

9. Section 29.9406 is amended by revising paragraphs (c)(1), (c)(2), (c)(3) and (d) to read as follows:

§ 29.9406 Failure of warehouse to comply with opening and selling schedule.

* * * * *

(c) * * *

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 15,000 pounds; and for the third and subsequent violations, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a schedule day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sales at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: March 8, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 97

[Docket Number: ST 99-006]

RIN 0581-AB71

Revision of Plant Variety Protection Office Fees

AGENCY: Agricultural Marketing Agency, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase Plant Variety Protection Office application, search, and certificate issuance fees by approximately 10 percent. Due to operating cost increases, the last fee increase in 1995 is no longer adequate to cover costs for this fully user-fee funded program. Also, the information symbol used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection is added to the USDA/AMS inventory of symbols and would appear in the regulations.

DATES: Comments must be received on or before April 14, 2000.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule. Comments should be sent in triplicate to Commissioner, Plant Variety Protection Office (PVPO), Rm. 500 N.A.L. Building, 10301 Baltimore Blvd. Beltsville MD 20705, telephone 1-301-504-7475; fax 1-301-504-5291, and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection at the same location, between the hours of 10 am and 4 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie Thro, Commissioner, PVPO; telephone 1-301-504-7475 or fax 1-301-504-5291.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866 and the Regulatory Flexibility Act

This proposed 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).

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of

AMS has considered the economic impact of this action on small entities. There are more than 800 users of the PVPO's variety protection service, of whom about 100 may file applications in a given year. Some of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small entities.

This rule has also been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will 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 the provision of this rule.

The Plant Variety Protection Office (PVPO) administers the Plant Variety Protection Act by issuing Certificates of Protection which provide legal intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover programs costs while maintain an adequate reserve balance. Without a fee increase, fiscal year (FY) 2000 revenues are projected at \$1,100,000; costs are projected at \$1,300,000, and trust fund balances would be \$1,500,000. With a fee increase, FY 2000 revenues are projected at \$1,200,000 and costs are projected at \$1,300,000. With the increase in revenue, the trust fund balance would be maintained at \$1,600,000, its level at the end of FY1999.

This action would raise the fee charged to users of plant variety protection. The AMS estimates that this proposed rule would yield an additional \$100,000 during FY 2000. The fee for plant variety protection would increase by approximately 10 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual users would be approximately \$275.00 per Plant Variety Protection Certificate issued. Plant Variety Protection is

sought on a voluntary basis. Any decision on their part to discontinue the use of plant variety protection would not hinder these entities from marketing their varieties. Finally, the addition of the information symbol to the USDA/AMS inventory of symbols and its inclusion in the regulations would not add further costs to users of the variety protection services.

III. Paperwork Reduction Act

This proposed rule does not contain any 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).

IV. Background information

The Plant Variety Protection 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.*) (PVPA) of 1970, as amended. 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 April 4, 1995, AMS published a rule in the **Federal Register** (60 FR 17188) that increased Plant Variety Protection Office fees pursuant to amendments to the Plant Variety Protection Act that became effective April 4, 1995. In its analysis of projected costs for fiscal year 2000, AMS has identified increases in the costs of providing plant variety protection. Anticipated revenue will not cover increased program costs. Without a fee increase, FY 2000 revenues are projected at \$1,100,000; costs are projected at \$1,300,000, and trust fund balances would be \$1,500,000. With a fee increase, FY 2000 revenues are projected at \$1,200,000 and costs are projected at \$1,300,000. Due to the increase in revenue, the trust fund balance would be maintained at \$1,600,000, its value at the end of FY 1999. The AMS estimates that this proposed rule would yield an additional \$100,000 during FY 2000.

Program operating costs include salaries and benefits of examining staff, supervision, training, and all administrative costs of operating the program. Cost increases are attributed mainly (80 percent of total operating budget) to national and locality pay raises and increased benefit costs for Federal employees. A general and

locality salary increase for Federal employees, totaling approximately 4.4 percent for the Washington, D.C. area, will materially affect the costs of plant variety protection. Increases are expected to continue in following years. Administrative costs, including salary increases, increases in rent, increases in costs of supplies and replacement equipment, and training have increased, in amounts ranging from 3.1 to 22 percent per item. Due to these operating cost increases, the last fee increase in 1995 is no longer adequate to cover obligations and maintain an adequate reserve balance.

The fees set forth in § 97.175 would be increased. The application fee will be increased from \$300 to \$320, the search fee from \$2,150 to \$2,385, and the issuance fee from \$300 to \$320. The fees for reviving an abandoned application, correcting or reissuance of a certificate are increased from \$300 to \$320. The charge for granting an extension for responding to a request is increased from \$50 to \$55. The hourly charge for any other service not specified is increased from \$60 to \$66. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from \$2,750 to \$3,050. These fee increases are necessary to cover 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 on March 24, 1999. The Board recommended that fees be increased. This proposed rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

The form of the official identification symbol, an umbrella over plant reproductive organs (a pistil with four stamens) illustrates the concept of intellectual property rights protection for sexually-reproduced crops.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small businesses. Thirty days is deemed appropriate because present fees are inadequate to properly cover program costs and additional revenues need to be generated to effectively operate the program.

List of Subjects in 7 CFR Part 97

Plants, seeds.

For reasons set forth in the preamble, it is proposed that 7 CFR part 97 be 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 below:

- (a) Filing the application and notifying the public of filing: \$320.00
- (b) Search or examination: \$2,385.00
- (c) Allowance and issuance of certificate and notifying public of issuance: \$320.00
- (d) Revive an abandoned application: \$320.00
- (e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material): \$1.10
- (f) Authentication (each page): \$1.10
- (g) Correcting or re-issuance of a certificate: \$320.00
- (h) Recording assignments (per certificate/application): \$28.00
- (i) Copies of 8 x 10 photographs in color: \$28.00
- (j) Additional fee for reconsideration: \$320.00
- (k) Additional fee for late payment: \$28.00
- (l) Additional fee for late replenishment of seed: \$28.00
- (m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision): \$3,050.00
- (n) Granting of extensions for responding to a request: \$55.00
- (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.

3. Section 97.900 is added to read as follows:

§ 97.900 Form of official identification symbol.

The symbol set forth in Figure 1, containing the words "Plant Variety Protection Office" and "U.S. Department of Agriculture", shall be the official identification symbol of the Plant Variety Protection Office. This information symbol, used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection, has been approved by the Office of Communications to be added to the USDA/AMS inventory of symbols. It is approved for use with AMS materials.



Figure 1. Official identification symbol of the Plant Variety Protection Office.

Dated: March 8, 2000.

William J. Franks, Jr.,

Deputy Administrator, Science and Technology.

[FR Doc. 00—6317 Filed 3–14–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–320–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that currently requires inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That AD also provides for an optional terminating modification that constitutes terminating action for the repetitive inspections. This action would mandate accomplishment of the previously

optional terminating action. This proposal is prompted by reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The actions specified by the proposed AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–320–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office,

1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2028; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 99–NM–320–AD.” The