

(As published in UPOV Gazette No. 94, December 2002)

THE SEEDS AND PLANT VARIETIES (PLANT BREEDER'S RIGHTS)  
REGULATIONS, 1994 \*

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THE SEEDS AND PLANT VARIETIES ACT

(Cap. 326)

IN EXERCISE of the powers conferred by sections 21, 24 and 28(2) of the Seeds and Plant Varieties Act, the Minister for Agriculture, Livestock Development and Marketing makes the following Regulations:-

THE SEEDS AND PLANT VARIETIES (PLANT BREEDER'S RIGHTS)  
REGULATIONS, 1994

Citation

1. These Regulations may be cited as the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations, 1994.

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\* As adopted and published on November 25, 1994, in the Official Kenya Gazette, Supplement No. 73, of November 25, 1994.

## Interpretation

2. In these Regulations, unless the context otherwise requires—

“breeder” means a person who discovers or breeds a new plant variety and includes his successor in title;

“Committee” means the Plant Breeder’s Rights Committee established by Regulations;

“grant” means a grant of plant breeder’s rights;

“grantee” means the holder of a grant, and in relation to a protected variety means the holder of a grant in respect of that variety;

“licensee” means a person licensed to exercise plant breeder’s rights;

“plant” means a plant in the plant kingdom and includes flowering and non-flowering plant species;

“prescribed fee” means the fee prescribed by regulation 29;

“protective direction” means a direction by the authorized officer under the Third Schedule to the Act;

“reproductive material” means the reproductive part of a plant and includes seeds and other vegetative propagating material such as a whole plant or parts thereof.

## The Plant Breeder’s Rights Committee

3.(1) There shall be a Committee to be known as the Plant Breeder’s Rights Committee, which shall consist of—

- (a) the Director of Agriculture, who shall be chairman;
- (b) the Director, Kenya Agriculture Research Institute;
- (c) the Director, Kenya Industrial Property Office;
- (d) the General Manager, Horticultural Crops Development Authority;
- (e) the Director, Kenya Forestry Research Institute;
- (f) the Director, National Seed Quality Control Service;
- (g) one representative of seed merchants; and
- (h) one representative of plant breeders.

(2) The Committee may co-opt a number of members not exceeding three to represent such interests as it may from time to time determine.

## Functions of the Committee

4. The functions of the Committee shall be—

- (a) to develop plant breeder’s rights policy;
- (b) with the approval of the Minister, to review plant breeder’s rights regulations and standards as may from time to time be required;
- (c) to make recommendations on the registration of grantees;

- (d) to moderate cases of appeal by aggrieved persons;
- (e) to review and recommend appropriate plant breeder's rights;
- (f) to perform such other duties as may from time to time be assigned by the Minister.

#### Meetings of Committee

5. Subject to the directions of the Minister, the Committee shall meet at least once in every year.

#### Application for a grant

- 6.(1) An application for a grant shall be in Form I in the Schedule and shall be accompanied by the prescribed fee.
- (2) Where the application is by a successor in title of the breeder, it shall be accompanied by—
- (a) the original or a certified copy of the deed of assignment; or
  - (b) the original or a certified copy of the certificate of grant of letters of administration; or
  - (c) such documentary evidence as is in the opinion of the authorized officer sufficient to establish the title of the application;
- (3) A person who—
- (a) has a substantial interest in the plant variety in respect of which the application is made; or
  - (b) is in a position to adduce evidence which is likely to be material to the consideration of the application,
- may on application to the authorized officer, be afforded an opportunity of making representations concerning the application.

#### Forfeiture of right to grant

- 7.(1) A person entitled to a grant by virtue of paragraph 9 of the Fourth Schedule to the Act may forfeit such right if, on being served with notice by the authorized officer, he fails to make a valid application under regulation 4 within the period specified in the notice.
- (2) A notice under paragraph (1) shall be for such period not exceeding thirty days, as the authorized officer may specify.
- (3) A person aggrieved by an act or omission of the authorized officer under this regulation may appeal to the Tribunal within fourteen days.

#### Certificate of grant

8. A certificate of a grant shall be in Form III in the Schedule and shall be issued on payment of the prescribed fee.

#### Application for extension of the period of grant

- 9.(1) An application for extension of the period of a grant under section 9(5) of the Act shall be in Form III in the Schedule and shall be in Form III in the Schedule and shall be accompanied by the prescribed fee.
- (2) Subject to paragraph (3), an application under this regulation shall be made not more than eighteen but not less than nine months before the date of expiry of the grant.

- (3) *The authorized officer may accept late application under this regulation if satisfied that the applicant's failure to lodge it within the prescribed period was due to circumstances beyond his control:*

Provided the application is lodged at least three months before the date of expiry of the grant.

- (4) *A person who—*
- (a) *is licensed to exercise any right in the plant variety to which the application relates, for whom otherwise has a substantial interest in the variety; or*
  - (b) *is in a position to produce evidence which is likely to be material to the consideration of the application and any person or organization representing such licensee or persons interested,*
- may on application to the authorized officer, be afforded an opportunity to make representations concerning the application.*

#### Application for compulsory licence

- VI 0.(1) *An application for a compulsory licence shall be in Form IV in the Schedule and shall be accompanied by the prescribed fee.*
- (2) *In addition to a person or organization entitled to make representations by virtue of section 23(7) of the Act, a person licensed to exercise any right in the plant variety to which the application relates may apply to the Minister for an opportunity to make representations concerning the application.*
- (3) *An application for the revocation, extension, limitation or other variation of the terms of a compulsory licence shall be in writing addressed to the authorized officer.*

#### Application for protective direction

- 11.(1) *An application for a protective direction shall be in Form V in the Schedule and shall be accompanied by the prescribed fee.*
- (2) *A certificate of a protective direction shall be in Form VI in the Schedule, and shall be issued on payment of prescribed fee.*

#### Withdrawal of protective direction

- 12.(1) *If it is intended to withdraw a protective direction otherwise than on the request of the holder, the authorized officer shall give the holder thirty days' notice of the intention.*
- (2) *A notice under paragraph (1) shall be in writing setting out the reasons for the intended withdrawal.*

#### Application for surrender of grant

- 13.(1) *An application for the surrender of a grant shall be in Form VII in the Schedule and shall be accompanied by the prescribed fee.*
- (2) *A licensee of any right in the plant variety to which the application relates or a person who otherwise has a substantial interest in the variety may, on application to the authorized officer, be afforded an opportunity to make representations concerning the application.*

#### Provision of information or evidence in support of application

- 14.(1) *A person making an application under these Regulations shall provide the authorized officer with such information or evidence in support of the application as the authorized officer may require.*

- (2) *In the case of an application for a grant, the applicant shall deliver to the authorized officer, or to a valuer of his for examination, the reproductive or other plant material of the plant variety to which the application relates.*
- (3) *In the case of any other application, the applicant shall deliver to the authorized officer the reproductive or other plant material as the authorized officer may require.*
- (4) *The reproductive or other plant material delivered or waived by the applicant for examination by the authorized officer under this regulation shall be of such quality and description as the authorized officer shall specify.*
- (5) *If in the course of examination of any plant material delivered or waived to the authorized officer under this regulation any part thereof is lost or damaged, or is found to be unhealthy or otherwise unsuitable, the authorized officer may require the applicant to supply further quantity of the plant material.*
- (6) *The applicant shall at all reasonable times avail to the authorized officer such facilities as may be necessary for the inspection of plants, plant material, trial grounds or other premises to which the application relates.*
- (7) *The authorized officer may require an applicant to undertake trials or tests in connection with the plant variety to which his application relates, at such times and in such manner as the authorized officer may determine.*

#### Refusal of repeated applications

- 15.(1) *If an application under regulations 6, 7 or 13 is made within 12 months of a decision by the Minister or the authorized officer in the same matter, the Minister or the authorized officer may, if in his opinion the application lacks merit, refuse it.*
- (2) *Before refusing an application under paragraph (1), the Minister or the authorized officer shall afford the applicant an opportunity to make representations thereon.*

#### Notification of application

- 16.(1) *The Minister shall notify every application under regulations 6, 7, 10 and 13 in the Gazette.*
- (2) *A notice under paragraph (1) shall specify—*
  - (a) *the categories of the persons entitled to make representations concerning the application under the Act or these Regulations;*
  - (b) *the period within which an application for an opportunity to make representations may be made; and*
  - (c) *any matters on which the Minister or the authorized officer should be satisfied by a person or organization applying for an opportunity to make representations.*

#### Application for opportunity to make representations

- 17.(1) *If a person or organization entitled by virtue of the provisions of the Act or these Regulations to make representations concerning any matter may apply in the prescribed form, to the Minister or the authorized officer, for an opportunity to make representations.*
- (2) *An application under paragraph (1) shall be—*
  - (a) *in Form VIII in the Schedule;*
  - (b) *accompanied by the prescribed fee; and*

- (c) lodged within the period specified in regulation 6.
- (3) The Minister or the authorized officer shall, on receipt of an application under this regulation, afford the applicant an opportunity of making representations to him in writing, or of being heard by him or by a person deputed by the Minister for that purpose.

#### Hearing of representations

18. (1) The Minister or the authorized officer shall appoint a date and place for the hearing of representations by any applicant under regulation 7.
- (2) In appointing the date and place for hearing, the Minister or the authorized officer shall have regard to—
- (a) the convenience of the applicant and any witnesses;
  - (b) the situation of any land or premises to be viewed in connection with the application; and
  - (c) any other relevant circumstances.
- (3) The Minister or the authorized officer shall give the applicant not less than 30 days' notice of the hearing.
- (4) The applicant shall, at least 4 days before the date appointed for the hearing, deliver to the authorized officer two copies of any document intended to be relied on or tendered as evidence at the hearing.
- (5) The applicant may appear in person at the hearing or be represented by a person of his own choice.
- (6) At the hearing, the applicant or his representative may—
- (a) give evidence;
  - (b) call witness;
  - (c) subject to paragraph (7), produce any document; and
  - (d) cross-examine any witnesses called.
- (7) No document shall be relied on or produced in evidence under paragraph (6) unless copies thereof are delivered to the authorized officer in accordance with paragraph (4).
- (8) The Minister or the authorized officer may require any witness called at the hearing to give evidence on oath, affirmation or otherwise and may for that purpose administer both oaths and affirmations.
- (9) Subject to the directions of the Minister or the authorized officer in consultation with the applicant, the hearing shall be held in public.
- (10) Before making his decision, the Minister or the authorized officer shall take into consideration any written representations made on the matter under regulation 7(3).
- (11) The Minister or the authorized officer shall give the applicant notice of his decision in writing, and shall specify therein the reasons for the decision.
- (12) An applicant aggrieved by a decision of the Minister or the authorized officer under this regulation may appeal to the Tribunal within 4 days.
- (13) Subject to regulation 9, a decision of the Minister or the authorized officer shall take effect on such date as he directs.

## Appeals to the Tribunal

- 19.(1) In appointing the time and place for hearing an appeal under section 29(1)(d), (e) or (f) of the Act, or under these Regulations, the Tribunal shall have regard to the matters specified in regulation 18(2).
- (2) Subject to paragraph (3), the operation of any decision appealed from shall be suspended pending the final determination of the appeal.
- (3) Notwithstanding any appeal, the operation of a decision to extend the duration of a grant shall not be suspended if the duration of the initial grant expires before the final determination of the appeal.

## Cancellation of grant

- 20.(1) The Minister shall give the grantee 30 days' notice of intended cancellation of a grant under section 9(7) of the Act.
- (2) A notice under paragraph (1) shall be in writing setting out the grounds for intended cancellation.

## Proposal of name for plant variety

- 21(1) The authorized officer may require an applicant for a grant to propose a name for the plant variety of which the application relates within such time as she may specify.
- (2) The authorized officer may reject a name proposed under paragraph (1) if the name—
- (a) is similar to that of a plant variety of the same class as the variety in respect of which the application is made either—
    - (i) a class consisting of the plant varieties of the species or groups prescribed by a scheme under Part V of the Act; or
    - (ii) a class prescribed for the purpose of section 21 of the Act.
  - or the name so nearly resembles the name of any plant variety as to be likely to deceive or cause confusion as to the identity of the variety; or
  - (b) is likely to deceive or cause confusion as to the characteristics or value of the plant variety or as to the identity of the breeder; or
  - (c) does not conform with international usage as regards the nomenclature of cultivated plants; or
  - (d) is similar to or likely to be confused with—
    - (i) a registered trademark; or
    - (ii) a trade name used in respect of the reproductive material of any kind; or
    - (iii) products of the plant variety in respect of which the application is made; or
    - (iv) products of a plant variety of the same class as the variety in respect of which the application is made, being the class specified under paragraph 2(a); or
  - (e) is in the opinion of the authorized officer otherwise undesirable.
- (3) If the authorized officer rejects a proposed name under paragraph (2), she shall so inform the applicant specifying the grounds for the rejection, and shall require him to propose another name within such time as he may specify.

- (4) The Minister shall publish in the Gazette, or in such manner as he may deem appropriate notice of every proposed name that is not rejected by the authorized officer under paragraph (2).
- (5) A person may, within 21 days of publication of a notice under paragraph (4), object to the approval of a proposed name on any of the grounds specified in paragraph (2).
- (6) An objection under paragraph (5) shall be in writing addressed to the authorized officer.
- (7) The authorized officer shall consider any objection lodged under paragraph (5) before approving the proposed name.
- (8) The Minister shall notify in the Gazette every name approved by the authorized officer under this regulation.
- (9) If an applicant does not comply with a request of the authorized officer to propose a name within the period specified, the authorized officer may deem the application to be abandoned.
- (10) An applicant for a grant, or a grantee may at any time propose to change the name approved under this regulation.
- (11) Upon a proposal under paragraph (9), the procedure for proposed names prescribed by this regulation shall apply.

#### Registrar of plant varieties

22. (1) The authorized officer shall maintain a register of plant varieties into which he shall enter the details relating to—
  - (a) a plant variety in respect of which a grant has been made; or
  - (b) a plant variety in respect of which an application for a grant is under consideration, specified in this regulation.
- (2) As regards a plant variety in respect of which a grant has been made, the authorized officer shall enter in the register—
  - (a) the name of the variety;
  - (b) a description of its characteristics;
  - (c) the reference number under which the variety is recorded in any reference collection of plant material maintained by the authorized officer;
  - (d) the name and address of the grantee;
  - (e) the date and duration of the grant;
  - (f) such other particulars as are in the opinion of the authorized officer necessary.
- (3) As regards a plant variety in respect of which an application for a grant is under consideration, the authorized officer shall enter in the register—
  - (a) the proposed name of the variety;
  - (b) a description of the characteristics of the variety as provided by the applicant;
  - (c) the date of grant or any protective direction;



- (d) the name and address of the applicant;
- (e) such other particulars as are in the opinion of the authorized officer necessary.

Botanical description and test results of variety

23. The authorized officer shall keep a botanical description and the results of any tests or trials of a plant variety in respect of which an application for a grant is made.

Inspection of registrar and documents

24. Any person may, during working hours, inspect the register and any documents lodged with or kept by the authorized officer, and may on payment of the prescribed fee, obtain a copy of the register or other document.

Address of grantee or applicant

25. (1) A grantee or person making any application under these Regulations shall give to the authorized officer an address for service of any documents required to be served upon him.
- (2) A grantee or applicant who changes his name or address shall forthwith notify the authorized officer.

Extension of period for compliance

26. The Minister or authorized officer may, on application, extend the period set for compliance with any regulation if in the circumstances he deems it reasonable to do so.

Amendment of register records

27. (1) If the authorized officer receives notification of change of name or address of a grantee or applicant under regulation 26, he shall amend the register accordingly.
- (2) Where—
- (a) the approved name of a variety is changed under regulation 22; or
  - (b) the period of a grant expires or is extended; or
  - (c) a grant is surrendered or cancelled,

the authorized officer shall also make such other amendments as may be necessitated by any information supplied to him.

Translation of documents

28. Where a document required to be submitted to the Minister, or authorized officer in connection with any matter is in a language other than the English language, it shall, unless the Minister or the authorized officer otherwise directs, be accompanied by a translation thereof in the English language.

Fees

29. The following fees shall be payable to the authorized officer for the purposes of the Act and these Regulations—

TYPE OF FEES	US\$
Application for a grant of PBR	200
Application for a protective direction	40

For technical evaluation of a variety	600
Annual fees for grant	200
Purchase of a report from a testing authority in another country	320
Replacement of lost or destroyed certificate	40
Claim of priority from a preceding application outside Kenya	20
For change of an approved denomination	80
Reinstatement of an abandoned application on petition	80
Surcharge for late payment	60
Application for a compulsory license	70
Application for extension of the period of a grant	100
Inspection of register and documents	40
Duplicate page of register or documents	0.5
Grant for PBR certificate	240