Occasionally, there may be instances where a bus operator (for the purposes of this part, the term “operator” shall include operator, operator representative, owner, distributor and/or manufacturer) believes that a vehicle has been placed out-of-service in error. The purpose of this procedure is to describe the actions the operator may take to appeal a cited defect which resulted in an out-of-service (OOS) determination. For the purposes of this appeal process, only “A” defects are defined as OOS defects. However, questions concerning non-out-of-service defects (“B” and “C”) should be directed to the inspector or the inspector’s supervisor for clarification or possible informal review.

The OOS Determination appeal process consists of the following two steps:

**Step 1**

**Supervisor Review**

The operator shall immediately notify the inspector that there is a disagreement concerning an OOS defect (“A” Defect) cited on the inspection form. The inspector shall clearly explain the basis for the OOS determination as the condition relates to the OOS criteria found in 17 NYCRR Part 720.11.

If the operator decides that the inspector’s explanation is not sufficient to resolve the disagreement, the operator shall have 3 business days from the date of the inspection to contact the inspector’s supervisor in writing via email in order for the supervisor to review the matter and seek further explanation or clarification for the issuance of the defect. In the event the inspector’s supervisor is not available, the inspector will provide the operator with an alternate supervisor to contact. It is the operator’s responsibility to set forth clear and concise reasoning as to why the inspector cited the defect(s) in error. Challenges that fail to provide sufficient reasoning may be dismissed without further review.
If after a discussion with the supervisor, the matter can not be resolved, usually the best way for the supervisor to determine the validity of an operator’s challenge would be to examine the component on the vehicle in its current state. The operator shall have the option of requesting an on-site review. The request to the supervisor shall be made in writing and sent via email. The operator shall make arrangements to have the vehicle available in order to allow the supervisor to conduct an on-site review within 3 business days from the date of the written request. If the supervisor does not conduct the on-site review within the 3 business days, the defect(s) shall be removed from the Department’s inspection records.*

The component(s) in question shall not be touched or worked on in any way until the supervisor concludes the on-site review. Altering the condition of the component(s) in any way before the supervisor has a chance to examine it (them), (even if the operator decides to correct, repair or remove the defective component(s) in order to present the vehicle for re-inspection) may be sufficient grounds for the supervisor to dismiss the challenge, unless a mutual arrangement is made to preserve/document the component(s) until the supervisor can conduct the review.

Operators shall be apprised of the supervisor’s determination in writing within 5 business days from the date when the supervisor received the written challenge by the operator, if no on-site review is requested.

Operators shall be apprised of the supervisor’s determination in writing within 5 business days after the date of an on-site review.

In both cases, if a decision is not made with the time frames indicated above, the defect(s) shall be removed from the Department’s inspection record, unless otherwise authorized by the inspection program Director.*

If the supervisor determines that the defect(s) was (were) written in error, the appropriate change(s) shall be made to the Department’s inspection records regarding the defect(s) and shall notify the main office that such change has been made.

The supervisor shall forward all the pertinent information and documentation, concerning the determination of any challenge, to the main office.

If the operator is not satisfied with the results of the supervisor’s determination, the operator is then eligible to take advantage of Step 2- Main Office Appeal.

**Step 2**

**NYSDOT Main Office Appeal**

The operator shall submit an appeal to the main office by using the designated email link on the NYSDOT website (passengersafety@dot.ny.gov) or submit the appeal in writing, within 10 business days from the date of the supervisor’s decision to:
NYSDOT
Passenger Carrier Safety Bureau
POD 53
50 Wolf Road
Albany, NY 12232

1) The appeal shall set forth clear and concise reasoning as to why the defect(s) cited by the inspector was (were) in error. Specific detailed information should be included to support the appeal.

2) The appeal shall be reviewed along with the supervisor’s determination and recommendation shall be presented to the Director to make a final determination.

3) A final determination on the appeal shall be made within 30 days from the date the appeal was received in the main office or the defect(s) shall be removed from the Department’s inspection records.*

   There shall be no further appeal process.

4) If the appeal is upheld, the specific defect(s) shall be appropriately removed/adjusted on the operator’s inspection record.

5) Operators shall not be limited as to the number of challenges or appeals that can be filed with the Department except when:

   - An operator repeatedly abuses the appeal process by filing frivolous or unreasonable challenges or main office appeals as determined by the Director. These operators shall be designated as ineligible to participate in the appeal process for a minimum period of 12 months.

*The Director may sustain the defects on an operator’s inspection record for good cause.