

APPEALS

§ 592.400 Who may request an appeal inspection or review of an inspection program employee's decision.

An appeal inspection may be requested by any interested party who is dissatisfied with the determination by an inspection program employee of the class, quality, quantity, or condition of any product, as evidenced by the USDA inspection mark and accompanying label, or as stated on a certificate and a review may be requested by the operator of an official plant with respect to an inspection program personnel decision or on any other matter related to inspection in the official plant.

§ 592.410 Where to file an appeal.

(a) Appeal of inspection program personnel decision in an official plant. Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product that was inspected by inspection program personnel 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 inspection program personnel on any other matter relating to inspection in such plant, may request an appeal inspection or review of the decision by the inspection program employee by filing such request with the inspection program employee's immediate supervisor.

(b) All other appeal requests. Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product that has left the official plant where it was inspected or inspected other than in an official plant may request an appeal inspection by filing such request with the District Manager in the district where the product is located.

§ 592.420 How to file an appeal.

The request for an appeal inspection or review of an inspection program employee'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 reasons for requesting the appeal service. If such ap-

peal 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 appeal inspection program employee assigned to make the appeal inspection.

§ 592.430 When an application for an appeal 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, class, quality, quantity, or that the condition of the product has undergone a material change since the original 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 refusal.

§ 592.440 Who shall perform the appeal.

(a) An appeal inspection or review of a decision requested under § 592.410(a) shall be made by the inspection program employee's immediate supervisor or by an inspection program employee assigned by the immediate supervisor other than the inspection program employee whose inspection or decision is being appealed.

(b) Appeal inspections requested under § 592.410(b) shall be performed by an inspection program employee other than the inspection program employee who originally inspected the product.

(c) Whenever practical, an appeal inspection shall be conducted jointly by two inspection program employees. The assignment of the inspection program personnel who will make the appeal inspection under § 592.410(b) shall be made by the District Manager.

§ 592.450 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.

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(b) *Laboratory analyses.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) *Condition inspection.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

§ 592.460 Appeal certificates.

Immediately after an appeal inspection is completed, an appeal certificate shall be issued to show that the original inspection was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal inspection program employee assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the District Office.

FEEES AND CHARGES

§ 592.500 Payment of fees and charges.

(a) Fees and charges for voluntary base time rate, overtime inspection service, and holiday inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and § 592.510 through § 592.530, both inclusive. If so required by the Inspection program personnel, such fees and charges shall be paid in advance.

(b) Fees and charges for any service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Food Safety Inspection

Service and remitted promptly to FSIS.

(c) Fees and charges for any service under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

§ 592.510 Base time rate.

The base time rate for voluntary inspection services for egg products is \$47.79 per hour per program employee in fiscal year 2006, \$48.84 per hour per program employee in fiscal year 2007, and \$49.93 per hour per program employee in fiscal year 2008.

[71 FR 2143, Jan. 13, 2006]

§ 592.520 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspection program personnel of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

[71 FR 2143, Jan. 13, 2006]

§ 592.530 Holiday rate.

When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

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