

he/she will not be readmitted to the Program at any time.

(2) If a Fellow or Senior Fellow withdraws from the Program for reasons that are not related to misconduct, poor performance, or suitability, he/she may petition the employing agency for readmission and reappointment to the Program; such a petition must be in writing and include appropriate justification. Upon consideration of that petition, the agency may, at its discretion, submit a written request seeking OPM approval to readmit and reappoint the individual to the Program; the individual's status in the Program upon readmission and reappointment must be addressed as part of the agency's submission. The OPM Director's, or the Director's designee's, final determination regarding readmission and reappointment is not subject to appeal.

**§ 362.208 Resignation, termination, reduction in force, and appeal rights.**

(a) *Resignation.* A Fellow or Senior Fellow who resigns at any time prior to completion of the Program does not have reinstatement eligibility for competitive service positions based on his/her Fellow or Senior Fellow appointment.

(b) *Termination.* If an agency does not appoint a Fellow or Senior Fellow at the end of the Program, as provided in § 362.209, or extend the individual's initial appointment under § 362.203, the appointment expires when certification for Program completion is denied or when the OPM Director, or the Director's designee, denies the agency's request for an extension. The agency must provide written notification to OPM when a Fellow or Senior Fellow is terminated for this or any reason.

(c) *Reduction in force.* Fellows and Senior Fellows are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter.

(d) *Appeal rights.* Fellows and Senior Fellows are excepted service employees within the meaning of chapters 43 and 75 in title 5, United States Code, and have appeal rights as provided therein. For systems not covered by 5 U.S.C. chapters 43 or 75, Fellows and Senior Fellows have appeal rights as provided by the equivalent authorities under their system, if any.

**§ 362.209 Placement upon completion.**

(a) A Fellow or Senior Fellow must complete the Program within the time limits prescribed in § 362.203, including any extensions approved by OPM. At the conclusion of that time period, the Fellow or Senior Fellow must be

appointed, as provided in paragraph (b) of this section.

(b)(1) As provided in part 315 of this chapter and/or Executive Order 13318, and except as provided in paragraph (c) of this section, an agency must appoint without further competition an ERB-certified Fellow or Senior Fellow to a full-time, permanent position, in the competitive or excepted service, as applicable. Appointments must be effective on or before the expiration of the individual's PMF appointment, including extensions.

(2) A Fellow or Senior Fellow who was initially appointed to a permanent position in an agency excepted from the competitive service upon completion of the Program may be appointed subsequently to a full-time permanent position in the competitive service without further competition one time only in accordance with the requirements prescribed in § 315.708 and Executive Order 13318.

(c) As provided for in § 362.204(e)(1)(ii), an agency may appoint a Senior Fellow who has been certified as having successfully completed the Senior Fellows program to a position in the SES, without further competition, in the same manner and subject to the same QRB review prescribed in § 317.502 of this chapter as a graduate of an OPM-approved SES candidate development program.

**§ 362.210 Transition.**

OPM shall provide written guidance for the orderly transition of employees from the Presidential Management Intern Program to the Fellow program and may revise it as necessary.

**PART 537—REPAYMENT OF STUDENT LOANS**

■ 11. The authority citation for part 537 continues to read as follows:

**Authority:** 5 U.S.C. 5379.

■ 12. Revise paragraph (d) of § 537.104 to read as follows:

**§ 537.104 Employee eligibility.**

\* \* \* \* \*

(d) Employees serving on excepted appointments who are eligible for noncompetitive conversion to a term, career, or career-conditional appointment (including, but not limited to, Career Interns, Presidential Management Fellows, or Senior Presidential Management Fellows).

**PART 550—PAY ADMINISTRATION (GENERAL)**

**Subpart G—Severance Pay**

■ 13. The authority citation for subpart G continues to read as follows:

**Authority:** 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

■ 14. Revise paragraph (f)(6) of the definition of “*Nonqualifying appointment*” in § 550.703 to read as follows:

**§ 550.703 Definitions.**

\* \* \* \* \*

*Nonqualifying appointment* \* \* \*  
(f) \* \* \*

(6) A Presidential Management Fellow or Senior Presidential Management Fellow appointment under part 362 of this chapter.

\* \* \* \* \*

[FR Doc. 05–9909 Filed 5–18–05; 8:45 am]

BILLING CODE 6325–39–P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 97**

[Docket Number ST–02–02]

RIN 0581–AC31

**Plant Variety Protection Office, Supplemental Fees**

**AGENCY:** Agricultural Marketing Service, USDA

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is establishing 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 is increased also to recover the costs of enhancing the PVP program's electronic archiving capabilities. Also, technical amendments are made which revise or remove obsolete language.

**DATES:** Effective June 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Janice M. Strachan, USDA, AMS, Science and Technology (S&T), PVP

Office, NAL Building, Room 401, 10301 Baltimore Avenue, Beltsville, MD 20705-2351, telephone 301-504-5518, fax 301-504-5291, and e-mail [Janice.Strachan@usda.gov](mailto:Janice.Strachan@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, was not 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 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 will 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 establishes new fees charged to users of plant variety protection for administrative services. AMS estimates that the 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 established to recover costs. AMS determined the new fees by analyzing the costs for providing the

listed services, including salaries and materials. Comments concerning the proposed rule are discussed later in this document.

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 rule makes 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 was 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 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 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 were previously approved under OMB control No. 0581-0055.

##### Background Information

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 rule amends 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 is 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 PVP fees and 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 fees in this rule will 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 rule makes changes in the regulations to implement these new supplemental fees.

This rule amends § 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" also is clarified by specifying that the owner is the person who developed or discovered and developed a variety, or the breeder's successor, as the PVP Act provides.

The address of the PVP Office is given in § 97.5(c). This rule updates the address of the Office.

Section 97.6(d)(1) is 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.

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 PVP Office has granted exceptions to applicants so that the cell culture need not be deposited until the examination has been completed. This rule regularizes this practice by providing that applicants declare that the cell culture will be deposited. A similar change is 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 rule allows a waiver of the requirement that the sample be submitted at the time of the application; but 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 are removed.

The provision for priority contests, §§ 97.205 through 97.222, are obsolete and are 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 amendment of the PVP Act 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 PVP Act 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 also are removed.

Section 97.175 is 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 is revised to remove a reference to an obsolete statutory provision.

#### *Summary of Public Comment*

A notice of the proposed rule was published in the **Federal Register** (70 FR 1835) on January 11, 2005. 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 organizations considered small businesses. The comment period expired on February 10, 2005, and four comments were received on the proposed rule.

Three comments were received which expressed concern about the impact of the supplemental fees on small businesses. Only one new fee will be routinely charged. That is the additional fee to recover the costs of improving electronic archiving capabilities, which service is frequently requested by users. This \$250 fee will be added to the allowance and issuance fee since only issued certificates are open to public access. All other fees are paid only if the user requests that the service be performed. It is expected that these fees will be assessed very infrequently based on past requests for these types of services. When these fees were set, the salary costs and time needed to perform the services were considered. In accordance with the PVP Act, new supplemental fees are reasonable and will allow the PVP program to recover the actual costs of performing the requested services. The costs to small businesses should be proportional to their use of the services. It is necessary that the program recover the costs of services. Accordingly, no changes are made based on these comments.

Finally, one comment was received from an individual who had concerns about Invasive Species, a program that is not administered by the PVP Office.

#### **List of Subjects in 7 CFR Part 97**

Plants, Seeds.

■ For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

## **PART 97—PLANT VARIETY 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.*

### **§ 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).

\* \* \* \* \*

### **§ 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.

■ 9. Section 97.175 is revised to read as follows:

**§ 97.175 Fees and charges.**

- (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) Revive 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 x 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 June 20, 2005)—\$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 inspections 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 also will be made for materials, space, and administrative costs.

**§§ 97.205–97.222 [Removed]**

■ 10. Sections 97.205 through 97.222 are removed.

Dated: May 13, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–9963 Filed 5–18–05; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Rural Utilities Service**

**7 CFR Part 1776**

**RIN 0572–AC00**

**Household Water Well System Grant Program**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) issues regulations to establish the Household Water Well System (HWWS) Program. This action establishes a grant program as authorized by Section 306E of the Consolidated Farm and Rural Development Act (CONACT). The HWWS Program will provide grants to private non-profit organizations, which, in turn, will use the funds to set up a loan program, making loans to eligible individuals for household water well systems. Eligible individuals may use the loans to construct, refurbish, and service individual household water well systems that they own or will own in rural areas. Additionally, the rule outlines the process by which applicants can apply for the program and describes how RUS will administer the grant program.

**DATES:** This rule will become effective June 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Francis, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2239–S, Stop 1570, Washington, DC 20250–1570. Telephone (202) 720–1937. E-mail: *Cheryl.Francis@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This final rule has been determined to be not significant under Executive Order 12866, Regulatory Planning and Review. Therefore, it has not been reviewed by the Office of Management and Budget (OMB).

**Executive Order 12372**

This program is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA’s regulations at 7 CFR part 3015.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912).

**Regulatory Flexibility Act Certification**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of the law to publish a notice of final rule making with respect to the subject matter of this rule.

**Information Collection and Recordkeeping Requirements**

The information collection and recordkeeping requirements contained in this rule have been cleared under OMB control number 0572–0139 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

**National Environmental Policy Act Certification**

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

**Catalog of Federal Domestic Assistance**

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.862. This catalog is available electronically through the free CFDA website on the Internet at <http://www.cfda.gov>. The print edition may be purchased by calling the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or ordering it online at <http://bookstore.gpo.gov>.

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory