

free fatty acids in the oil in the seed, shall be known as prime quality cottonseed and shall have a quality index of 100.

(b) *Below prime quality cottonseed.* The quality index of cottonseed that, by analysis, contains foreign matter, moisture, or free fatty acids in the oil in the seed, in excess of the percentages prescribed in paragraph (a) of this section, shall be found by reducing the quality index of prime quality cottonseed as follows:

(1) Four-tenths of a unit for each 0.1 percent of free fatty acids in the oil, in the seed, in excess of 1.8 percent.

(2) One-tenth of a unit for each 0.1 percent of foreign matter in excess of 1.0 percent.

(3) One-tenth of a unit for each 0.1 percent of moisture in excess of 12.0 percent.

(c) *Off quality cottonseed.* Cottonseed that has been treated by either mechanical or chemical process other than the usual cleaning, drying, and ginning (except sterilization required by the United States Department of Agriculture for quarantine purposes) or that are fermented or hot, or that upon analysis are found to contain 12.5 percent or more of free fatty acids, in the oil, in the seed, or more than 10.0 percent of foreign matter, or more than 20.0 percent of moisture, or more than 25.0 percent of moisture and foreign matter combined, shall be designated as “off quality cottonseed.”

(d) *Below grade cottonseed.* Cottonseed, the grade of which, when calculated according to § 96.25 is below grade 40.0, shall be designated as “below grade cottonseed,” and a numerical grade shall not be indicated.

**§ 96.28 Calculation of grades of official samples.**

(a) Data on certificates of official cottonseed analyses shall be expressed as follows:

- Foreign Matter to—0.1 percent
- Oil to—0.1 percent
- Ammonia to—0.01 percent
- Free Fatty Acid, when 5% or under, to—0.1 percent
- Free Fatty Acid, when over 5%, to—0.5 percent
- Quantity Index to—0.01 percent
- Quality Index to—0.1 percent

(b) Grade to whole or half units, whichever actual calculation is nearest shall be determined as follows:

(1) The calculation of grades shall be made by the method of disregarding the figures to the right of the second decimal place.

(2) Calculated grades ending with .2500 through .7499 will be considered to be in the .25 through .74 range, and will be reported to the nearest half grade.

(3) Calculated grades ending with .7500 through .2499 will be considered to be in the .75 through .24 range, and will be reported to the nearest whole grade.

**§ 96.29 Analysis and certification of samples and grades.**

The certification of samples of cottonseed, and the analysis and certification of grades of cottonseed shall be performed in accordance with methods, approved from time to time for the purposes by the Director, or a designated representative.

**PART 97—PLANT VARIETY AND PROTECTION**

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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.

SOURCE: 58 FR 42435, Aug. 9, 1993, unless otherwise noted.

## SCOPE

**§ 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.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

## DEFINITIONS

**§ 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.

*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.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996]

#### ADMINISTRATION

##### § 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.

[58 FR 42435, Aug. 9, 1993, as amended at 61 FR 248, Jan. 4, 1996]

#### THE APPLICATION

##### § 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 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<sup>1</sup>, 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.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996]

#### § 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.

<sup>1</sup>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.

(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 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.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996]

#### § 97.7 [Reserved]

#### § 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.

**§ 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.

**§ 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.

**§ 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.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

**§ 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.

**§ 97.13 When the owner is deceased or legally incapacitated.**

In case of the death of the owner or if the owner is legally incapacitated, the legal representative (executor, administrator, or guardian) or heir or assignee of the deceased owner may sign as the applicant. If an applicant dies between the filing of his or her application and the granting of a certificate thereon, the certificate may be issued to the legal representative, heir, or assignee, upon proper intervention.

**§ 97.14 Joint applicants.**

(a) Joint owners shall file a joint application by signing as joint applicants.

(b) If an application for certificate is made by two or more persons as joint owners, when they were not in fact joint owners, the application shall be amended prior to issuance of a certificate by filing a corrected application, together with a written explanation signed by the original applicants. Such statement shall also be signed by the assignee, if any.

(c) If an application has been made by less than all the actual joint owners, the application shall be amended by filing a corrected application, together with a written explanation, signed by all of the joint owners. Such statement shall also be signed by the assignee, if any.

(d) If a joint owner refuses to join in an application or cannot be found after diligent effort, the remaining owner may file an application on behalf of him or herself and the missing owner. Such application shall be accompanied by a written explanation and shall state the last known address of the

missing owner. Notice of the filing of the application shall be forwarded by the Office to the missing owner at the last known address. If such notice is returned to the Office undelivered, or if the address of the missing owner is unknown, notice of the filing of the application shall be published once in the Official Journal. Prior to the issuance of the certificate, a missing owner may join in an application by filing a written explanation. A certificate obtained by less than all of the joint owners under this paragraph conveys the same rights and privileges to said owners as though all of the original owners had joined in an application.

**§ 97.15 Assigned varieties and certificates.**

In case the whole or a part interest in a variety is assigned, the application shall be made by the owner or one of the persons identified in § 97.13. However, the certificate may be issued to the assignee, or jointly to the owner and the assignee, when a part interest in a variety is assigned.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

**§ 97.16 Amendment by applicant.**

An application may be amended before or after the first examination and action by the Office, after the second or subsequent examination or reconsideration as specified in § 97.107, or when and as specifically required by the examiner. Such amendment may include a specification that seed of the variety be sold by variety name only as a class of certified seed, if not previously specified or if previously declined. Once an affirmative specification is made, no amendment to reverse such a specification will be permitted unless the variety has not been sold and labeled or publication made in any manner that the variety is to be sold by variety name, only as a class of certified seed.

**§ 97.17 Papers of completed application to be retained.**

The papers submitted with a completed application shall be retained by the Office except as provided in § 97.23(c). After issuance of a certificate of protection the Office will furnish copies of the application and related

papers to any person upon payment of the specified fee.

**§ 97.18 Applications handled in confidence.**

(a) Pending applications shall be handled in confidence. Except as provided below, no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application. Also, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority of the applicant, or his or her assignee or attorney or agent. Exceptions to the above may be made by the Commissioner in accordance with 5 U.S.C. 552 and § 1.4 of this title, and upon a finding that such action is necessary to the proper conduct of the affairs of the Office, or to carry out the provisions of any Act of Congress, or as provided in sections 56 or 57 of the Act and § 97.19.

(b) Abandoned applications shall not be open to public inspection. However, if an abandoned application is directly referred to in an issued certificate and is available, it may be inspected or copies obtained by any person on written request, and with written authority received from the applicant. Abandoned applications shall not be returned.

(c) Decisions of the Commissioner on abandoned applications not otherwise open to public inspection (see paragraph (b) of this section) may be published or made available for publication at the Commissioner's discretion. When it is proposed to release such a decision, the applicant shall be notified directly or through the attorney or agent of record, and a time, not less than 30 days, shall be set for presenting objections.

**§ 97.19 Publication of pending applications.**

Information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal shall show:

(a) Application number and date of filing;

(b) The name of the variety or temporary designation;

(c) The name of the kind of seed; and

(d) Whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations that it can be certified.

Additional information, such as the name and address of the applicant or a brief description of the distinctive features of the variety, may be published only upon request or approval received from the applicant, at the time the application is filed or at any time before the notice of allowance of a certificate is issued.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996]

**§97.20 Abandonment for failure to respond within the time limit.**

(a) Except as otherwise provided in §97.104, if an applicant fails to advance actively his or her application within 30 days after the date when the last request for action was mailed to the applicant by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned. The application fee in such cases will not be refunded.

(b) The submission of an amendment to the application, not responsive to the last request by the Office for action, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When the applicant makes a bona fide attempt to advance the application, and is in substantial compliance with the request for action, but has inadvertently failed to comply with some procedural requirement, opportunity to comply with the procedural requirement shall be given to the applicant before the application shall be deemed abandoned. The Commissioner may set a period, not less than 30 days, to correct any deficiency in the application.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

**§97.21 Extension of time for a reply.**

The time for reply by an applicant to a request by the Office for certain action, shall be extended by the Commissioner only for good and sufficient cause, and for a specified reasonable time. A request for extension and appropriate fee shall be filed on or before the specified time for reply. In no case shall the mere filing of a request for extension require the granting of an extension or state the time for reply.

[58 FR 42435, Aug. 9, 1993, as amended at 61 FR 248, Jan. 4, 1996]

**§97.22 Revival of an application abandoned for failure to reply.**

An application abandoned for failure on the part of the applicant to advance actively his or her application to its completion, in accordance with the regulations in this part, may be revived as a pending application within 3 months of such abandonment, upon a finding by the Commissioner that the failure was inadvertent or unavoidable and without fraudulent intent. A request to revive an abandoned application shall be accompanied by a written statement showing the cause of the failure to respond, a response to the last request for action, and by the specified fee.

**§97.23 Voluntary withdrawal and abandonment of an application.**

(a) An application may be voluntarily withdrawn or abandoned by submitting to the Office a written request for withdrawal or abandonment, signed by the applicant or his or her attorney or agent of record, if any, or the assignee of record, if any.

(b) An application which has been voluntarily abandoned may be revived within 3 months of such abandonment by the payment of the prescribed fee and a showing that the abandonment occurred without fraudulent intent.

(c) An original application which has been voluntarily withdrawn shall be returned to the applicant and may be reconsidered only by refiling and payment of a new application fee.

(d) Transitional provision. An applicant whose application is pending on April 4, 1995, may notify the Plant Variety Protection Office in writing that

he or she wishes to withdraw the application and refile it under the Plant Variety Protection Act as amended in 1994. Payment of the current application fee is required but no other formalities are necessary.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

**§ 97.24 Assignee.**

The assignee of record of the entire interest in an application is entitled to advance actively or abandon the application to the exclusion of the applicant.

EXAMINATIONS, ALLOWANCES, AND  
DENIALS

**§ 97.100 Examination of applications.**

(a) [Reserved]

(b) Examinations of applications shall include a review of all available documents, publications, or other material relating to varieties of the species involved in the application, except that if there are fundamental defects in the application, as determined by the examiner, the examination may be limited to an identification of such defects and notification to the applicant of needed corrective action. However, matters of form or procedure need not, but may, be raised by an examiner until a variety is found to be new, distinct, uniform, and stable and entitled to protection.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

**§ 97.101 Notice of allowance.**

If, on examination, it shall appear that the applicant is entitled to a certificate, a notice of allowance shall be sent to the applicant or his or her attorney or agent of record, if any, calling for the payment of the prescribed fee, which fee shall be paid within 1 month from the date of the notice of allowance. Thereafter, a fee for delayed payment shall be made as required under § 97.175.

**§ 97.102 Amendments after allowance.**

Amendments to the application, after the notice of allowance is issued, may be made, if the certificate has not been issued.

**§ 97.103 Issuance of a certificate.**

(a) After the notice of allowance has been issued, the prescribed fee is received by the Office, and the applicant has clearly specified whether or not the variety shall be sold by variety name only as a class of certified seed, the certificate shall be promptly issued. Once an election is made and a certificate issued specifying that seed of the variety shall be sold by variety name only as a class of certified seed, no waiver of such rights shall be permitted by amendment of the certificate.

(b) The certificate shall be delivered or mailed to the owner.

**§ 97.104 Application or certificate abandoned.**

(a) Except as provided in paragraph (c) of this section, if the fee specified in the notice of allowance is not paid within 1 month from the date of the notice, the application shall be considered abandoned.

(b) Upon request by the Office, the owner shall replenish the viable basic seed sample of the variety. Upon request, the sample of seed which has been replaced shall be returned to the owner, otherwise it shall be destroyed. Failure to replenish viable basic seed within 3 months from the date of request shall result in the certificate being regarded as abandoned. No sooner than 1 year after the date of such request, notices of abandoned certificates shall be published in the Official Journal, indicating that the variety has become open for use by the public and, if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

(c) If the allowance fee, the viable basic seed sample or the fee for delayed payment are submitted within 9 months of the final due date, it may be accepted by the Commissioner as though no abandonment had occurred. For good cause, the Commissioner may extend for a reasonable time the period for submitting a viable basic seed sample before declaring the certificate abandoned.

(d) A certificate may be voluntarily abandoned by the applicant or his or her attorney or agent of record or the assignee of record by notifying the

Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice in the Official Journal that the variety has become open for use by the public, and if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

**§97.105 Denial of an application.**

(a) If the variety is found by the examiner to be not new, distinct, uniform, and stable, the application shall be denied.

(b) In denying an application, the examiner shall cite the reasons the application was denied. When a reason involves the citation of certain material which is complex, the particular part of the material relied on shall be designated as nearly as practicable. The pertinence of each reason, if not obvious, shall be clearly explained.

(c) If prior domestic certificates are cited as a reason for denial, their numbers and dates and the names of the owners shall be stated. If prior foreign certificates or rights are cited, as a reason for denial, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished, as may be necessary to enable the applicant to identify the cited certificates or rights.

(d) If printed publications are cited as a reason for denial, the author (if any), title, date, pages or plates, and places of publication, or place where a copy can be found shall be given.

(e) When a denial is based on facts known to the examiner, and upon request by the applicant, the denial shall be supported by the affidavit of the examiner. Such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

(f) Abandoned applications may not be cited as reasons for denial.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

**§97.106 Reply by applicant; request for reconsideration.**

(a) After an adverse action by the examiner, the applicant may respond to the denial and may request a reconsideration, with or without amendment of his or her application. Any amendment shall be responsive to the reason or reasons for denial specified by the examiner.

(b) To obtain a reconsideration, the applicant shall submit a request for reconsideration in writing and shall specifically point out the alleged errors in the examiner's action. The applicant shall respond to each reason cited by the examiner as the basis for the adverse action. A request for reconsideration of a denial based on a faulty form or procedure may be held in abeyance by the Commissioner until the question of the variety being new, distinct, uniform, and stable is settled.

(c) An applicant's request for a reconsideration must be a bona fide attempt to advance the case to final action. A general allegation by the applicant that certain language which he or she cites in the application or amendment thereto establishes the variety is new, distinct, uniform, and stable without specifically explaining how the language distinguishes the alleged new, distinct, uniform, and stable variety from the material cited by the examiner shall not be grounds for a reconsideration.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

**§97.107 Reconsideration and final action.**

If, upon reconsideration, the application is denied by the Commissioner, the applicant shall be notified by the Commissioner of the reason or reasons for denial in the same manner as after the first examination. Any such denial shall be final unless appealed by the applicant to the Secretary within 60 days from the date of denial, in accordance with §§97.300-97.303. If the denial is sustained by the Secretary on appeal, the denial shall be final subject to appeal to the courts, as provided in §97.500.

**§ 97.108 Amendments after final action.**

(a) After a final denial by the Commissioner, amendments to the application may be made to overcome the reason or reasons for denial. The acceptance or refusal of any such amendment by the Office and any proceedings relative thereto shall not relieve the applicant from the time limit set for an appeal or an abandonment for failure to reply.

(b) No amendment of the application can be made in an appeal proceeding. After decision on appeal, amendments can only be made to carry into effect a recommendation under § 97.302(b).

CORRECTION OF ERRORS IN CERTIFICATE

**§ 97.120 Corrected certificate—office mistake.**

When a certificate is incorrect because of a mistake in the Office, the Commissioner may issue a corrected certificate stating the fact and nature of such mistake, under seal, without charge, to be issued to the owner and recorded in the records at the Office.

**§ 97.121 Corrected certificate—applicant’s mistake.**

When a certificate is incorrect because of a mistake by the applicant of a clerical or typographical nature, or of minor character, or in the description of the variety (including, but not limited to, the use of a misleading variety name or a name assigned to a different variety of the same species), and the mistake is found by the Commissioner to have occurred in good faith and does not require a further examination, the Commissioner may, upon payment of the required fee and return of the original certificate, correct the certificate by issuing a corrected certificate, in accordance with section 85 of the Act. If the mistake requires a re-examination, a correction of the certificate shall be dependent on the results of the reexamination.

REISSUANCE OF CERTIFICATE

**§ 97.122 Certified seed only election.**

When an owner elects after a certificate is issued to sell the protected variety by variety name only as a class of

certified seed, a new certificate may be issued upon return of the original certificate to the Office and payment of the appropriate fee.

ASSIGNMENTS AND RECORDING

**§ 97.130 Recording of assignments.**

(a) Any assignment of an application for a certificate, or of a certificate of plant variety protection, or of any interest in a variety, or any license or grant and conveyance of any right to use of the variety, may be submitted for recording in the Office in accordance with section 101 of the Act (7 U.S.C. 2531).

(b) No instrument shall be recorded which is not in the English language or which does not identify the certificate or application to which it relates.

(c) An instrument relating to title of a certificate shall identify the certificate by number and date, the name of the owner, and the name of the variety as stated in the certificate. An instrument relating to title of an application shall identify an application by number and date of filing, the name of the owner, and the name of the variety as stated in the application.

(d) If an assignment is executed concurrently or subsequent to the filing of an application, but before its number and filing date are ascertained, the assignment shall identify the application by the date of the application, the name of the owner, and the name of the variety.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

**§ 97.131 Conditional assignments.**

Assignments recorded in the Office are regarded as absolute assignments for Office purposes until canceled in writing by both parties to the assignment or by a decree of a court of competent jurisdiction. The Office shall not determine whether conditions precedent to the assignment, such as the payment of money, have been fulfilled.

**§ 97.132 Assignment records open to public inspection.**

(a) Assignment records relating to original or amended certificates shall be open to public inspection and copies

of any recorded document may be obtained upon payment of the prescribed fee.

(b) Assignment records relating to any pending or abandoned application shall not be available for inspection except to the extent that pending applications are published as provided in section 57 of the Act and §97.19, or where necessary to carry out the provisions of any Act of Congress. Copies of assignment records and information on pending or abandoned applications shall be obtainable only upon written authority of the applicant or his or her assignee, or attorney or agent of record, or where necessary to carry out the provisions of any Act of Congress. An order for a copy of an assignment shall give the proper identification of the assignment.

#### MARKING OR LABELING PROVISIONS

##### **§97.140 After filing.**

Upon filing an application for protection of a variety and payment of the prescribed fee, the owner, or his or her designee, may label the variety or containers of the seed of the variety or plants produced from such seed, substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Variety Protection Applied For." Where applicable, "PVPA 1994" or "PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited" may be added to the notice.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996]

##### **§97.141 After issuance.**

Upon issuance of a certificate, the owner of the variety, or his or her designee, may label the variety or containers of the seed of the variety or plants produced from such seed substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Protected Variety." Where applicable, "PVPA 1994" or "PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited" may be added to the notice.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996]

##### **§97.142 For testing or increase.**

An owner who contemplates filing an application and releases for testing or increase, seed of the variety or reproducible plant material of the variety, may label such plant material or containers of the seed or plant material substantially as follows: "Unauthorized Propagation Prohibited—For Testing (or Increase) Only."

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

##### **§97.143 Certified seed only.**

(a) Upon filing an application, or amendment thereto, specifying seed of the variety is to be sold by variety name only as a class of certified seed, the owner, or his or her designee, may label containers of seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—U.S. Variety Protection Applied for Specifying That Seed of This Variety Is To Be Sold By Variety Name Only as a Class of Certified Seed."

(b) An owner who has received a certificate specifying that a variety is to be sold by variety name only, as a class of certified seed, may label containers of the seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—To Be Sold By Variety Name Only as a Class of Certified Seed—U.S. Protected Variety."

##### **§97.144 Additional marking or labeling.**

Additional clarifying information that is not false or misleading may be used by the owner, in addition to the above markings or labeling.

#### ATTORNEYS AND AGENTS

##### **§97.150 Right to be represented.**

An applicant may actively advance an application or may be represented by an attorney or agent authorized in writing.

##### **§97.151 Authorization.**

Only attorneys or agents specified by the applicant shall be allowed to inspect papers or take action of any kind, on behalf of the applicant, in any pending application or proceedings.

**§97.152 Revocation of authorization; withdrawal.**

An authorization of an attorney or agent may be revoked by an applicant at any time, and an attorney or agent may withdraw, upon application to the Commissioner. When the authorization is so revoked, or the attorney or agent has so withdrawn, the Office shall inform the interested parties and shall thereafter communicate directly with the applicant, or with such other attorney or agent as the applicant may appoint. An assignment will not of itself operate as a revocation of authorization previously given, but the assignee of the entire interest may revoke previous authorizations and be represented by an attorney or agent of his or her own selection.

**§97.153 Persons recognized.**

Unless specifically authorized as provided in §97.151, no person shall be permitted to file or advance applications before the Office on behalf of another person.

**§97.154 Government employees.**

Officers and employees of the United States who are disqualified by statute (18 U.S.C. 203 and 205) from practicing as attorneys or agents in proceedings or other matters before government departments or agencies, shall not be eligible to represent applicants, except officers and employees whose official duties require the preparation and prosecution of applications for certificates of variety protection.

**§97.155 Signatures.**

Every document filed by an attorney or agent representing an applicant or party to a proceeding in the Office shall bear the signature of such attorney or agent, except documents which are required to be signed by the applicant or party.

(a) Filing the application and notifying the public of filing .....	\$300
(b) Search or examination .....	2,150
(c) Allowance and issuance of certificate and notifying public of issuance .....	300
(d) Revive an abandoned application .....	300
(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material) .....	1
(f) Authentication (each page) .....	1
(g) Correcting or reissuance of a certificate .....	300
(h) Recording assignments (per certificate/application) .....	25
(i) Copies of 8 x 10 photographs in color .....	25

**§97.156 Addresses.**

Attorneys and agents practicing before the Plant Variety Protection Office shall notify the Office in writing of any change of address. The Office shall address letters to any person at the last address received.

**§97.157 Professional conduct.**

Attorneys and agents appearing before the Office shall conform to the standards of ethical and professional conduct, generally applicable to attorneys appearing before the courts of the United States.

**§97.158 Advertising.**

(a) The use of advertising, circulars, letters, cards, and similar material to solicit plant variety protection business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Office or may be suspended, excluded, or disbarred from further practice before the Office.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories, shall not be considered a violation of this section.

FEEs AND CHARGES

**§97.175 Fees and charges.**

The following fees and charges apply to the services and actions specified below:

**Agricultural Marketing Service, USDA**

**§ 97.201**

(j) Additional fee for reconsideration .....	300
(k) Additional fee for late payment .....	25
(l) Additional fee for late replenishment of seed .....	25
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision) .....	2,750
(n) Granting of extension for responding to a request .....	50
(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 \$60 per employee-hour.	

[60 FR 17190, Apr. 4, 1995]

**§97.176 Fees payable in advance.**

Fees and charges shall be paid at the time of making application or at the time of submitting a request for any action by the Office for which a fee or charge is payable and established in this part.

**§97.177 Method of payment.**

Checks or money orders shall be made payable to the Treasurer of the United States. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the prescribed fee. Money sent by mail to the Office shall be sent at the sender's risk.

**§97.178 Refunds.**

Money paid by mistake or excess payments shall be refunded, but a mere change of plans after the payment of money, as when a party decides to withdraw an application or to withdraw an appeal, shall not entitle a party to a refund. However, the examination or search fee shall be refunded if an application is voluntarily abandoned pursuant to §97.23(a) before a search or examination has begun. Amounts of \$1 or less shall not be refunded unless specifically demanded.

**§97.179 Copies and certified copies.**

(a) Upon request, copies of applications, certificates, or of any records, books, papers, drawings, or photographs in the custody of the Office and which are open to the public, will be furnished to persons entitled thereto, upon payment of the prescribed fee.

(b) Upon request, copies will be authenticated by imprint of the seal of the Office and certified by the official,

authorized by the Commissioner upon payment of the prescribed fee.

AVAILABILITY OF OFFICE RECORDS

**§97.190 When open records are available.**

Copies of records, which are open to the public and in the custody of the Office, may be examined in the Office during regular business hours upon approval by the Commissioner.

PROTEST PROCEEDINGS

**§97.200 Protests to the grant of a certificate.**

Opposition on the part of any person to the granting of a certificate shall be permitted while an application is pending and for a period not to exceed 5 years following the issuance of a certificate.

**§97.201 Protest proceedings.**

(a) Opposition shall be made by submitting in writing a petition for protest proceedings, which petition shall be supported by affidavits and shall show the reason or reasons for opposing the application or certificate. The petition and accompanying papers shall be filed in duplicate. If it appears to an examiner that a variety involved in a pending application or covered by a certificate may not be or may not have been entitled to protection under the Act, a protest proceeding may be permitted by the Commissioner.

(b) One copy of the petition and accompanying papers shall be served by the Office upon the applicant or owner, or his or her attorney or agent of record.

(c) An answer, by the applicant or owner of the certificate, or his or her

assignee, in response to the petition, may be filed with the Commissioner within 60 days after service of the petition, upon such person. If no answer is filed within said period, the Commissioner shall decide the matter on the basis of the allegations set forth in the petition.

(d) If the petition and answer raise any issue of fact needing proof, the Commissioner shall afford each of the parties a period of 60 days in which to file sworn statements or affidavits in support of their respective positions.

(e) As soon as practicable after the petition or the petition and answer are filed, or after the expiration of any period for filing sworn statements or affidavits, the Commissioner shall issue a decision as to whether the protests are upheld or denied. The Commissioner may, following the protest proceeding, cancel any certificate issued and may grant another certificate for the same variety to a person who proves to the satisfaction of the Commissioner, that he or she is the breeder or discoverer. The decision shall be served upon the parties in the manner provided in §97.403.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

#### PRIORITY CONTEST<sup>2</sup>

##### **§97.205 Definition; when declared.**

A priority contest may be instituted by the Secretary, on his or her own motion, or upon the request of any person who has applied for protection on the same variety, for which an adverse certificate has been issued, for the purpose of determining the question of priority between two or more parties claiming development or discovery of the same novel variety; *Provided, however*, That any person shall have forfeited his or her right to assert priority when an adverse certificate has been issued, if he or she fails to make a request for the institution of a priority contest within 1 year of the publication in the Official Journal of issuance of the adverse certificate by the Sec-

<sup>2</sup>All provisions relating to priority contests apply only to varieties protected under the Act as it was in force prior to April 4, 1995.

retary, or if he or she fails to make the request within the period for taking action after refusal of the application on the basis of the adverse certificate.

##### **§97.206 Preparation for priority contest between applicants.**

(a) Before a priority contest will be handled by the Office, an examiner must determine that the same novel variety is involved in separate applications filed by two or more parties and apparently certifiable to each of the parties, subject to the determination of the question of priority.

(b) The fact that a certificate has been issued will not prevent a priority contest.

##### **§97.207 Preparation of priority papers and declaration of priority contest.**

(a) When a priority question is found to exist, the examiner shall forward the pertinent files to the Commissioner, together with a written statement showing the reason for the contest.

(b) The Commissioner shall institute and declare the priority contest by forwarding a notice to each of the applicants involved. Each notice shall include the name and residence of each of the other applicants or those of his or her attorney or agent, if any, and of any assignee, and will identify the application of each opposing party by number and filing date, or in the case of a certificate, by the number and date of the certificate. The notice shall specify the basis of the priority contest. The notice shall specify a time, not to exceed 2 months, for filing preliminary statements.

(c) When a notice is returned to the Office undelivered, or when one of the parties resides abroad and his or her agent in the United States is unknown, notice may be given once by publication in the Official Journal.

##### **§97.208 Burden of proof.**

The parties to a priority contest will be presumed to have developed their varieties in the chronological order of the filing dates of their applications for certificates involved in the priority contest, and the burden of proof will rest upon the party who last filed an application.

**§ 97.209 Preliminary statement on novel variety developed in the United States.**

(a) Each party to the priority contest is required to file on or before a date fixed by the Office, a concise preliminary statement giving the facts and dates relating to the development of his or her alleged novel variety. The preliminary statement must be signed by the owner; *Provided, however,* That in appropriate circumstances, as when the owner is dead or legally incapacitated, or a showing is made of inability to obtain a statement from the owner, the preliminary statement may be made by the assignee or by someone authorized or entitled to make the statement, having knowledge of the facts.

(b) Preliminary statements shall be filed with the Office in duplicate. A copy shall be forwarded to each opposing party by the Office as soon as practicable after both parties have filed their statements within the requisite period.

(c) In filing a preliminary statement each party must show the following information:

(1) The date upon which the first determination of the novel variety was made.

(2) The date upon which the first written description of the novel variety was made. If a written description of the novel variety has not been made prior to the filing date of the application, it must be so stated.

(3) The date of the first act or acts susceptible of proof (other than making a written description or disclosing the novel variety to another person), which, if proven, would establish determination of the novel variety, and a brief description of such act or acts. If there have been no such acts, it must be so stated.

(4) The date of the actual production of the novel variety. If the novel variety had not been actually produced before the filing date of the application, it must be so stated.

(d) When an allegation as to the first written description (paragraph (c)(2) of this section) is made, a copy of such written description shall be attached to the statement.

(e) If a party intends to rely on a prior application, domestic or foreign, the preliminary statement shall clearly identify such prior application. Copies of the cited application and related documents will be served by the Office, upon all interested parties to the contest. In the case of an application filed in a foreign country, English translations shall be served to all interested parties by the party relying on the application filed in the foreign country.

**§ 97.210 Preliminary statement on novel variety developed in a foreign country.**

When the novel variety was developed in a foreign country, the preliminary statement must show (a) the information specified in § 97.209 (c) through (e) and (b) whether, and if so, when and under what circumstances the novel variety was introduced into the United States by or on behalf of the party.

**§ 97.211 Statements sealed before filing.**

The preliminary statement shall be submitted in a sealed envelope bearing the name of the party filing it and the number and title of the priority contest as shown on the notice issued by the Office. The envelope should be enclosed in an outer mailing envelope marked "To Be Opened Only by the Commissioner."

**§ 97.212 Correction of a statement on motion.**

In case of material error arising through inadvertence or mistake, a preliminary statement may be corrected upon a satisfactory showing to the Commissioner that the correction is of material significance. Correction of the statement must be made as soon as practicable after the discovery of the error.

**§ 97.213 Failure to file statements.**

If any party to a priority contest fails to file a preliminary statement, he or she shall be restricted to his or her earliest effective filing date.

**§ 97.214 Access to preliminary statements.**

The preliminary statements shall be open to the inspection of any party after the date set for the filing of preliminary statements (§ 97.207(b)), but shall not be open to inspection prior to that time.

**§ 97.215 Dissolution at the request of the Commissioner.**

If during a priority contest, information is submitted or found which, in the opinion of the Commissioner, may render the variety ineligible for a certificate, the priority contest may be suspended by the Commissioner and referred to an examiner for consideration of the matter. The parties will be notified of the reason for the suspension. Arguments of the parties regarding the suspension will be considered, if filed within 60 days of the notification. The suspension will then be continued, modified, or dismissed, in accordance with the determination by the Commissioner.

**§ 97.216 Concession; abandonment.**

(a) An applicant or a certificate holder involved in a priority contest may, at any time, file a written concession of priority, or abandonment of the certificate, signed by him or her. Upon the filing of such an instrument by any party, the decision shall be rendered against the interested party by the Commissioner.

(b) A concession of priority may not be made by an assignee of a part interest.

**§ 97.217 Affidavits and exhibits.**

Affidavits and exhibits, including official records and any special matter contained in a printed publication, pertinent to the issue involved in the contest, may be introduced as evidence in a priority contest by any party to the contest. In the case of official records and printed publications, the party introducing the evidence shall specify the record or the printed publication, the page or pages to be used, indicate generally its relevancy, and submit to the Commissioner the record or authenticated copy, or the printed publication, or a copy. Copies of affidavits and exhibits, including any record or

publication, shall be served by the Commissioner on each of the other interested parties.

**§ 97.218 Matters considered in determining a priority.**

In determining priority, the Commissioner will consider only priority of development based on the evidence submitted. Questions of novelty generally will not be considered in the decision on priority. The Commissioner may refer proposed findings of fact, conclusions, and notice of priority to the Board for an advisory decision.

**§ 97.219 Recommendation by the Commissioner.**

The Commissioner may, either before or concurrently with a decision on the question of priority, but independently of such decision, direct the attention of the examiner to any matter not relating to priority which may come to the Commissioner's attention, and which in his or her opinion establishes the fact that there has been an irregularity which amounts to a bar to the granting of a certificate to either of the parties. The Commissioner may suspend the priority contest and remand the case to the examiner for further consideration of the matters, to which attention has been directed.

**§ 97.220 Decision by the Commissioner.**

(a) When a priority contest is concluded on the basis of preliminary statements, or proposed findings of fact, conclusions and notice of priority shall be issued by the Commissioner to the interested parties, giving them a specified period, not less than 30 days, to show cause why such proposed findings of fact, conclusions, and notice of priority should not be made final. Any response made during the specified period will be considered by the Commissioner. Additional affidavits or exhibits will not be considered, unless accompanied by a showing of good cause acceptable to the Commissioner. Thereafter, final findings of fact, conclusions, and notice of priority shall be issued by the Commissioner.

(b) The decision shall be entered by the Commissioner against a party whose preliminary statement alleges a date of determination later than the

filing date of the other party's application.

**§97.221 Status of claims of defeated applicant.**

Whenever a final notice of priority has been issued by the Commissioner in a priority proceeding, and the time limit for an appeal from such decision has expired, the claim or claims constituting the issue of the priority stand finally disposed of without further action by the Commissioner.

**§97.222 Second priority contest.**

A second priority contest between the same parties shall not be entertained by the Commissioner for the same novel variety.

APPEAL TO THE SECRETARY

**§97.300 Petition to the Secretary.**

(a) Petition may be made to the Secretary from any final action of the Commissioner denying an application or refusing to allow a certificate to be issued, or from any adverse decision of the Commissioner made under §§97.18(c), 97.107, 97.201(e), and 97.220.

(b) Any such petition shall contain a statement of the facts involved and the point or points to be reviewed, and the actions requested.

(c) A petition to the Secretary shall be filed in duplicate and accompanied by the prescribed fee (see §97.175).

(d) Upon request, an opportunity to present data, views, and arguments orally, in an informal manner or in a formal hearing, shall be given to interested persons. If a formal hearing is requested, the proceeding shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§1.130 through 1.151 of this title.

(e) Except as otherwise provided in the rules in this part, any such petition not filed within 60 days from the action complained of shall be dismissed as untimely.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 8464, Feb. 14, 1995]

**§97.301 Commissioner's answer.**

(a) The Commissioner may, within such time as may be directed by the Secretary, furnish a written statement to the Secretary in answer to the appellant's petition, including such explanation of the reasons for the action as may be necessary and supplying a copy to the appellant.

(b) Within 20 days from the date of such answer, the appellant may file a reply statement directed only to such new points of argument as may be raised in the Commissioner's answer.

**§97.302 Decision by the Secretary.**

(a) The Secretary, after receiving the advice of the Board, may affirm or reverse the decision of the Commissioner, in whole or in part.

(b) Should the decision of the Secretary include an explicit statement that a certificate be allowed, based on an amended application, the applicant shall have the right to amend his or her application in conformity with such statement and such decision shall be binding on the Commissioner.

**§97.303 Action following the decision.**

(a) Copies of the decision of the Secretary shall be served upon the appellant and the Commissioner in the manner provided in §97.403.

(b) When an appeal petition is dismissed, or when the time for appeal to the courts pursuant to the Act has expired and no such appeal or civil action has been filed, proceedings in the appeal shall be considered terminated as of the dismissal or expiration date, except in those cases in which the nature of the decision requires further action by the Commissioner. If the decision of the Secretary is appealed or a civil action has been filed pursuant to the Act, the decision of the Secretary will be stayed pending the outcome of the court appeal or civil action.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

GENERAL PROCEDURES IN PRIORITY,  
PROTEST, OR APPEAL PROCEEDINGS

**§97.400 Extensions of time.**

Upon a showing of good cause, extensions of time not otherwise provided

§ 97.401

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for may be granted by the Commissioner or, if an appeal has been filed by the Secretary for taking any action required in any priority, protest, or appeal proceeding.

**§ 97.401 Miscellaneous provisions.**

(a) Petitions for reconsideration or modification of the decision of the Commissioner in priority or protest proceedings shall be filed within 20 days after the date of the decision.

(b) The Commissioner may consider on petition any matter involving abuse of discretion in the exercise of an examiner's authority, or such other matters as may be deemed proper to consider. Any such petition, if not filed within 20 days from the decision complained of, may be dismissed as untimely.

**§ 97.402 Service of papers.**

(a) Every paper required to be served on opposing parties and filed in the Office in any priority, protest, or appeal proceeding, must be served by the Secretary in the manner provided in § 97.403.

(b) The requirement in certain sections that a specified paper shall be served includes a requirement that all related supporting papers shall also be served. Proof of such service upon other parties to the proceeding must be made before the supporting papers will be considered by the Commissioner or Secretary.

**§ 97.403 Manner of service.**

Service of any paper under this part must be on the attorney or agent of the party if there be such, or on the party if there is no attorney or agent, and may be made in any of the following ways:

(a) By mailing a copy of the paper to the person served by certified mail, with the date of the return receipt controlling the date of service;

(b) By leaving a copy at the usual place of business of the person served with someone in his or her employ;

(c) When the person served has no usual place of business, by leaving a copy at his or her home with a member of the family over 14 years of age and of discretion; and

(d) Whenever it shall be found by the Commissioner or Secretary that none of the above modes of serving the paper is practicable, service may be by notice, published once in the Office Journal.

REVIEW OF DECISIONS BY COURT

**§ 97.500 Appeal to U.S. Courts.**

Any applicant dissatisfied with the decision of the Secretary on appeal may appeal to the U.S. Court of Customs and Patent Appeals or the U.S. Courts of Appeals, or institute a civil action in the U.S. District Court as set forth in the Act. In such cases, the appellant or plaintiff shall give notice to the Secretary, state the reasons for appeal or civil action, and obtain a certified copy of the record. The certified copy of the record shall be forwarded to the Court by the Plant Variety Protection Office on order of, and at the expense of the appellant or plaintiff.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

CEASE AND DESIST PROCEEDINGS

**§ 97.600 Rules of practice.**

Any proceedings instituted under section 128 of the Act for false marking shall be conducted in accordance with §§ 202.10 through 202.29 of this chapter (rules of practice under the Federal Seed Act) (7 U.S.C. 1551 *et seq.*), except that all references in those rules and regulations to "Examiner" shall be construed to be an Administrative Law Judge, U.S. Department of Agriculture, and not an "Examiner" as defined in the regulations under the Plant Variety Protection Act.

PUBLIC USE DECLARATION

**§ 97.700 Public interest in wide usage.**

(a) If the Secretary has reason to believe that a protected variety should be declared open to use by the public in accordance with section 44 of the Act, the Secretary shall give the owner of the variety appropriate notice and an opportunity to present views orally or in writing, with regard to the necessity for such action to be taken in the public interest.

(b) Upon the expiration of the period for the presentation of views by the owner, as provided in paragraph (a) of this section, the Secretary shall refer the matter to the Plant Variety Protection Board for advice, including advice on any limitations or rate of remuneration.

(c) Upon receiving the advice of the Plant Variety Protection Board, the Secretary shall advise the owner of the variety, the members of the Plant Variety Protection Board, and the public, by issuance of a press release, of any decision based on the provisions of section 44 of the Act to declare a variety open to use by the public. Any decision not to declare a variety open to use by the public will be transmitted only to the owner of the variety and the members of the Plant Variety Protection Board.

PUBLICATION

**§97.800 Publication of public variety descriptions.**

Voluntary submissions of varietal descriptions of "public varieties" on forms obtainable from the Office will be accepted for publication in the Official Journal. Such publication shall not constitute recognition that the variety is, in fact, distinct, uniform, and stable.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

**PART 98—MEALS, READY-TO-EAT (MRE's), MEATS, AND MEAT PRODUCTS**

SUBPART A—MRE'S, MEATS, AND RELATED MEAT FOOD PRODUCTS

Sec.

- 98.1 General.
- 98.2 Definitions.
- 98.3 Analyses performed and locations of laboratories.
- 98.4 Analytical methods.
- 98.5 Fees and charges.

**Subpart B—USDA Certification of Laboratories for the Testing of Trichinae in Horsemeat**

98.100 General.

98.101 Definitions.

98.102—98.600 [Reserved]

AUTHORITY: 7 U.S.C. 1622, 1624.

SOURCE: 58 FR 42445, Aug. 9, 1993, unless otherwise noted.

**Subpart A—MRE's, Meats, and Related Meat Food Products**

**§98.1 General.**

Analytical services of meat and meat food products are performed for fat, moisture, salt, protein, and other content specifications.

**§98.2 Definitions.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Lard (Edible).* The fat rendered from clean and sound edible tissues from swine.

*Meals, Ready-To-Eat (MRE).* Meals, Ready-To-Eat are complete portions of one meal for one military person and are processed and packaged to destroy or retard the growth of spoilage-type microorganisms in order to extend product shelf life for 7 years. Composition analyses for MRE's are covered by the reimbursable agreement in the Memorandums of Understanding (MOU's) between AMS, USDA and the Defense Personnel Support Center, Department of Defense (DOD). These DOD, Defense Personnel Support Center (DPSC) contracts state certain military specifications for an acceptable one meal serving, retorted pouched or 18-24 serving hermetically-sealed tray packed meat, or meal product regarding satisfactory analyses for fat, salt, protein, moisture content, added stabilizer ingredient, and sometimes microbiological composition. MRE's are for use by the DOD, DPSC as a component of operational food rations, and as an item of general issue by the military.

*Meat.* This includes the edible part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm,