

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.

[65 FR 64311, Oct. 26, 2000]

**§ 91.33 When an application for an appeal of a laboratory service may be withdrawn.**

An application for an appeal of a laboratory service may be withdrawn by the applicant at any time before the appealed laboratory service is performed; *Provided*, That, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the laboratory personnel, any travel, telephone, telegraph, or other expenses which have been incurred by the laboratory service in connection with such application.

**§ 91.34 When an appeal of a laboratory service may be refused.**

An application for an appeal of a laboratory service may be refused if:

(a) The reasons for the appealed laboratory service are frivolous or not substantial;

(b) The quality or condition of the commodity product has undergone a material change since the laboratory service covering the commodity product on which the appealed laboratory service is requested;

(c) The lot in question is not, or cannot be made accessible for sampling;

(d) The lot relative to which the appealed laboratory service is requested cannot be positively identified as the lot from which samples were previously drawn and originally analyzed; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

**§ 91.35 Who shall perform an appealed laboratory service.**

An appealed laboratory service shall be performed, whenever possible, by another individual or other individuals than the scientist(s) or the technician(s) that performed the original analytical determination.

**§ 91.36 Appeal laboratory certificate.**

(a) An appeal laboratory certificate shall be issued showing the results of such appealed analysis. This certificate shall supersede the laboratory certificate previously issued for the commodity product involved.

(b) Each appeal laboratory certificate shall clearly identify the number and date of the laboratory certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appealed laboratory certificate and shall no longer represent the analytical results of the commodity product.

(c) The individual issuing an appeal laboratory certificate shall forward notice of such issuance to such persons as he or she considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the individual issuing the appeal certificate.

(d) The provisions in the regulations in this part concerning forms and certificates, issuance of certificates, and retention and disposition of certificates shall apply to appeal laboratory certificates, except that copies of such appeal certificates shall be furnished to all interested parties who received copies of the superseded certificate.

**Subpart I—Fees and Charges**

**§ 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

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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.

(c) 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
Moisture, Oven .....	22.50

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

Type of analysis	List fee
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 .....	\$112.50
Antibiotic, Qualitative (Dairy) .....	22.50
Antibiotic, Quantitative ·1N .....	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
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

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

Type of analysis	List fee
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 <sub>1</sub> (Thiamin) .....	90.00
Vitamin B <sub>2</sub> (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
Xanthinol 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, oxy-tetracycline, 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—(Field Submitted Smears, Less Than or Equal To 75 Million Count) .....	11.25
Direct Microscopic Clump Count—(Field Submitted Smears, Greater Than 75 Million Count) .....	45.00
Direct Microscopic Clump Count—(Lab Prepared Smears) .....	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
Thermotolerant 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 optical 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-β-D-glucuronide (MUG), the enzyme β-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 medias, 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 medias, 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	Pair analyses <sup>1</sup>
Peanut Butter (TLC—CB, HPLC, Affinity Column) .....	\$45.00	<sup>2</sup> NA
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 Affinity Column (TLC) .....	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 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 (½hour charge) .....	\$22.50 per report or certificate re-issued.

[65 FR 64311, Oct. 26, 2000]

**§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.

[65 FR 64314, Oct. 26, 2000]

**§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.

[65 FR 64314, Oct. 26, 2000]

**§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 paragraph (a) (1) of §5704 of Title 5, United States Code

(U.S.C.), the automobile reimbursement rate 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.

[65 FR 64314, Oct. 26, 2000]

**§91.41 Charges for demonstrations and courses of instruction.**

Charges, not in excess of the cost thereof and as approved by the Deputy Administrator, may be made for demonstrations, samples, or courses of instruction when such are furnished upon request.

[58 FR 42415, Aug. 9, 1993, as amended at 65 FR 64314, Oct. 26, 2000]

**§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.

[65 FR 64314, Oct. 26, 2000]