

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 91, 93, and 96**

[Docket Number S&amp;TD-97-001]

**Revision of Laboratory Service Fees****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is increasing current fees for laboratory testing services for agricultural commodities. Without the fee increase, anticipated revenue would not cover program costs. This rule includes additional tests for various commodity products and removes test time allotments. Time allotments serve no useful purpose since they no longer represent test times accurately because of the development of numerous new analytical procedures.

**EFFECTIVE DATE:** May 4, 1998.**FOR FURTHER INFORMATION CONTACT:**

James V. Falk, Docket Manager, USDA, AMS, Science and Technology, P.O. Box 96456, Room 3517-South, Washington, DC 20090-6456; telephone: (202) 690-4089.

**SUPPLEMENTARY INFORMATION:** This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will 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.

**Regulatory Impact Analysis**

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 more than 300 users of the Science and Technology's laboratory testing services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small businesses because only minimal increases to user

fees for laboratory tests for commodities are recommended. Laboratory tests and services of Science and Technology are provided to these businesses on a voluntary basis and any decision on their part to discontinue the use of the services and obtain new contracts with other governmental agency or private laboratories would not hinder the food processors from marketing their products. In fiscal year 1996, the Science and Technology laboratory revenues exceeded obligatory costs by only \$101,000. The decline in revenue from the fiscal year 1995 level of \$907,000 was due to a decrease in the requested dairy product testing at the Science and Technology Midwestern Laboratory in Chicago, Illinois. For fiscal year 1997 Science and Technology reported a \$332,000 deficit at the current fee level because there were additional revenue declines with the analyzing of all other commodities at our laboratories. In 1997 Science and Technology incurred revenue losses from 1996 levels of \$216,000 and \$449,000 respectively from poultry and tobacco product testing. In addition, the aflatoxin testing program net governmental receipts available to cover administrative costs and authorized appropriation outlays declined from \$79,000 in 1996 to \$14,000 in 1997. This is a consequence of the increased number of Peanut Administrative Committee (PAC) approved private laboratories that handle required aflatoxin analyses of peanuts. In recent years Science and Technology has voluntarily closed aflatoxin testing facilities at Camilla and Ashburn, Georgia. This was a streamlining measure to reduce Federal program costs and to restructure the Laboratory Program to improve efficiency of operations and responsiveness of services. The Laboratory Program ended fiscal year 1997 with an operating reserve of \$3,261,000 which provides a reserve balance below the 6 month reserve appropriate under normal operating conditions. The AMS estimates that overall this rule would yield additional laboratory testing program revenues of \$694,000 during fiscal year (FY) 1998. Without the fee increase, anticipated revenue would not cover program costs. Projected FY 1998 laboratory revenues are \$5,616,000 with obligatory costs projected at \$6,276,000. Trust fund balances would be below the required 4 month reserve levels. With a fee increase, projected FY 1998 revenues would be \$6,310,000 with obligatory costs projected at \$6,276,000. The laboratory fees in the general schedules will increase by

approximately 6 percent. These fees are competitive to the fees found in price lists distributed by private laboratories. Furthermore, users of Science and Technology testing services are under no obligation to use them. This final rule action updates lists of laboratory tests and services contained in certain sections of the regulations. In addition, the fees for the specialized and required aflatoxin testing of nuts and their products have increases ranging from 6 to 21 percent.

**Paperwork Reduction Act**

In accordance with the provisions of the Paperwork Reduction Act of 1980, as amended on May 22, 1995 (44 U.S.C. Chapter 35; Pub. L. 104-13 § 2), the information collection requirements contained in the provisions to be updated have been previously approved by the Office of Management and Budget.

No additional recordkeeping requirements are imposed as a result of this rule.

**Background**

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 commodity programs (Cotton, Poultry, Fruit and Vegetable, Tobacco, Dairy, and Livestock and Seed) to its Science and Technology program, formerly the Science Division. The rule included fees charged for testing and related services under the diversified Science and Technology programs and set the hourly analytical testing rate at \$34.20 per hour. On May 10, 1994, an interim final rule was published in the **Federal Register** (59 FR 24318-24325) which was finalized on September 30, 1994 (59 FR 50120-50122) and which reduced Science and Technology laboratory testing fees for certain dairy products and established additional tests with fees for dairy products for incorporation into existing schedules.

The Science and Technology laboratory testing programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. However under certain programs such as those involving peanuts, aflatoxin testing is required. 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.

Science and Technology is revising its list of testing services available due to changes in analytical methodologies and customer service needs. Under this rule, new laboratory tests are added to the tables in Part 91 as follows: (1) heavy metal screen, (2) niacin, (3) odor, (4) vitamin B-1 (thiamin), (5) vitamin B-2 (riboflavin), (6) capsaicin (hot sauce), (7) color (apparent-visual), (8) extractable color in spices, (9) hydroxymethylfurfural (honey), (10) linolenic acid, (11) overrun for whipping topping, (12) pH—quinhydrone (cheese), (13) serum drainage for whipped topping, (14) rate of wetting (nondairy creamer), (15) reducing sugars, (16) *Bacillus cereus*, (17) *Lactobacillus count*, (18) *Salmonella* enumeration (complete test), (19) *Salmonella typhi* (meat products), and (20) parasite identification. The direct microscopic clump count (DMCC) test is removed from Table 5 in Part 91 because it is analogous to the bacterial direct microscopic count test. Certain other laboratory tests are removed from the tables in Part 91 because there have been few, if any, requests for these tests in recent years. These outmoded laboratory tests are fat by specific gravity, moisture by Karl Fischer, and proteolytic count (dairy products). Four existing laboratory test fees in the tables of Part 91 are reduced corresponding to reduced analysis time and lowered equipment cost associated with utilizing revised methodology. The cholesterol test fee is lowered from \$171.00 to \$90.65. The available carbon dioxide test fee is reduced from \$136.80 to \$54.39. The jelly strength (bloom) test fee is reduced from \$85.50 to \$54.39. The water activity test is changed from \$136.80 to \$27.20.

In its analysis of projected costs for fiscal years 1997 and 1998, AMS has identified increases in the costs of providing laboratory testing services despite declining revenues. The total Laboratory Program obligations in FY 1996 were \$5,963,000 while the program operating costs were \$6,032,000 in FY 1997 with current fees. These cost increases are attributable mainly (65 percent of total operating budget or \$3,684,000 in 1997) to national and locality pay raises and increased benefit costs for Federal employees. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, a

general and locality salary increase for Federal employees, ranging from 2.39 to 2.89 percent depending on locality, effective January 1996, and an additional salary increase, ranging from 3.30 to 6.26 percent depending on localities, effective January 1997, has materially affected the costs of laboratory programs. Current and estimated demand for the laboratory services are also factored in the fee revisions. Since Science and Technology's last fee increase in August 1993 (58 FR 42408) total annual revenue of the laboratories has decreased from \$6.2 million to \$5.6 million. Major factors affecting these revenue losses include industry's implementation of plant and in-house testing, cutbacks in dairy support and procurement programs, and reduction in USDA food assistance programs due to re-engineering involving State and local governments. It is anticipated that during this fiscal year, at the current fee levels, the Science and Technology will not have sufficient revenue to sustain present staffing levels, to cover equipment and material cost increases, and to still maintain an adequate reserve balance of \$2.7 million or a minimum 4 months reserve called for by Agency policy and prudent financial management.

The AMS laboratory testing programs are voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act requires that reasonable fees be collected from the users of these services to cover, as nearly as practicable, the costs of maintaining the programs. A recent review of the current fee schedules, effective since September 30, 1994 (59 FR 50120—50122), revealed that anticipated revenue would not adequately cover increasing program costs. Without a fee increase, projected FY 1998 revenues for laboratory services are \$5,616,000 with obligatory costs projected at \$6,276,000. Accordingly, Science and Technology is increasing by 6 percent the currently listed laboratory fees in Tables 1 through 5 and in Tables 7 through 8 in Part 91. The standard hourly rate will be increased from \$34.20 to \$36.26 (6 percent). In addition, the laboratory rate for appeals, holiday and overtime service will be raised from \$51.30 to \$54.39 per analysis hour.

The fees and charges in Part 96 involved with the official grading of any lot of cottonseed will also increase by 6 percent. These fee increases are needed because of a statistical based cottonseed lot size study by Science and Technology in 1992 and the

consequential revision of rule 135, section 5 of the Trading Rules of the National Cottonseed Products Association. The trade association's rule allows licensed cottonseed samplers under AMS's supervision to increase the maximum cottonseed lot size from 150 to 300 tons to obtain a representative official cottonseed sample when prevailing environmental conditions during a period of 3 consecutive days do not compromise the quality of graded cottonseed. This resulted in a corresponding yearly reduction of the total number of official cottonseed samples subject to analytical chemical methods to derive a composite official grade designation. Even though the cottonseed chemist licensing program costs have been lowered in recent years, the loss of revenue resulting from the decreased issuance of the official cottonseed grading certificates has been substantial. Therefore, the Agency revises the certificate fee charged for official analysis and cottonseed grade determination from \$3.00 per certificate, issued by the chemist, to \$3.18. The application fee for a chemist's license will be raised from \$1,100.00 to \$1,166.00 for the examination, while the fee for renewal of the license will be increased from \$275.00 to \$292.00.

The laboratory fees for aflatoxin analyses in Table 6 in Part 91 will be increased or decreased depending on the commodity type or analytical method utilized. The cost of analyzing shelled peanuts by high performance liquid chromatography (HPLC) will be decreased from \$50.00 to \$31.00 per single analysis because automated HPLC equipment is being used now in the laboratory. Other aflatoxin test fees will increase by 6 to 21 percent because there are corresponding increased costs of the expendable supplies and materials to perform these analyses.

The rule will remove the time allotments for single tests in Tables 1 through 7 in Part 91. The time allotments stated in the prior rules and regulations of the Science and Technology (58 FR 42415, August 9, 1993 and 59 FR 50121, September 30, 1994) are no longer applicable because of the recent approval of automated equipment and rapid procedures for many of the listed tests. This new technology comes with increased expenses in specialized supplies and materials required to perform the requested analyses.

A proposed rule to make revisions to the current fee schedules was published in the **Federal Register** on October 28, 1997 (62 FR 56036—56043). Interested persons were given until November 28, 1997 to submit comments. During the

30-day comment period only one letter of comment was received. The letter came from a trade association which represents grain, feed and oilseed processing facilities throughout the United States. While the commenter recognized that fee increases may be necessary from time to time, it encouraged AMS to continue efforts to provide efficient service at a competitive price to its customers. The commenter went on to state such efforts should include new and innovative ways to deliver service without degrading quality. AMS has been and continues to look for innovative ways to improve our efficiency of administering our science and technology programs.

**List of Subjects**

**7 CFR Part 91**

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

**7 CFR Part 93**

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

**7 CFR Part 96**

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

For the reasons set forth in the preamble, Chapter I of Title 7 of the Code of Federal Regulations is amended as follows:

**PART 91—SERVICES AND GENERAL INFORMATION**

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

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

**Subpart I—Fees and Charges**

2. In §91.37, paragraph (a) is amended by revising Tables 1 through 8, paragraph (b) is revised, and paragraph (d) is added to read as follows:

**§ 91.37 Fees for laboratory testing, analysis, and other services.**

\* \* \* \* \*  
(a) \* \* \*

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

Type of analysis	List fee
Ammonia, Ion Selective Electrode .....	\$81.59
Ash, Total .....	36.26
Ash, Acid Insoluble .....	54.39
Chloride, Salt Titration (Dairy) ..	18.13

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

Type of analysis	List fee
Fat, Acid Hydrolysis .....	36.26
Fat, Acid Hydrolysis (Cheese) ..	36.26
Fat (Dairy Products except Cheese) .....	18.13
Fat, Ether Extraction .....	36.26
Fat, Microwave—Solvent Extraction .....	36.26
Fiber, Crude .....	72.52
Moisture, Distillation .....	36.26
Moisture, Oven .....	18.13
Protein, Kjeldahl .....	72.52
Protein, Combustion .....	72.52
Salt, Back Titration .....	27.20
Salt, Potentiometric .....	18.13

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

Type of analysis	List fee
Acid Degree Value (Dairy) .....	\$36.26
Acidity, Titratable .....	9.07
Carotene, Spectrophotometric ..	90.65
Catalase Test .....	18.13
Cholesterol <sup>1</sup> .....	90.65
Color (Honey) .....	18.13
Color, NEPA (Eggs) .....	36.26
Consistency, Bostwick (Cooked) .....	18.13
Consistency, Bostwick (Uncooked) .....	18.13
Density (Specific Gravity) .....	9.07
Dispersibility (Moates-Dabbah method) .....	18.13
Fat Stability, <sup>2</sup> AOM .....	36.26
Fatty Acid Profile (AOAC—GC method) .....	145.04
Flash Point Test only .....	72.52
Free Fatty Acids .....	18.13
Meltability (Process Cheese) ....	18.13
Peroxidase Test .....	18.13
Peroxide Value .....	27.20
Smoke Point Test only .....	72.52
Smoke Point and Flash Point ...	126.91
Solids, Total (Oven Drying) .....	18.13
Soluble Solids, Refractometer ..	18.13

<sup>1</sup> Moisture and fat analyses are required to be analyzed at an additional cost as prerequisites to the cholesterol test.

<sup>2</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
Aflatoxin, (Dairy, Eggs) .....	\$126.91
Alar or Daminozide Residue .....	217.56
Amitraz Residue, GLC .....	217.56
Alcohol (Qualitative) .....	72.52
Alkalinity of Ash .....	54.39
Antibiotic, Qualitative (Dairy) ....	18.13
Antibiotic, Quantitative <sup>1</sup> .....	398.86
Ascorbates (Qualitative—Meats) .....	18.13

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

Type of analysis	List fee
Ascorbic Acid, Titration .....	36.26
Ascorbic Acid, Spectrophotometric .....	36.26
Benzene, Residual .....	72.52
Brix, Direct Percent Sucrose ....	18.13
Brix, Dilution .....	18.13
Butylated Hydroxyanisole (BHA) .....	54.39
Butylated Hydroxytoluene (BHT) .....	54.39
Caffeine, Micro Bailey-Andrew .....	54.39
Caffeine, Spectrophotometric ...	36.26
Calcium .....	54.39
Citric Acid, GLC or HPLC .....	54.39
Chlorinated Hydrocarbons: Pesticides and Industrial Chemicals—	
Initial Screen .....	145.04
Second Column Confirmation of Analyte .....	36.26
Confirmation on Mass Spectrometer (Per Residue) .....	72.52
Dextrin (Qualitative) .....	18.13
Dextrin (Quantitative) .....	108.78
Filth, Heavy (Dairy) .....	90.65
Filth, Heavy (Eggs) .....	145.04
Filth, Light (Eggs) .....	90.65
Filth, Light & Heavy (Eggs Extraneous) .....	217.56
Flavor (Dairy) .....	9.07
Flavor (Products except Dairy) ..	27.20
Fumigants: Initial Screen—	
Dibromochloropropane (DBCP) .....	36.26
Ethylene Dibromide ....	36.26
Methyl Bromide .....	36.26
Confirmation on Mass Spectrometer—	
Each individual fumigant residue .....	72.52
Glucose (Qualitative) .....	27.20
Glucose (Quantitative) .....	63.46
Glycerol (Quantitative) .....	108.78
Gums .....	108.78
Heavy Metal Screen <sup>2</sup> .....	317.28
High Sucrose Content or Avasucrol—	
Percent Sucrose (Holland Eggs) .....	145.04
Hydrogen Ion Activity, pH .....	18.13
Mercury, Cold Vapor AA .....	90.65
Metals—Other Than Heavy, Each Metal .....	72.52
Monosodium Dihydrogen Phosphate .....	145.04
Monosodium Glutamate .....	145.04
Niacin .....	72.52
Nitrites (Qualitative) .....	18.13
Nitrites (Quantitative) .....	108.78
Oxygen .....	18.13
Odor .....	9.07
Palatability and Odor: First Sample .....	27.20
Each Additional Sample ...	18.13
Phosphatase, Residual .....	36.26
Phosphorus .....	72.52
Propylene Glycol, Codistillation: (Qualitative) .....	72.52

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

Type of analysis	List fee
Pyrethrin Residue (Dairy) .....	145.04
Scorched Particles .....	9.07
Sodium, Potentiometric .....	36.26
Sodium Benzoate, HPLC .....	54.39
Sodium Lauryl Sulfate (SLS) ....	290.08
Sodium Silicoaluminate (Zeolex) .....	72.52
Solubility Index .....	18.13
Starch, Direct Acid Hydrolysis ..	108.78
Sugar, Polarimetric Methods ....	36.26
Sugar Profile, HPLC— <sup>3</sup>	
One type sugar from HPLC profile .....	108.78
Each additional type sugar .....	18.13
Sugars, Non-Reducing .....	108.78
Sugars, Total as Invert .....	72.52
Sulfites (Qualitative) .....	27.20
Sulfur Dioxide, Direct Titration ..	36.26
Sulfur Dioxide, Monier-Williams ..	54.39
Toluene, Residual .....	72.52
Triethyl Citrate, GC (Quantitative) .....	36.26
Vitamin A .....	90.65
Vitamin A, Carr-Price (Dry Milk) ..	45.33
Vitamin B-1 (Thiamin) .....	72.52
Vitamin B-2 (Riboflavin) .....	72.52
Vitamin D, HPLC (Vitamins D <sub>2</sub> and D <sub>3</sub> ) .....	308.21
Whey Protein Nitrogen .....	27.20
Xanthinol Test For Urea .....	54.39
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
Available Carbon Dioxide (Baking Powders) .....	\$54.39
Capsaicin (Hot Sauce) .....	72.52
Color, Apparent-Visual .....	9.07
Complete Kohman Analysis (Dairy) .....	36.26
Extractable Color in Spices .....	18.13
Grape Juice Absorbancy Ratio .....	18.13
Hydroxymethylfurfural (Honey) ..	36.26
Jelly Strength (Bloom) .....	54.39
Linolenic Acid .....	72.52
Methyl Anthranilate .....	36.26
Net Weight (Per Can) .....	9.07
Non-Volatile Methylene Chloride Extract .....	90.65
Overrun for Whipped Topping ..	27.20
Particle Size (Ether Wash) .....	18.13
pH—Quinhydrone (Cheese) .....	18.13
Potassium Iodide (Table Salt) ..	54.39
Quinic Acid (Cranberry Juice) ...	63.46

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

Type of analysis	List fee
Serum Drainage for Whipped Topping .....	18.13
Sieve or Particle Size .....	18.13
Rate of Wetting (Nondairy Creamer) .....	18.13
Reducing Sugars .....	72.52
Water Activity .....	27.20
Water Insoluble Inorganic Residues (WIIR) .....	72.52
Yellow Onion Test .....	27.20

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	List fee
Aerobic (Standard) Plate Count .....	\$18.13
Anaerobic Bacterial Plate Count ..	27.20
<i>Bacillus cereus</i> .....	72.52
Bacterial Direct Microscopic Count .....	36.26
<i>Campylobacter jejuni</i> .....	145.04
Coliform Plate Count (Dairy Products) .....	18.13
Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count) .....	27.20
Coliforms, Most Probable Number (MPN): <sup>1</sup>	
Step 1 .....	27.20
Step 2 .....	27.20
<i>E. coli</i> , Presumptive MPN (Additional) <sup>2</sup> .....	54.39
<i>Enterococci</i> Count .....	108.78
<i>Lactobacillus</i> Count <sup>3</sup> .....	45.33
<i>Listeria monocytogenes</i> Confirmation Analysis: <sup>4</sup>	
Step 1 .....	54.39
Step 2 .....	54.39
Step 3 (Confirmation) .....	90.65
Parasite Identification .....	145.04
Psychrotrophic Bacterial Plate Count .....	27.20
<i>Salmonella</i> (USDA Culture Method): <sup>5</sup>	
Step 1 (Dairy Products) .....	36.26
Step 1 .....	54.39
Step 2 .....	27.20
Step 3 (Confirmation) .....	54.39
Serological Typing (Optional) .....	90.65
<i>Salmonella</i> Enumeration (Complete Test) .....	108.78
<i>Salmonella</i> (Rapid Methods): <sup>6</sup>	
Step 1 .....	72.52
Step 2 .....	27.20
Step 3 (Confirmation) .....	54.39
<i>Salmonella typhi</i> (Meat Products) <sup>7</sup> .....	36.26
<i>Staphylococcus aureus</i> , MPN: With Coagulase Positive Confirmation .....	63.46
Thermocuric Bacterial Plate Count .....	27.20
Yeast and Mold Count .....	18.13

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES—Continued

Type of analysis	List fee
Yeast and Mold Differential Plate Count .....	27.20

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

<sup>4</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>5</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>6</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>7</sup> *Salmonella typhi* determination in mechanically deboned meat.

TABLE 6.—LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Fee per single analysis	Fee per pair analyses <sup>1</sup>
Peanut Butter (TLC—CB—Affinity Column)	\$ 36.26	<sup>2</sup> NA
Corn (TLC—CB—Affinity Column)	36.26	NA
Roasted Peanuts (TLC—BF)	36.26	NA
Brazil Nuts (TLC—BF)	72.52	NA
Pistachio Nuts (TLC—BF)	72.52	NA
Shelled Peanuts (TLC—Affinity Column)	17.00	34
Shelled Peanuts (HPLC)	31.00	62
Tree Nuts (TLC)	36.26	NA
Oilseed Meals (TLC)	36.26	NA
Edible Seeds (TLC)	36.26	NA
Dried Fruit (TLC)	36.26	NA
Small Grains (TLC)	36.26	NA
In-Shell Peanuts (TLC)	17.00	34
Silage; Other Grains (TLC)	36.26	NA
Submitted Samples (TLC—Affinity Column)	36.26	NA

<sup>1</sup> Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1-AB, 2-AB, 3-AB, and 1-CD is \$34.00 per pair of analyses using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column chromatography method. 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 \$31.00 and \$62.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science and Technology Division's current hourly rate of \$36.26.

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

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

Laboratory service description	List fee
Sample Grinding Raw Peanuts by Vertical Cutter Mixer (VCM)	\$ 18.13
Sample Grinding Canned Boned Poultry (VCM)	36.26
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):	
per pouch or raw sample	9.07
per tray pack	18.13
Compositing Multiple Subsamples for an Individual Test Sample Unit per subsample	9.07

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

Service description	List charge
Established Courier Expense at Albany, Georgia S&TD Laboratory	\$2.15.
Courier Expense at Other AMS Laboratories: Mileage Charge Set at \$0.31 Per Mile Roundtrip from Laboratory to Delivery Site.	Varies.
Facsimile Charge (Per Analysis Report)	\$3.20 minimum up to first 3 pages, then \$1.10 per page.
Additional Analysis Report or Extra Certificate (½ hour charge)	\$18.13 per report or certificate reissued.

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The standard hourly rate shall be \$36.26.

\* \* \* \* \*

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

3. Section 91.38 is revised to read as follows:

**§ 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 paragraph (a) of § 91.37 if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is \$54.39 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.

4. In § 91.39, paragraph (a) is revised to read as follows:

**§ 91.39 Special request fees 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 \$54.39 per analysis hour.

\* \* \* \* \*

5. In § 91.40, paragraph (a) is revised to read as follows:

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

(a) The AMS peanut aflatoxin laboratory at Albany, Georgia, has a set courier charge of \$2.15 per trip to retrieve the sample package. The mileage charge specified in Table 8 of § 91.37 for courier service at other AMS laboratories is based on the shortest roundtrip route from laboratory to sample retrieval site.

\* \* \* \* \*

**PART 93—PROCESSED FRUITS AND VEGETABLES**

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

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

2. In § 93.11, the definition for aflatoxin is 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>.

\* \* \* \* \*

3. In § 93.12, paragraph (b)(1) is revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \* (1) The Science and Technology Division Aflatoxin Laboratories at Albany 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.

\* \* \* \* \*

**PART 96—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (CHEMICAL ANALYSIS AND UNITED STATES OFFICIAL GRADE CERTIFICATION)**

1. The authority citation for part 96 continues to read as follows:

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

2. Section 96.20 is revised to read as follows:

**§ 96.20 Fee for chemist's license.**

(a) The fee for the examination of an applicant for a license as a chemist to

analyze and certify the grade of cottonseed shall be \$1,166.00.

(b) The examination fee shall be paid at the time the application is filed or at a time prior to the administration of the examinations. This fee shall be paid regardless of the outcome of the licensing examinations. The examination fee shall be nonrefundable to the applicant; however, in the event of death of the applicant prior to the examination, full payment of the fee may be returned to the applicant's beneficiary. If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

(c) For each renewal of a chemist's license, the fee shall be \$292.00.

3. In § 96.21, paragraph (a) is revised to read as follows:

**§ 96.21 Fee for certificates to be paid by licensee to Service.**

(a) To cover the cost of administering the regulations in this part, each licensed cottonseed chemist shall pay to the Service \$3.18 for each certificate of the grade of cottonseed issued by the licensee.

\* \* \* \* \*

Dated: March 27, 1998.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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