

## §97.14

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

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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