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

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

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

§ 91.35 Who shall perform an appealed laboratory service.

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

§ 91.36 Appeal laboratory certificate.

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

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 The superseded certificate shall become null and void upon the issuance of the appealed laboratory certificate and shall no longer represent the analytical results of the commodity product.

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shall forward notice of such issuance to such persons as he or she considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the individual issuing the appeal certificate.

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except that copies of such appeal certificates shall be furnished to all interested parties who received copies of the superseded certificate.

Subpart I—Fees and Charges

§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.

(a) The standard hourly fee rate in this section for the individual laboratory analyses cover the costs of Science and Technology laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in 7 CFR §§ 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.46, 70.71 through 70.72, and 70.75 through 70.78. The hourly fee rates in this part 91 apply to all processed commodity products, except flue-cured and burley tobacco, and exclude aflatoxin analyses, citrus juices and certain citrus products. The printed updated schedules of the laboratory testing fees for processed fruits and vegetables (7 CFR part 93), poultry and egg products (7 CFR part 94), and meat and meat products (7 CFR part 98) will be available for distribution by the individual Laboratory Directors of Science and Technology laboratories listed in § 91.5. The updated schedules of the laboratory testing fees are also available for electronic access on the world wide web (www) site at: http://ams.usda.gov/science. The fees for chemical analysis of cottonseed associated with grading and novel variety seed certification under the Plant Variety Protection Act are specified in 7 CFR parts 96 and 97, respectively. Except as otherwise provided in this section, charges will be made for laboratory analysis at the standard hourly rate of $45.00 for the time required to perform the service. A minimum charge of one-quarter hour at $11.25 will be made for service pursuant to each request or certificate issued.

(b) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to the Science and Technology program for the service provided.

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

GENERAL SCHEDULES OF FEES FOR OFFICIAL LABORATORY TEST SERVICES PERFORMED AT THE AMS SCIENCE AND TECHNOLOGY LABORATORIES FOR PROCESSED COMMODITY PRODUCTS

TABLE 1—SINGLE TEST LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	List fee
Ammonia, Ion Selective Electrode	$101.25
Ash, Total	45.00
Chloride, Salt Titration (Dairy)	22.50
Fat, Acid Hydrolysis (Cheese)	45.00
Fat, Acid Hydrolysis (Mojonnier)	45.00
Fat (Dairy Products except Cheese)	22.50
Fat (Dry Basis)	67.50
Fat, Ether Extraction (Soxhlet)	45.00
Fat (Kohman Analysis)	45.00
Fat, Microwave—Solvent Extraction	45.00
Moisture, Distillation	45.00
Moisture, Oven	22.50
Moisture (Kohman Analysis)	11.25
Protein, Combustion	90.00
Protein, Kjeldahl	90.00
Salt, Back Titration	33.75
Salt, Potentiometric	22.50
Salt (Rapid)	33.75

TABLE 2—SINGLE TEST LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of analysis	List fee
Acid Degree Value (Dairy)	$45.00
Acidity, Titratable	22.50
Density (Specific Gravity)	11.25
Dispersibility (Instant Dry Whole Milk)	67.50
Dispersibility (Moates-Dabbah Method)	22.50
Fat Stability,[1] AOM	45.00
Fatty Acid Profile (AOAC–GC method)	180.00
Flash Point Test only	90.00
Free Fatty Acids	22.50
Meltability (Process Cheese)	22.50
Peanut Oil Analyses (Oil, Moisture, Free Fatty Acids, Ammonia, and Foreign Matter)	45.00
Any One of the Oilseed Oil Analyses	22.50
Peroxide Value	33.75
Smoke Point Test only	90.00
Smoke Point and Flash Point	157.50
Solids, Total (Oven Drying)	22.50
Soluble Solids, Refractometer	22.50

[1] Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

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

Type of analysis	List fee
Amitraz Residue, GLC	$112.50

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

Type of analysis	List fee
Antibiotic, Qualitative (Dairy)	22.50
Antibiotic, Quantitative ^{1}N	393.75
Ascorbates (Qualitative—Meats)	22.50
Ascorbic Acid, Titration	45.00
Ascorbic Acid, Spectrophotometric	45.00
Brix, Direct Percent Sucrose	22.50
Brix, Dilution	22.50
Butylated Hydroxyanisole (BHA)	67.50
Butylated Hydroxytoluene (BHT)	67.50
Caffeine, Micro Bailey-Andrew	67.50
Caffeine, Spectrophotometric	78.75
Citric Acid, GLC or HPLC	67.50
Chlorinated Hydrocarbons:	
Pesticides and Industrial Chemicals—	
Initial Screen	180.00
Second Column Confirmation of Analyte	45.00
Confirmation on Mass Spectrometer (Per Residue)	$90.00
Dextrin (Qualitative)	22.50
Dextrin (Quantitative)	135.00
Filth, Heavy (Dairy)	112.50
Filth, Heavy (Eggs)	180.00
Filth, Light (Eggs)	112.50
Filth, Light & Heavy (Eggs Extraneous)	270.00
Fines	22.50
Flavor (Dairy)	11.25
Flavor (Products except Dairy)	33.75
Fumigants:	
Initial Screen—	
Dibromochloropropane (DBCP)	45.00
Ethylene Dibromide	45.00
Methyl Bromide	45.00
Confirmation on Mass Spectrometer—	
Each individual fumigant residue	$90.00
Glucose (Qualitative)	33.75
Glucose (Quantitative)	78.75
Glycerol (Quantitative)	135.00
Gums	135.00
Heavy Metal Screen[2]	326.25
Mercury, Cold Vapor AA	135.00
Monosodium Dihydrogen Phosphate	180.00
Monosodium Glutamate	180.00
Niacin	90.00
Ochratoxin A	67.50
Odor	11.25
Organic Acids (in Eggs)	180.00
Oxygen	22.50
Palatability and Odor: Each Sample	22.50
Penicillin	67.50
Pyrethrin Residue (Dairy)	180.00
Scorched Particles	22.50
Sodium, Potentiometric	45.00
Sodium Benzoate, HPLC	67.50
Sodium Lauryl Sulfate (SLS)	360.00
Sodium Silicoaluminate (Zeolex)	90.00
Solubility Index	11.25
Starch, Direct Acid Hydrolysis	90.00
Starch (in Dry Milk)	22.50
Sugar, Polarimetric Methods	33.75
Sugar Profile, HPLC—[3]	
One type sugar from HPLC profile	135.00
Each additional type sugar	22.50
Sugars, Non-Reducing	135.00
Sulfur Dioxide, Direct Titration	45.00
Toluene, Residual	90.00
Vitamin A, Carr-Price (Dairy)	112.50
Vitamin A, HPLC	90.00
Vitamin B_1 (Thiamin)	90.00
Vitamin B_2 (Riboflavin)	90.00
Vitamin D, HPLC (Vitamins D_2 and D_3), Dairy	382.50

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

Type of analysis	List fee
Whey Protein Nitrogen	33.75
Whey Protein Nitrogen, Kjeldahl	112.50
Xanthydrol Test For Urea	67.50
This is an optional test to the extraneous materials isolation test.	

[1] Antibiotic testing includes tests for chlorotetracycline, oxytetracycline, and tetracycline.
[2] Heavy metal screen includes tests for cadmium, lead, and mercury.
[3] This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose.

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

Type of analysis	List fee
Cheese(Fines)	$11.25
Color, Apparent-Visual	11.25
Complete Kohman Analysis (Dairy)	45.00
Hot Water Insolubles	$67.50
Linolenic Acid	90.00
Net Weight (Per Can)	11.25
Non-Volatile Methylene Chloride Extract	112.50
Overrun for Whipped Topping	33.75
Particle Size (Ether Wash)	22.50
pH	11.25
pH—Quinhydrone (Cheese)	22.50
Potassium Iodide (Table Salt)	67.50
Protein Reducing Substances	45.00
Quinic Acid (Cranberry Juice)	78.75
Serum Drainage for Whipped Topping	22.50
Sieve or Particle Size	22.50
Rate of Wetting (Nondairy Creamer)	22.50
Reducing Sugars	90.00
Water Activity	22.50
Water Insoluble Inorganic Residues (WIIR)	90.00

TABLE 5—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	List fee
Aerobic (Standard) Plate Count	$22.50
Anaerobic Bacterial Plate Count	33.75
Bacillus cereus	90.00
Bacterial Direct Microscopic Count	45.00
Coliform Plate Count (Dairy Products)	22.50
Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count)	33.75
Coliforms, Most Probable Number (MPN)[1]:	
Step 1	33.75
Step 2	22.50
Direct Microscopic Clump Count—(Field Submitted Smears, Less Than or Equal To 75 Million Count)	11.25
Direct Microscopic Clump Count—(Field Submitted Smears, Greater Than 75 Million Count)	45.00
Direct Microscopic Clump Count—(Lab Prepared Smears)	45.00
E. coli, Presumptive MPN (Additional)[2]	$45.00
E. coli (MUG[3])	33.75
Enterococci Count	135.00
Howard Mold Count[4]	56.25
Lactobacillus Count[5]	56.25
Lactic Acid Tolerant Microbes	22.50

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

Type of analysis	List fee
Listeria monocytogenes Confirmation Analysis[6]:	
Step 1	67.50
Step 2	56.25
Step 3 (Confirmation)	112.50
Parasite Identification	180.00
Psychrotrophic Bacterial Plate Count	45.00
Salmonella (USDA Culture Method)[7]:	
Step 1	78.75
Step 2	33.75
Step 3 (Confirmation)	56.25
Salmonella Enumeration (Complete Test)	135.00
Salmonella (Rapid Methods)[8]:	
Step 1	78.75
Step 2	33.75
Step 3 (Confirmation)	56.25
Salmonella typhi (Meat Products)[9]	45.00
Staphylococcus aureus, Direct Plating	67.50
Staphylococcus aureus, MPN: With Coagulase Positive Confirmation	78.75
Thermoduric Bacterial Plate Count	33.75
Yeast and Mold Count	22.50
Yeast and Mold Differential Confirmation	22.50
Yeast and Mold Differential Plate Count	33.75
Yeast or Mold Confirmation	22.50

[1] 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.
[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E. coli* test. Prior enrichment in lauryl sulfate tryptose broth is required for optical recovery of *E.coli* from inoculated and incubated EC broth (*Escherichia coli* broth). The *E. coli* test is performed through growth on eosin methylene blue agar. The fee stated for *E. coli* analysis is a supplementary charge to step 1 of coliform test.
[3] In the presence of the substrate 4-methylumbelliferone-β-D-glucuronide (MUG), the enzyme β-glucuronidase, which is found in the majority of *E. coli* strains, produces a fluorogenic end product which is visible under ultraviolet (UV) light.
[4] Howard Mold Count involves counting mold filaments in commodity products.
[5] Determination of bacterial plate count of different species of *Lactobacillus.*
[6] *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.

[7] *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'' antiserums. The serological typing of *Salmonella* is requested on occasion.

[8] *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'' antiserums.

[9] *Salmonella typhi* determination in mechanically deboned meat.

TABLE 6—LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Single analysis	Pair analyses [1]
Peanut Butter (TLC–CB, HPLC, Affinity Column)	$45.00	[2] NA
Corn (TLC–CB, HPLC, Affinity Column)	45.00	NA
Roasted Peanuts (TLC–BF)	45.00	NA
Brazil Nuts (TLC–BF)	90.00	NA
Pistachio Nuts (TLC–BF, HPLC)	90.00	NA
Shelled Peanuts (TLC, Affinity Column)	45.00	$38.00
Shelled Peanuts (HPLC)	45.00	70.00
Tree Nuts (TLC)	45.00	NA
Oilseed Meals (TLC, HPLC, Affinity Column)	$45.00	NA
Edible Seeds (TLC)	45.00	NA
Dried Fruit (TLC)	45.00	NA
Small Grains (TLC)	45.00	NA
In-Shell Peanuts Affinity Column (TLC)	45.00	38.00
In-Shell Peanuts (HPLC)	45.00	70.00
Silage; Other Grains (TLC)	45.00	NA
Submitted Samples (TLC, HPLC, Affinity Column)	45.00	NA
Aflatoxin (Dairy, Eggs)	157.50	NA

[1] Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD for single or pair of analyses is $19.00 or $38.00, respectively using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column assay with fluorometric quantitation. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the Best Foods method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per single or pair of analyses using High Pressure Liquid Chromatography (HPLC) is $35.00 and $70.00, respectively. Other aflatoxin for fruits and vegetables are listed at Science and Technology's current hourly rate of $45.00.

[2] NA denotes not applicable.

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

Laboratory service description	List fee
Sample Grinding by Vertical Cutter Mixer (VCM)	$22.50
Sample Grinding Canned Boned Poultry	$11.25 per can.
Sample Grinding by Dickens Hammer Mill	$11.25.
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):	
Per pouch or raw sample	$11.25.
Per tray pack	$22.50.
Composting Multiple Subsamples for an Individual Test Sample Unit per subsample	Varies—Preparation fee based on $45.00 per hour.

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

Service description	List charge
Courier Expense at Other AMS Laboratories: Mileage Charge Set at 32.5¢ Per Mile Round Trip from Laboratory to Delivery Site.	Varies (based on total mileage).
Facsimile Charge (Per Analysis Report)	$3.20 minimum up to first 3 pages, then $1.50 per page.
Additional Analysis Report or Extra Certificate (½ hour charge)	$22.50 per report or certificate reissued.

[65 FR 64311, Oct. 26, 2000]

§ 91.38 Additional fees for appeal of analysis.

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in § 91.37 (a) if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is $67.50 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses