

### Background and Analysis of Proposal

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408–42448) to combine AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various commodity programs into the Science and Technology (S&T) program, formerly the Science Division and the Science and Technology Division (S&TD). All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997.

The description of examination and licensure services provided in section 91.4 needs to be broadened to include other laboratory and testing licenses provided by the Science & Technology programs. In addition, if the proposed rule to remove the Cottonseed Chemist Licensing Program becomes finalized then the limited description of services would no longer be applicable. Science & Technology Program laboratories and facilities have undergone modernization and consolidation since May 1998. In many instances the addresses of the locations changed in section 91.5. A major change was the October 2002 opening of the National Science Laboratory in Gastonia, North Carolina which now has biotechnology testing facilities.

On November 1, 1999 the USDA Office of Communications approved two information symbols in the form of AMS shields to be added to the USDA/AMS inventory and they are acceptable for use with AMS materials. The two approved AMS shields with the words "USDA AMS TESTED" and "USDA LABORATORY TESTED FOR EXPORT" are proposed to be added to the regulations in 7 CFR part 91. A major role of the Science and Technology program for the Agency is to perform analytical testing services of commodities. The approved AMS shields are designed to enhance the acceptance of AMS tested agricultural commodities on a national or international basis.

The licensed cottonseed chemist program and official grade certification are voluntary, user fee-funded services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624). Under the current USDA program, chemists in private laboratories are licensed to analyze cottonseed in order to certify its quality, to access its lot potential for oil yield at seed crushing mills, and to determine the grade of official samples

of cottonseed produced at cotton gins according to the rules, regulations and By-Laws of the National Cottonseed Products Association (NCPA). A representative lot of cottonseed for official grade determination is generally limited to a maximum of 150 tons for quality concerns. An official certificate is issued by the licensed chemist for each official cottonseed sample at a current unit fee of \$3.18 to cover the costs of the USDA program.

The USDA licensed cottonseed chemist program originated on July 31, 1937 when a Bureau of the United States Department of Agriculture published a rule in the **Federal Register** (2 FR 1348–1353) and provided the details for the program. On August 14, 1937 the first user fee increase for the program occurred when the issuance cost for each certificate of the official grade of cottonseed increased from 10 cents to 25 cents (2 FR 1400).

The regulations in 7 CFR part 96 include in subpart A the details of the USDA cottonseed chemist licensing program (under the AMS Cotton Division's supervision for the last time in 1988) and the applicable user fees. In subpart B the method used to calculate official cottonseed grade was provided.

The current fees have been in effect since May 4, 1998 (63 FR 16370–16375). The fees include \$1,166 for a chemist's license examination, \$292 for a chemist's license renewal, a \$3.18 fee per official cottonseed grade certificate issued, and a \$60 fee for the review of the grading of an official lot of cottonseed. The number of official cottonseed grade certificates issued by licensed chemists dropped from 36,565 in fiscal year 1992 to 5,718 in early fiscal year 1999. The large decline in official cottonseed grade certificates was due to the 40 percent divergence of cottonseed usage from human food to dairy animal feed. In addition, many large oil mills have setup their own laboratories to perform cottonseed quality testing and have established trade relations with their customers based on an unofficial grade of seed.

The S&T programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act authorizes the Department to provide analytical testing services that facilitate marketing and allow commodity products to obtain grade designations or meet marketing standards. In addition, the laboratory tests establish quality standards for the agricultural commodities. The Act also requires that reasonable and reimbursable fees be collected from users of the program services to cover,

as nearly as practicable, the costs of the services rendered to maintain the program. At a May 1999 annual meeting, the National Cottonseed Products Association was provided an analysis of the services the Agency provides for the official cottonseed grade determination, and the revisions of fees that are needed to continue services to the extent commensurate with the actual costs. The industry expressed strong resistance to paying the increased costs needed to provide the official cottonseed grading service that includes official sampling expenses. It was their recommendation to eliminate the cottonseed chemist licensing program. In June 1999 the last official cottonseed grade certificate was issued and no revenue has been obtained from the USDA cottonseed chemist licensing program since that time to the present. The program has become a financial burden to AMS. The total obligatory cost to Science and Technology to carry the program forward to the full completion of fiscal year (FY) 2003 would be \$65,939. The estimated cost of the program for FY 2004 would remain at \$65,939. This cost consists of \$47,786 for salaries and benefits, \$2,480 for USDA blind check sample preparation, \$7,101 for travel, \$3,575 for rent/utilities/communications, and \$4,997 for administrative overhead. The Agency has no projected revenue to continue the program operation using the current user fee schedule. Hence, this rule proposes to terminate the cottonseed chemist licensing program and to remove related official cottonseed grading and associated fees from the regulations. This rule proposes to remove 7 CFR part 96 in its entirety. Private or non-government laboratories would no longer be eligible to hold USDA cottonseed chemist licenses. There will be no need for persons to possess official cottonseed sampler licenses or similar designations. Marketing News for official grade cottonseed would no longer be available.

This proposed rule would also update various commodity testing laboratory addresses and would adopt approved AMS shields to indicate that products have been tested by AMS. The new shields would be placed in a new subpart together with appropriate definitions.

This proposed rule provides for a 30-day comment period. This period is deemed appropriate in view of the need to make changes to the regulations as soon as possible. All comments which are received during the comment period will be considered before making any