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7 CFR Ch. I (1-1-16 Edition)

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; 70 FR 28785, May 19, 2005]

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.

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(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 request¹, 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, National Agricultural Library, Room 401, 10301 Baltimore Avenue, Beltsville, MD 20705-2351).

(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; 70 FR 28785, May 19, 2005]

§ 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:

¹Copies 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.

(1) A declaration that at least 3,000 seeds of the viable basic seed required to reproduce the variety will be deposited in a public depository approved by the Commissioner and will be maintained for the duration of the certificate; or

(2) With the application for a tuber propagated variety, a declaration that a viable cell culture will be 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, a declaration that a plot of vegetative material for each parent will be 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; 70 FR 28785, May 19, 2005; 70 FR 54611, Sept. 19, 2005]

§ 97.7 Deposit of Voucher Specimen.

(a) *Voucher specimen types.* As regards the deposit of voucher specimen material for purposes of plant variety protection applications under 7 U.S.C. 2321 *et seq.*, the term voucher specimen shall include material that is capable of self-replication either directly or indirectly. Representative examples include seeds, plant tissue cells, cell lines, and plots of vegetative material of self-incompatible parental lines of hybrids. Seed samples should not be treated with chemicals or coatings.

(b) *Need to make a deposit.* Applications for plant variety protection require deposit of a voucher specimen of the variety. The deposit shall be acceptable if made in accordance with these regulations. Sample packages shall meet the packaging and deposit requirements of the depository. Samples and correspondence about samples shall be identified, minimally, by:

(1) The application number assigned by the Office;

(2) The crop kind, genus and species, and variety denomination; and

(3) The name and address of the depository.

(c) *Acceptable depository.* A deposit shall be recognized for the purposes of these regulations if made in: