Subpart—United States Standards for Grades of Table Grapes (European or Vinifera Type)

§ 51.886 Tolerances.

* * * * *

(b) * * *

TABLE II.—TOLERANCES EN ROUTE OR AT DESTINATION

Factor	U.S. extra fancy table	U.S. fancy table	U.S. No. 1 table
(A) For bunches failing to meet color requirements	10	10	10
(B) For bunches failing to meet requirements for minimum diameter of berries	10	10	10
(C) For bunches failing to meet stem color requirements	10		
(D) For offsize bunches and for bunches and berries failing to meet the remaining requirements for the grade	12	12	12
(E) For shattered berries in consumer size packages an allowance of 10 percent is provided. Any percent of shattered berries exceeding the allowance of 10 percent shall be scored as berries failing to meet the requirements of the grade.			
Including in (D):			
(a) For permanent defects	8	8	8
(b) For serious damage	4	4	4
And, including in (b):			
(i) For serious damage by permanent defects	2	2	2
(ii) For decay	1	1	1

Dated: September 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–7869 Filed 9–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 91 and 92

[Docket Number ST–05–01]

RIN 0581–AC48

Changes in Hourly Fee Rates for Science and Technology Laboratory Services—Fiscal Years 2007–2009

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to change the hourly fee rates for Science and Technology (S&T) Laboratory Services. The agency is proposing to raise these rates to reflect, among other factors, national and locality pay increases for Federal employees and inflation, operating costs, instrumentation and training, and program and agency administrative overhead costs. In the past, AMS has amended its regulations on an as needed basis in order to recover laboratory program costs. With this proposed regulation, AMS is providing for three annual standard hourly fee rate increases for fiscal years 2007–2009. This would provide the agricultural commodity industries and other stakeholders with more timely and relevant information regarding voluntary user fees for laboratory testing services. The agency is also proposing to remove tables and schedules with listings of individual tests and services. Three annual hourly fee rate adjustments are proposed for appeals, holiday, and overtime services to reflect the anticipated increase in cost of providing these laboratory services each fiscal year. The regulations also are updated to identify current facility addresses. Part 92 is obsolete and therefore has been removed.

DATES: Comments must be received on or before October 23, 2006.

ADDRESSES: Send comments to James V. Falk, Docket Manager, USDA, AMS, Science and Technology Programs, 1400 Independence Avenue, SW., Mail Stop 0272, Washington, DC 20250–0272; telephone (202) 690–4089; fax (202) 720–4631, or e-mail: *James.falk@usda.gov.* State that your comments refer to Docket No. ST–05–01. Comments may also be submitted electronically through *http://www.regulations.gov.* Submitted comments will be available for public inspection during regular business hours in Room 1090 South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Epstein, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, Mail Stop 0270, 1400 Independence Avenue, SW., Washington, DC 20250–0270, telephone number (202) 720–5231; fax (202) 720–6496, and e-mail: *Robert.epstein@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Science and Technology (S&T) Programs has been performing voluntary laboratory services under the Agricultural Marketing Act of 1946, as amended, for the AMS commodity programs (Fruit and Vegetable, Cotton, Livestock and Seed, Poultry, Dairy, and Tobacco) and applicable customers in these industries since its inception on August 17, 1988. Before that, voluntary laboratory testing was provided for a user fee by AMS under the various commodity programs. The current standard hourly rate of $45.00 and the premium hourly rate of $67.50 have been in effect since publication in the **Federal Register** on October 27, 2000 (65 FR 64302). The standard fee rate for laboratory services is proposed to be increased to $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. The premium hourly fee rates would also be adjusted for fiscal years 2007 through 2009. An increase in the premium hourly rates over the three fiscal years for laboratory services performed on holidays, appeal samples, and overtime basis is also needed since Science and Technology laboratory personnel may be required to work extended hours of service at the time and a half pay or the double hourly pay to accommodate clients. This is due to

stakeholder demand for immediate test results. Generally, the processing of all laboratory samples is continuous over a 24/7 timeframe due to the recent introduction of automated equipment.

The AMS laboratory testing programs are voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*). The AMA authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and trade. In addition, consumers may be able to determine the quality and wholesomeness characteristics of a commodity or product through laboratory testing. This allows agricultural products to be assigned official AMS grade designations or to meet specifications. The AMA 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.

AMS regularly reviews its user-fee-supported laboratory service programs to determine if the voluntary fees are adequate to cover expenses. The most recent review determined that the existing fee schedules and tables of individual tests or services, which have been in place since October 27, 2000, will not generate sufficient revenues to recover operating costs.

A more flexible user fee system, using set hourly rates for multiple fiscal years, is proposed by this rulemaking to ensure that AMS properly recovers its full costs for providing laboratory services, and that all stakeholders are charged reasonable fees. By enacting a three year fee increase instead of a single year fee increase, AMS would help ensure that the fee increases are effective at the beginning of each fiscal year (October 1).

In addition, the existing fee schedules and tables in 7 CFR, part 91, § 91.37 would be removed. The analytical tests listed in the tables are not specific to individual commodity testing requirements or stakeholder needs. The current tables do not represent the actual operational costs to perform single tests and newer methodologies. Laboratory services are provided for five types of analytical testing: Microbiological, physical, residue chemistry, proximate analysis for composition, and biomolecular testing. AMS must recover the costs of providing these services. The proposed hourly fee rates would recover these costs.

AMS calculated its actual costs for fiscal years 2001 through 2005 and its projected increases in salaries and inflation in fiscal years 2006 through 2009. The estimates for increases in salaries for fiscal year 2006 as the base year and the succeeding out years are from the Office of Management and Budget's (OMB) multi-year ''Economic Assumptions'' tables. The Federal pay raise for calendar years 2002, 2003, and 2004 were 4.6 percent, 4.1 percent and 4.1 percent, respectively. This information comes from Table 11–1, ''Economic Assumptions'', of the Office of Management and Budget's Fiscal Year 2005 Budget which is available at *http://www.whitehouse.gov/omb/budget/fy2005/econ.html.* The average fiscal year pay raise for Federal employees in calendar years 2005 and 2006 was 3.5 percent effective January 2005 and 3.1 percent effective January 2006. The average combined national and locality pay raise is estimated to be 2.2 percent for fiscal years 2007, 2008, and 2009. Inflation for fiscal year 2006 is estimated to be 2.1 percent. Inflation for fiscal year 2007 is estimated to be 2.2 percent. Inflation for fiscal year 2008 is estimated to be 2.1 percent. Inflation for fiscal year 2009 is estimated to be 2.1 percent. These estimates for inflation percent can be obtained from Table 12–1, ''Economic Assumptions'', of the OMB's Fiscal Year 2007 Budget which is available at *http://www.whitehouse.gov/omb/budget/fy2007/econ.html.*

The Agency will initiate another rulemaking to adjust any fee established, if estimated increases for pay and inflation do not adequately cover the Agency's costs of providing the services. The cost of providing laboratory services includes both direct and overhead costs. Direct costs include the cost of salaries, employee benefits, operation cost and infrastructure cost. The Agency is able to estimate the employee benefits attributable to overtime work and has included these in the fee calculations.

TABLE 1.—CURRENT AND PROPOSED HOURLY FEE RATES (PER HOUR) BY TYPE OF SERVICE

Service	Current rate	FY 2007 rate [1]	FY 2008 rate [2]	FY 2009 rate [3]
Laboratory	$ 45.00	$ 60.00	$ 63.00	$ 67.00
Appeal	67.50	71.00	74.00	78.00
Overtime	67.50	71.00	74.00	78.00
Legal Holiday	67.50	82.00	85.00	89.00

[1 2 3] Hourly values for FY 2007–FY 2009 are rounded off to nearest whole dollar.

With this proposed action, the AMS would amend its regulations to provide for three annual fee increases in one action. Table 1 shows the summary of the current rates and the proposed hourly fee rates for fiscal years 2007 through 2009 for the four different types of services (regular laboratory, appeal, overtime, and legal holiday work) that Science and Technology Programs employees perform.

TABLE 2.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2006

Laboratory services	Apportioned fee rate
Base Time:	
Actual FY 2005 Salaries [1] @ $2,787,474	$20.00
FY 2006 Pay Adjustment [2] = [Actual FY 2005 Salaries ($20.00)] x 0.031 + $0.86 (weighted portion @ $119,500 increase for the FY 2006 period changes with payroll for within-grade pay step increases for General Schedule salaries, promotion pay costs and new employee position pay costs)	1.48
Benefits [3]	6.90
Operational Costs [4]	11.60
Infrastructure Costs [5]	8.78

TABLE 2.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2006—Continued

Laboratory services	Apportioned fee rate
Program Overhead [6]	3.44
Agency Overhead [7]	3.28
FY 2006 Inflation (2.1 %) = [Costs excluding infrastructure and payroll] x .021.	0.53
Total Rate Per Hour—Base Time	56.01

[1] Actual cost of FY 2005 salaries ($2,787,474) ÷ (2,080 program hours times 67 program employees) = $20.00 unit cost.
[2] Actual cost of FY 2006 pay adjustment ($205,911) ÷ (2,080 program hours times 67 program employees) = $1.48 unit cost.
[3] Actual cost of benefits ($961,668) ÷ (2,080 program hours times 67 program employees) = $6.90 unit cost.
[4] Actual cost of operational costs ($1,616,645) ÷ (2,080 program hours times 67 program employees) = $11.60 unit cost.
[5] Actual cost of infrastructure ($1,223,570) ÷ (2,080 program hours times 67 program employees) = $8.78 unit cost.
[6] Actual cost of Program overhead ($479,000) ÷ (2,080 program hours times 67 program employees) = $3.44 unit cost.
[7] Actual cost of Agency overhead ($457,000) ÷ (2,080 program hours times 67 program employees) = $3.28 unit cost.

TABLE 3.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2007

Laboratory services	Apportioned fee rate
Base Time:	
FY 2006 Salaries = Actual FY 2005 Salaries ($20.00) + FY 2006 Pay Adjustment ($1.48)	$21.48
FY 2007 Pay Adjustment = FY 2006 Salaries × 0.022	0.47
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	11.75
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × 022	0.57
Total Rate Per Hour—Base Time	60.02

TABLE 4.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2008

Laboratory services	Apportioned fee rate
Base Time:	
FY 2007 Salaries = FY 2006 Salaries ($21.48) + FY 2007 Pay Adjustment ($0.47)	$21.95
FY 2008 Pay Adjustment = FY 2007 Salaries × 0.022	0.48
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	13.47
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
Total Rate Per Hour—Base Time	62.77

TABLE 5.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2009

Laboratory services	Apportioned fee rate
Base Time:	
FY 2008 Salaries = FY 2007 Salaries ($21.95) + FY 2008 Pay Adjustment ($0.48)	$22.43
FY 2009 Pay Adjustment = FY 2008 Salaries × 0.022	0.49
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	16.15
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
FY 2009 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.56

TABLE 5.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2009—Continued

Laboratory services	Apportioned fee rate
Total Rate Per Hour—Base Time	66.50

In order to project the hourly fee rates for the laboratory program services for fiscal years 2007 through 2009, the current fiscal year 2006 is used as a base. The total base time hourly fee rate calculation (Table 2) for fiscal year 2006 begins with the actual salaries for fiscal year 2005 ($2,787,474) and adds the fiscal year 2006 pay raises (3.1 percent) and add other fiscal year 2006 pay adjustments ($119,500) for within-grade pay step increases for General Schedule (GS) salaries, promotion pay costs, and new employee position pay costs. Table 2 contains footnotes 1–7 that provide the common mathematical formula used to calculate the apportioned rate for each fee charge category for fiscal year 2006. The formula uses the actual cost or projected cost in dollars for the applicable fiscal year for each individual fee charge category divided by the available program hours and further divided by the number of laboratory service program employees. The formula derives the apportioned fee rate for each fee charge category (salaries with pay adjustment, benefits, operational costs, infrastructure cost, program administrative overhead and agency overhead). The same formula that is used in Table 2 and that is indicated in its footnotes is also applied in the other tables to derive each category unit rate with the different actual costs or variable projected costs to be inserted in the formula equation for the applicable fiscal year.

Table 3 through Table 5 show the calculation of the total standard hourly fee rates to be rounded off for fiscal years 2007 through 2009.

TABLE 6.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2006

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half):	
FY 2005 Salaries @ 1.5 = [Actual 2005 Salaries ($20.00)] × 1.5	$30.00
FY 2006 Pay Adjustment = [Actual FY 2005 Salaries ($20.00) × 0.031 + $0.86 (weighted portion @ $119,500 increase for the FY 2006 period changes with payroll for within-grade pay step increases for General Schedule salaries, promotion pay costs, and new employee position pay costs)] × 1.5	2.22
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	8.78
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
Total Rate Per Hour—Appeal and Overtime	66.75

TABLE 7.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2007

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half):	
FY 2006 Salaries @ 1.5 = [Actual 2005 Salaries ($20.00) + 2006 Pay Adjustment ($1.48)] × 1.5	$32.22
FY 2007 Pay Adjustment = FY 2006 Salaries @ 1.5 × 0.022	0.71
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	11.75
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
Total Rate Per Hour—Appeal and Overtime	71.00

TABLE 8.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2008

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half):	
FY 2007 Salaries @ 1.5 = [FY 2006 Salaries ($21.48) + FY 2007 Pay Adjustment ($0.47)] × 1.5	$32.93

TABLE 8.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2008—Continued

Laboratory services	Apportioned fee rate
FY 2008 Pay Adjustment = FY 2007 Salaries @ 1.5 × 0.022	0.72
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	13.47
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
Total Rate Per Hour—Appeal and Overtime	73.99

TABLE 9.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2009

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half):	
FY 2008 Salaries @ 1.5 = [FY 2007 Salaries ($21.95) + FY 2008 Pay Adjustment ($0.48)] × 1.5	$33.65
FY 2009 Pay Adjustment = FY 2008 Salaries @ 1.5 × 0.022	0.74
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	16.15
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
FY 2009 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.56
Total Rate Per Hour—Appeal and Overtime	77.97

Table 6 through Table 9 show the calculation of the total appeal and total overtime hourly fee rates to be rounded off for fiscal years 2006 through 2009. These tables incorporate the differentials in costs associated with the necessity of laboratory personnel to work extended hours of service at the time and a half pay doing either overtime or appeal sample testing.

TABLE 10.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2006

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time):	
FY 2005 Salaries @ 2.0 [Actual 2005 Salaries ($20.00)] × 2.0	$40.00
FY 2006 Pay Adjustment = [Actual FY 2005 Salaries ($20.00) × 0.031 + $0.86 (weighted portion @ $119,500 increase for the FY 2006 period changes with payroll for within-grade pay step increases for General Schedule salaries, promotion pay costs, and new employee position pay costs)] × 2.0	2.96
Benefits	6.96
Operational Costs	11.60
Infrastructure Cost	8.78
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
Total Rate Per Hour—Holidays	77.49

TABLE 11.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2007

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time):	
FY 2006 Salaries @ 2.0 = [Actual 2005 Salaries ($20.00) + 2006 Pay Adjustment ($1.48)] × 2.0	$42.96
FY 2007 Pay Adjustment = FY 2006 Salaries @ 2.0 × 0.022	0.95
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	11.75
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
Total Rate Per Hour—Holidays	81.98

TABLE 12.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2008

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time):	
FY 2007 Salaries @ 2.0 = [FY 2006 Salaries ($21.48) + FY 2007 Pay Adjustment ($0.47)] × 2.0	$43.90
FY 2008 Pay Adjustment = FY 2007 Salaries @ 2.0 × 0.022	0.97
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	13.47
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
Total Rate Per Hour—Holidays	85.21

TABLE 13.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2009

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time):	
FY 2008 Salaries @ 2.0 = [FY 2007 Salaries ($21.95) + FY 2008 Pay Adjustment ($0.48)] × 2.0	$44.86
FY 2009 Pay Adjustment = FY 2008 Salaries @ 2.0 × 0.022	0.99
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	16.15
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
FY 2009 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.56
Total Rate Per Hour—Holidays	89.43

Table 10 through Table 13 show the calculation of the total legal holiday hourly fee rates to be rounded off for fiscal years 2006 through 2009. These tables incorporate the differentials in costs associated with the necessity of laboratory personnel to work extended hours of service at the double hourly pay rate doing sample testing on a Federal holiday or a designated day for the Federal holiday.

The Agency proposes to recover the actual cost of services for multiple fiscal years covered by this rule. These fee increases are essential for the continued sound financial management of the Agency's budget. In order to enhance the transparency of the hourly fee rates in the aforementioned Tables 3 through 13 for fiscal year 2007, fiscal year 2008 and fiscal year 2009, a description is provided of each fee charge category. Federal salaries with national and locality pay adjustments and choices in benefits are made available on an annual basis by the Office of Personnel Management (OPM). Operational costs include expenses for rents, communications, utilities, medical

examinations, safety equipment, sample preparation equipment, training, trash and hazardous waste disposal, travel and transportation costs. Communication expenditures include costs for photocopying, printing, e-mailing, Internet services, telephone, and faxing equipment. There have been large capital improvement expenditures in the laboratories in recent years. These expenditures include costs for the Food Emergency Response Network (FERN) and the capital improvements for the Environmental Management Systems (EMS) in accordance with the applicable mandates for Federal laboratories of Executive Order 13148 of April 21, 2000, Greening the Government Through Leadership in Environmental Management (65 FR 24593). These capital improvement costs are included in the normal operations of the Science and Technology field service laboratories. In addition, operational costs include expenses for office and laboratory supplies, chemicals, reagents, security and guard services, waste removal, robots, cleaning and internal building maintenance, billing and collection services, and a Laboratory Information Management System (LIMS). Infrastructure costs are mainly laboratory instruments and capital equipment with service and maintenance contracts and replacement spare parts. Infrastructure expenses include consumable supply costs associated directly with the proper operation of analytical instruments and laboratory equipment. Stakeholders demand that AMS provide cost effective and timely product testing requiring modern and sometimes automated instrumentation. These instruments are expensive and undergo equipment capitalization for determining costs. Equipment capitalization is the determined cost per year to replace the equipment after its useful service life has been established. Infrastructure costs include database acquisitions and maintenance for e-business. Infrastructure costs include large computer hardware and software expenses. Agency and Program overhead is the pro-rated share, attributable to a particular service, of the agency's management and support costs. Management and administrative support costs include the costs of providing budget and accounting services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, statistical services, and other general program and agency management services of support activities above the local laboratory level. Overhead expenditures are allocated across the Agency for each direct hour of laboratory service.

AMS no longer uses the Billings and Collections System (BLCO) for billings and collections through the National Finance Center (NFC) in New Orleans, LA. The Agency now uses the ''accounts receivable'' functions in Foundation Financial Information System (FFIS) as the document feeder system for customer billings and the collections now come through our lockbox. Accordingly, § 91.42 would be updated to reflect these changes. The regulations also are updated to identify current facility addresses.

This proposed rule would also remove and reserve 7 CFR part 92. Part 92 is obsolete because it relates to the mandatory testing of imported tobacco for prohibited pesticide residues and the statutory requirement for such testing has been removed by the Fair and Equitable Tobacco Reform Act of 2004 (7 U.S.C. 518). The tests had been conducted by Science and Technology (S&T) Programs for the AMS Tobacco Program, which sampled imported tobacco and administered the program for imported tobacco.

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

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

An economic analysis follows to review the impacts on laboratory customers of the proposed revisions in AMS voluntary user fees for laboratory services. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). In accordance with 5 U.S.C. 603, AMS has performed an Initial Regulatory Flexibility Analysis for this proposed rule. AMS is inviting comments about this proposed rule as it relates to small entities. In particular, AMS is interested in obtaining information concerning the number and kind of small entities who may incur benefits or costs from implementation of this proposed rule and the impact of those benefits or costs on decisions to utilize AMS voluntary testing services.

Regulations must be designed in the most cost-effective manner possible to obtain the objective of a sustainable cost recovery program while imposing the least burden on society. AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an economic analysis of the benefits and costs.

Need for Proposed Action.

The AMS laboratory testing programs are voluntary, user fee services conducted under the authority of the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*). The AMA authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and trade. The AMA also requires that reasonable fees be collected from the users of the services to cover as nearly as practicable the costs of maintaining the programs.

Science and Technology (S&T) Programs of AMS regularly reviews its user-fee-financed laboratory service programs to determine if the fee levels are adequate. The most recent review determined that the existing fee schedule, effective October 27, 2000 (65 FR 64302) does not generate sufficient revenues to recover operating costs. For fiscal year 2005 the Science and Technology program reported a $702,000 deficit at the current fee levels. The Science and Technology program costs and revenues for fiscal year 2005 were $6,393,000 and $5,691,000, respectively. Program obligations for fiscal year 2006 are projected at $6,602,000 and revenues are projected at $5,834,000 for an estimated deficit of $768,000. With this proposed action, the Agency expects to collect an estimated $6,521,000, $7,186,000, and $7,553,000 in fiscal years 2007 through 2009 respectively, to cover the cost of routine laboratory services, appeal requests, overtime, and holiday services for Science and Technology customers and other program stakeholders.

Alternatives

Alternatives to the proposed rate increase were considered by the Agency. One alternative to this proposed rule would be to make no changes to the current user fees. As a result, AMS would not recover the full cost of program activities and services would have to be reduced or terminated. Were this to happen, the users of AMS laboratory services would be unable to meet certain AMS program requirements, would find it more difficult to meet foreign government or importer testing requirements, and would lose the opportunity to support

their marketing efforts with what they believe to be preferred government laboratory test results. Consequently, AMS does not consider this alternative to be reasonable.

Another alternative considered would be to calculate the fee increases needed over the next three year period and then spread this overall increase evenly in annual increments. Because the increases are necessary to cover on-going costs, e.g., rent, salaries and benefits, and equipment replacement, and financial stability needs to be maintained for this program, adequate funds must be generated immediately, rather than spread over a three year period. Thus, AMS does not consider this alternative to be reasonable.

To ensure full costs are being covered as they are incurred, the preferred alternative is to match fee increases with expected costs on an annual basis over the next three years. This alternative will assure costs are appropriately covered and that laboratory testing services remain available as program customers request them. With this proposed action, the Agency expects to collect an estimated $6,521,000, $7,186,000, and $7,553,000 in fiscal years 2007 through 2009, respectively, to cover the cost of routine laboratory services, appeal requests, overtime, and holiday services.

Summary of Impacts

Under this proposal AMS would continue to offer laboratory testing services under the Agricultural Marketing Act of 1946 as amended, to facilitate marketing and allow products to obtain grade designations or meet marketing standards. As such, the program provides a viable option for a wide variety of clients by delivering scientific and analytical support services to the agricultural community and provides a valuable resource for those businesses and industries that wish to use a USDA shield.

Further, by proposing a three year fee increase instead of a single year fee increase, the Agency would help ensure that the fee increases are effective at the beginning of each fiscal year on October 1. An increase over three fiscal years would permit customers and other program stakeholders an opportunity to plan for annual changes in costs of laboratory service and to incorporate them into their budgetary plans.

For analytical purposes, projected collections are based on calculations using an effective date of October 1, 2006 for the proposed fiscal year 2007 user fees. There are essentially three rate increases being proposed for the basic laboratory services—$45 to $60 or 33.3 percent in fiscal year 2007, $60 to $63 or 5.0 percent in fiscal year 2008 and $63 to $67 or 6.4 percent in fiscal year 2009. The rate increases for overtime and appeals are $67.50 to $71 or 5.2 percent, $71 to $74 or 4.2 percent, and $74 to $78 or 5.4 percent in fiscal years 2007, 2008, and 2009, respectively. The rate increases for holiday service are $67.50 to $82 or 21.5 percent, $82 to $85 or 3.7 percent, and $85 to $89 or 4.7 percent in fiscal years 2007, 2008, and 2009, respectively. This is a voluntary program and the costs to each user would be proportional to their use of laboratory services each year. The increased fees will cover inflation and national and locality pay raises and replacement of equipment and other infrastructure improvements.

Under the Regulatory Flexibility Act, the impact ofthis proposed rule on small businesses must be analyzed. There are 811 current users of AMS laboratory testing services. Such users of services include food processors, handlers, growers, Federal and State government agencies, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). Any decision by stakeholders and customers to discontinue the use of the laboratory services because of increased fees would not hinder food processors or other industry members from marketing their products.

For the following cost analysis, certain assumptions are used. First, base year data is actual fiscal year 2005 amount billed for voluntary services performed for the public. Second, seven percent of the total amount billed represents overtime costs and five percent represents costs related to appeals. Third, the calculated amounts in fiscal year 2007 are using the base year data as if the base year was fiscal year 2006. Fourth, each of the 811 customers had the exact same tests, using the same amount of time, and thus were billed the exact same amount. This customer is the ''average'' laboratory customer.

Table 14 sets the total levels for the dollar ($) amounts billed in the base year (Fiscal Year 2006).

TABLE 14.—BASE YEAR DATA (FISCAL YEAR 2006)

Total Billed	$1,536,688
Basic Laboratory Services	1,352,285
Overtime Costs (7%)	107,568
Appeal Costs (5%)	76,834

Table 15 presents the base year costs and estimates costs in fiscal year 2007, fiscal year 2008, and fiscal year 2009 for the ''average'' laboratory customer. The base year values are derived by dividing basic laboratory services, overtime costs, and appeal costs by 811. The values for fiscal years 2007, 2008, and 2009 are derived multiplying each year by the appropriate percentage rate.

TABLE 15.—COSTS ($) FOR THE ''AVERAGE'' CUSTOMER, BASE YEAR THROUGH FISCAL YEAR 2009

	Base year	FY 2007	FY 2008	FY 2009	Total Diff.[1]
Lab Services	1,667	2,223	2,334	2,483	816
Overtime	133	140	146	154	21
Appeals	95	100	104	110	15
Total	1,895	2,463	2,584	2,747	852

[1] Net difference calculated between costs in dollars ($) between base year and Fiscal Year 2009.

After the third increase, the customer will pay an additional average of $852 for all laboratory services. This is a 44.96 percent increase over the base year. The percentage increase for the basic laboratory services is 49.0 percent, overtime is 15.8 percent, and an appeal sample is 15.8 percent.

TABLE 16.—COSTS ($) FOR A ''LARGE BUSINESS'' CUSTOMER, BASE YEAR THROUGH FISCAL YEAR (FY) 2009

	Base year	FY 2007	FY 2008	FY 2009	Total diff.[1]
Lab Services	704,000	938,432	985,354	1,048,417	344,417
Overtime	56,000	58,912	61,386	64,701	8,701
Appeals	40,000	42,080	43,847	46,215	6,215
Total	800,000	1,039,424	1,090,587	1,159,333	359,333

[1] Net difference calculated between costs in dollars ($) between base year and Fiscal Year 2009.

Table 16 presents the base year costs and estimates costs in fiscal years 2007, 2008, and 2009 for a ''large business'' laboratory customer. While the numerical values increase significantly, the percentages are the same. Even though the ''large business'' customer is paying $359,333 more then what was paid for the same services in the base year, the increase is still approximately 44.9 percent above what was billed in the base year.

The same is true for a ''small business'' customer. Table 17 presents the costs associated with a customer billed $29,000. Again the total difference between the billing in fiscal year 2009 and the base year is significantly smaller than the billing of an ''average'' customer, but the percentage increase is still near 44.9 percent.

TABLE 17.—COSTS ($) FOR A ''SMALL BUSINESS'' CUSTOMER, BASE YEAR THROUGH FISCAL YEAR (FY) 2009

	Base year	FY 2007	FY 2008	FY 2009	Total diff.[1]
Lab Services	25,520	34,018	35,719	38,005	12,485
Overtime	2,030	2,136	2,226	2,346	316
Appeals	1,450	1,525	1,589	1,675	225
Total	29,000	37,679	39,534	42,026	13,026

[1] Net difference calculated between costs in dollars ($) between base year and FY 2009.

Under the Regulatory Flexibility Act, the impact of this proposed rule on small businesses must be considered. The Agency estimates that 25 percent of the laboratory fees billed in fiscal year 2005 was to small businesses. Thus, a total of $384,172 was billed to small businesses. If the entire proposed fee increase had been implemented, small businesses would have been billed $556,665, a 44.9 percent increase.

One question is how each of these customers including small businesses will react to cost increases at these amounts. The increases are spread over a three year period which will mitigate some of the impact. But the focus should be on the reaction to the increase occurring in fiscal year 2007 which is a one third increase over the base year. The answer is dependent on the customer's business, and is proportional to the number of samples involved. The lower the cost per unit of product being sampled, the higher the probability the customer will continue to use AMS laboratory services and pass on some or all of the additional costs, the exact amount of which is not known. Also, use of AMS laboratory services is voluntary and other private or public laboratory options are available.

This proposed rule contains no new information collection or recordkeeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in anyone year. When such a statement is needed for a rule, section 205 of UMRA generally requires that the Department identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in anyone year. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Civil Justice Reform (Executive Order 12988)

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

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin,

gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. AMS has included at § 91.7 the provision in the regulation under part 91 to describe in detail the requirements for nondiscrimination when reviewing or granting any person or entity the benefits of Science and Technology Programs laboratory service. This regulation is consistent with USDA regulations which prohibit discrimination in its programs and activities.

This proposed rule would not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

AMS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis.'' AMS has determined this proposed action ensures the civil rights of all Science and Technology Programs applicants and customers. They represent minorities (24.4%), women (51.1%), and persons with disabilities (14.5%) in the same percent proportions to the entire customer base as their compositions are represented in the total approximate general population (299 million) of the United States of America available in descriptive tables at *http://www.census.gov/*. In addition, each and every customer would receive the same user fee for each identical service.

Comments

A thirty day comment period is provided for interested persons to comment on this proposed action. All comments received by October 23, 2006 will be considered. A thirty day period for public comment is justified in order to allow the agency to recover the full cost of operating a voluntary user fee laboratory testing program. The existing fee schedules have been in place since October 2000. AMS regularly reviews its user-fee-supported programs to determine if the voluntary fees are adequate to cover expenses. Due to the length of the rulemaking process, the fiscal year has partially elapsed by the time the agency publishes a final rule to amend its fees. As a result the agency is unable to recover the full cost of its services in a timely manner. Therefore, a thirty day comment period is reasonable.

List of Subjects

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.

Under the authority of 7 U.S.C. 1622 and 1624, the Agricultural Marketing Service proposes to amend parts 91 and 92 of Title 7, chapter I, subchapter E, of the Code of Federal Regulations as follows:

PART 91—SERVICES AND GENERAL INFORMATION [AMENDED]

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

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

2. 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 as listed below.

(1) *Science and Technology Programs National Science Laboratory.* A variety of proximate, chemical, microbiological and biomolecular tests and laboratory analyses performed on fruits and vegetables, poultry, meat and meat products, fiber products and processed foods are performed at the Science and Technology Programs (S&T) laboratory located at: USDA, AMS, Science and Technology Programs, National Science Laboratory (NSL), 801 Summit Crossing Place, Suite B, Gastonia, North Carolina 28054–2193.

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

(i) USDA, AMS, Science & Technology, Citrus Laboratory, 98 Third Street, SW., Winter Haven, Florida 33880–2905.

(ii) USDA, AMS, Science & Technology, 6567 Chancey Mill Road, Blakley, Georgia 39823–2785.

(iii) USDA, AMS, Science & Technology, c/o Golden Peanut Company LLC, (Mail: P.O. Box 272), 715 Martin Luther King Drive, Dawson, Georgia 39842–1002.

(iv) USDA, AMS, Science & Technology, 107 South Fourth Street, Madill, Oklahoma 73446–3431.

(v) USDA, AMS, Science & Technology, (Mail: P.O. Box 1130), 308 Culloden Street, Suffolk, VA 23434–4706.

(3) *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.

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

(5) *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 Programs, Plant Variety Protection Office, National Agricultural Library Building, Room 401, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351.

(6) *Science and Technology Programs headquarters offices.* The examination, licensure, quality assurance reviews, laboratory approval/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follow: USDA, AMS, Science and Technology Programs, Office of the Deputy Administrator, South Agriculture Bldg., Mail Stop 0270, 1400 Independence Ave., SW., Washington, DC 20250–0270.

(7) *The Information Technology (IT) Group.* The IT office of the Science and Technology Programs is headed by the Associate Deputy Administrator for Technology/Chief Information Officer 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 Associate Deputy Administrator for Technology, 1752 South Agriculture Bldg., Mail Stop

0204, 1400 Independence Ave., SW., Washington, DC 20250–0204.

(8) *Statistics Branch Office.* The Statistics Branch office of Science and Technology Programs (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistics Branch office generates 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 Statistics Branch office is located as follows: USDA, AMS, S&T Statistics Branch, 0603 South Agriculture Bldg., Mail Stop 0223, 1400 Independence Ave., SW., Washington, DC 20250–0223.

(9) *Technical Services Branch Office.* The Technical Services Branch office of Science and Technology (S&T) provides technical support services to all Agency programs and other agencies within the USDA. In addition, the Technical Services Branch office provides certification and approval services of private and State government laboratories as well as oversees quality assurance programs; import and export certification of laboratory tested commodities. The Technical Services Branch mailing address is as follows: USDA, AMS, S&T Technical Services Branch, South Agriculture Bldg., Mail Stop 0272, 1400 Independence Ave., SW., Washington, DC 20250–0272. The Technical Services Branch office is located as follows: USDA, AMS, Science and Technology Technical Services Branch, Room 306, Cotton Annex Bldg., 300 12th Street, SW., Washington, DC 20250.

(10) *Monitoring Programs Office.* Services afforded by the Pesticide Data Program (PDP) and Microbiological Data Program (MDP) are provided by USDA, AMS, Science and Technology Monitoring Programs Office, 8609 Sudley Road, Suite 206, Manassas, VA 20110–8411.

(11) *Pesticide Records Branch Office.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by private certified applicators are provided by USDA, AMS, Science and Technology, Pesticide Records Branch, 8609 Sudley Road, Suite 203, Manassas, VA 20110–8411.

(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 Programs laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture (USDA), 1400 Independence Ave., SW., Room 0725, South Agriculture Building, Mail Stop 0271, Washington, DC 20250–0271.

3. Sections 91.37 through 91.39 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 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 § 91.37(a) for the time required to perform the service. A charge will be made for service pursuant to each request or certificate issued.

(d) 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.

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

§ 91.38 Additional fees for appeal of analysis.

(a) The applicant for appeal sample testing will be charged a fee at the hourly rate for laboratory service that appears in this paragraph. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The appeal rate for laboratory service is $71.00 per hour in fiscal year 2007, $74.00 per hour in fiscal year 2008, and $78.00 per hour in fiscal year 2009.

(b) The appeal fee will not be waived for any reason if analytical testing was completed in addition to the original analysis.

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

(a) When analytical testing in a Science and Technology facility requires the services of laboratory personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. When analytical testing in a Science and Technology facility requires the services of laboratory personnel on a Federal holiday or a day designated in lieu of such a holiday, such services are considered holiday work. Laboratory analyses initiated at the request of the applicant to be rendered on Federal holidays, and on an overtime basis will be charged fees at hourly rates for laboratory service that appear in this paragraph. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The laboratory analysis rate for overtime service is $71.00 per hour in fiscal year 2007, $74.00 per hour in fiscal year 2008, and $78.00 per hour in fiscal year 2009. The laboratory analysis rate for Federal holiday or designed holiday service is $82.00 per hour in fiscal year 2007, $85.00 per hour in fiscal year 2008, and $89.00 per hour in fiscal year 2009.

(b) Information on legal holidays or what constitutes overtime service at a particular Science and Technology laboratory is available from the Laboratory Manager or facility supervisor.

4. Section 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 (NFC) using the Foundation Financial Information System (FFIS) 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 or office.

(b) The total charge or fee shall normally be stated directly on the analysis report or on a standardized official certificate form for the laboratory analysis 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.

PART 92—[REMOVED AND RESERVED]

5. Part 92 is removed in its entirety and reserved.

Dated: September 14, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–7821 Filed 9–21–06; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV06–993–1 PR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would decrease the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2006–07 and subsequent crop years from $0.65 to $0.40 per ton of salable dried prunes. The committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Assessments upon dried prune handlers are used by the committee to fund reasonable and necessary expenses of the program. The crop year began August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by October 23, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax (559) 487–5906, or E-mail: *Toni.Sasselli@usda.gov* or *Terry.Vawter@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 110 and Marketing Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable dried prunes beginning August 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would decrease the assessment rate established for the committee for the 2006–07 and subsequent crop years from $0.65 to $0.40 per ton of salable dried prunes handled.

The California dried prune marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California dried prunes. They are familiar with the committee's needs and with the costs for goods and services in their local area; and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in at least one public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 29, 2006, and unanimously recommended a decreased assessment rate of $0.40 per ton of salable dried prunes and expenditures totaling $77,215 for the 2006–07 crop year. In comparison, last year's approved expenses were $89,090. The proposed assessment rate of $0.40 per ton of salable dried prunes is $0.25 lower than the rate currently in effect.

The committee recommended a lower assessment rate based on an estimated production of 145,000 tons of salable dried prunes. At the proposed assessment rate, the assessment income