

SOUTH AFRICA

REGULATIONS RELATING TO PLANT BREEDERS' RIGHTS

No. R. 1186

12 September 1997

The Deputy Minister of Agriculture, acting under section 44 of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), on behalf of the Minister of Agriculture-

(a) has made the regulations in the Schedule; and

(b) has repealed the regulations published

by Government Notices Nos. R. 2630 of 24 December 1980, R. 37 of 6 January 1984, R. 990, of 3 May 1985, R. 1588 of 1 August 1986, R. 2349 of 14 November 1986, R. 2341 of 16 October 1987, R. 1519 of 14 July 1989, R. 1975 of 15 September 1989, R. 1640 of 13 July 1990, R. 74 of 18 January 1991, R. 989 of 10 May 1991, R. 2415 of 4 October 1991, R. 1493 of 29 May 1992, R. 1561 of 20 August 1993, R. 2039 of 29 October 1993, R. 2534 of 31 December 1993, R. 368 of 25 February 1994, R. 492 of 18 March 1994, R. 1075 of 10 June 1994, R. 1452 of 26 August 1994, R. 831 of 9 June 1995, R. 997 of 7 July 1995, R. 1611 of 20 October 1995, R. 287 of 23 February 1996, R. 1203 of 26 July 1996, R. 95 of 24 January 1997 and R. 308 of 28 February 1997.

Definitions

1. Unless the context otherwise indicates, words and phrases in these regulations shall have the same meaning assigned thereto in the Act, and-

"Director-General" means the Director-General: Agriculture; and

"the Act" means the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976).

Kinds of plants in respect of which plant breeders' rights may be granted

2. A plant breeder's right, the contents and mode of exercise of which are as determined in the Act and these regulations, may be granted in respect of varieties of the kinds of plants specified in column 1 of Table 1.

Submission of applications

3. (1) An application for the grant of a plant breeder's right shall be submitted to the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose.

(2) Such application shall be accompanied by-

- (a) a description, on a technical questionnaire which is obtainable from the offices of the registrar in Pretoria for this purpose, of a typical plant of the variety concerned and of the procedure to be used for the maintenance and reproduction of the variety concerned;
- (b) such coloured illustrations as are required by the registrar, of a typical plant of the variety concerned;
- (c) such propagating material as is required by the registrar, of a typical plant of the variety concerned;
- (d) written proof, where applicable, of the title or authority of the legal representative or agent submitting such application;
- (e) written authorisation from the breeder or owner of the variety in respect of which an application for a plant breeder's right is submitted;
- (f) the application fee specified in item I of Table 2; and
- (g) the examination fees as specified in items 4 and 5 of Table 2.

Priority of applications

4. (1) If more than one application for the grant of a plant breeder's right in respect of the same variety is received by the registrar, the registrar shall subject to the provisions of section 8 (2) of the Act, give priority to the application first received.

(2) A claim to give priority in terms of section 8 (2) of.. the Act to an application for the grant of a plant breeder's right in respect of a variety which is preceded by an application by or on behalf of the same applicant for the protection of the rights in the same variety in a convention country or an agreement country, and which has been deposited in accordance with the laws in force in that country shall—

- (a) be lodged with the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose;
- (b) be lodged within 12 months from the date on which the application for the protection of the rights in the same variety was duly deposited in a convention country or an agreement country; and
- (c) be accompanied by the fee specified in item 2 of Table 2.

(3) Such claim for priority shall within. six months from the date on which it was lodged to the registrar, be confirmed by submitting to the registrar a copy, certified as correct by the appropriate authority in the convention country or agreement country in question, of each document which constitutes the relevant preceding application.

(4) The period referred to in section 8 (4) of the Act, within which an application thus given priority shall be confirmed by supplementing it in any respect necessary in order to comply with the requirements of the Act shall be four years: Provided that if the preceding application in a convention country or an agreement country is withdrawn or rejected, the registrar may require that such supplementation be completed at an earlier date.

Denominations for varieties

5. (1) The denomination which is proposed for a variety in terms of regulation 3 (2i (c) shall-

- (a) be suitable to identify the variety;
- (b) not be such as to be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the variety in question or the identity of the breeder thereof;
- (c) be different from each denomination which distinguishes existing varieties of the same or a closely related kind of plant in a convention country or an agreement country;
- (d) subject to the provisions of sub-regulation (3) not be identical with or similar to, or liable to lead to confusion with a mark which enjoys the protection accorded thereto by the Trade Marks Act, 1963 (Act No. 62 of 1963), and which applies to propagating material or the use in connection therewith or in connection with a product thereof;
- (e) not be inimical to public order or contrary to, morality; and
- (f) be the same in all convention countries or agreement countries.

(2) If the registrar considers a denomination proposed for a variety as unsuitable, the applicant concerned shall submit a translation thereof or some other denomination acceptable to the registrar, within two months from the date on which he or she was directed in writing to do so.

(3) Notwithstanding anything to the contrary contained in these regulations-

- (a) a mark referred to in sub-regulation (1) (d) may only be approved as a denomination for a variety if the applicant concerned submits documentary proof that the holder of the mark concerned renounces his or her right to such mark as from the date on which a plant breeder's right to the variety is granted; and
 - (b) the denomination approved by the registrar for a variety in respect of which protection has been granted by, or an application for protection has been lodged with the appropriate authority in a convention country or an agreement country in accordance with the laws in force in that country shall be the same as the denomination thus protected or thus applied for in such country, on condition however that the provision of subparagraph (a) are complied with and that a priority claim on such denomination is not proved by another person.
- (4) When a variety is advertised, offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination.

(5) A trademark, trade name or other similar indication referred to in section (4) shall not be used alone without the variety denomination which must at all times be easily recognisable.

Publication of applications

6. (1) The particulars specified in item 1 of Table 3 shall be published in terms of section 13 (1) of the Act in respect of an application for the grant of a plant breeder's right which has not been rejected by the registrar in terms of section 11 of the Act.

(2) The particulars specified in item 2 of Table 3 shall be published in terms of section 13 (2) of the Act in respect of an application for the grant of a plant breeder's right which has been withdrawn before a plant breeder's right has been granted in respect of the variety concerned.

Grant of provisional protection

7. An application for a protective direction in terms of section 14 of the Act with a view to the provisional protection of the plant breeder's right which may be granted in respect of a variety shall be submitted on a form which is obtainable from the offices of the registrar in Pretoria for this purpose.

Objections against applications for the grant of plant breeders' rights

8. (1) An objection against an application for the grant of a plant breeder's right shall—

- (a) be lodged with the registrar in writing within six months from the date on which the particulars relating to the application concerned were published in terms of section 13 (1) of the Act;
- (b) state the name and address of the person objecting;
- (c) indicate the published particulars of the application concerned;
- (d) subject to the provisions of section 17 (2) of the Act, state the grounds on which it is based; and
- (e) be accompanied by the fee specified in item 3 of Table 2.

(2) The registrar may direct that such objection be substantiated by such proof as may be deemed necessary.

(3) A person thus objecting shall serve a copy of any document and other proof lodged in terms of sub-regulations (1) and (2) on the person who submitted the application concerned and shall furnish the registrar with proof of such service.

(4) A counter-statement against such objection by the person who has submitted the application concerned shall—

(a) be lodged with the registrar in writing within 60 days, or such further period as the registrar may allow, from the date on which such person has received the relevant objection and other proof referred to in sub-regulation (2);

(b) indicate the published particulars of the application concerned; and

(c) set out the particulars of each ground upon which any allegation of the person objecting, is contested.

(5) The person lodging such counter-statement shall serve a copy thereof on the person objecting and shall furnish the registrar with proof of such service.

(6) The registrar shall notify the person who objected against the application for the grant of a plant breeder's right, the person who applied for the plant breeder's right and the person or persons appointed to assist him or her in hearing the objection in writing of the date and time on which and the place at which the objection will be heard.

(7) At the hearing of an objection against an application for the grant of a plant breeder's right—

- (a) any person referred to in sub-regulation (6) will be allowed to call witnesses during the hearing and to cross-examine other witnesses;
- (b) the onus rests with each person to notify his or her witnesses of the date, place and time of the hearing and to ensure their presence at the hearing;

- (c) the person who lodged the objection against an application for the grant of a plant breeder's right shall be allowed to present his or her case first and to call witnesses; and
 - (d) the person who applied for the plant breeder's right shall then be allowed to present his or her case and to call witnesses.
- (8) After hearing all the evidence, the registrar shall reach a decision and thereafter in writing advise the person objecting and the person who applied for the grant of the plant breeder's right concerned, of his or her decision and of the grounds on which it is based.
- (9) The registrar shall publish the particulars specified in item 3 of Table 3 in respect of an application for the grant of a plant breeder's right when such application has lapsed because an objection against it has been upheld.

Consideration and examination of applications

9. (1) When the registrar undertakes tests and trials in terms of section 19 (2) of the Act in order to determine whether a variety of a kind of plant specified in column 1 of Table 1, is a variety which qualifies for the grant of a plant breeder's right under section 2 of the Act, the examination fees specified in items 4 and 5 of Table 2 shall be payable to the registrar by the applicant concerned.
- (2) The amount payable in respect of the cost of results which are obtained from the appropriate authority in a convention country or an agreement country in terms of section 19 (4) and (6) of the Act shall be the fee determined by the appropriate country and shall be calculated at the rate of exchange between the monetary units of the Republic and the country concerned as on the date of payment of such costs to the appropriate authority concerned.
- (3) The amount specified in item 6 of Table 2 shall be payable when the registrar provides the results of tests and trials undertaken by him or her to the appropriate authority in a convention country or an agreement country.
- (4) The particulars specified in items 4 and 5 of Table 3 shall respectively be published in respect of—
- (a) a plant breeder's right which has been granted; and
 - (b) the refusal to grant a plant breeder's right.

Payment of annual fee

10. (1) The annual fee which is, in terms of section 22 of the Act, payable to the registrar during the currency of a plant breeder's right in respect of a variety of a kind of plant specified in column 1 of Table 1 by the holder of such right shall be the amount specified in item 7 of Table 2.
- (2) If the annual fee for a particular year has not been paid prior to or on 31 January of that year, an additional amount of 10 per cent of the appropriate fee referred to in sub-regulation (1) shall be payable in terms of section 22 (2) of the Act for each month or portion of a month of late payment.

Period of plant breeders' rights

11. The period for which a plant breeder's right in respect of a variety of a kind of plant specified in column 1 of Table 1 is granted shall be as specified in column 3 of the said Table opposite the name of the kind of plant concerned.

Period of sole rights

- 11 (a). The holder of a plant breeder's right in respect of a variety of a kind of plant specified in column 1 of Table 1 shall during the period specified in column 4 of the said Table opposite the name of the kind of plant in question, have the sole right referred to in section 23 of the Act.

Notice of licences

12. (1) The holder of a plant breeder's right shall notify the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose, of each licence which was issued by him or her in terms of section 25 of the Act.
- (2) Such notice shall be submitted to the registrar within 30 days from the date of issue of the licence concerned.

Application for compulsory licences

13. (1) An application for the issue of a compulsory licence in respect of a plant breeder's right shall—

- (a) be submitted in writing to the registrar;
- (b) indicate the published particulars of the application concerned;
- (c) set out the reasons why the applicant concerned considers the refusal by the holder of the plant breeder's right concerned to issue a license, or the conditions imposed to be unreasonable; and
- (d) be accompanied by the fee specified in item 8 of Table 2.

(2) The registrar may direct that such application be substantiated by such proof as he or she may deem necessary.

(3) A person thus applying shall serve a copy of any document and proof submitted in terms of sub-regulations (1) and (2) on the holder of the plant breeder's right concerned and shall furnish the registrar with proof of service thereof.

(4) The holder of such plant breeder's right may within 60 days from the date of receipt of the document and proof referred to in sub-regulation (3), or within such further time as the registrar may allow, lodge a counterstatement with the registrar in which the particulars of any ground upon which he or she contests the application concerned are set out.

Transfer of plant breeders' rights

14. (1) The holder of a plant breeder's right shall notify the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose, of the fact that such a right or any part thereof has been transferred to another person.

(2) Such notice shall—

- (a) be submitted within 30 days from the date on which the plant breeder's right concerned or a portion thereof was transferred; and
- (b) be accompanied by the fee specified in item 9 of Table 2.

(3) When the registrar has been notified of the transfer of a plant breeder's right as contemplated in sub-regulation (1), the particulars specified in item 6 of Table 3, in respect of such transfer shall be published.

Alteration of denominations

15. (1) An application for the alteration or supplementation of the denomination approved for a variety in respect of which a plant breeder's right has been granted shall—

- (a) be submitted to the registrar by the holder of the plant breeder's right concerned on the form which is obtainable from the offices of the registrar in Pretoria for this purpose; and
- (b) be accompanied by the fee specified in item 10 of Table 2.

(2) If the registrar intends to approve the alteration or supplementation of the denomination of a variety, the particulars specified in item 7 of Table 3 in respect thereof shall be published.

(3) An objection, against the intended approval of an alteration or supplementation shall—

- (a) be lodged with the registrar in writing within three months from the date on which the particulars thereof were published in terms of section 32 (4) of the Act;
- (b) state the name and address of the person objecting;
- (c) indicate the published particulars of the application concerned;
- (d) state the grounds on which it is based; and
- (e) be accompanied by the fee specified in item 11 of Table 2.

(4) The registrar may direct that such objection be substantiated by such proof as he or she may be deemed necessary.

(5) The registrar shall publish the particulars specified in item 8 of Table 3 in respect of the denomination of a variety after he or she has approved an alteration or supplementation thereof.

Termination of plant breeders' rights

16. (1) An objection against the intended termination of a plant breeder's right of which the holder thereof or the holder of a licence therein has been notified as contemplated in section 33 (2) of the Act shall—

- (a) be lodged in writing by the holder of the plant breeder's right concerned or the holder of a licence therein;
- (b) be lodged with the registrar within 60 days from the date on which a person referred to in paragraph (a) has been notified thereof;
- (c) state the name and address of the person objecting;
- (d) indicate the published particulars of the plant breeder's right concerned;
- (e) state the grounds on which the objection is based; and
- (f) be accompanied by the fee specified in item 12 of Table 2.

(2) The registrar shall publish the particulars specified in item 9 of Table 3 in respect of the termination of a plant breeder's right.

(3) The holder of a plant breeder's right shall return the certificate of registration issued in respect thereof to the registrar within 30 days from the date of the publication referred to in sub-regulation (2).

Voluntary surrender of plant breeders' rights

17. (1) A notice by the holder of a plant breeder's right that he or she is surrendering such a right, shall—

- (a) be submitted to the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose; and
- (b) be accompanied by—
 - (i) the fee specified in item 13 of Table 2; and
 - (ii) the certificate of registration issued in respect of the plant breeder's right concerned.

(2) The registrar shall publish the particulars specified in item 10 of Table 3 in respect of the voluntary surrender of a plant breeder's right.

Recognition of agents

18. (1) The registrar may recognise a person as an agent if he or she is satisfied that such person—

- (a) is of good standing; and
- (b) has suitable qualifications and adequate experience;

and is therefore able to represent a person applying for the grant of a plant breeder's right or the holder of such right and to further the interests of such person or holder.

(2) A notice in connection with the designation or substitution of an agent shall—

- (a) be furnished by a person who has applied for the grant of a plant breeder's right or by the holder of such right;
- (b) be submitted to the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose; and
- (c) be submitted within 30 days from the date on which such designation or substitution has come into effect.

Notice of change of address

19. Any change of the address which, for purposes of correspondence is specified in an application for the grant of a plant breeder's right, or of an address entered in the register, shall—

- (1) as the case may be, be furnished by-
 - (a) the person who has applied for the grant of the plant breeder's right concerned;
 - (b) the holder of the plant breeder's right concerned;
 - (c) the legal representative or agent of such applicant or holder; or
 - (d) the person to whom a licence or compulsory licence has been issued in respect of the plant breeder's right concerned;
- (2) be submitted to the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose; and
- (3) be submitted within 30 days from the date on which such change of address has come into effect.

Register of plant breeders' rights

20. (1) In the register of plant breeders' rights referred to in section 4 of the Act shall be entered—

- (a) the kind of plant to which each variety belongs;
- (b) the denomination of each variety and any approved alteration thereof;
- (c) the principal characteristics of each variety and, where varieties are produced by a cross between certain hereditary components, the principal characteristics of such components;
- (d) the full name and address of the original breeder of each variety;
- (e) the name and address of the holder of the plant breeder's right in each variety and the name and address of each person to whom such right has been transferred;
- (f) the name and address of the person who has been appointed as the agent of any person referred to in paragraph (e);
- (g) the date of inception of the plant breeder's right in each variety;
- (h) the date on which a plant breeder's right ceases to exist and the reason therefor;
- (i) the name and address of each person to whom a licence or a compulsory licence has been issued in terms of the Act for the use of a plant breeder's right; and
- j) such other particulars as the registrar may, subject to the provisions of the Act, deem necessary.

(2) The fee specified in item 14 of Table 2 shall be payable by a person requesting inspection of the register of plant breeders' rights.

Inspection in and copies of documents

21. (1) Any person—

- (a) desiring to inspect a document submitted to the registrar in connection with an application for the grant of a plant breeder's right;
 - (b) requiring a copy of any particulars in the register, or of a document referred to in paragraph (a), or
 - (c) requiring a certificate by the registrar in connection with particulars or a document referred to in paragraph (b); shall apply therefor on a form which is obtainable from the offices of the registrar in Pretoria for this purpose.
- (2) Such application shall be accompanied by the appropriate application fees specified in items 15, 16 and 17 of Table 2.

Appeal to the minister

22. (1) An appeal in terms of section 42 of the Act, shall—

- (a) be lodged with the Director-General in writing within 60 days from the date on which the registrar has given the appellant written notice of the decision or action concerned;
- (b) state the reference number and the date of the document by means of which such appellant was notified of that decision or action;
- (c) state the grounds on which the appeal is based; and
- (d) be accompanied by the fee specified in item 18 of Table 2.

(2) An appeal shall—

- (a) when forwarded by post, be addressed to –

The Director-General: Agriculture
Private Bag X250
PRETORIA
0001; or

- (b) when delivered by hand, be delivered to -

The Director-General: Agriculture
Dirk Uys Building
Hamilton Street
PRETORIA

Remuneration of chairperson and members of appeal boards

23. A person who is appointed in terms of section 42 (2) (a) of the Act, as a member of an appeal board, and who is not an officer, shall be remunerated according to Category C of the Manual for the Application of the System for the Administration of the Service Benefit Packages for Office bearers of Certain Statutory and other Institutions.

Payment of fees

24. (1) Postage on and delivery costs of any application or document submitted in terms of these regulations, as well as on or of anything else pertaining thereto, shall be prepaid.

(2) Any fee payable in terms of these regulations, shall be paid by means of a cheque, postal order or money order made out in favour of the Director-General: Agriculture: Provided that if such fee is delivered by hand, it may be paid in cash.

(3) Subject to the provisions of section 42 (8) of the Act, fees which are paid in terms of these regulations shall not be repayable.

Address for the submission of documents

25. Any application, notice, objection or other document which is to be submitted to the registrar in terms of these regulations shall—

- (a) when forwarded by post, be addressed to-

The Registrar of Plant Breeders' Rights
Private Bag X258
PRETORIA
0001; or

- (b) when delivered by hand, be addressed to or delivered to

The Registrar of Plant Breeders' Rights

Directorate: Plant and Quality Control
Block V-Agriculture Build.
Hamilton Street
PRETORIA.