

## Agricultural Marketing Service, USDA

## § 91.33

the original certificates or original analysis reports and their copies.

(f) Duplicate certificates shall not be issued for certificates that have been superseded.

### **§ 91.30 Maintenance and retention of copies of certificates or analysis reports.**

(a) At least one copy of each certificate or analysis report shall be filed in the laboratory for a period of not less than 3 years either from the date of issuance of the document, from the date of voiding a certificate, or from the date last payment is made by the applicant for a reported laboratory determination, whichever is later.

(b) Whenever any document, because of its condition, becomes unsuitable for its intended or continued use, the laboratory personnel shall make a copy of the original document.

(c) True copies shall be retained as photocopies, microfilm, microfiche, or other accurate reproductions and durable forms of the original document. Where reduction techniques, such as microfilming are used, suitable reader and photocopying equipment shall be readily available. Such reproductions shall be treated and considered for all purposes as though they were the original documents.

(d) All documents required to be maintained under this part shall be kept confidential and shall be disclosed only to the applicants or other persons with the applicants' knowledge and permission. Only such information as the Administrator deems relevant shall be disclosed to the public without the applicants' permission, and then, only in a suit or administrative hearing brought at the direction, or on the request, of the Administrator, or to which the Administrator or any other officer of the United States is a party.

## **Subpart H—Appeal of Laboratory Services**

### **§ 91.31 When an appeal of a laboratory service may be requested.**

(a) An application for an appeal of a laboratory service may be made by any interested party who is dissatisfied with the results of an analysis as stated in a certificate or laboratory report,

if the lot of the commodity can be positively identified by the laboratory service as the lot from which originally drawn samples were previously analyzed.

(b) An application for an appeal of a laboratory service shall be made within thirty (30) days following the day on which the previous analysis was performed. However, upon approval by the Deputy Administrator, the filing time for an appeal application may be extended.

[58 FR 42415, Aug. 9, 1993, as amended at 65 FR 64311, Oct. 26, 2000]

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

(a) 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.

[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

## **§91.34**

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 certifi-

## **7 CFR Ch. I (1–1–11 Edition)**

cate 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 \$78.00 per hour in fiscal year 2010, \$81.00 per hour in fiscal year 2011, and \$83.00 per hour in fiscal year 2012.

(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 Directors 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 paragraph (a) of this section.

(c) Except as otherwise provided in this section, charges will be made at the applicable hourly rate stated in paragraph (a) of this section for the time required to perform the service. A