

# Rules and Regulations

Federal Register

Vol. 68, No. 7

Friday, January 10, 2003

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 97

[Docket ST-02-01]

RIN 0581-AC22

#### Plant Variety Protection Office, Fee Increase

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is increasing Plant Variety Protection (PVP) Office application, search, and certificate issuance fees by approximately 35 percent. The last fee increase in September 2000 is no longer adequate to cover current program obligations for administrative and information technology needs. The PVP Act requires that reasonable fees be collected from applicants seeking certification of protection in order to maintain the program.

**EFFECTIVE DATE:** February 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Fabian Q. Generao, USDA, AMS, Science and Technology, 14th & Independence Avenue, Room 3521-South Bldg., Washington, DC 20250, Tel. 202/720-0195, Fax. 202/720-4631

#### SUPPLEMENTARY INFORMATION:

##### 1. Executive Order 12866

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

##### II. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5

U.S.C. 670 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small business entities. There are more than 800 users of the PVP, of whom about 100 may file applications in a given year. Some of these users are small business entities under the criteria established by the Small Business Administration (13 CFR 121.201). The AMS has determined that this action would not have a significant economic impact on a substantial number of these small business entities.

The Plant Variety Protection (PVP) Office administers the PVP Act of 1970 (7 U.S.C. 2321 *et seq.*), and issues Certificates of Protection that provide intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after examination indicates that it is new, distinct from other varieties, genetically uniform, and stable through successive generations. This action will raise the fee charged to users of plant variety protection. The AMS estimates that the rule will yield an additional \$270,000 during fiscal year (FY) 2003. The costs to private and public business entities will be proportioned to their use of the service, and shared equitably. The costs to individual users will be increased by 35 percent, or about \$1,059.00 per application. Plant Variety Protection is a voluntary service. Any decision by developers to discontinue to the use of plant variety protection will not hinder private and public entities from marketing their varieties in commercial markets.

Every year, AMS reviews its user fee financial program to determine their fiscal condition. In the most recent review of the PVP program, the cost analysis indicated that the existing fee schedule will not generate sufficient revenues to cover program services and obligations while maintaining an adequate program reserve balance. From 1995 and through 2002, the PVP Office absorbed accumulated national and locality salary increases for Federal employees totaling 36 and 19 percent, respectively. These costs were offset by a fee increase of only 10 percent in September 2000.

AMS calculated the new fee schedule by projecting FY 2002 revenues of \$903,000 and program obligations of \$1,231,000. This indicates a projected

loss to the program of \$328,000 for FY 2003. At this rate, the trust fund balance would be nearly depleted by the end of FY 2004. With a fee increase of 35 percent, FY 2003 revenues and expenditures are projected to be \$1,041,000 and \$1,189,000, respectively. The trust fund balance is expected to be maintained at the FY 2003 level of \$853,000, which satisfies Agency requirements.

##### III. Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of the rule.

##### IV. Paperwork Reduction Act

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

##### Background Information

The PVP Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*). The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and potatoes. The Act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

On August 2, 2000, AMS published a rule in the **Federal Register** (65 FR 47243) that increased Plant Variety Protection fees that became effective September 1, 2000.

In its analysis of projected costs for FY 2002, AMS identified administrative and information technology support as well as a 10 percent decrease in the number of applications submitted to the office. For FY 2002, user fee revenues and program obligations are projected to be \$903,000 and \$1,231,000, respectively, resulting in an estimated \$328,000 program deficit. With a fee increase, FY 2003 revenues and

expenditures are projected to be \$1,041,000 and \$1,189,000 respectively. We estimate this rule would yield an additional \$270,000 during FY 2003 that will offset increased program operating costs. The program will take additional cost cutting measures to eliminate the remaining deficit.

AMS used the fees currently charged as a base for calculating the new fee schedule for FY 2003. The fees set forth in Sec. 97.175 would be increased. The application fee will be increased from \$320 to \$432, the search fee from \$2,385 to \$3,220, and the issuance fee from \$320 to \$432. The fees for reviving an abandoned application, correcting or re-issuance of a certificate are increased from \$320 to \$432. The charge for granting an extension for responding to a request is increased from \$55 to \$74. The hourly charge for any other service not specified will increase from \$66 to \$89. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from \$3,050 to \$4,118. Reproduction of records, drawings, certificates, exhibits or printed materials, late payment, and replenish of seeds will increase by 35 percent. These fee increases are necessary to recover the costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase in November 2001. The Board recommended that fees be increased. This rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

#### Summary of Public Comment

A notice of the proposed rule was published in the **Federal Register** (67 FR 61545) on October 1, 2002. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small business.

The only comment received in response to the proposed revised regulatory text questioned whether the 35 percent increase of the existing fee schedule was truly warranted. Every year, AMS reviews its user fee financed programs to determine their fiscal condition. In the most recent review of the PVP program, the cost analysis indicated that the existing fee schedule will not generate sufficient revenues to cover program services and obligations while maintaining an adequate program reserve balance. We estimate the final rule would yield an additional \$270,000

during FY 2003, offsetting increased program operating costs, salaries and benefits, and technology improvements. From October 1, 2001 to September 30, 2002, the PVP program has reduced the backlog by 21 percent. With sufficient funds to cover overall operating costs, the program will continue to improve the efficiency and turnaround time in the processing of plant variety protection requests.

#### List of Subjects in 7 CFR Part 97

Plants, seeds.

For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

#### PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for part 97 continues to read as follows:

**Authority:** 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

#### § 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified in this section:

- (a) Filing the application and notifying the public of filing—\$432.00.
- (b) Search or examination—\$3,220.00.
- (c) Allowance and issuance of certificate and notifying public of issuance—\$432.00.
- (d) Revive an abandoned application—\$432.00.
- (e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material)—\$1.50.
- (f) Authentication (each page)—\$1.50.
- (g) Correcting or re-issuance of a certificate—\$432.00.
- (h) Recording assignments (per certificate/application)—\$38.00.
- (i) Copies of 8 x 10 photographs in color—\$38.00.
- (j) Additional fee for reconsideration—\$432.00.
- (k) Additional fee for late payment—\$38.00.
- (l) Additional fee for late replenishment of seed—\$38.00.
- (m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—\$4,118.00.
- (n) Granting of extensions for responding to a request—\$74.00.
- (o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulation.
- (p) Any other service not covered in this section will be charged for at rates

prescribed by the Commissioner, but in no event shall they exceed \$89.00 per employee-hour.

Dated: January 6, 2003.

**A.J. Yates,**

*Administrator.*

[FR Doc. 03-452 Filed 1-9-03; 8:45 am]

**BILLING CODE 3410-02-M**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-130-1]

#### Oriental Fruit Fly; Designation of Quarantined Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Oriental fruit fly regulations by quarantining a portion of Los Angeles and Orange Counties, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of Oriental fruit fly into noninfested areas of the United States.

**DATES:** This interim rule was effective January 6, 2003. We will consider all comments that we receive on or before March 11, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-130-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-130-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-130-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to