

**§ 97.23**

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(a) An application may be voluntarily withdrawn or abandoned by submitting to the Office a written request for withdrawal or abandonment, signed by the applicant or his or her attorney or agent of record, if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(c) An original application which has been voluntarily withdrawn shall be returned to the applicant and may be reconsidered only by refiling and payment of a new application fee.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