

## § 97.155

## 7 CFR Ch. I (1-1-01 Edition)

### § 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.

### § 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:

(a) Filing the application and notifying the public of filing—\$320.00.

(b) Search or examination—\$2,385.00.

(c) Allowance and issuance of certificate and notifying public of issuance—\$320.00.

(d) Revive an abandoned application—\$320.00.

(e) Reproduction of records, drawings, certificates, exhibits, or or pointed material (copy per page of material)—\$1.10.

(f) Authentication (each page)—\$1.10.

(g) Correcting or re-issuance of a certificate—\$320.00.

(h) Recording assignments (per certificate/application)—\$28.00.

(i) Copies of 8 x 10 photographs in color—\$28.00.

(j) Additional fee for reconsideration—\$320.00.

(k) Additional fee for late payment—\$28.00.

(l) Additional fee for late replenishment of seed—\$28.00.

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—\$3,050.00.

(n) Granting of extensions for responding to a request—\$55.00.

(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 \$66.00 per employee-hour.

[65 FR 47244, Aug. 2, 2000]

### § 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

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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

<sup>2</sup>All provisions relating to priority contests apply only to varieties protected under

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