

APPEAL OF AN INSPECTION OR DECISION

§ 59.300 Who may request an appeal inspection or review of an inspector's decision.

Any appeal inspection may be requested by any interested party who is dissatisfied with the determination by an inspector of the class, quantity, or condition of any product, and a review may be requested by the operator of an official plant with respect to an inspector's decision or on any other matter related to inspection in the official plant.

[36 FR 9814, May 28, 1971. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; and amended at 60 FR 49169, Sept. 21, 1995]

§ 59.310 Where to file an appeal.

(a) *Appeal of resident inspector's inspection or decision in an official plant.* Any interested party who is not satisfied with the determination of the class, quantity, or condition of product which was inspected by an inspector in an official plant and has not left such plant, and the operator of any official plant who is not satisfied with a decision by an inspector on any other matter relating to inspection in such plant may request an appeal inspection or review of the decision by the inspector by filing such request with the inspector's immediate supervisor.

(b) *All other appeal requests.* Any interested party who is not satisfied with the determination of the class, quantity, or condition of product which has left the official plant where it was inspected or which was inspected other than in an official plant may request an appeal inspection by filing such request with the Regional Director in the region where the product is located or with the Chief of the Grading Branch.

[36 FR 9814, May 28, 1971. Redesignated at 42 FR 32514, June 27, 1977, and amended at 43 FR 60138, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981; as amended at 60 FR 49169, Sept. 21, 1995]

§ 59.320 How to file an appeal.

The request for an appeal inspection or review of an inspector's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly

state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal inspection site shall be provided to the inspector assigned to make the appeal inspection.

[60 FR 49169, Sept. 21, 1995]

§ 59.330 When an application for an appeal grading or inspection may be refused.

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, or that the condition of the product has undergone a material change since the original grading or inspection, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for such refusal.

[60 FR 49169, Sept. 21, 1995]

§ 59.340 Who shall perform the appeal.

(a) An appeal inspection or review of a decision requested under § 59.310(a) shall be made by the inspector's immediate supervisor or by a licensed inspector assigned by the immediate supervisor other than the inspector whose inspection or decision is being appealed.

(b) The assignment of the inspector(s) who will make the appeal inspection under § 59.310(b) shall be made by the Regional Director or the Chief of the Grading Branch, Poultry Division, Agricultural Marketing Service.

§ 59.350 Procedures for selecting appeal samples.

(a) *Prohibition on movement of product.* Products shall not have been moved from the place where the inspection being appealed was performed and must have been maintained under adequate refrigeration when applicable.

(b) *Laboratory analyses.* The appeal sample shall consist of product taken