FEES AND CHARGES

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified in this section:

(a) Filing the application and notifying the public of filing—$432.00.

(b) Search or examination—$3,220.00.

(c) Allowance and issuance of certificate and notifying public of issuance—$432.00.

(d) Revive an abandoned application—$432.00.

(e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material)—$1.50.

(f) Authentication (each page)—$1.50.

(g) Correcting or re-issuance of a certificate—$432.00.

(h) Recording assignments (per certificate/application)—$38.00.

(i) Copies of 8 x 10 photographs in color—$38.00

(J) Additional fee for reconsideration—$432.00.

(k) Additional fee for late payment—$38.00.

(l) Additional fee for late replenishment of seed—$38.00.

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$4,118.00.

(n) Granting of extensions for responding to a request—$74.00.

(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 Regulation.

(p) Any other service not covered in this section will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $89.00 per employee-hour.

[68 FR 1360, Jan. 10, 2003]

[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 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[2]

§ 97.205 Definition; when declared.

A priority contest may be instituted by the Secretary, on his or her own motion, or upon the request of any person who has applied for protection on the same variety, for which an adverse certificate has been issued, for the purpose of determining the question of priority between two or more parties claiming development or discovery of the same novel variety; *Provided, however,* That any person shall have forfeited his or her right to assert priority when an adverse certificate has been issued, if he or she fails to make a request for the institution of a priority contest within 1 year of the publication in the Official Journal of issuance of the adverse certificate by the Secretary, or if he or she fails to make the request within the period for taking action after refusal of the application on the basis of the adverse certificate.

§ 97.206 Preparation for priority contest between applicants.

(a) Before a priority contest will be handled by the Office, an examiner must determine that the same novel variety is involved in separate applications filed by two or more parties and apparently certifiable to each of the parties, subject to the determination of the question of priority.

(b) The fact that a certificate has been issued will not prevent a priority contest.

§ 97.207 Preparation of priority papers and declaration of priority contest.

(a) When a priority question is found to exist, the examiner shall forward the pertinent files to the Commissioner, together with a written statement showing the reason for the contest.

(b) The Commissioner shall institute and declare the priority contest by forwarding a notice to each of the applicants involved. Each notice shall include the name and residence of each of the other applicants or those of his or

[2] All provisions relating to priority contests apply only to varieties protected under the Act as it was in force prior to April 4, 1995.