

Regulations Respecting Plant Breeders' Rights (SOR/91-594)

Enabling Statute: Plant Breeders' Rights Act

Regulation current to January 25th, 2011

Attention: See coming into force provision and notes, where applicable.

Plant Breeders' Rights Regulations

SOR/91-594

Registration October 24, 1991

PLANT BREEDERS' RIGHTS ACT

Plant Breeders' Rights Regulations

P.C. 1991-2020 October 24, 1991

Whereas, pursuant to subsection 75(2) of the *Plant Breeders' Rights Act*^{*}, a copy, of the proposed *Regulations respecting plant breeders' rights*, substantially in the form annexed hereto, was published in the *Canada Gazette* Part I on July 20, 1991;

And Whereas a reasonable opportunity was afforded to interested persons to make representations to the Minister of Agriculture with respect to the proposed Regulations;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Agriculture and the Treasury Board, pursuant to subsection 75(1) of the *Plant Breeders' Rights Act*^{*}, is pleased hereby to make the annexed *Regulations respecting plant breeders' rights*.

* S.C. 1990, c. 20

REGULATIONS RESPECTING PLANT BREEDERS' RIGHTS

SHORT TITLE

1. These Regulations may be cited as the *Plant Breeders' Rights Regulations*.

INTERPRETATION

2. (1) For the purposes of the Act and these Regulations,

"description" means a narrative that defines the characteristics of a plant variety for the purpose of demonstrating that the variety in question is a new variety;
(*description*)

"identifiable characteristics" means characteristics of a plant variety that may be included in a description and that, when so included, permit a clear distinction to be made between that variety and all other varieties in its category; (*caractère identifiable*)

"recently prescribed category" means, for a period of not more than 12 months beginning on the day on which this definition comes into force, a category referred to in item 40 of Schedule I; (*catégorie établie depuis peu par règlement*)

"representations" means representations in writing. (*observations*)

(2) In these Regulations, "Act" means the *Plant Breeders' Rights Act*. (*Loi*)
SOR/94-750, s. 1(E); SOR/98-582, s. 1.

APPLICATION

3. These Regulations apply to any plant variety belonging to a category set out in Schedule I.

COUNTRY OF THE UNION

4. Any country that has ratified the *International Convention for the Protection of New Varieties of Plants* of December 2, 1961, and any revisions thereto, as published in the *Canada Gazette*, is prescribed to be a country of the Union.
SOR/94-750, s. 2.

CRITERIA RELATING TO COMMON KNOWLEDGE

5. For the purposes of paragraph 4(2)(a) of the Act, the following criteria shall be considered when determining that the existence of a plant variety is a matter of common knowledge, namely,

(a) whether the variety is already being cultivated or exploited for commercial purposes; or

(b) whether the variety is described in a publication that is accessible to the public.

PRESCRIBED PERIODS

6. In the case of a new variety of a recently prescribed category, with respect to the requirements concerning the sale or the concurrence in a sale in Canada, the period referred to in paragraph 7(1)(a) of the Act shall commence on August 1, 1990 and terminate on the date of receipt by the Commissioner of the application for the grant of plant breeders' rights respecting that variety.

SOR/94-750, s. 3.

7. (1) In the case of a new variety of a recently prescribed category, with respect to the requirements concerning a sale or the concurrence in a sale outside Canada, the period referred to in paragraph 7(1)(c) of the Act shall commence

(a) on August 1, 1984 and terminate on the date of receipt by the Commissioner of the application for the grant of plant breeders' rights respecting the new variety of woody plants, including their rootstocks; and

(b) on August 1, 1986 and terminate on the date of receipt by the Commissioner of the application for the grant of plant breeders' rights respecting the new variety, for any other category.

(2) In the case of a new variety of a category set out in Schedule I, other than a recently prescribed category, with respect to the requirements concerning a sale or the concurrence in a sale outside Canada, the period referred to in paragraph 7(1)(c) of the Act shall commence

(a) not more than six years before the date of receipt by the Commissioner of the application for the grant of plant breeders' rights respecting the new variety of woody plants, including their rootstocks; and

(b) not more than four years before the date of receipt by the Commissioner of the application for the grant of plant breeders' rights respecting the new variety, for any other category.

SOR/93-87, s. 1; SOR/94-750, s. 4; SOR/98-582, s. 2.

8. An objection made under subsection 22(1) of the Act in respect of an application for the grant of plant breeders' rights shall be filed by submitting a written statement within a period of six months after the date of publication of the application.

9. The applicant is deemed to have abandoned an application for the grant of plant breeders' rights, pursuant to subsection 26(1) of the Act, six months after the date of notice of any action by the Commissioner.

10. Pursuant to paragraph 26(2)(a) of the Act, the applicant who is deemed to have abandoned his application pursuant to subsection 26(1) of the Act may have the application reinstated within 30 days after the date on which the application was deemed abandoned.

11. The petition referred to in paragraph 26(2)(b) of the Act shall be presented within 90 days after the end of the period set out in section 10.

SOR/93-87, s. 2.

12. An assignee shall comply with the requirements of subsection 31(1) of the Act and section 26 of the Regulations within 30 days after the date of the assignment of the plant breeders' rights.

SOR/94-750, s. 5.

13. A holder of plant breeder's rights shall comply with the Commissioner's request, for the purposes of paragraph 35(1)(b) of the Act, within 60 days after the date of receipt of the request.

14. An objection made pursuant to paragraph 36(2)(a) of the Act shall be filed by submitting a written statement to the Commissioner, within 60 days after the date on which notice is given by the Commissioner.

15. An applicant or a holder of plant breeder's rights shall correct any failure described in subsection 39(2) of the Act within 30 days after the date of the notice from the Commissioner relating to the failure.

16. For the purposes of paragraph 45(1)(b) of the Act, the holder of plant breeder's rights shall take proceedings after being called on to do so within 15 days after the date on which the holder is so called.

17. For the purposes of subsection 67(1) of the Act, the period for which documents shall be preserved is a period equal to the term of the grant of plant breeder's rights or a period of six months after the date on which an application for plant breeder's rights has been deemed to have been abandoned pursuant to subsection 26(1) of the Act, as the case may be.

SOR/94-750, s. 6(F).

18. For the purposes of subsection 67(3) of the Act, all papers and other material submitted in connection with the application for the grant of plant breeders' rights shall be returned to the applicant within 30 days after the date of withdrawal of the application.

18.1 Any objection to a change of denomination published in the *Canada Gazette* pursuant to paragraph 70(3)(a) of the Act shall be filed by submitting a written statement with the Commissioner within a period of six months after the date of publication of the change of denomination.

SOR/94-750, s. 7.

APPLICATION FOR PLANT BREEDERS' RIGHTS

19. (1) An application for the grant of plant breeder's rights shall be made to the Commissioner and contain the following information:

- (a) the name and address of the applicant;
- (b) the name and address of the breeder, if different from the applicant;
- (c) the name and address of any agent or legal representative, where applicable;
- (d) the botanical and common names of the plant variety;
- (e) the proposed denomination;
- (f) whether an application for a protective direction is included;
- (g) a description of the plant variety;
- (h) a statement that the plant variety is a sufficiently homogeneous variety within the meaning of subsection 4(3) of the Act and is stable;
- (i) the manner in which the plant variety was originated;
- (j) where an application for plant breeders' rights respecting the plant variety has been made or granted in any country other than Canada, the name of the country;
- (k) whether priority is being claimed as a result of a preceding application made by the applicant in a country of the Union or an agreement country;
- (l) where the breeder or a legal representative of the breeder sold or concurred in the sale of the plant variety within or outside Canada, the date of the sale;
- (m) where applicable, any request for exemption from compulsory licencing; and

(n) the manner in which the propagating material will be maintained.

(2) In an application referred to in subsection (1), the applicant shall include a representative reference sample of viable propagating material of the plant variety that is the subject of the application.

20. An application referred to in subsection 19(1) shall be supported by

(a) the results of comparative tests and trials to demonstrate that the plant variety is a new variety; and

(b) photographs and a detailed description of the plant variety that illustrate that the plant variety is clearly distinguishable pursuant to paragraph 4(2)(a) of the Act.

21. Where an application referred to in subsection 19(1) is made by a person other than a breeder, the application shall be accompanied by evidence that establishes that the person is the agent or legal representative of the breeder.

SOR/94-750, s. 8(E).

DENOMINATIONS OF NEW VARIETIES

22. Where the Commissioner rejects a proposed denomination pursuant to subsection 14(2) of the Act, an applicant shall submit another proposed denomination in writing to the Commissioner.

23. (1) A request for a change of denomination shall be submitted to the Commissioner in writing.

(2) The Commissioner may approve a change of denomination pursuant to subsection 14(5) of the Act in the following circumstances, namely,

(a) where the denomination approved by the Commissioner is not, owing to error, the denomination proposed by the holder;

(b) where additional information that becomes available after the grant of plant breeders' rights justifies a change of denomination; or

(c) where an objection has been filed pursuant to subsection 25(2).

SOR/94-750, s. 9.

24. A change of denomination comes into effect on the date on which it is approved by the Commissioner.

25. [Repealed, SOR/94-750, s. 10]

ASSIGNMENT OF PLANT BREEDERS' RIGHTS

26. Where the holder of plant breeders' rights assigns the rights, an assignee shall, for the purposes of subsection 31(1) of the Act, provide the Commissioner in writing with the following particulars:

(a) the name and address of the previous holder;

(b) the category and denomination of the plant variety to which the assignment applies;

(c) the plant breeder's rights certificate number;

(d) a letter of assignment signed by both the holder and the assignee, each in the presence of a witness; and

(e) the effective date of the assignment.

SOR/94-750, s. 11.

COMPULSORY LICENCES

27. (1) An application for a compulsory licence shall

(a) be in writing;

(b) identify the plant variety and category for which the application is made; and

(c) state the reasons for the application.

(2) Any interested person who will be adversely affected by the Commissioner's decision to grant a compulsory licence may make representations to the Commissioner within 60 days after the date on which notice is given pursuant to subsection 32(5) of the Act.

SOR/94-750, s. 12(F).

28. Where the applicant makes the request referred to in paragraph 19(1)(m), the Commissioner may grant an exemption from compulsory licensing to allow the applicant sufficient time to multiply and distribute propagating material of the plant variety.

FEES AND CHARGES

29. The fees and charges payable for the purposes of the Act and these Regulations are as set out in Schedule II and are payable, in Canadian dollars, to the Commissioner.

30. (1) The annual fee set out in item 10 of Schedule II is payable on or before the date of the anniversary of the granting of plant breeder's rights every year for the term of the grant of the rights.

(2) For the purposes of paragraph 35(1)(d) of the Act, failure to pay the fee referred to in subsection (1) within 60 days after the anniversary date may result in a revocation of the plant breeders' rights.

SOR/94-750, s. 13.

SCHEDULE I (Sections 3, 6 and 7)

CATEGORIES

Column I Item Common Name	Column II Botanical Name
1. Rape	<i>Brassica campestris</i> L. and <i>Brassica napus</i> L.
2. Chrysanthemum	<i>Chrysanthemum</i> spp.
3. Soybean	<i>Glycine max</i> L. Merrill
4. Rose	<i>Rosa</i> spp.
5. Potato	<i>Solanum tuberosum</i> L.
6. Wheat	<i>Triticum</i> spp.
7. Oats	<i>Avena</i> spp.
8. Dianthus	<i>Dianthus</i> spp.
9. Poinsettia	<i>Euphorbia pulcherrima</i> Willd. ex Keotzsch
10. Strawberry	<i>Fragaria</i> L.
11. Barley	<i>Hordeum vulgare</i> L. sensu lato
12. Flax	<i>Linum usitatissimum</i> L.
13. Apple	<i>Malus</i> Mill
14. Alfalfa	<i>Medicago sativa</i> L. sensu lato
15. Bean	<i>Phaseolus vulgaris</i> L. & <i>Phaseolus coccineus</i> L.
16. Pea	<i>Pisum sativum</i> L. sensu lato
17. Potentilla	<i>Potentilla</i> spp.
18. Cherry	All species of cherries of the <i>Prunus</i> spp.
19. Pear	<i>Pyrus</i> spp.
20. African violet	<i>Saintpaulia</i> spp.
21. Yew	<i>Taxus</i> spp.
22. Grapevine	<i>Vitis</i> L.
23. Corn	<i>Zea mays</i> L.
24. Maple	<i>Acer</i> spp.
25. Begonia	<i>Begonia</i> spp.
26. Mustard	<i>Brassica carinata</i> A. Braun, <i>Brassica juncea</i> (L.) Czern et Coss., <i>Brassica nigra</i> (L.) W. Koch & <i>Sinapis alba</i> L.

Column I Item Common Name	Column II Botanical Name
27. Clematis	<i>Clematis</i> spp.
28. Creeping red fescue	<i>Festuca rubra</i> L.
29. Impatiens	<i>Impatiens</i> spp.
30. Lentil	<i>Lens culinaris</i> Medikus
31. Pelargonium	<i>Pelargonium</i> spp.
32. Timothy	<i>Phleum pratense</i> L. & <i>Phleum bertolonii</i> DC.
33. Kentucky bluegrass	<i>Poa pratensis</i> L.
34. Peach	<i>Prunus persica</i> (L.) Batsch
35. Plum	All species of plums of the <i>Prunus</i> spp.
36. Raspberry	<i>Rubus idaeus</i> L.
37. Spirea	<i>Spiraea</i> spp.
38. Blueberry	All species of blueberries of the <i>Vaccinium</i> spp.
39. Viburnum	<i>Viburnum</i> spp.
40. All other categories of the plant kingdom, except algae, bacteria and fungi	

SOR/93-87, s. 3; SOR/94-750, ss. 14(F) to 17(F), 18, 19; SOR/98-582, s. 3.

SCHEDULE II
(Section 29 and subsection 30(1))

Column I Item Service	Column II Fees or charges
1. Filing, pursuant to subsection 9(1) of the Act, of an application for plant breeder's rights	\$250
2. Filing, pursuant to subsection 19(1) of the Act, of an application for a protective direction	50
3. Claim, pursuant to paragraph 11(1)(b) of the Act, respecting priority based on a preceding application made in a country of the Union or an agreement country	50
4. Examination, pursuant to subsection 23(1) and paragraph 75(1)(a) of the Act, of an application for grant of plant breeder's rights	750
5. Registration of grant of plant breeder's rights pursuant to subsection 27(3) of the Act	500
6. Filing, pursuant to subsection 22(1) of the Act, an objection to an application for plant breeder's rights	200
7. Processing of request for change of an approved denomination by the holder of the plant breeder's rights pursuant to subsection 14(5) and paragraph 75(1)(a) of the Act	100
8. Reinstatement of an abandoned application for plant breeder's rights pursuant to paragraph 26(2)(a) of the Act	100
9. Reinstatement of an abandoned application for plant breeder's rights on petition pursuant to paragraph 26(2)(b) of the Act	200
10. Annual fee, pursuant to subsection 6(2) of the Act	300
11. Processing of application for compulsory licence, pursuant to subsection 32(1) and paragraph 75(1)(a) of the Act	250
12. Issuance, pursuant to subsection 27(5) of the Act, of certified copy of lost or destroyed certificate of grant of plant breeder's rights	50
13. Public inspection of the register and the index referred to in subsection 67(2) 5	

Column I	Column II
Item Service	Fees or charges
of the Act, including any documents that, in the opinion of the Commissioner, should be open for public inspection, at the Plant Breeders' Rights Office	
14. Copies of documents or certificates with regard to an entry in the register or index referred to in subsection 67(2) of the Act, including any documents that, in the opinion of the Commissioner, should be open for public inspection and obtained from the Plant Breeders' Rights Office	0.50/page
15. Providing copies of publications, pursuant to paragraph 75(1)(a) of the Act	at cost

SOR/94-750, s. 20.

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