

§ 590.220

that, official egg products plants which use all shell eggs received and do not reship any shell eggs need only to maintain records indicating the amount of eggs received, date received, and the name and address of the shipper.

[37 FR 6657, Apr. 1, 1972. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 745, Jan. 7, 1982; 63 FR 69971, Dec. 17, 1998]

§ 590.220 Information and assistance to be furnished to inspectors.

When inspection service is performed at any plant, the plant operator shall furnish the inspector such information and assistance as may be required for the performance of inspection functions, preparing certificates, reports, and for other official duties.

ADMINISTRATIVE DETENTION

§ 590.240 Detaining product.

Whenever any eggs or egg products subject to the Act are found by any authorized representative of the Secretary upon any premises, and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of the Act or the regulations in this part, or that they are in any other way in violation of the Act, such articles may be detained by such representative for a period not to exceed 20 days, as more fully provided in section 19 of the Act. A detention tag or other similar device shall be used to identify detained product, and the custodian or owner shall be given a written notice of such detention. Only authorized representatives of the Secretary shall affix or remove detention identification. The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of the Act, the regulations in this part, or other laws.

[37 FR 6658, Apr. 1, 1972. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 63 FR 69972, Dec. 17, 1998]

9 CFR Ch. III (1–1–07 Edition)

APPEAL OF AN INSPECTION OR DECISION

§ 590.300 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 further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 60 FR 49169, Sept. 21, 1995]

§ 590.310 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 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, as 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; 63 FR 69972, Dec. 17, 1998]

§ 590.320 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]

§ 590.330 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, 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 such refusal.

[60 FR 49169, Sept. 21, 1995, as amended at 63 FR 69972, Dec. 17, 1998]

§ 590.340 Who shall perform the appeal.

(a) An appeal inspection or review of a decision requested under § 590.310(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 § 590.310(b) shall be made by the Regional Director or the Chief of the Grading Branch, Poultry Division, Agricultural Marketing Service.

§ 590.350 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 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.

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

§ 590.360 Appeal inspection 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 inspector 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 National Supervisor.

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

§ 590.370 Cost of appeals.

(a) There shall be no cost to the appellant when the appeal inspection discloses a material error was made in the original determination.

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of \$27.36, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made