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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Docket number ST 99-006 FR]

RIN 0581-AB71

Revision of Plant Variety Protection Office Fees

AGENCY: Agricultural Marketing Agency, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing 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.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie Thro, Commissioner, Plant Variety Protection Office, Rm. 500 N.A.L. Building, 10301 Baltimore Blvd. Beltsville MD 20705, telephone 1-301-504-5518 and -7475; fax 1-301-504-5291.

SUPPLEMENTARY INFORMATION:

I. Executive Orders 12866 and 12988, and the Regulatory Flexibility Act

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).

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.

Pursuant to the 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.

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 program costs while maintaining 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 will be maintained at \$1,600,000, its level at the end of FY 1999.

This action raises the fee charged to users of plant variety protection. The AMS estimates that this 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 will 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 prevent 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 will not add further costs to users of the variety protection services.

II. Paperwork Reduction Act

This rule does not contain any information collection or recordkeeping requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

III. Background information

The Plant Variety Protection Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (PVPA), 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 tubers. 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 became effective April 4, 1995. In its analysis of projected costs for FY 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 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 4.8 percent for the Washington, D.C. metropolitan 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 Section 97.175 will 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 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.

Summary of Public Comment

A notice of proposed rule making was published in the **Federal Register** (65 FR 13917) on March 15, 2000. 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 businesses.

The commentor observed that a charge for "any other service not specified" is in the current fee schedule, but was omitted from the proposed revised regulatory text. The hourly charge for "any other service not specified" was omitted from the list of fees and charges in § 97.175 due to an electronic error; however, it was included in the discussion of proposed increases in the text of the "Background" section of the proposed rule as published on March 15. The proposed increase was from \$60 to \$66. Accordingly, the text of § 97.175 is changed to reflect this fee. The comment also noted that first priority should be given to the examination and issue of certificates. This is done to the extent practicable.

List of Subjects in 7 CFR Part 97

Administrative practice and procedure, Labeling, Laboratories, Plants, Reporting and recordkeeping requirements.

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 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 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 Regulations.

(p) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed \$66.00 per employee-hour.

2. A new 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: July 27, 2000.

Robert L. Epstein,

Acting Deputy Administrator, Science and Technology.

[FR Doc. 00-19452 Filed 8-1-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV00-982-2 FR]

Hazelnuts Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate established for the Hazelnut Marketing Board (Board) for the 2000-2001 and subsequent marketing years from \$0.004 to \$0.005 per pound of hazelnuts handled. The Board locally administers the marketing order, which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest

Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from

such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning on July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2000-2001 and subsequent marketing years from \$0.004 to \$0.005 per pound of hazelnuts handled.

The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board