

Rules and Regulations

Federal Register

Vol. 61, No. 3

Thursday, January 4, 1996

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Docket No. SD-95-001]

RIN 0581-AB39

Plant Variety Protection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting as a final rule, with minor changes, the interim final rule that revised the Plant Variety Protection Regulations to conform to changes made in the Plant Variety Protection Act (PVPA). The changes will add an additional language option to the marking and labeling provisions for varieties that have an application pending or have received a certificate of protection. Other changes correct outdated information and provide consistency in language.

EFFECTIVE DATE: January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Marsha A. Stanton, Commissioner, Plant Variety Protection Office, Telephone: (301)504-5518, FAX (301)504-5291.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866; Executive Order 12778

This final 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.

This rule has also been reviewed under Executive Order 12778, 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 provisions of this rule.

II. Regulatory Flexibility Act

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612). The fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which utilize Plant Variety Protection services.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the information collection requirements included in 7 CFR Part 97 have been approved previously by the Office of Management and Budget and have been assigned OMB control number 0581-0055.

IV. Background Information

The Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*) (PVPA) authorizes the Secretary to issue Certificates of Plant Variety Protection which afford variety ownership rights similar to patent rights. As a member of the International Union for the Protection of New Varieties of Plants (UPOV) the United States participated in negotiations which resulted in the March 19, 1991 UPOV Convention. The PVPA was amended on October 6, 1994 to conform to the new UPOV Convention and the amendments became effective on April 4, 1995. The interim rule amending 7 CFR part 97 was published at 60 FR 17188 on April 4, 1995 with a request for comments.

One hundred four comments were received. The majority of comments recommended a change to Sections 97.140 and 97.141, which cover optional marking and labeling provisions for varieties that have an application pending or have received a certificate of protection. Under the current regulations the labeling change suggested in the comments could be stated; but, because of the number of comments, a specific change to the final rule has been made. The final rule specifies that owners may label varieties pending or granted protection under the

1994 revisions with "PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited".

Seven other non-substantive changes in the final rule have been made. The following paragraphs outline the changes which were made to correct grammar, provide consistency, or remove outdated references.

References to the Science Division in Sections 97.2 and 97.5(c) have been changed to "Science and Technology Division" to reflect the division's name change which was effective Oct. 1, 1995.

Section 97.3(c) is revised to correct the reference to the Federal Seed Act. The obsolete Public Law number, P.L. 92-463, is removed. Reference to the Federal Seed Act by name is maintained.

An outdated phone number is removed from second sentence of footnote referred to in Section 97.5(b)(4). The phone number will not be published as part of the regulations due to the difficulty of corrections if the phone number changes.

In Section 97.6, which deals with the requirement that the application must be accompanied by a seed sample or verification that a viable cell culture will be deposited in a public depository, is revised by adding language to require verification of deposit of self-sterile (self-incompatible) parents of hybrids. The PVPA requires deposition of viable seed or any propagating material necessary to reproduce the variety. The extension of protection to tuber-propagated and first generation hybrid varieties requires deposition of material other than basic seed. Deposition of propagating material for tuber crops was added in the interim final rule; however, language pertaining to hybrids whose parents are self-sterile was inadvertently omitted. The modification to the final rule will make deposit of material to propagate these varieties consistent with that for other types of varieties.

Section 97.19 is revised for grammatical purposes. The second occurrence of "the" is removed.

Section 97.21 is revised to be consistent with other sections of the rule requiring a payment of fee. A fee for extensions was added in the interim rule in section 97.15.

Finally, the authority citation is revised and simplified.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not

postponing the effective date of this rule until 30 days after publication in the Federal Register because (1) the interim rule was published in the Federal Register for public comment, (2) the changes made in this final action are for clarity and are considered non-substantive, and (3) no useful purpose would be accomplished in delaying the effective date of this action.

List of Subjects in 7 CFR Part 97

Novel Seed variety certification, Plant variety and protection.

Accordingly the interim rule amending 7 CFR Part 97, which was published at 60 FR 17188 on April 4, 1995, is adopted as a final rule with the following changes:

PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for Part 97 is revised to read as follows:

Authority: Plant Variety Protection Act, as amended, 7 U.S.C. 2321 *et seq.*; and Sec. 14, Plant Variety Protection Act amendments of 1994, 7 U.S.C. 2401 note.

2. In § 97.2, the definition for Office or Plant Variety Protection Office is revised to read as follows:

§ 97.2 Meaning of words.

* * * * *

Office or Plant Variety Protection Office. The Plant Variety Protection Office, Science and Technology Division, AMS, USDA.

* * * * *

§ 97.3 [Amended]

3. In § 97.3, paragraph (c), the words "(Pub. L. 92-463)" are removed.

4. In § 97.5, paragraph (b)(4), footnote number (1) is revised to read as follows:

§ 97.5 General requirements.

* * * * *

¹ Copies and translations of foreign laws and regulations will be requested only if they are not in the files of the Plant Variety Protection Office. Applicants may learn whether such a request will be made by writing to the address given in paragraph (c) of this section.

§ 97.5 [Amended]

5. In § 97.5(c), the second sentence is amended by adding the words "and Technology" after the word "Science".

6. In § 97.6, paragraph (d) is revised to read as follows:

§ 97.6 Application for certificate.

* * * * *

(d) The applicant shall submit with the application:

(1) At least 2,500 seeds of the viable basic seed required to reproduce the variety;

(2) With the application for a tuber propagated variety, verification that a viable cell culture has been deposited in a public depository approved by the Commissioner and will be maintained for the duration of the certificate; or

(3) With the application for a hybrid from self-incompatible parents, verification that a plot of vegetative material for each parent has been established in a public depository approved by the Commissioner and will be maintained for the duration of the certificate.

§ 97.19 [Amended]

7. In § 97.19, the introductory text is amended by removing "the" after the words "Journal shall show".

§ 97.21 [Amended]

8. In § 97.21, the second sentence is amended by adding the words "and appropriate fee" immediately following the words "A request for extension".

9. In § 97.140, the last sentence is revised to read as follows:

§ 97.140 After filing.

* * * * *

Where applicable, "PVPA 1994" or "PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited" may be added to the notice.

10. In § 97.141, the last sentence is revised to read as follows:

§ 97.141 After issuance.

* * * * *

Where applicable, "PVPA 1994" or "PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited" may be added to the notice.

Dated: December 27, 1995.

Kenneth C. Clayton,
Acting Administrator, Agricultural Marketing Service.

[FR Doc. 96-75 Filed 1-3-96; 8:45 am]

BILLING CODE 3410-02-P

[Docket No. FV95-979-1IFR; Amendment 1]

Melons Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative

expenses for the South Texas Melon Committee (Committee) under M.O. No. 979. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective October 1, 1995, through September 30, 1996. Comments received by February 5, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1995-96 fiscal period, which began October 1, 1995,