is a mechanism for ensuring that disagreements between regulated parties and MPI staff are reviewed. The Department encourages regulated parties to appeal inspection decisions they believe are not consistent with applicable standards. Regulated parties may file an appeal without fear of retaliation. An appeal encourages communication between a regulated party and MPI staff that may lead to a better understanding of the food safety system and the standards that apply to both parties. For example, an appeal may uncover a long held misunderstanding of a standard by the plan that MPI staff can further explain.

Chain of Command

The appeal process follows the MPI chain of command. The chain of command ensures that program employees most familiar with the appeal facts 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. The MPI chain of command is:

1. MPI inspector
2. MPI regional supervisor
3. MPI bureau chief
4. Animal Health division administrator
5. Department executive officer
6. Board of Livestock

Appeal Process

What may be appealed?

Any inspection decision that adversely affects a regulated party may be appealed to the next highest level up the chain of command. Decisions that may be appealed include, for example, a non-compliance record (NR) and a review of an appeal at a lower level in the chain of command. Decisions that may not be appealed include a recall, which is an action by the regulated party, or a decision for which no adverse action was taken by the Department. Recall situations are governed by the state and federal recall procedures and guidelines.

Who may appeal?

When a regulated party feels adversely affected by a decision of the department they may pursue the appeal individually or through legal counsel.

How must appeals be made?

All appeals must be in writing at each level of the appeal. Appeal must be delivered to the Department at the following address:

Executive Officer
Montana Department of Livestock
301 N Roberts
Helena, MT 59620

What is not an appeal?

Requests for reconsideration by the regulated party to the Department employee making the initial inspection decision are not appeals. However, these requests may be made orally to that Department employee for consideration.

Requests for consideration of actions that:

1. have not occurred (e.g., an anticipated action);
2. have been resolved (e.g., the remedy sought has been received);
3. are not adverse (e.g., a recommendation by the Department); or
4. are not by the Department (e.g., a party's decision to issue a recall);

are not appeals. Requests for damages or for a remedy other than revision of an initial inspection decision are not appeals. Personal attacks against Department personnel are not appeals.

Every non-appealable request contained within an appeal must be dismissed without consideration of the merits of the non-appealable request.

When must appeals be made?

Appeals must be made within 60 days of the prior decision being appealed. If an appeal is denied, the regulated party may subsequently appeal to the next level up the chain of command. The time limitation applies both to the appeal of the initial inspection decision and to any subsequent appeal up the chain of command.

What must be included in an appeal?

The regulated party must provide in the initial appeal:

1. A statement of the facts supporting revision of the initial inspection decision;
2. All documentation supporting the statement of facts;
3. A statement of the legal basis supporting revision of the initial inspection decision;
4. An explanation of how the statement of facts and the legal basis demonstrate that revision of the initial inspection decision is merited; and
5. A request for the specific remedy sought on appeal.

The regulated party must provide in any subsequent appeal up the chain of command:

1. All documentation provided in the prior appeal up the chain of command.
2. An explanation of why the regulated party believes that revision of the prior appeal decision is merited.

What must be demonstrated in an appeal?

The regulated party must demonstrate that revision of the appealed decision is merited by a preponderance of the evidence. A preponderance of the evidence means that it is more likely than not that the appealed decision must be revised.

When will an appeal be decided?

Time is needed for Department employees or the Board to become familiar with the facts as the appeal moves up the chain of command. Generally, the higher up the chain of command an appeal moves, the longer it will take for that level of appeal to be decided. Appeals submitted at levels 1,2 and 3 of the chain of command should be answered within two weeks of receipt. Appeals submitted to levels 4 and 5 of the chain of command should be answered within 30 days of receipt. Appeals reaching the Board of Livestock may take as much as 60 days because of the timing and public notice requirements of their official business meetings. If an appeal becomes stalled at a lower level in the chain of command and is not answered within the given time frame it may be elevated to the next level at that point.

How will an appeal be decided?

The Department employee or the Board decides the merits of the appeal based on the facts and law presented including, if necessary, review of Department documentation and consultation

with subject matter experts and legal counsel. There is no right to a hearing on an appeal, except as otherwise may be provided by law.

Department Handling of Appeals

Process

All appeals must be filed first with the Executive Officer. In the event an appeal is first sent to a Department employee that is not the Executive officer or a Board member, the appeal and any related materials must be immediately forwarded to the Executive Officer. The Executive Officer will distribute the appeal materials to the appropriate review level in the chain of command. The Department employee or the Board, as appropriate, must issue a written decision on the appeal that explains the basis for the decision. The Department employee or the Board must provide that decision to the Executive Officer, who will distribute the appeal decision to the regulated party.

Appeal File

The Department will organize all appeal materials in an identifiable appeal file that contains, at a minimum:

1. The appeal filed with the Department;
2. The documentation in support of the appeal filed with the Department;
3. Additional documentation of facts considered by the Department for the appeal; and
4. The Department's decision on the appeal.

The Department's organization of appeal documentation should be separate and complete for each level of appeal.

Legal Counsel

The Department or the Board, as appropriate in the chain of command, may seek the opinion of legal counsel about questions of law that arise at each level of review of the appeal. They may also seek a recommendation from legal counsel about the application of law to the facts at each level of review of the appeal. Legal opinions and recommendations, including communications with legal counsel, are privileged documents that are not part of the appeal file.

Judicial Review

The decision on appeal of the Board of Livestock is final. Any party aggrieved by the Board's decision may, within 10 days after the date of the decision, seek judicial review in the district court of the district in which the licensed premises are located. §§ [81-9-231](#), MCA.

Resources

Some of the language in this Guideline is adapted or copied from the FSIS [Compliance Guideline for Small and Very Small Plants Appealing Inspection Decisions](#).