

## SWITZERLAND

### ORDINANCE ON THE PROTECTION OF NEW VARIETIES OF PLANTS No. 232.161 of June 25, 2008 (status as of September 1, 2008)\*

The Swiss Federal Council,

Considering art. 7, paragraph 2, 36, paragraph 3, and 54 of the Federal Law of March 20, 1975 on the Protection of New Varieties of Plants,<sup>1</sup> decides as follows:

#### Section 1 Subject matter

##### Art. 1

The present Ordinance regulates:

a. the procedure for the protection of new varieties of plants; b. the list of species to which the farmer's privilege applies; c. fees relating to the protection of varieties.

#### Section 2 Procedure

##### Art. 2

#### Filing date for applications sent by mail

1. For applications sent from Switzerland, the filing date shall be the day on which the application was mailed, as proven by the date of the postmark of the post office from which the application was sent. If such mark is lacking or is illegible, the stamp of the receiving post office shall be valid; if such stamp is also lacking or is illegible, the date on which the application was received by the Bureau for the Protection of Varieties shall be deemed to be the date of filing. The sender shall be entitled to provide proof of a date prior to the date on which the application was given to the post office.

2. For applications sent from abroad, the filing date shall be the date of the first Swiss postmark. If such mark is lacking or is illegible, the date on which the

application was received by the Bureau for the protection of varieties shall be deemed to be the date of filing. The sender shall be entitled to provide proof of a date prior to the date on which the application was given to the Swiss post office.

#### Art.3 Language

1. Applications addressed to the Bureau for the Protection of Varieties shall be drafted in German, French or Italian (official languages) or in English.

2. If documents are drafted in another language, their translation into the language of the procedure may be required.

3. Supporting documents which are not drafted in an official language or in English shall only be taken into consideration if they have been translated into an official language or into English.

4. If the translation of a document must be supplied, the Bureau for the Protection of Varieties may require that the accuracy of the translation be certified within the time limit set. If such certification is not provided, the document shall be deemed not to have been received.

#### Art. 4 Electronic communication

1. The Bureau for the Protection of Varieties may authorize electronic communication.

2. It shall decide on the technical arrangements and publish them accordingly.

#### Art. 5 Application filed jointly by several persons

1. When several persons file an application jointly, they shall:

RO 2008 3595

\* Unofficial translation provided by the Office of the Union. The official version of the Ordinance in French, German and Italian can be consulted at the following website [http://www.admin.ch/ch/d/sr/c232\\_161.html](http://www.admin.ch/ch/d/sr/c232_161.html)

1. RS 232.16

a. appoint a person from among their midst as their spokesperson with the Bureau for the Protection of Varieties;

b. appoint a joint representative.

2. If neither a spokesperson nor a representative has been appointed, the first person mentioned on the application shall be deemed to be the spokesperson. If one of the other persons is opposed to this, the Bureau for the Protection of Varieties shall invite all of the persons concerned to act in conformity with paragraph 1.

#### Art. 6

##### Relations with the appointed representative

1. If a representative has been appointed by one of the parties, as a general rule the bureau only accepts communications or proposals from that person. However, the principal may withdraw the application for protection of a variety or a denomination or waive protection of varieties, effective immediately.

2. The representative shall remain authorized to receive the files and fees which the Bureau for the Protection of Varieties is bound to pass on, when the principal withdraws an application for protection or waives protection of varieties.

#### Art. 7

##### Application

1. An application shall be filed with the Bureau for the Protection of Varieties using an official form. It shall comprise the following:

- a. the documents referred to in art. 8;
- b. the description of the variety covered by art. 9.

2. The filing fee shall be paid when the application is filed.

3. A separate application shall be filed for each variety.

#### Art. 8

##### Documents required to file an application

The following information shall be provided with the application:

Switzerland

a. the name or company name of the applicant, his residence or head office, and his exact address;

b. if the applicant and the holder are not one and the same person, the name or company name of the holder, his residence or head office, and his exact address;

c. the nationality of the holder, when such holder is a natural person;

d. the variety denomination or the designation indicated at the time of filing;

e. the name and address of a possible representative and the power of attorney;

f. the name and address of the initial breeder and the confirmation that to the applicant's knowledge, no other person helped breed the variety;

g. indications concerning the acquisition of the variety, when the holder is not the initial breeder or is not the sole initial breeder;

h. if propagating material or the harvested material for the variety is sold or otherwise handed over with the agreement of the holder or one of his predecessors, the place and date of such handing-over;

i. if an application has already been filed for the variety or if it is already protected in one or more members of the International Union for the Protection of New Varieties of Plants (members of the Union), the indication:

1. of this (these) member(s) of the Union;

2. of the variety denomination;

3. of the serial number under which the application or title of protection has been registered;

4. of the date of the application for or issuing of the title of protection;

j. if a right of priority has been claimed, the date of the first filing and an indication of the UPOV member in which the application was filed;

Ordinance No. 232.161 (status as of September 1, 2008)

k. the applicant's signature.

Art. 9  
Description of the variety

1. The description of the variety should contain the main morphological and physiological characteristics of the variety and the botanical name of the species to which it belongs. For varieties where plants are produced by cross-breeding of hereditary components, the main morphological and physiological characteristics of the breeding partners shall also be indicated. Moreover, there is a need to indicate the other varieties that the variety for which the application has been filed resembles and how it is different from them.

2. The description of the variety shall be based on a technical questionnaire.

3. The authorities in charge of the examination shall be entitled to ask for illustrations.

Section 3

List of species to which the  
farmer's privilege applies

Art. 10

The species to which the farmer's privilege shall apply are referred to in Annex 1.

Section 4  
Fees

Art. 11

Applicability of the General Ordinance on Fees

The General Ordinance of September 8, 2004 on Fees<sup>2</sup> shall apply, barring special provisions set out in the Federal Law of March 20, 1975 on the Protection of Plant Varieties or the present Ordinance.

Art. 12  
Date of payment

"Date of payment" shall be deemed to mean:

a. for transfers made in Switzerland, the debit date on the account of the person giving the order or, failing this, the date on the postmark for the credit notice;

b. for transfers made abroad, the date of receipt of the transfer notice by the first Swiss processing centre or, failing this, the date of the postmark for the credit notice.

Art. 13  
Filing fee

The filing fee is set in Annex 2.

Art. 14  
Fee for the examination of the variety

1. The authority responsible for carrying out the examination shall calculate the fee for the examination of the variety based on the amount of time spent.

2. If a foreign authority is responsible for carrying out the examination or if the examination results are taken up, the corresponding expenses shall be considered to be costs.

3. If the examination lasts several years, fees shall be billed annually.

Art. 15  
Annual fee

1. The annual fee shall be set at 240 Swiss francs per year and per variety.

2. If protection of the variety is not granted on the first day of a calendar year, the annual fee shall be calculated on a pro rata basis.

Art. 16  
Other fees

Fees shall be charged for decisions taken and services provided in relation to the protection of varieties.

2. RS 172.041.1

Art. 17  
Fee calculation

1. Fees shall be calculated using the rates referred to in Annex 2.

2. If no rate is set in the Annex, fees shall be calculated on the basis of the time spent. Depending on the knowledge required by the person conducting the examination, the hourly rate shall range from 90 to 200 Swiss francs.

3. When a decision or service, for which a rate has been set in Annex 2, leads to high extraordinary expenditure, fees shall be calculated according to paragraph 2.

Section 5  
Final provisions

Art. 18  
Repeal of legislation in force

The Ordinance of May 11, 1977 on the Protection of Varieties<sup>3</sup> is hereby repealed.

Art. 19  
Amendment of legislation in force

The Ordinance of October 19, 1977 on Patents<sup>4</sup> is amended as follows:

*Preamble*

*Previous title art. 110*

*Art. 110*

*Previous title art. 111*

Art. 20  
Entry into force

The present Ordinance shall enter into force on September 1, 2008.

3. [RO 1977 880, 1983 271, 1990 1030, 1993 879 Annex 3 ch.5, 1977 869 2779 ch. II 19, 2002 1122 Annex ch.3, 2006 2633 4705 ch.II 23]

4. RS 232.141. The amendments mentioned above are inserted in the said Ordinance.

ANNEX 1  
(art. 10)

## List of species

## (a) Fodder crops

*Brassica rapa* L. (partim)  
*Cicer arietum* L.  
*Lupinus albus* L.  
*Lupinus angustifolius* L.  
*Lupinus luteus* L.  
*Medicago sativa* L.  
*Pisum sativum* L. (partim)  
*Òrifolium alexandrinum* L.  
*Òrifoliuò resupinatum* L.  
*Vicia faba*  
*Vicia sativa* L.

## (b) Cereals

*Avena sativa*  
*Hordeum vulgare* L.  
*Oryza sativa* L.  
*Phalaris canariensis* L.  
*Secale cereale* L.  
*X Triticosecale* Wittm.  
*Triticum aestivum* L. emend Fiori et Paol.  
*Triticum durum* Desf  
*Triticum spelta* L.

## (c) Potatoes

*Solanum tuberosum*

## (d) Oil Crops and Fiber Crops

*Brassica napus* L. (partim)  
*Linum usitatissimum*

ANNEX 2  
(Art. 13 and 17, para 1)

## Fees for decisions and services

	Francs
Filing relating to a variety with a provisional or future indication of the denomination	400
Filing with definitive indication of the variety denomination	300
Publication of a change in the register of deposits or the register of protection titles	100
Requests for extension of the deadline for the submission of the documents and equipment	100
Costs in case of failure to comply with the time limits set for the submission of documents and equipment	200
Reminder in case of unpaid invoices	100