

Reform. It is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, 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 Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Even though an official cottonseed grading certificate has not been issued since June 3, 1999, there are some potential users available that may use the cottonseed chemist licensing program services. Such possible users of program services include 35 oil mills, 1,400 U.S. cottonseed gins, 11 private laboratories, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

USDA licensed cottonseed chemist program service and official cottonseed grade determinations are provided to all businesses on a voluntary basis and user fees to administer the program are listed in 7 CFR part 96. Any decision to discontinue the use of the official cottonseed grading services (with a unit certificate fee) at private laboratories and obtain new contracts with their customers based upon unofficial grade of seed (without a fee) would not hinder the cottonseed industry members from marketing their products. Monthly published Marketing News reports for cottonseed are based entirely on summary information of the quality and quantity factors and grades obtained from all official certificates issued by licensed chemists. There has been no official cottonseed grade certificate issued from a licensed chemist since June 3, 1999. All cottonseed business since that date has been based on an unofficial cottonseed grade. User fee costs to entities would be proportional to their use of program services, so that costs are shared equitably by all users.

The last fee increases for the USDA Cottonseed Chemist Licensing Program services became effective on May 4, 1998 (63 FR 16370–16375). Since June 1999, no revenue has been available to administer the program and there has been a yearly increase in cost of living for the Federal employee salaries and benefits (\$47,786) that comprise 72 percent of total program expenses. No program revenue is generated because there has been a shift in usage patterns

on the part of the cottonseed industry for testing and grading services by chemists. The industry is now relying entirely on an unofficial cottonseed grade certification for their purchase and trade decisions.

Other miscellaneous and unsubstantial changes which would be made by the rule will not adversely affect users of the program services. The addition of two information symbols in the form of approved AMS shields and their inclusion in the regulations will not add further costs to users of the variety of AMS Science and Technology laboratory testing services.

Accordingly, the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Background Information

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 § 91.4 will be broadened to include other laboratory and testing licenses provided by the Science & Technology programs. In addition, since this final rule removes the Cottonseed Chemist Licensing Program then the limited description of services will 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 § 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” will 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 present 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