

CANADA

REGULATIONS RESPECTING PLANT BREEDERS' RIGHTS*

SHORT TITLE

Section 1

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

INTERPRETATION

Section 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 a category set out in Schedule I that has been prescribed for a period of not more than 12 months. (catégorie établie depuis peu par règlement)

“representations” means representations in writing. (observations)

(2) In these Regulations, “Act” means the Plant Breeders' Rights Act. (Loi)

APPLICATION

Section 3

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

COUNTRY OF THE UNION

Section 4

Any country of the Union that has ratified the International Convention for the Protection of New Varieties of Plants of December 2, 1961, and any revisions thereto, is prescribed to be a country of the Union.

CRITERIA RELATING TO COMMON KNOWLEDGE

Section 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

Section 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.

Section 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, 1970, for the category of potato set out in item 5 of Schedule I; and
- (b) on August 1, 1986, for any other category set out in Schedule I.

(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 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.

Section 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.

Section 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.

Section 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.

Section 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 9.

Section 12

An assignee shall comply with the requirements of Subsection 31(1) of the Act within 30 days after the date of the assignment of the plant breeders' rights.

Section 13

A holder of plant breeders' 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.

Section 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.

Section 15

An applicant or a holder of plant breeders' 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.

Section 16

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

Section 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 breeders' rights or a period of six months after the date on which an application for plant breeders' rights has been deemed to have been abandoned pursuant to Subsection 26(1) of the Act, as the case may be.

Section 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.

APPLICATION FOR PLANT BREEDERS' RIGHTS

Section 19

(1) An application for the grant of plant breeders' 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.

Section 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.

Section 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.

DENOMINATIONS OF NEW VARIETIES

Section 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.

Section 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, in the opinion of the Commissioner, 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).

Section 24

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

Section 25

- (1) The Commissioner shall publish the approval of any change of denomination in the Canada Gazette.

(2) Any interested person may file an objection to a change of denomination with the Commissioner by submitting a written statement indicating the grounds for the objection within six months after the date that the notice of the change of denomination is published in the Canada Gazette.

ASSIGNMENT OF PLANT BREEDERS' RIGHTS

Section 26

Where a holder of plant breeders' rights assigns the rights pursuant to Subsection 31(1) of the Act, an assignee shall 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 breeders' 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.

COMPULSORY LICENCES

Section 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.

Section 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

Section 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.

Section 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 breeders' rights every year for the term of the grant of the rights.

(2) 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.

SCHEDULE I

(Sections 3, 6 and 7)

Not reproduced here.

SCHEDULE II

(Section 29 and Subsection 30(1))

Not reproduced here.

* French full title: Règlement concernant la protection des obtentions végétales
French short title: Règlement sur la protection des obtentions végétales
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