

## Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

5. Revise § 315.709 to read as follows:

### § 315.709 Appointment for Persons With Disabilities.

(a) *Coverage.* An employee appointed under § 213.3102(u) of this chapter may have his or her appointment converted to a career or career-conditional appointment when he or she:

(1) Completes 2 or more years of satisfactory service, without a break of more than 30 days, under a nontemporary Schedule A appointment;

(2) Is recommended for such conversion by his or her supervisors;

(3) Meets all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register and medical qualifications; and

(4) Is converted without a break in service of one workday.

(b) *Tenure on conversion.* An employee converted under paragraph (a) of this section becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee if he or she has completed 3 years of substantially continuous service in a nontemporary appointment under § 213.3102(u) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 97

[Docket Number ST02-02]

RIN # 0581-AC31

### Plant Variety Protection Office, Supplemental Fees

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes supplemental fees for the Plant Variety Protection (PVP) Office covering a variety of administrative services that are not currently charged by the program. These include administrative service requests for: replenishment of seed low in

germination or seed number; submission of new application data after notice of allowance, but prior to certificate issuance; recording any revision, withdrawal, or revocation of an assignment; and protest to the issuance of a certificate. The allowance and issuance fee will be increased also to recover the costs of enhancing the PVP program's electronic archiving capabilities. Also, technical amendments are proposed which would revise or remove obsolete language.

**DATES:** Comments must be received on or before February 10, 2005.

**ADDRESSES:** Interested persons are invited to submit comments concerning this proposed rule. Comments should be sent in triplicate to Dr. Paul M. Zankowski, Commissioner, PVP Office, Room 401, NAL Building, 10301 Baltimore Avenue, Beltsville, MD 20705-2351, telephone (301) 504-5518, fax (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 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Janice M. Strachan, USDA, AMS, Science and Technology (S&T), PVP Office, 10301 Baltimore Avenue, NAL Room 401, Beltsville, MD 20705-2351, telephone (301) 504-5518, and fax (301) 504-5291.

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Order 12866

This proposed 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. 601 *et seq.*), the AMS has considered the economic impact of this action on small business entities. There are more than 800 potential users of the Plant Variety Protection (PVP) Office's service, of whom about 100 may file applications in a given year. Some of these users are considered 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 PVP Office administers the PVP Act of 1970, as amended (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 the variety is new, distinct from other varieties, genetically uniform, and stable through successive generations. The Act requires that reasonable fees be collected in order to maintain the program. This action will add new fees charged to users of plant variety protection for administrative services. AMS estimates that the proposed rule will yield an additional \$96,000 of new revenue in fiscal year (FY) 2006. The costs to private and public business entities will be proportional to their use of the administrative services. The PVP program is a voluntary service, so any decision by developers to discontinue the use of plant variety protection will not hinder private and public entities from marketing their varieties in commercial markets.

AMS regularly reviews its user-fee-financed programs to determine their fiscal condition. In a recent review of the PVP program, the cost analysis indicated that there are a number of administrative services for which there are no fees available to recover costs. AMS determined the new fees by analyzing the costs for providing the listed services, including salaries and materials.

The PVP Advisory Board has been informed of customer services for which the PVP Office is not reimbursed, and consulted on new supplementary fees in November 2001 and again in March 2003. The Board recommended that new supplemental fees be put in place. This proposed rule will make changes in the regulations to implement the supplemental fees.

Without the supplemental fees in FY 2006, the PVP Office revenues are projected at \$1,496,000, operational expenses are estimated at \$1,614,720, and trust fund balances would be down to \$966,458. On the other hand, if supplemental fees are established, the trust fund balance would be \$1,243,658 at the end of FY 2006, which would begin to replenish the program reserves.

##### 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 proposed rule.

#### IV. Paperwork Reduction Act

This proposed rule does not contain any information collection or recordkeeping 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).

The current information collection and recordkeeping requirements in part 97 have been previously approved under OMB control No. 0581-0055.

#### *Background Information and Proposed Changes*

The PVP program is a voluntary, user-fee-funded service, conducted under the Authority of the PVP Act (7 U.S.C. 2321 *et seq.*) of 1970, as amended. The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed reproduced or tuber propagated plants. The Act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

This proposed rule would amend the current fee schedule to cover a variety of administrative services for which users are not being charged by the program. These include administrative service requests for replenishment of seed low in germination or seed number; submission of new application data after notice of allowance, but prior to certificate issuance; revocation of authorization or change of address on assignments, security interests, licenses, grants, or conveyances; recording of withdrawal from assignments, security interests, licenses, grants, or conveyances; and protest to the issuance of a certificate. In addition, the allowance and issuance fee will be increased by \$250 to recover the costs of improving the PVP program's electronic archiving capabilities.

On January 10, 2003, AMS published a rule in the **Federal Register** (68 FR 1359) that increased Plant Variety Protection fees that became effective February 10, 2003. In that rule, the fees were revised to take into account that from 1995 through 2002, the PVP Office absorbed accumulated national and locality salary increases for Federal employees. The proposed fees in this rule would yield an estimated \$96,000 of additional revenue.

The PVP Advisory Board has been informed of customer services for which the PVP Office is not reimbursed, and consulted on new supplementary fees in November 2001 and again in March 2003. The Board recommended that new

supplemental fees be put in place. This proposed rule makes changes in the regulations to implement these new supplemental fees.

Section 97.6(d)(1) would be amended by adding a replenishment fee for restocking the voucher seed sample. Seeds need to be replenished when the germination rate falls below 85%. The germination rate is tested periodically and these tests use up the stored seed sample. The voucher seed sample is a supplement to the Exhibit C description of the variety and is kept for the life of the certificate. Failure to replenish the voucher seed sample results in cancellation of the certificate.

This proposed rule would amend § 97.2 by updating the definition of the term "Plant Variety Protection Office" by noting that the Office is part of the Agricultural Marketing Service's Science and Technology Programs. The definition of the term "owner" would also be clarified by specifying that the owner is the person who developed or discovered and developed a variety, or the breeder's successor, as the PVPA provides.

The address of the PVPO is given in § 97.5(c). This proposed rule would update the address of the office.

Section 97.6(d) provides that a viable seed sample shall be submitted with the application. For tuber propagated varieties, the applicant must verify that a viable cell culture has been deposited in an approved public depository, and for hybrids from self-incompatible parents, verification that a plot of vegetative material for each parent has been established in an approved public depository.

Because of the expense of depositing cell cultures and because cell cultures are not useful in the examination process, the PVPO has granted exceptions to applicants so that the cell culture need not be deposited until the examination has been completed. This proposed rule would regularize this practice by providing that applicants declare that the cell culture will be deposited. A similar change would be made for the establishment of plots of vegetative material for self-incompatible parents of hybrids.

There are instances where it is impractical or impossible for the applicant to submit a sample of viable seeds with the application. For example, requirements for phytosanitary certificates for the importation of seed could delay the submission of a sample until the variety would no longer be eligible for protection. Accordingly the proposed rule would allow a waiver of the requirement that the sample be submitted at the time of the application;

this is not intended to operate so that the certificate could be obtained without submitting the seed sample.

Section 97.158 prohibits, with limited exceptions, advertising by attorneys and other persons practicing before the PVPO. Although the prohibition of advertising by attorneys was once standard, this is no longer the case. Accordingly, the provisions would be removed.

The provision for priority contests, §§ 97.205 through 97.222, are obsolete and should be removed, together with references to those provisions in other sections. When the same variety is independently developed by different parties, the right of priority for a certificate of protection is determined by filing date. Prior to the amendment of the PVPA in 1994, the right of priority was controlled by the date of determination of the variety. Because applications pending at the time of the amendment of the PVPA continued to be governed by the old provisions, it was necessary to leave the priority contest regulations in place for a transition period. There are no longer any pending applications to which the priority contest procedure could be applied. All other references to priority contests would also be removed.

Section 97.175 would be revised by adding new supplemental fees, and incorporating language to the present fee schedule to recover the costs of administrative service requests for: Replenishment of seed low in germination or seed number; submission of new application data after notice of allowance, but prior to certificate issuance; revocation of authorization, change of address, or recording of withdrawal from assignments, security interests, licenses, grants, or conveyances; and protest to the issuance of a certificate.

Finally, the authority citation for part 97 would be revised to remove a reference to an obsolete statutory provision.

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 organizations considered small businesses. Thirty days is deemed appropriate because present fees do not 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 PROTECTION**

1. The authority citation for part 97 would be revised to read as follows:

**Authority:** Plant Variety Protection Act, as amended, 7 U.S.C. 2321 *et seq.*

### **§ 97.2 [Amended]**

2. Section 97.2 is amended by:

(a) Revising the word “Division” to read “Programs” in the definition of the term *Office or Plant Variety Protection Office*.

(b) Adding the words “and developed” after the word “discovered” in the definition of term *Owner*.

3. In § 97.5, paragraph (c) is revised to read as follows:

### **§ 97.5 General Requirements.**

\* \* \* \* \*

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office, National Agricultural Library, Room 401, 10301 Baltimore Avenue, Beltsville, MD 20705-2351).

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### **§ 97.6 [Amended]**

4. Section 97.6 is amended by:

(a) Adding the words “, unless a waiver has been granted for good cause” immediately following the word “variety” in paragraph (d)(1).

(b) Removing the words “verification that a viable cell culture has been deposited” and adding the words “a declaration that a viable cell culture will be deposited” in their place in paragraph (d)(2).

(c) Removing the words “verification that a plot of vegetable material for each parent has been established” and adding the words “a declaration that a plot of vegetative material for each parent will be established” in their place in paragraph (d)(3).

### **§ 97.104 [Amended]**

5. In § 97.104, paragraph (b) the words “and shall pay the handling fee for replenishment” are added following the words “sample of the variety”.

### **§ 97.107 [Amended]**

6. § 97.107, the words “within 60 days from the date of denial, in accordance with §§ 97.300—97.303” are removed.

### **§ 97.108 [Amended]**

7. In § 97.108, paragraph (b) the words “to carry into effect a recommendation under § 97.302(b)” are removed and the

words “in accordance with the decision” are added in their place.

### **§ 97.158 [Removed]**

8. Section 97.158 is removed.

### **§ 97.175 [Revised]**

9. Section 97.175 is revised to read as follows:

(a) Filing the application and notifying the public of filing—\$432.00.

(b) Search or examination—\$3,220.00

(c) Submission of new application data, after notice of allowance, prior to issuance of certificate—\$432.00.

(d) Allowance and issuance of certificate and notifying public of issuance—\$682.00.

(e) Revived an abandoned application—\$432.00

(f) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)—\$1.50.

(g) Authentication (each page)—\$1.50.

(h) Correcting or re-issuance of a certificate—\$432.00

(i) Recording an assignment, any revision of an assignment, or withdrawal or revocation of an assignment (per certificate or application)—\$38.00.

(j) Copies of 8 × 10 photographs in color—\$38.00.

(k) Additional fee for reconsideration—\$432.00.

(l) Additional fee for late payment—\$38.00.

(m) Fee for handling replenishment seed sample (applicable only for certificates issued after [insert the effective date of the final rule])—\$38.00.

(n) Additional fee for late replenishment of seed—\$38.00.

(o) Filing a petition for protest proceeding—\$4,118.00.

(p) Appeal to Secretary (refundable if appeal overturns the Commissioner’s decision)—\$4,118.00.

(q) Granting of extensions for responding to a request—\$74.00.

(r) Field inspection or other services requiring travel 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, salary, and administrative costs) in accordance with Standardized Government Travel Regulation.

(s) 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. Charges will also be made for materials, space, and administrative costs.

### **§§ 97.205–97.222 [Removed]**

10. Sections 97.205 through 97.222 are removed.

Dated: January 5, 2005.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–472 Filed 1–10–05; 8:45 am]

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## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 925**

[Docket No. FV05–925–1 PR]

### **Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the California Desert Grape Administrative Committee (committee) for the 2005 and subsequent fiscal periods from \$0.015 to \$0.0175 per 18-pound lug of grapes handled. The committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by February 10, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; e-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst or Terry Vawter, Marketing Specialist, Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California