

# Rules and Regulations

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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