

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

IP/N/1/USA/P/4

20 January 1997

(97-0166)

**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English/
anglais/
inglés

**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

United States

The present document reproduces¹ Title 7, Code of Federal Regulations, Subtitle B, Subchapter E, Part 97 - Plant Variety and Protection Scope, as notified by the United States under Article 63.2 of the Agreement.

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES
A LA PROPRIETE INTELLECTUELLE NOTIFIEES
AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD**

Etats-Unis

Le présent document contient le texte du Titre 7, Code des règlements fédéraux, Sous-titre B, Section E, Partie 97 - Variétés végétales et portée de la protection¹, notifié par les Etats-Unis au titre de l'article 63:2 de l'Accord.

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

Estados Unidos

En el presente documento se reproduce¹ la parte 97 del subcapítulo B del subtítulo E del Título 7 del Código de Reglamentaciones Federales (Obtenciones vegetales y alcance de la protección), notificada por los Estados Unidos en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo.

¹English only/anglais seulement/inglés solamente.

Plant Variety Protection Laws and Regulations

TITLE 7, CODE OF FEDERAL REGULATIONS

AGRICULTURE

**SUBTITLE B-REGULATIONS OF THE DEPARTMENT OF
AGRICULTURE**

SUBCHAPTER E-COMMODITY LABORATORY TESTING PROGRAMS

PART 97-PLANT VARIETY AND PROTECTION SCOPE

- 97.1 General.
- 97.2 Meaning of words.
- 97.3 Plant Variety Protection Board.
- 97.5 General requirements
- 97.6 Application for certificate
- 97.8 Specimen requirements.
- 97.9 Drawings and photographs.
- 97.10 Parts of an application to be filed together.
- 97.11 Application accepted and filed when received.
- 97.12 Number and filing date of an application.
- 97.13 When the owner is deceased or legally incapacitated.
- 97.14 Joint applicants.
- 97.15 Assigned varieties and certificates.
- 97.16 Amendment by applicant.
- 97.17 Papers of completed application to be retained
- 97.18 Applications handled in confidence
- 97.19 Publication of pending applications.
- 97.20 Abandonment for failure to respond within the time limit.
- 97.21 Extension of time for a reply.
- 97.22 Revival of an application abandoned for failure to reply.
- 97.23 Voluntary withdrawal and abandonment of an application
- 97.24 Assignee
- 97.100 Examination of applications.
- 97.101 Notice of allowance.
- 97.102 Amendments after allowance.
- 97.103 Issuance of a certificate.
- 97.104 Application or certificate abandoned
- 97.105 Denial of an application.
- 97.106 Reply by applicant; request for reconsideration.
- 97.107 Reconsideration and final action.
- 97.108 Amendments after final action.
- 97.120 Corrected certificate -- office mistake.
- 97.121 Corrected certificate -- applicant's mistake.
- 97.122 Certified seed only election.
- 97.130 Recording of assignments.
- 97.131 Conditional assignments.

Plant Variety Protection Laws and Regulations

- 97 132 Assignment records open to public inspection.
- 97.140 After filing.
- 97 141 After issuance.
- 97.142 For testing or increase.
- 97.143 Certified seed only.
- 97 144 Additional marking or labeling.
- 97 150 Right to be represented
- 97 151 Authorization
- 97 152 Revocation of authorization, withdrawal.
- 97.153 Persons recognized.
- 97.154 Government employees
- 97.155 Signatures
- 97.156 Addresses
- 97.157 Professional conduct.
- 97 158 Advertising
- 97.175 Fees and charges
- 97.176 Fees payable in advance.
- 97.177 Method of payment
- 97 178 Refunds.
- 97.179 Copies and certified copies
- 97.190 When open records are available.
- 97 200 Protests to the grant of a certificate
- 97.201 Protest proceedings.
- 97.205 Definition, when declared
- 97 206 Preparation for priority contest between applicants
- 97 207 Preparation of priority papers and declaration of priority contest
- 97 208 Burden of proof
- 97 209 Preliminary statement on novel variety developed in the United States
- 97.210 Preliminary statement on novel variety developed in a foreign country.
- 97 211 Statements sealed before filing
- 97 212 Correction of a statement on motion.
- 97.213 Failure to file statements
- 97.214 Access to preliminary statements.
- 97.215 Dissolution at the request of the Commissioner.
- 97.216 Concession, abandonment.
- 97.217 Affidavits and exhibits
- 97.218 Matters considered in determining a priority
- 97.219 Recommendation by the Commissioner.
- 97.220 Decision by the Commissioner
- 97.221 Status of claims of defeated applicant
- 97.222 Second priority contest.
- 97.300 Petition to the Secretary.
- 97.301 Commissioner's answer.
- 97.302 Decision by the Secretary.
- 97.303 Action following the decision.
- 97.400 Extensions of time.

Plant Variety Protection Laws and Regulations

- 97.401 Miscellaneous provisions
- 97.402 Service of papers
- 97.403 Manner of service.
- 97.500 Appeal to U S. Courts
- 97.600 Rules of practice.
- 97.700 Public interest in wide usage
- 97.800 Publication of public variety descriptions.

TITLE 7, CODE OF FEDERAL REGULATIONS

AGRICULTURE

**SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF
AGRICULTURE**

SUBCHAPTER E—COMMODITY LABORATORY TESTING PROGRAMS

PART 97—PLANT VARIETY AND PROTECTION SCOPE

7 CFR 97.1 General.

Certificates of protection are issued by the Plant Variety Protection office for new, distinct, uniform, and stable varieties of sexually reproduced or tuber propagated plants. Each certificate of plant variety protection certifies that the breeder has the right, during the term of the protection, to prevent others from selling the variety, offering it for sale, reproducing it, importing or exporting it, conditioning it, stocking it, or using it in producing a hybrid or different variety from it, as provided by the Act.

7 CFR 97.2 Meaning of words.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. The definitions of terms contained in the Act shall apply to such terms when used in this part. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Abandoned application. An application which has not been pursued to completion within the time allowed by the Office or has been voluntarily abandoned.

Act. The Plant Variety Protection Act (7 U S C. 2321 et seq.).

Administrator. The Administrator of the Agricultural Marketing Service of the U.S. Department of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

Applicant. The person who applied for a certificate of plant variety protection

Application. An application for plant variety protection under the Act.

Assignee. A person to whom an owner assigns his/her rights in whole or in part

Board. The Plant Variety Protection Board appointed by the Secretary.

Certificate. A certificate of plant variety protection issued under the Act by the Office. **Certified seed.** Seed which has been determined by an official seed certifying agency to conform to standards of genetic purity and identity as to variety, which standards have been approved by the Secretary.

Commissioner. The Examiner in Chief of the Office

Decision and order. Includes the Secretary's findings of fact; conclusions with respect to all material issues of fact and law, as well as the reasons or basis therefor; and order.

Examiner. An employee of the Plant Variety Protection Office who determines whether a certificate is entitled to be issued. The term shall, in all cases, include the Commissioner.

Foreign application. An application for plant variety protection filed in a foreign country.

Hearing Clerk. The Hearing Clerk, U S. Department of Agriculture, Washington, DC.

Hearing Officer. An Administrative Law Judge, U.S. Department of Agriculture, or other officer or employee of the Department of Agriculture, duly assigned to preside at a hearing held pursuant to the rules of this part.

Plant Variety Protection Laws and Regulations

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

Official Journal. The "Official Journal of the Plant Variety Protection Office."

Owner. A breeder who developed or discovered a variety for which plant variety protection may be applied for under the Act, or a person to whom the rights to such variety have been assigned or transferred.

Person. An individual, partnership, corporation, association, government agency, or other business or governmental entity

Secretary. The Secretary of Agriculture of the United States or any other officer or employee of the U S. Department of Agriculture, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his or her stead.

Seed certifying agency. It shall be defined as set forth in the Federal Seed Act (53 Stat. 1275).

Sale for other than seed purposes. The transfer of title to and possession of the seed by the owner to a grower or other person, for reproduction for the owner, for testing, or for experimental use, and not for commercial sale of the seed or the reproduced seed for planting purposes

7 CFR 97.3 Plant Variety Protection Board.

(a) The Plant Variety Protection Board shall consist of 14 members appointed for a 2-year term. The Board shall be appointed every 2 years and shall consist of individuals who are experts in various areas of varietal development. The membership of the Board, which shall include farmer representation, shall be drawn approximately equally from the private or seed industry sector and from the government or public sector. No member shall be eligible to act on any matter involving any appeal or questions under section 44 of the Act, in which the member or his or her employer has a direct financial interest.

(b) The functions of the Board are to

- (1) Advise the Secretary concerning adoption of rules and regulations to facilitate the proper administration of the Act;
- (2) Make advisory decisions on all appeals from the examiner or Commissioner;
- (3) Advise the Secretary on the declaration of a protected variety open to use in the public interest; and
- (4) Advise the Secretary on any other matters under the regulations in this part.

(c) The proceedings of the Board shall be conducted in accordance with the Federal Advisory Committee Act, Administrative Regulations of the U S Department of Agriculture (7 CFR part 25), and such additional operating procedures as are adopted by members of the Board.

7 CFR 97.5 General requirements.

(a) Protection under the Act shall be afforded only as follows

- (1) Nationals and residents of the United States shall be eligible to receive all of the protection under the Act
- (2) Nationals and residents of Member States of the International Union for the Protection of New Varieties of Plants (including states which are members of an intergovernmental organization which is a UPOV member) shall be eligible to receive the same protection under the Act as is provided to nationals of the United States.
- (3) Persons who are not entitled to protection under paragraph (a)(1) or (2) of this section, and who are nationals of a foreign state which is not a member of the International Union for the Protection of New Varieties of Plants, shall be entitled to only so much of the protection provided under the Act, as is afforded by such foreign state to nationals of the United States, for the same genus and species under the laws of such foreign state in effect at the time that the application for

Plant Variety Protection Laws and Regulations

protection under the Act is filed, except where further protection under the Act must be provided in order to avoid the violation of a treaty to which the United States is a party.

(b) Applications for certificates shall be made to the Plant Variety Protection Office. An application shall consist of:

- (1) A completed application form, except that the section specifying that seed of the variety shall be sold by variety name only, as a class of certified seed, need not be completed at the time of application
- (2) A completed set of the exhibits, as specified in the application form, unless the examiner waives submission of certain exhibits as unnecessary, based on other claims and evidence presented in connection with the application.
- (3) Language and legibility:
 - (i) Applications and exhibits must be in the English language and legibly written, typed or printed.
 - (ii) Any interlineation, erasure, cancellation, or other alteration must be made in permanent ink before the application is signed and shall be clearly initialed and dated by the applicant to indicate knowledge of such fact at the time of signing
- (4) To determine the extent of reciprocity of the protection to be provided under the Act, persons filing an application for plant variety protection in the United States under the provisions of paragraph (a)(3) of this section shall, upon request,¹ furnish the Plant Variety Protection Office with a copy of the current plant variety protection laws and regulations for the country of which the applicant is a national, and an accurate English translation of such laws and regulations.

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office, Science and Technology Division, AMS, USDA, room 500, National Agricultural Library Building, Beltsville, Maryland 20705.)

(d) Effective the date of these regulations and rules of practice, the signature of the applicant, or his or her agent or attorney on any affidavit or other statement filed pursuant to these regulations and rules constitutes a certification by the applicant. The signature certifies that all information relied on in any affidavit or statement filed in the course of the proceeding is knowingly correct and false claims have not been made to mislead

7 CFR 97.6 Application for certificate.

(a) An application for a plant variety protection certificate shall be signed by, or on behalf, of the applicant.

(b) The application shall state the full name, including the full first name and the middle initial or name, if any, and the capacity of the person executing it

(c) The fees for filing an application, and search or examination, shall be submitted with the application in accordance with §§ 97.175 through 97.178

(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

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.

Plant Variety Protection Laws and Regulations

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

7 CFR 97.8 Specimen requirements.

(a) The applicant may be required by the examiner to furnish representative specimens of the variety, or its flower, fruit, or seeds, in a quantity and at a specified stage of growth, as may be necessary to verify the statements in the application. Such specimens shall be packed and forwarded in conformity with instructions furnished by the examiner. If the applicant requests the examiner to inspect plants in the field before a final decision is made, all such inspection costs shall be borne by the applicant by payment of fees sufficient to reimburse the Office for all costs, including travel, per diem or subsistence, and salary.

(b) Plant specimens submitted in support of an application shall not be removed from the Office except by an employee of the Office or other person authorized by the Secretary.

(c) Plant specimens submitted to the Office shall, except as provided below, and upon request, be returned to the applicant at his or her expense after the specimens have served their intended purpose. The Commissioner, upon a finding of good cause, may require that certain specimens be retained in the Office for indefinite periods of time. Specimens which are not returned or not retained as provided above shall be destroyed.

7 CFR 97.9 Drawings and photographs.

(a) Drawings or photographs submitted with an application shall disclose the distinctive characteristics of the variety

(b) Drawings or photographs shall be in color when color is a distinguishing characteristic of the variety, and the color shall be described by use of Nickerson's or other recognized color chart.

(c) Drawings should be sent flat, or may be sent in a suitable mailing tube, in accordance with instructions furnished by the Commissioner.

(d) Drawings or photographs submitted with an application shall be retained by the Office as part of the application file.

7 CFR 97.10 Parts of an application to be filed together.

All parts of an application, including exhibits, should be submitted to the Office together, otherwise, each part shall be accurately and clearly referenced to the application

7 CFR 97.11 Application accepted and filed when received.

(a) An application, if materially complete when initially submitted, shall be accepted and filed to await examination

(b) If any part of an application is so incomplete, or so defective that it cannot be handled as a completed application for examination, as determined by the Commissioner, the applicant will be notified. The application will be held a maximum of 3 months for completion. Applications not completed at the end of the prescribed period will be considered abandoned. The application fee in such cases will not be refunded.

7 CFR 97.12 Number and filing date of an application.

(a) Applications shall be numbered and dated in sequence in the order received in the Office. Applicants will be informed in writing as soon as practicable of the number and effective filing date of the application

(b) An applicant may claim the benefit of the filing date of a prior foreign application in accordance with section 55 of the Act. A certified copy of the foreign application shall be filed upon request made by the examiner. If a foreign application is not in the English language, an English translation, certified as accurate by a sworn or official translator, shall be submitted with the application