

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 90, 91, 92, 93, 94, and 98**

[Docket Number S&amp;T-99-008]

RIN 0581-AB91

**Changes in Fees for Science and Technology (S&T) Laboratory Service****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to increase the standard hourly fee rate for each laboratory analysis conducted under the AMS S&T Laboratory Program from \$36.26 to \$45.00. The premium laboratory rate for appeals, holiday and overtime service would be increased from \$54.39 to \$67.50 per analysis hour. These proposed 24.1 percent increases in hourly rates reflect the additional revenue S&T is required to collect in order to recover laboratory program expenses. AMS also proposes to change fees for laboratory testing services which are offered for agricultural food commodities to reflect actual equipment and labor expenses for performing each test. The proposed regulations include additional tests for commodity products for incorporation into existing schedules and sets an updated hourly rate of \$45.00 for unlisted tests. AMS proposes to remove laboratory tests that have been found to be obsolete as well as duplicate tests performed by other Agricultural Marketing Service programs. The proposal also has name, position title, and address changes as a result of Agency restructuring that lead to the formation of the AMS Science and Technology program.

**DATES:** Comments must be received on or before June 15, 2000.

**ADDRESSES:** Comments are invited on this proposed rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Comments should be sent in triplicate to James V. Falk, Docket Manager, USDA, AMS, Science and Technology, P.O. Box 96456, Room 3521-South, Washington, DC 20090-6456; telephone (202) 690-4089; the facsimile (202) 720-4631, or e-mail: James.Falk@usda.gov and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection in Room 3507, South Agriculture Building, 1400 Independence Avenue, SW,

Washington, D.C. 20250 between the hours of 10:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday, except Federal holidays. All comments received on or before the closing date for comments will be considered. After the close of the comment period, AMS intends to publish a final rule in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****A. Executive Order 12866**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

**B. Civil Justice Reform**

This action has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule does not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

**C. Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are 811 current users of the Science and Technology's (S&T) laboratory testing services. Such users of services include food processors, handlers, growers, government agencies, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). Laboratory tests for commodities are provided to all businesses on a voluntary basis and user fees are set at an hourly rate. Any decision to discontinue the use of the laboratory services and obtain new contracts with other governmental agencies or private laboratories would not hinder the food processors or industry members from marketing their products. User fee costs to entities would be proportional to their use of testing services, so that costs are shared equitably by all users.

The last fee increases for the Laboratory Program testing services

became effective on May 4, 1998 (63 FR 16370-16375). Since that time, there has been both a decline in revenue and an increase in costs. This reflects a shift in usage patterns on the part of applicants for testing services and change to government programs. For example, several federal commodity purchasing programs are now relying heavily on vendor certification rather than government laboratory testing; a larger percentage of peanut aflatoxin analyses are performed by other, non-S&T laboratories; testing of tobacco samples is down; and poultry testing is decreasing due to changing importer country requirements. In addition, some companies are doing their own company and in-house analyses rather than using government laboratory testing services. Further, there has been a noticeable decrease in requested dairy product testing with the scaling back of the dairy price support program. Several streamlining actions to be completed in FY 2000 will result in cost savings. They include staff and space reductions or closing of laboratories. However, overall, costs are increasing despite these efforts. Employee salary and benefits, which account for approximately 68 percent of FY 2000 operating budget, have increased 4.8 to 5.59 percent, depending on the locality, since January 2000. For FY 1999, these increases were 3.54 to 4.02 percent, depending on locality. Rents, utilities, communications, and other overhead costs increased 5.1 percent during FY 1999. These overhead costs are projected to increase by the same percentage for FY 2000.

In fiscal year 1999, the S&T Laboratory Program obligatory costs exceeded revenues by \$1,423,869 with costs at \$6,419,006 and revenue at \$4,995,137. There was an \$807,299 decline in revenue in fiscal year 1999. For FY 2000 the S&T program expects to report a \$1,562,534 deficit at the current fees because there are expected to be lower numbers of samples for analysis with all commodities at our laboratories. The S&T program projected costs and revenues for FY 2000 are \$6,513,730 and \$4,951,196 respectively without a fee increase.

The AMS estimates that this rule would yield \$1,584,383 overall in additional laboratory testing program revenues during FY 2000. The laboratory hourly fee rate would increase by approximately 24.1 percent from \$36.26, as last revised effective May 4, 1998. The new standard laboratory service fee rate would be \$45.00 per hour. This fee would also apply to tests which are not listed in the fee schedules (Tables 1 through 8). The

premium laboratory rate for appeals, holiday and overtime service would be \$67.50 per analysis hour or one and one half times the fees listed in Tables 1 through 8. This represents a 24.1 percent increase. The fees in Tables 1 through 8 would also be amended. Most of these would increase. Without an increase, anticipated revenue would not adequately cover increasing program costs. FY 2000 revenues for laboratory testing are expected to be \$4,951,196 at the current hourly fee rates, obligatory costs are projected at \$6,513,730, and trust fund balance would be \$797,211, which is below necessary reserve level (\$2,552,243). With the fee increase, FY 2000 revenues are projected to be \$5,017,147 with obligatory costs of \$6,400,480 and trust balance at \$874,667. Users of S&T testing services are under no obligation to use them. However, it is necessary for AMS to recover the cost of these services. The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) provides for the collection of reimbursable fees from users of the program services to cover, as nearly as practicable, the costs of the services rendered.

Other miscellaneous and unsubstantial changes are proposed that would not adversely affect users of the program services. Related proposed fee increases represent the minimal fee increases necessary to cover the costs of operating the services provided under

the S&T program. Accordingly, the Administrator has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

#### D. Paperwork Reduction Act

This proposed rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### E. Background and Proposed Fees

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408–42448) to combine all AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various AMS commodity programs (Cotton, Poultry, Fruit and Vegetable, Tobacco, Dairy, and Livestock and Seed) to its Science and Technology (S&T) program, formerly the Science Division and the Science and Technology Division (S&TD).

All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997. The prior rules included fees charged for testing and related services under the diversified S&T programs and set an hourly analytical testing rate. The

current standard hourly rate of \$36.26 and the premium hourly rate of \$54.39 have been in effect since the April 2, 1998 rule (63 FR 16370—16375).

The S&T laboratory testing programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing standards. In addition, the laboratory tests establish quality standards for agricultural commodities. The Act also requires that reasonable fees be collected from the users of the services to cover as nearly as possible the costs of maintaining the programs.

In addition to raising hourly fees, there is a need to amend all general schedules and listing of fees for official laboratory test services in tables 1 through 8 in Part 91, Subpart I due to rapid changes in analytical methodologies and customer service needs. Under the present regulations the fee schedules list 200 items of laboratory services in part 91. Many additions and deletions of laboratory tests have occurred since the last rule published on April 2, 1998 (63 FR 16370—16375). The following tables 1 through 8 compare current fees and charges with proposed fees and charges for the laboratory testing of food and fiber products as found at 7 CFR 91.37:

TABLE 1.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 1—Single Test Laboratory Fees for Proximate Analyses.	Ammonia, Ion Selective Electrode .....	\$81.59	\$101.25
	Ash, Total .....	36.26	45.00
	Ash, Acid Insoluble .....	54.39	( <sup>2</sup> )
	Chloride, Salt Titration (Dairy) .....	18.13	22.50
	Fat, Acid Hydrolysis (Cheese) .....	36.26	45.00
	Fat Acid Hydrolysis (Mojonnier) .....	36.26	45.00
	Fat (Dairy Prod. Except Cheese) .....	18.13	22.50
	Fat (Dry Basis) .....	None	67.50
	Fat, Ether Extraction (Soxhlet) .....	36.26	45.00
	Fat (Kohman) .....	( <sup>1</sup> )	45.00
	Fat, Microwave-Solvent Extract .....	36.26	45.00
	Fiber, Crude .....	72.52	( <sup>2</sup> )
	Moisture, Distillation .....	36.26	45.00
	Moisture, Oven .....	18.13	22.50
	Moisture (Kohman) .....	( <sup>1</sup> )	11.25
	Protein, Combustion .....	72.52	90.00
	Protein, Kjeldahl .....	72.52	90.00
	Salt, Back Titration .....	27.20	33.75
	Salt, Potentiometric .....	18.13	22.50
	Salt (Rapid) .....	( <sup>1</sup> )	33.75
Standard hourly rate .....	36.26	45.00	
Premium hourly rate .....	54.39	67.50	

<sup>1</sup> None.

<sup>2</sup> Removed.

TABLE 2.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 2—Single Test Laboratory Fees for Lipid Related Analysis.	Acid Degree Value (Dairy) .....	\$36.26	\$45.00
	Acidity, Titratable .....	9.07	22.50
	Carotene, Spectrophotometric .....	90.65	( <sup>2</sup> )
	Catalase Test .....	18.13	( <sup>2</sup> )
	Cholesterol .....	90.65	( <sup>2</sup> )
	Color (Honey) .....	18.13	( <sup>2</sup> )
	Color, NEPA (Eggs) .....	36.26	( <sup>2</sup> )
	Consistency, Bostwick (Cooked) .....	18.13	( <sup>2</sup> )
	Consistency, Bostwick Uncooked) .....	18.13	( <sup>2</sup> )
	Density (Specific Gravity) .....	9.07	11.25
	Dispersibility (I Dry Whole Milk) .....	( <sup>1</sup> )	67.50
	Dispersibility (Moates-Dabbah) .....	18.13	22.50
	Fat Stability, AOM .....	36.26	45.00
	Fatty Acid Profile, AOAC—GC .....	145.04	180.00
	Flash Point Test only .....	72.52	90.00
	Free Fatty Acids .....	18.13	22.50
	Meltability (Process Cheese) .....	18.13	22.50
	Peanut Oil Analyses (Oil, Moisture, Free Fatty Acid, Ammonia, and Foreign Matter).	( <sup>1</sup> )	45.00
	Any 1 of the oilseed oil analyses .....	( <sup>1</sup> )	22.50
	Peroxidase Test .....	18.13	( <sup>2</sup> )
	Peroxide Value .....	27.20	33.75
	Smoke Point Test only .....	72.52	90.00
	Smoke Point and Flash Point .....	126.91	157.50
	Solids, Total (Oven Drying) .....	18.13	22.50
	Soluble Solids, Refractometer .....	18.13	22.50

<sup>1</sup> None.<sup>2</sup> Removed.

TABLE 3.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee	
Table 3—Single Test Laboratory Fees for Food Additive (Direct and Indirect).	Aflatoxin (Dairy, Eggs) .....	\$126.91	( <sup>2</sup> )	
	Alar or Daminozide Residue .....	217.56	( <sup>3</sup> )	
	Amitraz Residue, GLC .....	217.56	\$270.00	
	Alcohol (Qualitative) .....	72.52	( <sup>3</sup> )	
	Alkalinity of Ash .....	54.39	( <sup>3</sup> )	
	Antibiotic, Qualitative (Dairy) .....	18.13	22.50	
	Antibiotic, Quantitative .....	389.86	393.75	
	Ascorbates (Qualitative—Meats) .....	18.13	22.50	
	Ascorbic Acid, Titration .....	36.26	45.00	
	Ascorbic Acid, Spectrophotometric .....	36.26	45.00	
	Benzene, Residual .....	72.52	( <sup>3</sup> )	
	Brix, Direct Percent Sucrose .....	18.13	22.50	
	Brix, Dilution .....	18.13	22.50	
	Butylated Hydroxyanisole (BHA) .....	54.39	67.50	
	Butylated Hydroxytoluene (BHT) .....	54.39	67.50	
	Caffeine, Micro Bailey-Andrew .....	54.39	67.50	
	Caffeine, Spectrophotometric .....	36.26	78.75	
	Calcium .....	54.39	( <sup>3</sup> )	
	Citric Acid, GLC or HPLC .....	54.39	67.50	
	Chlorinated Hydrocarbons: Pesticides and Industrial Chemicals—Initial Screen.	145.04	180.00	
	Second Column Confirmation of Analyte .....	36.26	45.00	
	Confirmation on Mass Spectrometer .....	72.52	90.00	
	Dextrin (Qualitative) .....	18.13	22.50	
	Dextrin (Quantitative) .....	108.78	135.00	
	Filth, Heavy (Dairy) .....	90.65	112.50	
	Filth, Heavy (Eggs) .....	145.04	180.00	
	Filth, Light (Eggs) .....	90.65	112.50	
	Filth, Light & Heavy (Eggs) .....	217.56	270.00	
	Fines .....	( <sup>1</sup> )	22.50	
	Flavor (Dairy) .....	9.07	11.25	
	Flavor (Products except Dairy) .....	27.20	33.75	
	Fumigants:			
	Initial Screen—			
	Dibromochloropropane (DBCP) .....	36.26	45.00	
	Ethylene Dibromide .....	36.26	45.00	

TABLE 3.—AMENDED—Continued

Name of specific program	Type of analysis	Current fee	Proposed fee
	Methyl Bromide .....	36.26	45.00
	Confirmation on Mass Spectrometer—Each individual fumigant residue.	72.52	90.00
	Glucose (Qualitative) .....	27.20	33.75
	Glucose (Quantitative) .....	63.46	78.75
	Glycerol (Quantitative) .....	108.78	135.00
	Gums .....	108.78	135.00
	Heavy Metal Screen .....	317.28	326.25
	High Sucrose Content or Avasucrol (Holland Eggs) .....	145.04	( <sup>3</sup> )
	Hydrogen Ion Activity, pH .....	18.13	( <sup>3</sup> )
	Mercury, Cold Vapor AA .....	90.65	135.00
	Metals (Other Than Heavy, Each Metal) .....	72.52	( <sup>3</sup> )
	Monosodium Dihydrogen Phosphate .....	145.04	180.00
	Monosodium Glutamate .....	145.04	180.00
	Niacin .....	72.52	90.00
	Nitrites (Qualitative) .....	18.13	( <sup>3</sup> )
	Nitrites (Quantitative) .....	108.78	( <sup>3</sup> )
	Ochratoxin A .....	( <sup>1</sup> )	67.50
	Odor .....	9.07	11.25
	Organic Acids (in Eggs) .....	( <sup>1</sup> )	180.00
	Oxygen .....	18.13	22.50
	Palatability and Odor:		
	First Sample .....	27.20	22.50
	Each Additional Sample .....	18.13	( <sup>3</sup> )
	Penicillin .....	( <sup>1</sup> )	67.50
	Phosphatase, Residual .....	36.26	( <sup>3</sup> )
	Phosphorus .....	72.52	( <sup>3</sup> )
	Propylene Glycol, Codistillation: (Qualitative) .....	72.52	( <sup>3</sup> )
	Pyrethrin Residue (Dairy) .....	145.04	180.00
	Scorched Particles .....	9.07	22.50
	Sodium, Potentiometric .....	36.26	45.00
	Sodium Benzoate, HPLC .....	54.39	67.50
	Sodium Lauryl Sulfate (SLS) .....	290.08	( <sup>3</sup> )
	Sodium Silicoaluminate (Zeolox) .....	72.52	90.00
	Solubility Index .....	18.13	11.25
	Starch (in Dry Milk) .....	( <sup>1</sup> )	22.50
	Starch, Direct Acid Hydrolysis .....	108.78	90.00
	Sugar, Polarimetric Methods .....	36.26	33.75
	Sugar Profile, HPLC—		
	One type sugar from profile .....	108.78	135.00
	Each additional type sugar .....	18.13	22.50
	Sugars, Non-Reducing .....	108.78	135.00
	Sugars, Total as Invert .....	72.52	( <sup>3</sup> )
	Sulfites (Qualitative) .....	27.20	( <sup>3</sup> )
	Sulfur Dioxide, Direct Titration .....	36.26	45.00
	Sulfur Dioxide, Monier-Williams .....	54.39	( <sup>3</sup> )
	Toluene, Residual .....	72.52	90.00
	Triethyl Citrate, GC (Quantitative) .....	36.26	( <sup>3</sup> )
	Vitamin A, Carr-Price (Dairy) .....	45.33	112.50
	Vitamin A, HPLC .....	90.65	90.00
	Vitamin B-1 (Thiamin) .....	72.52	90.00
	Vitamin B-2 (Riboflavin) .....	72.52	90.00
	Vitamin D, HPLC (Vitamins D2 & D3/Dairy) .....	308.21	382.50
	Whey Protein Nitrogen .....	27.20	33.75
	Whey Protein Nitrogen, Kjeldahl .....	( <sup>1</sup> )	112.50
	Xanthidrol Test for Urea .....	54.39	67.50
	This is an optional test to the extraneous material isolation test.		

<sup>1</sup> None.<sup>2</sup> Redistributed.<sup>3</sup> Removed.

TABLE 4.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 4—Single Test Laboratory Fees for Other Chemical and Physical Component Analyses	Available Carbon Dioxide (Baking Powders) .....	\$145.04	( <sup>2</sup> )
	Capsaicin (Hot Sauce) .....	72.52	( <sup>2</sup> )
	Cheese (Fines) .....	( <sup>1</sup> )	\$11.25
	Color, Apparent-Visual .....	9.07	11.25
	Complete Kohman Analysis-DairyExtractable Color in Spices.	36.26	45.00
	Grape Juice Absorbancy Ratio .....	18.13	( <sup>2</sup> )
	Hot Water Insolubles .....	( <sup>1</sup> )	67.50
	Hydroxymethylfurfural (Honey) .....	36.26	( <sup>2</sup> )
	Jelly Strength (Bloom) .....	90.65	( <sup>2</sup> )
	Linolenic Acid. ....	72.52	90.00
	Methyl Anthranilate .....	36.26	( <sup>2</sup> )
	Net Weight (Per Can) .....	9.07	11.25
	Non-Volatile Methylene Chloride Extract .....	90.65	112.50
	Overrun for Whipped Topping .....	27.20	33.75
	Particle Size (Ether Wash) .....	18.13	22.50
	pH .....	( <sup>1</sup> )	11.25
	pH—Quinhydrone (Cheese) .....	18.13	22.50
	Potassium Iodide (Table Salt) .....	54.39	67.50
	Protein Reducing Substances .....	( <sup>1</sup> )	45.00
	Quinic Acid (Cranberry Juice) .....	63.46	78.75
	Serum Drainage for Whipped Topping .....	18.13	22.50
	Sieve or Particle Size .....	18.13	22.50
	Rate of Wetting (Nondairy Creamer) .....	18.13	22.50
	Reducing Sugars .....	72.52	90.00
	Water Activity .....	27.20	22.50
	Water Insoluble Inorganic Residues (WIIR) .....	72.52	90.00
Yellow Onion Test .....	27.20	( <sup>2</sup> )	

<sup>1</sup> None.  
<sup>2</sup> Removed.

TABLE 5.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 5—Single Test Laboratory Fees for Microbiological Analyses.	Aerobic (Standard) Plate Count .....	\$18.13	\$22.50
	Anaerobic Bacterial Plate Count .....	27.20	33.75
	<i>Bacillus cereus</i> .....	72.52	90.00
	Bacterial Direct Microscopic Count .....	36.26	45.00
	<i>Campylobacter jejuni</i> .....	145.04	( <sup>2</sup> )
	Coliform Plate Count (Dairy Products) .....	18.13	22.50
	Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count).	27.20	33.75
	Coliforms, Most Probable Number (MPN):		
	Step 1 .....	27.20	33.75
	Step 2 .....	27.20	22.50
	Direct Microscopic Clump Count .....	( <sup>1</sup> )	11.25
	Direct Microscopic Clump Count Greater Than 75 Million.	( <sup>1</sup> )	45.00
	<i>E. coli</i> , Presumptive MPN (Additional) .....	54.39	45.00
	<i>E. coli</i> (MUG) .....	( <sup>1</sup> )	33.75
	<i>Enterococci</i> Count .....	108.78	135.00
	Howard Mold Count .....	( <sup>1</sup> )	56.25
	<i>Lactobacillus</i> Count .....	45.33	56.25
	Lactic Acid Tolerant Microbes .....	( <sup>1</sup> )	22.50
	<i>Listeria monocytogenes</i> Confirmation Analysis:		
	Step 1 .....	54.39	67.50
	Step 2 .....	54.39	56.25
	Step 3 (Confirmation) .....	90.65	112.50
	Parasite Identification .....	145.05	180.00
	Psychrotrophic Bacterial Plate Count .....	27.20	45.00
	Salmonella (USDA Culture Method):		
	Step 1 (Dairy Products) .....	\$36.26	( <sup>2</sup> )
	Step 1 .....	54.39	\$78.75
	Step 2 .....	27.20	33.75
	Step 3 (Confirmation) .....	54.39	56.25
	Serological Typing (Optional) .....	90.65	( <sup>2</sup> )
	<i>Salmonella</i> Enumeration (Complete Test) .....	108.78	135.00
	<i>Salmonella</i> (Rapid Methods):		

TABLE 5.—AMENDED—Continued

Name of specific program	Type of analysis	Current fee	Proposed fee
	Step 1 .....	72.52	78.75
	Step 2 .....	27.20	33.75
	Step 3 (Confirmation) .....	54.39	56.25
	<i>Salmonella typhi</i> (Meat Products) .....	36.26	45.00
	<i>Staphylococcus aureus</i> , Direct Plating .....	(1)	67.50
	<i>Staphylococcus aureus</i> , MPN: With Coagulase Positive Confirmation .....	63.46	78.75
	Thermoduric Bacterial Plate Count .....	27.20	33.75
	Yeast and Mold Count .....	18.13	22.50
	Yeast and Mold Differential Confirmation .....	(1)	22.50
	Yeast and Mold Differential Plate Count .....	27.20	33.75
	Yeast or Mold Confirmation .....	(1)	22.50

<sup>1</sup> None.  
<sup>2</sup> Removed.

TABLE 6.—[AMENDED] LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Current fee per single analysis	Current fee per pair analyses	Proposed fee per single analysis	Proposed fee per pair analyses <sup>1</sup>
Peanut Butter (TLC—CB, HPLC, Affinity Column) Affinity Column) .....	\$36.26	( <sup>3</sup> )	\$45.00	( <sup>3</sup> )
Corn (TLC—CB, HPLC, Affinity Column) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Roasted Peanuts (TLC—BF) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Brazil Nuts (TLC—BF) .....	72.52	( <sup>3</sup> )	90.00	( <sup>3</sup> )
Pistachio Nuts (TLC—BF, HPLC) .....	72.52	( <sup>3</sup> )	90.00	( <sup>3</sup> )
Shelled Peanuts (TLC, Affinity Column) .....	17.00	\$34.00	45.00	\$38.00
Shelled Peanuts (HPLC) .....	31.00	62.00	45.00	70.00
Tree Nuts (TLC) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Oilseed Meals (TLC, HPLC, Affinity Column) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Edible Seeds (TLC) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Dried Fruit (TLC) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Small Grains (TLC) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
In-Shell Peanuts (TLC, Affinity Column) .....	17.00	34.00	45.00	38.00
In-Shell Peanuts (HPLC) .....	( <sup>2</sup> )	( <sup>2</sup> )	45.00	70.00
Silage; Other Grains (TLC) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Submitted Samples (TLC, HPLC, Affinity Column) .....	36.26	( <sup>3</sup> )	45.00	( <sup>3</sup> )
Aflatoxin (Dairy, Eggs) .....	126.91	( <sup>2</sup> )	157.50	( <sup>3</sup> )

<sup>1</sup> Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1—AB, 2—AB, 3—AB, and 1—CD for single or pair of analyses is \$19.00 or \$38.00, respectively using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column assay with fluorometric quantitation. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the Best Foods method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per single or pair of analyses using High Pressure Liquid Chromatography (HPLC) is \$35.00 and \$70.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science and Technology's current hourly rate of \$45.00.

<sup>2</sup> None.  
<sup>3</sup> NA=Not Applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL—TO SCIENCE AND TECHNOLOGY'S LABORATORY TEST FEES

Laboratory service description	Current list fee	Proposed list fee
Sample Grinding by Vertical Cutter Mixer (VCM) .....	\$18.13 .....	\$22.50.
Sample Grinding Canned Boned Poultry .....	36.26 .....	11.25 per can.
Sample Grinding by Dickens Hammer Mill .....	None .....	11.25.
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):		
Per pouch or raw sample .....	9.07 .....	11.25.
Per tray pack .....	18.13 .....	22.50.
Compositing Multiple Subsamples for an Individual Test Sample—Unit per Subsample.	9.07 .....	Varies—Preparation fee based on \$45.00 per hour.

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	Current list charge	Proposed list charge
Established Courier Expense at Albany, Georgia S&T Laboratory.	\$2.15 .....	Removed.

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO SAMPLE RECEIPT AND ANALYSIS REPORT—Continued

Service description	Current list charge	Proposed list charge
Courier Expense at Other AMS Laboratories: Mileage Charge Set at \$0.325 Per Mile Round Trip from Laboratory to Delivery Site..	Varies .....	Varies (based on total mileage).
Facsimile Charge (Per Analysis Report) .....	\$3.20 minimum up to first 3 pages, then \$1.10 per page.	\$3.20 minimum up to first 3 pages, then \$1.50 per page.
Additional Analysis Report or Extra Certificate (½ hour charge minimum).	\$18.13 per report or certificate reissued .....	\$22.50 per report or certificate issued.

Currently, there are 200 tests or laboratory services in the current fee schedules in Tables 1 through 8 of Part 91 of the regulations. This proposed rule recommends removing 41 laboratory tests or services which have been found to be obsolete or which duplicate tests performed by other Agricultural Marketing Service programs. The proposed rule adds 28 new analytical tests that are frequently requested by many of Science and Technology's 811 customers. The customers for our laboratory services would benefit with the increased convenience of choosing newer and perhaps less costly analytical methods for determining a particular analyte in a commodity product. Once this rule becomes effective, there would be 187 laboratory test and service descriptions with scheduled fees in tables 1 through 8 of part 91 of the regulations. The majority of the fees have increased by 24.1 percent. However, 11 fees have increased by a greater percentage and 8 fees have been lowered. Although the fees set for the various tests are based on the hourly fee, it is necessary to consider other factors when setting fees for some of the tests. For example, the large increase in proposed fees for some laboratory tests is due to the additional need to recover the large increase in costs for specialized chemicals or microbiological media and other materials for performing these tests. Therefore, the titratable acidity and the scorched particles analyses would increase from \$9.07 to \$22.50, and the Carr-Price vitamin A (Dairy) test would increase from \$45.33 to \$112.50. For the same reason, S&T is proposing to increase the cost of performing step 1 for the Salmonella (USDA culture method) to \$78.75 from \$54.39 and the fee for performing the psychrotrophic bacterial plate count would change from \$27.20 to \$45.00.

The general 24.1 percent increase in user fees for laboratory services are intended to cover all of the costs associated with S&T Laboratory Program. In fee tables 1 through 8 in 7 CFR part 91, S&T is proposing to increase the fees for the quantitative

antibiotic, the heavy metal screen, the step 1 *Listeria monocytogenes* analysis, the step 3 or confirmation *Salmonella* analysis (both the USDA culture and rapid methods), and the step 1 *Salmonella* analysis (rapid method) by 1, 2.8, 3.4, 3.4 (both), and 8.6 percent respectively. In addition, certain laboratory fees are proposed to be lowered by 17.3 percent. These are the palatability and odor test, the direct acid hydrolysis starch test, the water activity test, the step 2 MPN coliforms test, and the MPN presumptive *E. coli* test. S&T is also proposing to lower the fees for the solubility index, the sugar polarimetric methods, and the HPLC vitamin A analysis by 37.9, 6.9, and 0.7 percent respectively.

In its analysis of projected costs for fiscal years 1999 and 2000, AMS has identified increases in the costs of providing laboratory testing services despite declining revenues. In fiscal year 1999, the S&T Laboratory Program obligatory costs exceeded revenues by \$1,423,869 with costs at \$6,419,006 and revenue at \$4,995,137. There was an \$807,299 decline in revenue in fiscal year 1999. For FY 2000 the S&T program expects to report a \$1,562,534 deficit at the current fees because there are expected to be lower numbers of samples for analysis with all commodities at our laboratories. The S&T program projected costs and revenues for FY 2000 are \$6,513,730 and \$4,951,196 respectively without a fee increase. The corresponding decrease in revenue with lower numbers of samples are attributable mainly to a shift in usage patterns on the part of applicants for testing services and change to government programs. For example, several federal commodity purchasing programs are now relying heavily on vendor certification rather than government laboratory testing; a larger percentage of peanut aflatoxin analyses are performed by Peanut Administrative (PAC) approved private laboratories; testing of tobacco samples is down; and poultry testing is decreasing due to changing importer country requirements. In addition, some companies are doing their own

company analyses rather than using government laboratory testing services. Further, there has been a noticeable decrease in requested dairy product testing as a result of an ongoing phase out of the dairy price support program. Several streamlining actions to be completed in FY 2000 will result in cost savings. They include staff and space reductions or closing of laboratories. For example, S&T has voluntarily closed aflatoxin testing facilities at Dothan, Alabama and Ashburn, Georgia that are currently listed in 7 CFR part 91. Overall, costs are increasing despite these efforts. Employee salary and benefits, which account for approximately 68 percent of FY 2000 operating budget, have increased 4.8 to 5.59 percent, depending on the locality, since January 2000. For FY 1999, these increases were 3.54 to 4.02 percent, depending on locality. Rents, utilities, communications, and other overhead costs increased 5.1 percent during FY 1999. These overhead costs are projected to increase by the same percentage for FY 2000.

The AMS estimates that this rule would yield \$1,584,383 overall in additional laboratory testing program revenues during FY 2000. The laboratory hourly fee rate would increase by approximately 24.1 percent from \$36.26, as last revised effective May 4, 1998 (63 FR 16370). The new standard laboratory service fee rate would be \$45.00 per hour. This fee would also apply to tests which are not listed in the fee schedules (Tables 1 through 8). The premium laboratory rate for appeals, holiday and overtime service would be \$67.50 per analysis hour or one and one half times the fees listed in Tables 1 through 8. This represents an approximate 24.1 percent increase. The fees in Tables 1 through 8 would also be amended. Most of these would increase. Without an increase, anticipated revenue would not adequately cover increasing program costs. FY 2000 revenues for laboratory testing are expected to be \$4,951,196 at the current hourly fee rates, obligatory costs are projected at \$6,513,730, and trust fund balances would be \$797,211,

which is below necessary reserve level (\$2,552,243). With the fee increase, FY 2000 revenues are projected to be \$5,017,147 with obligatory costs of \$6,400,480 and trust balance at \$874,667. Users of S&T testing services are under no obligation to use them. However, it is necessary for AMS to recover the cost of these services. The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) provides for the collection of reimbursable fees from users of the program services to cover, as nearly as practicable, the costs of the services rendered.

All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997. Hence, this proposal also has name, position title, address corrections, and other changes which are administrative in nature as a result of these Agency restructuring efforts. The term "Science and Technology Division" would be changed to "Science and Technology." The term "Director" would be replaced by the term "Deputy Administrator." Section 91.5 would list new addresses for the Science and Technology regional laboratories, headquarters offices, the Information Technology (IT) office, the Statistical Branch office, and the offices for residue programs. The name "Residue Branch" in section 91.5 would be more appropriately named "Pesticide Data Branch." In section 91.9, the Technical Service Branch Chief would replace the defunct Laboratory Operations Coordination Staff Chief position. In sections 91.23, 93.13, 94.4 and 98.4, the analytical method references would have updated addresses. Section 91.37 would list a world wide web ([www](http://ams.usda.gov/science)) site (<http://ams.usda.gov/science>) in which to obtain updated schedules of the laboratory testing fees. In section 91.37, a new fee (\$11.25) in table 7 for sample grinding by Dickens hammer mill would be listed. In table 8 of section 91.37, a revised facsimile charge (\$1.50) for an additional page would be listed. In section 91.40, the established courier expense at the S&T peanut aflatoxin laboratory in Albany, Georgia would be removed.

This proposed rule provides for a 20-day comment period. This period is deemed appropriate in view of the need to make changes to the fees as soon as possible, in order to cover the necessary and ongoing expenditures of the S&T Laboratory Program. All comments which are received during the comment period will be considered before this rule is finalized.

## List of Subjects

### 7 CFR Part 90

Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

### 7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

### 7 CFR Part 92

Agricultural commodities, Laboratories, Pesticides and pests, Tobacco.

### 7 CFR Part 93

Agricultural commodities, Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables.

### 7 CFR Part 94

Agricultural commodities, Eggs, Laboratories, Poultry.

### 7 CFR Part 98

Agricultural commodities, Laboratories, Meat and Meat products.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend Title 7, chapter I, subchapter E, of the Code of Federal Regulations as follows:

## PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

### § 90.1 [Amended]

2. In § 90.1, the words "Science and Technology Division" are revised to read "Science and Technology", the words "Science and Technology Division's" are revised to read "Science and Technology's", and the word "S&TD" is revised to read "S&T" everywhere they appear.

### § 90.2 [Amended]

3. In § 90.2, the definitions of "Director," "Division" and "Laboratories" are removed and new definitions of "Deputy Administrator", "Laboratories", and "Program" are added in alphabetical order read as follows:

### § 90.2 General terms defined.

\* \* \* \* \*

**Deputy Administrator.** The Deputy Administrator of the Science and Technology program of the Agricultural Marketing Service agency, or any officer or employee of this agency to whom authority has heretofore been delegated,

or to whom authority may hereafter be delegated, to act.

**Laboratories.** Science and Technology laboratories performing the official analyses described in this subchapter.

**Program.** The Science and Technology (S&T) program of the Agricultural Marketing Service (AMS) which performs official analytical testing services, issues licenses for cottonseed chemists, and conducts quality assurance reviews and grants accreditation or certification for commodity testing programs of laboratories.

\* \* \* \* \*

### § 90.3 [Amended]

4. In § 90.3, the words "Science and Technology Division" are revised to read "Science and Technology".

### § 90.101 [Amended]

5. In § 90.101, the words "Science and Technology Division" are revised to read "Science and Technology".

### § 90.102 [Amended]

6. In § 90.102, the word "Director" is revised to read "Deputy Administrator".

## PART 91—[AMENDED]

7. The authority citation for part 91 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

### § 91.1 [Amended]

8. In § 91.1, the words "Science and Technology Division" are revised to read "Science and Technology".

9. In § 91.2, the definition for "Applicant" is revised and the definition for "Agency" is added to read as follows:

### § 91.2 Definitions.

\* \* \* \* \*

**Agency.** The Agricultural Marketing Service agency of the United States Department of Agriculture.

\* \* \* \* \*

**Applicant.** Any person or organization requesting services provided by the Science and Technology (S&T) programs.

\* \* \* \* \*

### § 91.3 [Amended]

10. In § 91.3, the words "Division Director" are revised to read "Deputy Administrator".

11. Section 91.4 is revised to read as follows:

### § 91.4 Kinds of services.

(a) **Analytical tests.** Analytical laboratory testing services under the regulations in this subchapter consist of microbiological, chemical, and certain

other analyses, requested by the applicant and performed on tobacco, seed, dairy, egg, fruit and vegetable, meat and poultry products, and related processed products. Analyses are performed to determine if products meet Federal specifications or specifications defined in purchase contracts and cooperative agreements. Laboratory analyses are also performed on egg products as part of the mandatory Egg Products Inspection Program under the management of USDA's Food Safety and Inspection Service (FSIS) as detailed in 9 CFR 590.580.

(b) *Examination and licensure.* The manager of the Science and Technology's Cottonseed Chemist Licensing Program administers examinations and licenses chemists to certify the official grade of cottonseed.

(c) *Quality assurance reviews.* The Science and Technology representative performs on-site laboratory quality assurance reviews (both required and voluntary) to ensure that appropriate technical methods, equipment maintenance, and quality control procedures are being observed.

(d) *Consultation.* Technical advice, statistical science consultation, and quality assurance program assistance are provided by the representatives for the Science and Technology programs for domestic and foreign laboratories.

12. Section 91.5 is revised to read as follows:

**§ 91.5 Where services are offered.**

(a) Services are offered to applicants at the Science and Technology laboratories and facilities in the following list.

(1) *Science and Technology regional laboratories.* A variety of tests and laboratory analyses are available in two regional multi-disciplinary Science and Technology (S&T) laboratories, and are located as follows:

- (i) USDA, AMS, S&T, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618-5391.
- (ii) USDA, AMS, S&T, Eastern Laboratory (Microbiology), 2311-B Aberdeen Boulevard, Gastonia, NC 28054.
- (iii) USDA, AMS, S&T, Eastern Laboratory (Chemistry), 645 Cox Road, Gastonia, NC 28054.

(2) *Science and Technology (S&T) aflatoxin laboratories.* The specialty laboratories performing aflatoxin testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products and other commodities are located as follows:

- (i) USDA, AMS, S&T, 1211 Schley Avenue, Albany, GA 31707.

- (ii) USDA, AMS, S&T, c/o Golden Peanut Company, Mail: P.O. Box 279, 301 West Pearl Street, Aulander, NC 27805.

- (iii) USDA, AMS, S&T, 610 North Main Street, Blakely, GA 31723.

- (iv) USDA, AMS, S&T, 107 South Fourth Street, Madill, OK 73446.

- (v) USDA, AMS, S&T, c/o Cargill Peanut Products, Mail: P.O. Box 272, 715 North Main Street, Dawson, GA 31742-0272.

- (vi) USDA, AMS, S&T, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434.

(3) *Citrus laboratory.* The Science and Technology's citrus laboratory specializes in testing citrus juices and other citrus products and is located as follows: USDA, AMS, S&T Eastern Laboratory (Citrus), 98 Third Street, S.W., Winter Haven, FL 33880.

(4) *Program laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(5) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science and Technology laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel are available.

(6) *The Plant Variety Protection (PVP) Office.* The PVP office and plant examination facility of the Science and Technology programs issues certificates of protection to developers of novel varieties of plants which reproduce sexually. The PVP office is located as follows: USDA, AMS, Science & Technology, Plant Variety Protection Office, National Agricultural Library Building, Room 500, 10301 Baltimore Boulevard, Beltsville, MD 20705-2351.

(7) *Science and Technology headquarters offices.* The examination, licensure, quality assurance reviews, laboratory accreditation/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follows: USDA, AMS, Science and Technology, Office of the Deputy Administrator, Room 3507 South Agriculture Bldg., Mail Stop 0222, 1400 Independence Ave., SW., Washington, DC 20250.

(8) *The Information Technology (IT) Office.* The IT office of the Science and Technology programs is headed by AMS's Chief Information Officer (CIO) and provides information technology services and management systems to the Agency and other agencies within the USDA. The main IT office is located as follows: USDA, AMS, Science and Technology, Office of the Chief Information Officer, 1752 South Agriculture Bldg., 1400 Independence Ave., SW., Washington, DC 20250.

(9) *Statistical Branch office.* The Statistical Branch office of Science and Technology (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistical Branch office devices sample plans and performs consulting services for research studies in joint efforts with or in a leading role with other program areas of AMS or of the USDA. The main Statistical Branch office is located as follows: USDA, AMS, S&T Statistical Branch, 0611 South Agriculture Bldg., 1400 Independence Ave., SW., Washington, DC 20250.

(10) *Offices for Pesticide Residue Programs.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by certified applicators and services afforded by the Pesticide Data Program (PDP) are provided by offices located as follows:

- (i) USDA, AMS, Science and Technology, Pesticide Data Branch, 8700 Centreville Road, Suite 200, Manassas, VA 20110-8411.
- (ii) USDA, AMS, Science and Technology, Pesticide Records Branch, 8700 Centreville Road, Suite 202, Manassas, VA 20110-8411.
- (iii) USDA, AMS, Science and Technology, Office of Associate Deputy Administrator, Room 3522 South Agriculture Bldg., 1400 Independence Ave., SW., Washington, DC 20250.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science and Technology laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Room 0727 South Building, Mail Stop 0271, Washington, DC 20090-6456.

**§ 91.6 [Amended]**

13. In § 91.6, paragraph (a), the words "Science and Technology Division" are

revised to read "Science and Technology".

14. Section 91.9 is revised to read as follows:

**§ 91.9 How to make an application.**

(a) *Voluntary.* An application for analysis and testing may be made by contacting the director or supervisor of the Science and Technology laboratory where the service is provided, or by contacting the Technical Services Branch Chief at Science and Technology Headquarters, Washington, DC. A list of the Science and Technology laboratories is included in § 91.5.

(b) *Mandatory.* In the case of mandatory analyses, such as those required to be performed on eggs and egg products, application for services may be submitted to the office or USDA agency which administers the program, or by contacting an inspector or grader who is involved with the program.

15. Section 91.23 is revised to read as follows:

**§ 91.23 Analytical methods.**

Most analyses are performed according to approved procedures described in manuals of standardized methodology. These standard methods are the specific methods used. Alternatively, equivalent methods prescribed in cooperative agreements are used. The manuals of standard methods most often used by the Science and Technology laboratories are listed as follows:

(a) Approved Methods of the American Association of Cereal Chemists (AACC), American Association of Cereal Chemists/Eagan Press, 3340 Pilot Knob Road, St. Paul, Minnesota 55121-2097.

(b) ASTA's Analytical Methods Manual, American Spice Trade Association (ASTA), 560 Sylvan Avenue, P.O. Box 1267, Englewood Cliffs, New Jersey 07632.

(c) Compendium Methods for the Microbiological Examination of Foods, Carl Vanderzant and Don Splittstoesser (Editors), American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(d) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterobacteriaceae, Elsevier Science, Inc., Regional Sales Office, 655 Avenue of the Americas, P.O. Box 945, New York, NY 10159-0945.

(e) FDA Bacteriological Analytical Manual (BAM), AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(f) Manual of Analytical Methods for the Analysis of Pesticide Residues in

Human and Environmental Samples, EPA 600/9-80-038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(g) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, P.O. Box 3489, 2211 West Bradley Avenue, Champaign, Illinois 61821-1827.

(h) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(i) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), 1701 Pennsylvania Avenue, NW, Washington, DC 20006.

(j) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(k) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association (AWWA) and the Water Pollution Control Federation, AWWA Bookstore, 6666 West Quincy Avenue, Denver, CO 80235.

(l) Test Methods for Evaluating Solid Waste Physical/Chemical Methods, Environmental Protection Agency, Office of Solid Waste, SW-846 Integrated Manual (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

(m) U.S. Army Natick Research, Development and Engineering Center's Military Specifications, approved analytical test methods noted therein, Code NPP-9, Department of Defense Single Stock Point (DODSSP) for Military Specifications, Standards, Building 4/D, 700 Robbins Avenue, Philadelphia, PA 19111-5094.

(n) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN), 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

16. Section 91.24 is revised to read as follows:

**§ 91.24 Reports of test results.**

(a) Results of analyses are provided, in writing, by facsimile, by e-mail or other electronic means to the applicant.

(b) Applicants may call the appropriate Science and Technology laboratory for interim or final results prior to issuance of the formal report. The advance results may be telegraphed, e-mailed, telephoned, or sent by facsimile to the applicant. Any additional expense for advance information shall be borne by the requesting party.

(c) A letter report in lieu of an official certificate of analysis may be issued by a laboratory representative when such action appears to be more suitable than a certificate: *Provided*, that, issuance of such report is approved by the Deputy Administrator.

**§ 91.25 [Amended]**

17. In § 91.25, the words "Division Director" are revised to read "Deputy Administrator".

**§ 91.26 [Amended]**

18. In § 91.26, the words "Division Director" are revised to read "Deputy Administrator", and the word "Division" is revised to read "Science and Technology Program" everywhere they appear.

**§ 91.31 [Amended]**

19. In § 91.31, the words "Division Director" are revised to read "Deputy Administrator".

20. Section 91.32 is revised to read as follows:

**§ 91.32 Where to file for an appeal of a laboratory service and information required.**

(c) Application for an appeal of a laboratory service may be filed with the supervisor in the office or the director of the laboratory facility that issued the certificate or laboratory report on which the appeal analysis covering the commodity product is requested.

(b) The application for an appeal of a laboratory service shall state the location of the lot of the commodity product and the reasons for the appeal; and date and serial number of the certificate covering the laboratory service of the commodity product on which the appeal is requested. In addition, such application shall be accompanied by the original and all available copies of the certificate or laboratory report.

(c) Application for an appeal of a laboratory service may be made orally (in person or by telephone), in writing, by e-mail, by facsimile, or by telegraph. If made orally, written confirmation shall be made promptly.

21. In part 91, subpart I §§ 91.37 through 91.40 are revised to read as follows:

**§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.**

(a) The standard hourly fee rate in this section for the individual laboratory analyses cover the costs of Science and Technology laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in 7 CFR 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.46, 70.71 through 70.72, and 70.75 through 70.78. The hourly fee rates in this part 91 apply to all processed commodity products, except flue-cured and burley tobacco, and exclude aflatoxin analyses, citrus juices and certain citrus products. The printed updated schedules of the laboratory testing fees for processed fruits and vegetables (7 CFR part 93), poultry and egg products (7 CFR part 94), and meat and meat products (7 CFR part 98) will be available for distribution by the individual Laboratory Directors of Science and Technology laboratories listed in § 91.5. The updated schedules of the laboratory testing fees are also available for electronic access on the world wide web (www) site at: <http://ams.usda.gov/science>. The fees for chemical analysis of cottonseed associated with grading and novel variety seed certification under the Plant Variety Protection Act are specified in 7 CFR parts 96 and 97, respectively. Except as otherwise provided in this section, charges will be

made for laboratory analysis at the standard hourly rate of \$45.00 for the time required to perform the service. A minimum charge of one-quarter hour at \$11.25 will be made for service pursuant to each request or certificate issued.

(b) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to the Science and Technology program for the service provided.

When Science and Technology staff provides applied and developmental research and training activities for microbiological, physical and chemical analyses on agricultural commodities the applicant will be charged a fee on a reimbursable cost basis.

**General Schedules of Fees for Official Laboratory Test Services Performed at the AMS Science and Technology Laboratories for Processed Commodity Products**

TABLE 1.—SINGLE TEST LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	List fee
Ammonia, Ion Selective Electrode	\$101.25
Ash, Total	45.00
Chloride, Salt Titration (Dairy)	22.50
Fat, Acid Hydrolysis (Cheese)	45.00
Fat, Acid Hydrolysis (Mojonnier)	45.00
Fat (Dairy Products except Cheese)	22.50
Fat (Dry Basis)	67.50
Fat, Ether Extraction (Soxhlet)	45.00
Fat (Kohman Analysis)	45.00
Fat, Microwave—Solvent Extraction	45.00
Moisture, Distillation	45.00

TABLE 1.—SINGLE TEST LABORATORY FEES FOR PROXIMATE ANALYSES—Continued

Type of analysis	List fee
Moisture, Oven	22.50
Moisture (Kohman Analysis)	11.25
Protein, Combustion	90.00
Protein, Kjeldahl	90.00
Salt, Back Titration	33.75
Salt, Potentiometric	22.50
Salt, (Rapid)	33.75

TABLE 2.—SINGLE TEST LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of analysis	List fee
Acid Degree Value (Dairy)	\$45.00
Acidity, Titratable	22.50
Density (Specific Gravity)	11.25
Dispersibility (Instant Dry Whole Milk)	67.50
Dispersibility (Moates-Dabbah Method)	22.50
Fat Stability, <sup>1</sup> AOM	45.00
Fatty Acid Profile (AOAC—GC method)	180.00
Flash Point Test only	90.00
Free Fatty Acids	22.50
Meltability (Process Cheese)	22.50
Peanut Oil Analyses (Oil, Moisture, Free Fatty Acids, Ammonia, and Foreign Matter)	45.00
Any One of the Oilseed Oil Analyses	22.50
Peroxide Value	33.75
Smoke Point Test only	90.00
Smoke Point and Flash Point	157.50
Solids, Total (Oven Drying)	22.50
Soluble Solids, Refractometer	22.50

<sup>1</sup> Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

Type of analysis	List fee
Amitraz Residue, GLC	\$270.00
Antibiotic, Qualitative (Dairy)	22.50
Antibiotic, Quantitative <sup>1</sup>	393.75
Ascorbates (Qualitative—Meats)	22.50
Ascorbic Acid, Titration	45.00
Ascorbic Acid, Spectrophotometric	45.00
Brix, Direct Percent Sucrose	22.50
Brix, Dilution	22.50
Butylated Hydroxyanisole (BHA)	67.50
Butylated Hydroxytoluene (BHT)	67.50
Caffeine, Micro Bailey-Andrew	67.50
Caffeine, Spectrophotometric	78.75
Citric Acid, GLC or HPLC	67.50
Chlorinated Hydrocarbons:	
Pesticides and Industrial Chemicals—	
Initial Screen	180.00
Second Column Confirmation of Analyte	45.00
Confirmation on Mass Spectrometer (Per Residue)	90.00
Dextrin (Qualitative)	22.50
Dextrin (Quantitative)	135.00
Filth, Heavy (Dairy)	112.50
Filth, Heavy (Eggs)	180.00
Filth, Light (Eggs)	112.50

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	List fee
Filth, Light & Heavy (Eggs Extraneous) .....	270.00
Fines .....	22.50
Flavor (Dairy) .....	11.25
Flavor (Products except Dairy) .....	33.75
Fumigants:	
Initial Screen—	
Dibromochloropropane (DBCP) .....	45.00
Ethylene Dibromide .....	45.00
Methyl Bromide .....	45.00
Confirmation on Mass Spectrometer—	
Each individual fumigant residue .....	90.00
Glucose (Qualitative) .....	33.75
Glucose (Quantitative) .....	78.75
Glycerol (Quantitative) .....	135.00
Gums .....	135.00
Heavy Metal Screen <sup>2</sup> .....	326.25
Mercury, Cold Vapor AA .....	135.00
Monosodium Dihydrogen Phosphate .....	180.00
Monosodium Glutamate .....	180.00
Niacin .....	90.00
Ochratoxin A .....	67.50
Odor .....	11.25
Organic Acids (in Eggs) .....	180.00
Oxygen .....	22.50
Palatability and Odor:	
Each Sample .....	22.50
Penicillin .....	67.50
Pyrethrin Residue (Dairy) .....	180.00
Scorched Particles .....	22.50
Sodium, Potentiometric .....	45.00
Sodium Benzoate, HPLC .....	67.50
Sodium Lauryl Sulfate (SLS) .....	360.00
Sodium Silicoaluminate (Zeolex) .....	90.00
Solubility Index .....	11.25
Starch, Direct Acid Hydrolysis .....	90.00
Starch (in Dry Milk) .....	22.50
Sugar, Polarimetric Methods .....	33.75
Sugar Profile, HPLC <sup>3</sup> :	
One type sugar from HPLC profile .....	135.00
Each additional type sugar .....	22.50
Sugars, Non-Reducing .....	135.00
Sulfur Dioxide, Direct Titration .....	45.00
Toluene, Residual .....	90.00
Vitamin A, Carr-Price (Dairy) .....	112.50
Vitamin A, HPLC .....	90.00
Vitamin B-1 (Thiamin) .....	90.00
Vitamin B-2 (Riboflavin) .....	90.00
Vitamin D, HPLC (Vitamins D <sub>2</sub> and D <sub>3</sub> ), Dairy .....	382.50
Whey Protein Nitrogen .....	33.75
Whey Protein Nitrogen, Kjeldahl .....	112.50
Xanthidrol Test For Urea .....	67.50
This is an optional test to the extraneous materials isolation test.	

<sup>1</sup> Antibiotic testing includes tests for chlorotetracycline, oxytetracycline, and tetracycline.

<sup>2</sup> Heavy metal screen includes tests for cadmium, lead, and mercury.

<sup>3</sup> This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose.

TABLE 4.—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

Type of analysis	List fee
Cheese (Fines) .....	\$11.25
Color, Apparent—Visual .....	11.25
Complete Kohman Analysis (Dairy) .....	45.00
Hot Water Insolubles .....	67.50
Linolenic Acid .....	90.00
Net Weight (Per Can) .....	11.25
Non-Volatile Methylene Chloride Extract .....	112.50
Overrun for Whipped Topping .....	33.75
Particle Size (Ether Wash) .....	22.50
pH .....	11.25
pH—Quinhydrone (Cheese) .....	22.50

TABLE 4.—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES—Continued

Type of analysis	List fee
Potassium Iodide (Table Salt) .....	67.50
Protein Reducing Substances .....	45.00
Quinic Acid (Cranberry Juice) .....	78.75
Serum Drainage for Whipped Topping .....	22.50
Sieve or Particle Size .....	22.50
Rate of Wetting (Nondairy Creamer) .....	22.50
Reducing Sugars .....	90.00
Water Activity .....	22.50
Water Insoluble Inorganic: Residues (WIIR) .....	90.00

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	List fee
Aerobic (Standard) Plate Count .....	\$22.50
Anaerobic Bacterial Plate Count .....	33.75
<i>Bacillus cereus</i> .....	90.00
Bacterial Direct Microscopic Count .....	45.00
Coliform Plate Count (Dairy Products) .....	22.50
Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count) .....	33.75
Coliforms, Most Probable Number (MPN): <sup>1</sup>	
Step 1 .....	33.75
Step 2 .....	22.50
Direct Microscopic Clump Count .....	11.25
Direct Microscopic Clump Count— Greater Than 75 Million .....	45.00
<i>E. coli</i> , Presumptive MPN (Additional) <sup>2</sup> .....	45.00
<i>E. coli</i> (MUG <sup>3</sup> ) .....	33.75
<i>Enterococci</i> Count .....	135.00
Howard Mold Count <sup>4</sup> .....	56.25
<i>Lactobacillus</i> Count <sup>5</sup> .....	56.25
Lactic Acid Tolerant Microbes .....	22.50
<i>Listeria monocytogenes</i> Confirmation Analysis: <sup>6</sup>	
Step 1 .....	67.50
Step 2 .....	56.25
Step 3 (Confirmation) .....	112.50
Parasite Identification .....	180.00
Psychrotrophic Bacterial Plate Count .....	45.00
<i>Salmonella</i> (USDA Culture Method): <sup>7</sup>	
Step 1 .....	78.75
Step 2 .....	33.75
Step 3 (Confirmation) .....	56.25
<i>Salmonella</i> Enumeration (Complete Test) .....	135.00
<i>Salmonella</i> (Rapid Methods): <sup>8</sup>	
Step 1 .....	78.75
Step 2 .....	33.75
Step 3 (Confirmation) .....	56.25
<i>Salmonella typhi</i> (Meat Products) <sup>9</sup> .....	45.00
<i>Staphylococcus aureus</i> , Direct Plating .....	67.50
<i>Staphylococcus aureus</i> , MPN: With Coagulase Positive Confirmation .....	78.75
Thermoturc Bacterial Plate Count .....	33.75
Yeast and Mold Count .....	22.50
Yeast and Mold Differential Confirmation .....	22.50
Yeast and Mold Differential Plate Count .....	33.75
Yeast or Mold Confirmation .....	22.50

<sup>1</sup> Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

<sup>2</sup> Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E. coli* test. Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E. coli* from inoculated and incubated EC broth (*Escherichia coli* broth). The *E. coli* test is performed through growth on eosin methylene blue agar. The fee stated for *E. coli* analysis is a supplementary charge to step 1 of coliform test.

<sup>3</sup> In the presence of the substrate 4-methylumbelliferone- $\beta$ -D-glucuronide (MUG), the enzyme  $\beta$ -glucuronidase, which is found in the majority of *E. coli* strains, produces a fluorogenic end product which is visible under ultraviolet (UV) light.

<sup>4</sup> Howard Mold Count involves counting mold filaments in commodity products.

<sup>5</sup> Determination of bacterial plate count of different species of *Lactobacillus*.

<sup>6</sup> *Listeria monocytogenes* test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical media, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test.

*Listeria monocytogenes* test using the FDA method may be in three steps as follows: Step 1— isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical media, Sulfide-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA–YE plates.

Both methods for *Listeria* determination have the equivalent time needed for each step.  
<sup>7</sup> *Salmonella* test may be in three steps as follows: Step 1— growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3— confirmatory test through biochemicals, and polyvalent serological testing with Poly “O” and Poly “H” antisera. The serological typing of *Salmonella* is requested on occasion.

<sup>8</sup> *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and ELISA test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly “O” and Poly “H” antisera.

<sup>9</sup> *Salmonella typhi* determination in mechanically deboned meat.

TABLE 6.—LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Single analysis fee	Pair analyses <sup>1</sup> fee
Peanut Butter (TLC–CB, HPLC, Affinity Column) .....	\$45.00	NA <sup>2</sup>
Corn (TLC–CB, HPLC, Affinity Column) .....	45.00	NA
Roasted Peanuts (TLC–BF) .....	45.00	NA
Brazil Nuts (TLC–BF) .....	90.00	NA
Pistachio Nuts (TLC–BF, HPLC) .....	90.00	NA
Shelled Peanuts (TLC, Affinity Column) .....	45.00	38.00
Shelled Peanuts (HPLC) .....	45.00	70.00
Tree Nuts (TLC) .....	45.00	NA
Oilseed Meals (TLC, HPLC, Affinity Column) .....	45.00	NA
Edible Seeds (TLC) .....	45.00	NA
Dried Fruit (TLC) .....	45.00	NA
Small Grains (TLC) .....	45.00	NA
In-Shell Peanuts (TLC, Affinity Column) .....	45.00	38.00
In-Shell Peanuts (HPLC) .....	45.00	70.00
Silage; Other Grains (TLC) .....	45.00	NA
Submitted Samples (TLC, HPLC, Affinity Column) .....	45.00	NA
Aflatoxin (Dairy, Eggs) .....	157.50	NA

<sup>1</sup> Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD for single or pair of analyses is \$19.00 or \$38.00, respectively using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column assay with fluorometric quantitation. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the Best Foods method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per single or pair of analyses using High Pressure Liquid Chromatography (HPLC) is \$35.00 and \$70.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science and Technology’s current hourly rate of \$45.00.

<sup>2</sup> NA denotes not applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL TO THE SCIENCE AND TECHNOLOGY’S LABORATORY ANALYSIS FEES

Laboratory service description	List fee
Sample Grinding by Vertical Cutter Mixer (VCM) .....	\$22.50.
Sample Grinding Canned Boned Poultry .....	11.25 per can.
Sample Grinding by Dickens Hammer Mill .....	11.25.
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):	
Per pouch or raw sample .....	11.25.
Per tray pack .....	22.50.
Compositing Multiple Subsamples for an Individual Test Sample Unit per subsample.	Varies Preparation fee based on \$45.00 per hour.

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	List charge
Courier Expense at Other AMS Laboratories: Mileage Charge Set at 32.5 Per Mile Round Trip from Laboratory to Delivery Site.	Varies (based on total mileage).
Facsimile Charge (Per Analysis Report) .....	\$3.20 minimum up to first 3 pages, then \$1.50 per page.
Additional Analysis Report or Extra Certificate (½ hour charge) .....	\$22.50 per report or certificate reissued.

**§ 91.38 Additional fees for appeal of analysis.**

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in § 91.37(a) if, as a

result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is \$67.50 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses that an inadvertent error was made in the original analysis.

**§ 91.39 Premium hourly fee rate for overtime and legal holiday service.**

(a) Laboratory analyses initiated at the special request of the applicant to be rendered on Saturdays, Sundays, Federal holidays, and on an overtime basis will be charged at a rate of 1.5 times the standard rate stated in § 91.37 (a). The premium laboratory rate for holiday and overtime service will be \$67.50 per analysis hour.

(b) Information on legal holidays or what constitutes overtime service at a particular S&T laboratory is available from the Laboratory Director or facility supervisor.

**§ 91.40 Fees for courier service and facsimile of the analysis report.**

(a) The Science and Technology laboratories have a courier charge per trip to retrieve the sample package. The courier service charge is determined from the established single standard mileage rate and from the total authorized distance based on the shortest round trip route from laboratory to sample retrieval site. Pursuant to the requirements of Title 5, United States Code (U.S.C.), part III, subpart D, § 5704, paragraph (a) (1), the automobile reimbursement rate per mile established by the Administrator of General Services for an employee who is engaged on official business for the Government cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS).

(b) The faxing of laboratory analysis reports or certificates is an optional service for each S&T facility offered at a fee specified in table 8 in § 91.37.

**§ 91.41 [Amended]**

22.–26. In § 91.41, the words “Division Director” are revised to read “Deputy Administrator.”

27. § 91.42 is revised to read as follows:

**§ 91.42 Billing.**

(a) Each billing cycle will end on the 25th of the month. The applicant will be billed by the National Finance Center using the Billings and Collections System (BLCO) on the 1st day, following the end of the billing cycle in which voluntary laboratory services and other services were rendered at a particular Science and Technology laboratory.

(b) The total charge shall normally be stated directly on the analysis report or on a standardized official certificate form for the laboratory analyses of a specific agricultural commodity and related commodity products.

(c) The actual bill for collection will be issued by the USDA, National Finance Center Billings and Collection

Branch, (Mail: P.O. Box 60075), 13800 Old Gentilly Road, New Orleans, Louisiana 70160–0001.

28. In § 91.43, paragraph (b) is revised and in paragraph (c) the words “Division Director” are removed and the words “Deputy Administrator” are added in their place to read as follows:

**§ 91.43 Payment of fees and charges.**

\* \* \* \* \*

(b) Fees and charges for services under a cooperative agreement with a State or other AMS programs or other governmental agency will be paid in accordance with the terms of the cooperative agreement.

\* \* \* \* \*

29. In § 91.44, paragraph (e) is revised to read as follows:

**§ 91.44 Charges on overdue accounts and issuance of delinquency notices.**

\* \* \* \* \*

(e) The Deputy Administrator of S&T program and personnel of the USDA, NFC Billings and Collections Branch (address as listed in § 91.42) will take such actions as may be necessary to collect any delinquent amounts due for accounts in claim status.

30. Section 91.45 is revised to read as follows:

**§ 91.45 Charges for laboratory services on a contract basis.**

(a) Irrespective of hourly fee rates and charges prescribed in § 91.37, or in other sections of this subchapter E, the Deputy Administrator may enter into contracts with applicants to perform continuous laboratory services or other types of laboratory services pursuant to the regulations in this part and other requirements, as prescribed by the Deputy Administrator in such contract. In addition, the charges for such laboratory services, provided in such contracts, shall be on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory services, including an appropriate overhead charge to cover administrative overhead expenses as may be determined by the Administrator.

(b) Irrespective of hourly fee rates and charges prescribed in this subpart I, or in other parts of this subchapter E, the Deputy Administrator may enter into a written Memorandum of Understanding (MOU) or agreement with any administrative agency or governing party for the performance of laboratory services pursuant to said agreement or order on a basis that will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory service, including an

appropriate overhead administrative overhead charge.

(c) The conditions and terms for renewal of such Memorandum of Understanding or agreement shall be specified in the contract.

**PART 92—[AMENDED]**

1. The authority citation for part 92 continues to read as follows:

**Authority:** 7 U.S.C. 511m and 7 U.S.C. 511r.

**§ 92.1 [Amended]**

2. In § 92.1, the words “Science and Technology Division’s” are revised to read “Science and Technology’s”.

**§ 92.2 [Amended]**

3. Section 92.2 is amended as follows:

a. Remove the definition of “Certificate of Analysis (Form CSSD–3)”.

b. Revise the definitions for “2,4-D”, “DDE”, “Dicamba”, “HCB”, “Maximum pesticide residue level”, “Pesticide certification”, “Pesticide test sample”, “Sample Identification Form (Form TB-89)”, “2,4,5-T”, “TDE”, and “Tobacco”.

c. Add two new definitions of “AMS” and “Certificate of Analysis (Form TB–92)” in alphabetical order to read as follows:

**§ 92.2 Definitions.**

\* \* \* \* \*

*AMS.* The abbreviations for the Agricultural Marketing Service (AMS) agency of the United States Department of Agriculture.

\* \* \* \* \*

*Certificate of Analysis (Form TB–92).* A legal document on which the confirmed test results for official samples will be testified to be correct by a Science and Technology chemist in charge of testing.

*2,4-D.* The common abbreviation for the acid herbicide 2,4-Dichlorophenoxyacetic acid.

\* \* \* \* \*

*DDE.* The common abbreviation for the chlorinated pesticide Dichlorodiphenyldichloroethylene. Degradation product of DDT by loss of one molecule of hydrochloric acid or referred to as a dehydrohalogenation process.

\* \* \* \* \*

*Dicamba.* The common name for the acid herbicide 2-Methoxy-3,6-dichlorobenzoic acid.

\* \* \* \* \*

*HCB.* The common abbreviation for the organochlorine pesticide Hexachlorobenzene.

\* \* \* \* \*

*Maximum pesticide residue level.* The maximum concentration of residue allowable for a specific pesticide or combination of pesticides, as set forth in 7 CFR 29.427 by the AMS Deputy Administrator of the Tobacco Programs.

\* \* \* \* \*

*Pesticide certification.* A document issued by the Tobacco Programs in a form approved by its AMS Deputy Administrator, containing a certification by the importer that flue-cured and burley tobacco offered for importation does not exceed the maximum allowable residue levels of any pesticide that has been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

*Pesticide test sample.* An official sample or samples, collected from a lot of tobacco by the AMS Tobacco Programs inspector for analysis by a certified chemist to ascertain the residue levels of pesticides that have been canceled, suspended, revoked, or otherwise prohibited under the FIFRA.

*Sample Identification Form (Form TB-89).* A document titled "Imported Tobacco Pesticide Residue Analysis" that is approved by the AMS Deputy Administrator of the Tobacco Programs that identifies and accompanies the sample to the testing facility.

*2,4,5-T.* The common abbreviation for the acid herbicide 2,4,5-Trichlorophenoxyacetic acid.

*TDE.* DDD or the common abbreviation for the chlorinated insecticide 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethane (CAS number 72-54-8).

\* \* \* \* \*

*Tobacco.* Tobacco as it appears between the time it is cured and stripped from the stalk, or primed and cured, in whole leaf or strip form, and the time it enters into the different manufacturing processes. Conditioning, sweating, stemming, and threshing are not regarded as manufacturing processes. Tobacco, as used in this part, does not include manufactured or semi-manufactured products, stems, cuttings, clippings, trimmings, siftings, or dust.

4. Section 92.3 is revised to read as follows:

**§ 92.3 Location for laboratory testing and kind of services available.**

(a) The analytical testing of imported Type 92 flue-cured tobacco samples and imported Type 93 burley tobacco samples for maximum pesticide residue level determinations is performed at the AMS Science and Technology's Eastern Laboratory and is located at: USDA, AMS, Science and Technology, Eastern

Laboratory (Chemistry), 645 Cox Road, Gastonia, NC 28054.

(b) Domestic-grown tobacco and tobacco products may be analyzed for acid herbicides, chlorinated hydrocarbons, fumigants, and organophosphates at the Science and Technology facility in this section.

(c) The Science and Technology facility performs for the AMS Tobacco Programs the quantitative and confirmatory chemical residue analyses on pesticide test samples of imported tobacco for the following specific pesticides:

(1) Organochlorine pesticides such as Dichloro-diphenyldichloroethylene (DDE), Dichloro Diphenyl Trichloroethane (DDT), 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethane (TDE), Toxaphene, Endrin, Aldrin, Dieldrin, Heptachlor, Methoxychlor, Chlordane, Heptachlor Epoxide, Hexachlorobenzene (HCB), Cypermethrin, and Permethrin.

(2) Organophosphorus pesticides such as Formothion.

(3) Fumigants such as Ethylene Dibromide (EDB) and Dibromochloropropane (DBCP).

(4) Acid herbicides such as 2,4-D, 2,4,5-T, and Dicamba.

5. In § 92.4, paragraph (b) is revised to read as follows:

**§ 92.4 Approved forms for reporting analytical results.**

\* \* \* \* \*

(b) Test results of the pesticide analyses for tobacco shall be recorded on "Certificate of Analysis For Official Samples", Form TB-92, and shall be expressed as parts by weight of the residue per one million parts by weight of the tobacco sample (parts per million or ppm), which concentration is representative for each particular pesticide residue found in the lot of tobacco. Form TB-92 is attached to Form TB-89 that is returned to the AMS Tobacco Programs. The analytical data on Form TB-92 substantiates the information placed on Form TB-89.

6. Section 92.5 is revised to read as follows:

**§ 92.5 Analytical methods.**

Every chemist certified to analyze tobacco samples for pesticide residue contamination shall follow precisely the USDA developed analytical test methods and all successive official method updates, as approved by the AMS Deputy Administrator, Science and Technology. Many of the official analyses for tobacco are found in the following manuals:

(a) Manual of Analytical Methods for the Analysis of Pesticide Residues in

Human and Environmental Samples, EPA 600/9-80-038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(b) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I and II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(c) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN), 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

7. Section 92.6 is revised to read as follows:

**§ 92.6 Cost for pesticide analysis set by cooperative agreement.**

The fee for the pesticide analysis of tobacco is set by the AMS Tobacco Programs, in conjunction with the AMS Science and Technology program, and appears at 7 CFR 29.500 as part of Tobacco Programs' fees for sampling and certification of imported flue-cured and burley tobacco. A Memorandum of Understanding (MOU) exists between the Tobacco Programs and the Science and Technology (S&T) for the testing of imported tobacco samples for pesticide residue contamination, and the corresponding agreement on the cost of analyses is specified in the MOU.

**PART 93—[AMENDED]**

1. The authority citation for part 93 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

**§ 93.2 [Amended]**

2. In § 93.2, the definitions for "Brix or degrees Brix", "Brix value" and "Recoverable oil" are revised to read as follows:

**§ 93.2 Definitions.**

\* \* \* \* \*

*Brix or degrees Brix.* The percent by weight concentration of the total soluble solids of the juice or citrus product when tested with a Brix hydrometer calibrated at 20 °C (68 °F) and to which any applicable temperature correction has been made. The Brix or degrees Brix may be determined by any other method which gives equivalent results.

*Brix value.* The pure sucrose or soluble solids value of the juice or citrus product determined by using the

refractometer along with the "International Scale of Refractive Indices of Sucrose Solutions" and to which the applicable correction for acidity is added. The Brix value is determined in accordance with the refractometer method outlined in the Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II.

\* \* \* \* \*

*Recoverable oil.* The percent of oil by volume, determined by the bromate titration method after distillation and acidification as described in the current edition of the Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II.

\* \* \* \* \*

3. Section 93.3 is revised to read as follows:

**§ 93.3 Analyses available and location of laboratory.**

(a) Laboratory analyses of citrus juice and other citrus products are being performed at the following Science and Technology location: USDA, AMS, S&T Eastern Laboratory (Citrus), 98 Third Street, S.W., Winter Haven, FL 33880.

(b) Laboratory analyses of citrus fruit and products in Florida are available in order to determine if such commodities satisfy the quality and grade standards set forth in the Florida Citrus Code (Florida Statutes Pursuant to Chapter 601). Such analyses include tests for acid as anhydrous citric acid, Brix, Brix/acid ratio, recoverable oil, and artificial coloring matter additive, as turmeric. The Fruit and Vegetable Inspectors of the Division of Fruit and Vegetable of the Florida Department of Agriculture and Consumer Services may also request analyses for arsenic metal, pulp wash (ultraviolet and fluorescence), standard plate count, yeast with mold count, and nutritive sweetening ingredients as sugars.

(c) There are additional laboratory tests available upon request at the Science and Technology Eastern (Citrus) Laboratory at Winter Haven, Florida. Such analyses include tests for vitamins, naringin, sodium benzoate, *Salmonella*, protein, salt, pesticide residues, sodium metal, ash, potassium metal, and coliforms for citrus products.

4. Section 93.4 is revised to read as follows:

**§ 93.4 Analytical methods.**

(a) The majority of analytical methods for citrus products are found in the Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(b) Other analytical methods for citrus products may be used as approved by the AMS Deputy Administrator, Science and Technology (S&T).

5. Section 93.5 is revised to read as follows:

**§ 93.5 Fees for citrus product analyses set by cooperative agreement.**

The fees for the analyses of fresh citrus juices and other citrus products shall be set by mutual agreement between the applicant, the State of Florida, and the AMS Deputy Administrator, Science and Technology programs. A Memorandum of Understanding (MOU) or cooperative agreement exists presently with the AMS Science and Technology and the State of Florida, regarding the set hourly rate and the costs to perform individual analytical tests on Florida citrus products, for the State.

6. In § 93.11, the definitions for "Aflatoxin" and "Peanut Administrative Committee (PAC)" are revised to read as follows:

**§ 93.11 Definitions.**

\* \* \* \* \*

*Aflatoxin.* A toxic metabolite produced by the molds *Aspergillus flavus*, *Aspergillus parasiticus*, and *Aspergillus nomius*. The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin B<sub>1</sub> and derivatives with a blue fluorescence, aflatoxin B<sub>2</sub> with a blue-violet fluorescence, aflatoxin G<sub>1</sub> with a green fluorescence, aflatoxin G<sub>2</sub> with a green-blue fluorescence, aflatoxin M<sub>1</sub> with a blue-violet fluorescence, and aflatoxin M<sub>2</sub> with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B<sub>1</sub>, B<sub>2</sub>, G<sub>1</sub>, G<sub>2</sub>, M<sub>1</sub>, M<sub>2</sub>, GM<sub>1</sub>, B<sub>2a</sub>, G<sub>2a</sub>, R<sub>0</sub>, B<sub>3</sub>, 1-OCH<sub>3</sub>B<sub>2</sub>, and 1-CH<sub>3</sub>G<sub>2</sub>.

*Peanut Administrative Committee (PAC).* The committee established under the United States Department of Agriculture Marketing Agreement for Peanuts, 7 CFR part 998, which administers the terms and provisions of this Agreement, including the aflatoxin control program for domestically produced raw peanuts, for peanut shellers. The Peanut Administrative Committee (PAC) headquarters are at 2537 Lafayette Plaza Drive Suite A; Albany, Georgia 31707.

\* \* \* \* \*

7. Section 93.12 is revised to read as follows:

**§ 93.12 Analyses available and locations of laboratories.**

(a) *Aflatoxin testing services.* The aflatoxin analyses for peanuts, peanut products, dried fruits, grains, edible

seeds, tree nuts, shelled corn products, cottonseed, oilseed products and other commodities are performed at the following 6 locations for AMS Science and Technology (S&T) Aflatoxin Laboratories:

- (1) USDA, AMS, S&T, 1211 Schley Avenue, Albany, GA 31707.
- (2) USDA, AMS, S&T, c/o Golden Peanut Company, Mail: P.O. Box 279, 301 West Pearl Street, Aulander, NC 27805.
- (3) USDA, AMS, S&T, 610 North Main Street, Blakely, GA 31723.
- (4) USDA, AMS, S&T, 107 South Fourth Street, Madill, OK 73446.
- (5) USDA, AMS, S&T, c/o Cargill Peanut Products, Mail: P.O. Box 272, 715 North Main Street, Dawson, GA 31742-0272.
- (6) USDA, AMS, S&T, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434.

(b) *Peanuts, peanut products, and oilseed testing services.* (1) The Science and Technology (S&T) Aflatoxin Laboratories at Madill, Oklahoma and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

(2) All of the analyses described in paragraph (b)(1) of this section performed on a single seed sample are billed at the rate of one hour per sample. Any single seed analysis performed on a single sample is billed at the rate of one-half hour per sample. The standard hourly rate shall be as specified in § 91.37(a) of this subchapter.

(c) *Vegetable oil testing services.* The analyses for vegetable oils are performed at the USDA, AMS, Science and Technology (S&T) Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618-5391. The analyses for vegetable oils will include the flash point test, smoke point test, acid value, peroxide value, phosphorus in oil, and specific gravity. The fee charged for any single laboratory analysis for vegetable oils shall be obtained from the Midwestern Laboratory Director and it is based on the hourly fee rates and charges as specified in 7 CFR part 91, subpart I.

8. Section 93.13 is revised to read as follows:

**§ 93.13 Analytical methods.**

Official analyses for peanuts, nuts, corn, oilseeds, and related vegetable oils are found in the following manuals:

(a) Approved Methods of the American Association of Cereal

Chemists (AACC), American Association of Cereal Chemists/Eagan Press, 3340 Pilot Knob Road, St. Paul, Minnesota 55121-2097.

(b) ASTA's Analytical Methods Manual, American Spice Trade Association (ASTA), 560 Sylvan Avenue, P.O. Box 1267, Englewood Cliffs, New Jersey 07632.

(c) Analyst's Instruction for Aflatoxin (August 1994), S&T Instruction No. 1, USDA, Agricultural Marketing Service, Science and Technology, 3521 South Agriculture Building, 1400 Independence Avenue, SW, P.O. Box 96456, Washington, DC 20090-6456.

(d) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, P.O. Box 3489, 2211 West Bradley Avenue, Champaign, Illinois 61821-1827.

(e) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(f) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), 1701 Pennsylvania Avenue, NW, Washington, DC 20006.

(g) U.S. Army Natick Research, Development and Engineering Center's Military Specifications, approved analytical test methods noted therein, Code NPP-9, Department of Defense Single Stock Point (DODSSP) for Military Specifications, Standards, Building 4/D, 700 Robbins Avenue, Philadelphia, PA 19111-5094.

9. Section 93.14 is revised to read as follows:

**§ 93.14 Fees for aflatoxin analysis and fees for testing of other mycotoxins.**

(a) The fee charged for any laboratory analysis for aflatoxins and other mycotoxins shall be obtained from the Laboratory Director for aflatoxin laboratories at the Dothan administrative office as follows: USDA, AMS, Science & Technology, 3119 Wesley Way, Suite 6, Dothan, Alabama 36305, Voice Phone: 334-794-5070, Facsimile: 334-792-1432.

(b) The charge for the aflatoxin testing of raw peanuts under the Peanut Marketing Agreement for subsamples 1-AB, 2-AB, 3-AB, and 1-CD is a set cost per pair of analyses and shall be set by cooperative agreement between the Peanut Administrative Committee and AMS Science and Technology program.

10. Section 93.15 is revised to read as follows:

**§ 93.15 Fees for analytical testing of oilseeds.**

The fee charged for any laboratory analysis for oilseeds shall be obtained from the Laboratory Director for aflatoxin laboratories at the Dothan administrative office as listed in § 93.14(a).

**PART 94—[AMENDED]**

1. The authority citation for part 94 continues to read as follows:

**Authority:** Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1635; 21 U.S.C. 1031-1056), Agricultural Marketing Act of 1946, Secs. 202-208 as amended (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

2. In § 94.2, the definitions for "Egg", "Egg product" and "Mandatory sample" are revised to read as follows:

**§ 94.2 Definitions.**

*Egg.* The shell egg of the domesticated chicken, turkey, duck, goose, or guinea. Some of the terms applicable to shell eggs are defined by the AMS Poultry Programs in 7 CFR 57.5.

*Egg product.* Any dried, frozen, or liquid eggs, with or without added ingredients. However, products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry may be exempted by the Secretary under such conditions as may be prescribed to assure that the egg ingredients are not adulterated and such products are not represented as egg products. Some of the products exempted as not being egg products are specified by the AMS Poultry Programs in 7 CFR 57.5.

*Mandatory sample.* An official sample of egg product(s) taken for testing under authority of the Egg Products Inspection Act (21 U.S.C. 1031-1056) for analysis by a United States Department of Agriculture, Agricultural Marketing Service, Science and Technology laboratory at government expense. A mandatory sample shall include an egg product sample to be analyzed for microbiological, chemical, or physical attributes. A mandatory egg product sample analyzed for the presence of *Salmonella* is also referred to as a confirmation sample as specified by the Food Safety and Inspection Service agency of USDA in 9 CFR 590.580, paragraph (d).

\* \* \* \* \*

3. In § 94.3, paragraphs (a), (b) and (e) are revised to read as follows:

**§ 94.3 Analyses performed and locations of laboratories.**

(a) Samples drawn by a USDA egg products inspector will be analyzed by AMS Science and Technology (S&T) personnel for microbiological, chemical, and physical attributes. The analytical results of these samples will be reported to the resident egg products inspector at the applicable plant on the official certificate.

(b) Mandatory egg product samples for *Salmonella* are required and are analyzed in S&T laboratories to spot check and confirm the adequacy of USDA approved and recognized laboratories for analyzing routine egg product samples for *Salmonella*.

\* \* \* \* \*

(e) The AMS Science and Technology's Eastern Laboratory shall conduct the majority of laboratory analyses for egg products. The analyses for mandatory egg product samples are performed at the following USDA location: USDA, AMS, Science & Technology, Eastern Laboratory (Microbiology), 2311-B Aberdeen Boulevard, Gastonia, NC 28054.

4. Section 94.4 is revised to read as follows:

**§ 94.4 Analytical methods.**

The majority of analytical methods used by the USDA laboratories to perform mandatory analyses for egg products are listed as follows:

(a) Compendium Methods for the Microbiological Examination of Foods, Carl Vanderzant and Don Splittstoesser (Editors), American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(b) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterobacteriaceae, Elsevier Science, Inc., Regional Sales Office, 655 Avenue of the Americas, P.O. Box 945, New York, NY 10159-0945.

(c) FDA Bacteriological Analytical Manual (BAM), AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(d) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, EPA 600/9-80-038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(e) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(f) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(g) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association (AWWA) and the Water Pollution Control Federation, AWWA Bookstore, 6666 West Quincy Avenue, Denver, CO 80235.

(h) Test Methods for Evaluating Solid Waste Physical/Chemical Methods, Environmental Protection Agency, Office of Solid Waste, SW-846

Integrated Manual (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

(i) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN), 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

#### **PART 98—[AMENDED]**

1. The authority citation for part 98 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

2. In part 98, the words “Science and Technology Division” are revised to read “Science and Technology”, and the word “S&TD” is revised to read “S&T” everywhere they appear.

Dated: May 22, 2000.

**William J. Franks, Jr.,**

*Deputy Administrator, Science and Technology, Agricultural Marketing Service.*

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