

§91.34

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 The superseded certificate shall become null and void upon the issuance of the appealed laboratory certificate and shall no longer represent the analytical results of the commodity product.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

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he or she considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the individual issuing the appeal certificate.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 commodity and processed commodity products. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The rate for laboratory services is \$60.00 per hour in fiscal year 2007, \$63.00 per hour in fiscal year 2008, and \$67.00 per hour in fiscal year 2009.

(b) 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 to Science and Technology's constituents and stakeholders by the individual Laboratory Managers of Science and Technology laboratories listed in §91.5. These single test laboratory fee schedules are based upon the applicable hourly fee rate stated in §91.37(a).

(c) Except as otherwise provided in this section, charges will be made at the applicable hourly rate stated in