

CHAPTER 255

PROTECTION OF NEW PLANT VARIETIES REGULATIONS

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CHAPTER 255

PROTECTION OF NEW PLANT VARIETIES REGULATIONS

(Section 53)

116 of 2001.
Ch. 255.

[25th August, 2001.]

1. These Regulations may be cited as the

Short title.

**PROTECTION OF NEW PLANT VARIETIES
REGULATIONS.**

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

Interpretation.

“Court” means the Supreme Court of Judicature established under the Supreme Court of Judicature Act;

CAP. 91.

“Journal” means the Journal of Intellectual Property referred to in section 5 (d) of the Patents Act;

CAP. 253.

“Office” means the Office of Companies, Corporate Affairs and Intellectual Property established under section 3 of the Patents Act;

CAP. 253.

“Register” means the Register of Plant Breeder’s Rights referred to in section 3 (2) of the Act;

“Registrar” means the Registrar of Companies, Corporate Affairs and Intellectual Property;

“relevant variety” means the variety which is the subject of the application (in relation to an application for a grant of plant variety rights under the Act).

Informing
applicant of
ground for
rejection.

3. If the Registrar does not approve a variety denomination pursuant to section 32 (3), the Registrar shall inform the applicant of the ground for not approving the variety denomination and require him to propose within one month another denomination for the variety.

Register of Plant
Breeder's Rights.

4. (1) The Registrar shall maintain the Register of Plant Breeder's Rights referred to in section 3 (2) of the Act in such form as the Registrar considers appropriate.

(2) The Registrar shall, in relation to an application for a grant, enter in the Register the following particulars-

- (a) the name of the species of the relevant variety;
- (b) the proposed denomination of the relevant variety or the applicant's reference for identifying the relevant variety;
- (c) the application number assigned by the Registrar to the application;
- (d) the date on which the provisional protection took effect under section 40 of the Act;
- (e) the name and address of the applicant and if the applicant is not the person who bred or discovered or developed the relevant variety, the name and address of such person;
- (f) the Registrar's decision of making or declining to make the grant applied for, as and when such decision is made, and the date of such decision; and

- (g) such other particulars as the Registrar considers to be important or useful.

(3) The Registrar shall, in relation to a grant, enter in the Register the following particulars-

- (a) the grantee's name and address;
- (b) the date of the grant;
- (c) the duration of the grant;
- (d) the denomination approved by the Registrar for the protected variety;
- (e) the reference number under which the description of the protected variety's distinctive features are filed in the Registrar's file record kept under sub-regulation (1);
- (f) details of any cancellation of the grant;
- (g) where the Registrar is satisfied that any person other than the original grantee has become entitled to the grant or to a share in the rights of the grant, details of the entitlement;
- (h) where the grant was made pursuant to a priority accorded under section 29 of the Act, details of the equivalent application concerned; and
- (i) such other particulars as the Registrar considers to be important and useful.

(4) A grantee who has changed his name or address shall apply to the Registrar in writing for amendment of the Register accordingly, and shall, if required, furnish the Registrar with documentary evidence in support of the change in name or address.

(5) On the application of a person for the rectification of an error or omission in the Register, the Registrar may, if he opines that the rectification may affect the interest of any person (other than the person making the application for rectification), publish details of it in the Journal before making a decision.

(6) Any document delivered to, served on or given to the Registrar in connection with any application may be amended with the consent of the Registrar after application in writing made to him by the person by whom or on whose behalf the document has been delivered, served or given.

(7) The Registrar shall keep a file record of the description of the distinctive features of the protected varieties and shall hold the same available for public inspection at his Office during such hours of business as he may specify.

Copies and
extracts from
Register.

5. (1) Any person who applies for a certified copy or an uncertified copy (as the case may be) of any entry in the Register or a certified extract or an uncertified extract (as the case may be) from the Register shall be entitled to obtain such a copy or extract on payment of the prescribed fees.

(2) In this regulation-

“certified copy” means a copy certified by the Registrar and sealed with the seal of the Registrar;

“certified extract” means an extract certified by the Registrar and sealed with the seal of the Registrar.

6. (1) As soon as practicable after the Registrar has decided to make or decline to make a grant, the Registrar shall advertise his decision in the Journal.
- (2) As soon as may be after 1st January of every year, the Registrar shall prepare and publish in the Journal a list of the relevant varieties and the protected varieties that have been entered in the Register in the preceding year under regulation 4 (2) and (3) and are still in force as at that date.
7. (1) Where any document or thing is to be delivered, served or given or any act is to be done within a time limit specified by the Registrar, or prescribed by or required under these Regulations, such time limit may, upon application in writing made to the Registrar by the person required to deliver, serve or give the document or thing or do the act, be extended by the Registrar for such period and upon such terms, if any, as he thinks fit if in all the circumstances of the case he considers it reasonable to do so.
- (2) The Registrar shall give to a person making an application in accordance with sub-regulation (1), notice of his decision to extend or to refuse to extend the time limit in question.
8. (1) An applicant or grantee shall file with the Registrar an address for service within Belize.
- (2) An applicant or grantee may at any time change his address for service by notice in writing to the Registrar.
- (3) Any document or thing required or authorized by these Regulations to be delivered to, served on or given to any person other than the Registrar may be delivered, served or given by being delivered to him personally, left for him at his address for service or sent to him there by post.
- (4) Any document or thing required or authorized by these Regulations to be delivered to, served on or given to the Registrar may be delivered, served or given by being left for the Registrar, or sent to the Registrar

Certain information to be published in the Journal.

Extension of time limit.

Service of documents.

by post, at his Office or at such other place as the Registrar may have required in writing.

(5) Any document or thing sent by post in accordance with sub-regulation (3) or (4) shall be deemed to have been received at the time when the letter, properly addressed and postage prepaid, containing it would be delivered in the ordinary course of post.

Translation of documents.

9. (1) Where any document submitted to the Registrar pursuant to the Act or these Regulations is in a language other than the English language, it shall, unless the Registrar otherwise directs, be accompanied by a complete and adequate translation into the English language.

(2) A translation of any document submitted to the Registrar shall be made by a qualified person and shall be certified by such person to be a full and correct translation of the document.

(3) A person making the translation is a qualified person if he is certified by the appropriate person mentioned in paragraphs (a) and (b) to be believed by such appropriate person to be competent to translate the document into the English language, that is to say-

(a) if the translation is made outside Belize;

(i) a notary public in the place where the translation is made; or

(ii) such other person as may be specified by the Registrar;

(b) if the translation is made in Belize-

(i) a notary public in Belize;

- (ii) an attorney-at-law practicing in Belize in accordance with the relevant law; or
- (iii) such other person as may be specified by the Registrar.

(4) The Registrar may in any particular case, if he thinks fit to do so and upon such conditions as he thinks fit, permit translations to be submitted to him though not certified in accordance with the above requirements.

10. (1) The Registrar or the Court may-

Awarding costs
and requiring
security.

- (a) award any party such costs as he or it considers reasonable; and
- (b) direct how and by what parties they are to be paid.

(2) An order of the Registrar made pursuant to sub-regulation (1) may be enforced in the same way as an order of the Court.

(3) The Registrar may, in appropriate cases, require a party to proceedings before him to give security for costs, and the consequences if such security is not given may be stated in Regulations made under this Act.

(4) For the purposes of this regulation, the word "costs" includes-

- (a) remuneration by way of allowances, for the services of an expert witness; and
- (b) payment of travelling allowances of an expert witness, in respect of time spent travelling in connection with undertaking such services,

in relation to proceedings before the Registrar or before the

Court.

Opposition to
grant.

11. (1) If an opposition is filed under section 41 of the Act, the person filing the opposition shall upon the Registrar's request furnish the Registrar within 1 month after being requested by the Registrar with-

- (a) a statement of the grounds upon which the person opposing the grant files his objection;
- (b) particulars of any evidence by way of a statutory declaration in support of the opposition; and
- (c) any other information that the Registrar thinks relevant and requests from the person filing the opposition.

(2) If the person filing the opposition fails to comply with sub-regulation (1), he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition.

(3) The Registrar shall within 14 days of being furnished with the matters referred to in sub-regulation (1)-

- (a) send to the applicant concerned a copy of such matters; and
- (b) send to the applicant concerned and the person filing the opposition notice of a date and time when he will hear argument in the case, which date shall, unless the applicant concerned and the person filing the opposition consent to shorter notice, be at least 14 days after the date of the notice.

(4) If the applicant concerned or the person filing the opposition fails to appear before the Registrar on the date and at the time for hearing the argument referred to in sub-regulation (3) (b), the Registrar may-

- (a) if he is satisfied that the failure to appear is due to reasonable cause, adjourn the hearing of the argument to a date and time that he thinks fit; or
- (b) proceed to hear argument from the party appearing before him and make a decision without hearing argument from the party who fails to appear.

12. The fees to be paid under the Act and these Regulations are those fixed in Schedule I. Fees set out.

13. Payments shall be made in Belizean currency, but the equivalent amount in a foreign currency that is convertible in Belize may be accepted. Currency.

14. When a fee paid by a person to the Registrar for any purpose exceeds the fee fixed by these Regulations for that purpose by more than \$10, the person who paid the fee is entitled to be refunded the amount of excess less \$10. Excess fee.

15. When a fee is paid to the Registrar by any person by mistake, for an application that is withdrawn before it is given an application number, or for a service that cannot be provided, the person who paid the fee is entitled to a refund of the fee less \$25, if he claims the refund within one year of the payment of the fee. Fee refund.

16. When a person pays a fee in advance for the grant of a variety right, renewal of a variety right or for any other purpose, he is entitled to a refund of that fee, less \$15, if he decides not to proceed with the application for the variety right, renewal or other matter to the stage where the fee would be required. Refund of advance fee.

- Payments of fees. 17. (1) Fees that are paid by cheque, bank draft or money order shall be forwarded to the Registrar and made payable to him.
- (2) Fees may be paid by cash at the Office.
- Cheques. 18. A payment of a fee by cheque may be accepted by the Registrar as being a payment of the fee when the cheque is received by him, but if the cheque is not paid when presented to the bank on which it is drawn and not made good within such time as the Registrar may fix, the acceptance of the fee is revoked and anything done pursuant to the payment is void and, if appropriate, shall be so recorded in the Register.
- Form required. 19. (1) In submitting a document to the Office for any purpose, the person submitting the document must use the form set out in Schedule II that is appropriate for the purpose, but the form may be modified in such manner as is necessary in the circumstances.
- (2) In submitting a document to the Office, one copy only of the document need be submitted.
- Replacing documents Schedule II. 20. If a document that is submitted to the Office differs significantly from the form in Schedule II intended to be used for the purpose of the submission, the Registrar may require that the document be replaced, within a time fixed by the Registrar, by one that conforms to the document required by Schedule II to be used for the purpose.
- Paper requirements. 21. (1) All applications, notices, statements, technical questionnaires, or other documents authorized or required by the Act or these Regulations to be made, left with or sent to the Registrar must be on strong, durable white paper and, except in the case of statutory documents and affidavits, must be written on one side of the paper only.
- (2) Each sheet of paper must have its short sides at the top and bottom of the sheet.

(3) Each sheet of paper must be of the same size and on A-4 paper or such other size as the Registrar may permit.

22. (1) The pages of documents must be numbered consecutively, preferably at the top of the page.

Numbered
consecutively.

(2) Page margins must be at least 2 centimetres.

(3) Pages must be typed or printed, preferably with one and a half spacing or double spacing.

23. An application must be in English.

Language of
documents.

24. (1) For the purposes of section 28 (3) of the Act, the quantity of propagating material set out in column 3 of Schedule III is prescribed in respect of the kind of variety set out opposite such quantity in column 2 of that Schedule.

Propagating
material.

(2) For the purposes of section 20 (1) of the Act, the stock of propagating material in relation to a variety which is required to be maintained is the stock set out in column 3 of Schedule IV opposite the variety concerned set out in column 2 of that Schedule.

25. These Regulations shall come into force on the 17th day of August, 2001.

Commencement.

MADE by the Attorney General this 17th day of August, 2001.

(GODFREY SMITH)
Attorney General

SCHEDULE 1

[Regulation 12]

| FEES | \$ |
|--|--|
| An application under section 28 of the Act | 300.00 |
| Fee for a grant of breeder's right under section 39 of the Act | 300.00 |
| Applying for a compulsory licence under section 51 (1) of the Act | 500.00 |
| Examination of Register | 5.00 per page or part of a page |
| Obtaining uncertified copy or extract of an entry in the Register | 5.00 per page or part of a page |
| Obtaining certified copy or extract of an entry in the Register | 10.00 per page or part of a page |

| | |
|---|--------|
| Annual renewal fee, as mentioned in section 22 of the Act, in relation to any variety | 500.00 |
| Making late payment of the annual fee | 100.00 |
| Assignment or transfer of application for the grant of breeder's right | 200.00 |
| Opposition to grant of breeder's right as mentioned in section 41 (1) of the Act | 200.00 |
| Application for invalidation of breeder's right under section 26 of the Act | 200.00 |

SCHEDULE II
[Regulation 19 (1)]
(Section 28 (1) of the Act)

FORM NO. 1

APPLICATION FOR PROTECTION OF A PLANT VARIETY

| | |
|--|---|
| 1. Owner(s): name(s) and address(es): (If Belize (BZ address) telephone: fax: | 2. BZ address to which correspondence is to be sent (if different from 1.): telephone: fax: |
| 3. Kind of plant: Common name: _____ Botanical name: _____ | |
| 4. (a) Proposed denomination (in block letters): _____ (b) Breeder's reference (if any): _____ (c) Commercial synonyms (if any): _____ | |
| 5. (a) Name and address of original breeder(s) (if other than owner(s): To the best of my (our) knowledge there is no other original breeder | |
| (b) If original breeder(s) other than owner(s), indicate whether the variety was transferred to owner(s) by: • contract • succession • other (specify): | |

6. Have applications for plant variety protection been made in other countries:

• Yes

• No

If "yes" give details below:

| Country | Application date | Application No. | Stage | Denomination (or breeder's reference) |
|---------|------------------|-----------------|-------|---------------------------------------|
| | | | | |

Checklist

The items in bold print are required at application time. Those in normal print should be supplied at application or as soon as possible afterwards.

FOR ALL VARIETIES

- **application form completed fully, signed and dated.**
- **application fee**
- **technical questionnaire.**
- authorization of agent (if applicable).
- evidence of ownership (if applicable).
- certified correct copy of the overseas application for which priority is claimed, (if applicable).

INSTRUCTIONS**General Instructions**

The application can only be accepted if completed, signed and accompanied by the correct application fee, the completed technical questionnaire and any other required attachment. The checklist above indicates the attachments which are required at application.

Send the original of the application, the attachments and fee payment by:
post to/self or courier to- The Registrar,
 Intellectual Property Office
 BELMOPAN

Retain a copy for your own reference.

Any authorization of agent, evidence of assignment of ownership, etc., must

be the copy containing the original signature, or be an original legally certified true copy.

Specific Instructions

Part 1 - Where the application is made by an agent (including also an application made by a joint owner acting for all owners) it must be accompanied by an authorization completed by the person(s) on whose behalf the agent is authorized to act. A model authorization is given in Form No. 2 of this Schedule.

Part 4- The denomination is the designation or name under which the grant of Plant Variety Rights will be registered. Where application is made in more than one country the same denomination must be used. Applicants may defer proposing a denomination until after application but if so must give a breeder's reference or some sort of temporary designation. With some species it is common practice for the variety denomination to be in the form of a breeder's code name. The term commercial synonym is used to refer to the fancy name that may be added to such a denomination when the variety is marketed. For example, the rose variety with denomination 'Macauck' has the commercial synonym "Olympiad".

Part 5 - Where the owner of the variety is other than the original breeder, i.e. the owner is the successor in title to the breeder, the application must be accompanied by documentary evidence sufficient to establish present ownership.

Part 6 - Indicate in chronological order all prior applications for protection (e.g. plant variety rights, plant variety protection certificate, plant patent) without exception, including those filed in countries which are not Parties to the International Convention for the Protection of New Varieties of Plants of 1978 as last revised. In the "Stage" column indicate whether-pending, rejected, withdrawn, or rights granted.

(Instructions on reverse side)

7. Priority is claimed in respect of the application filed in (country) _____

on (date) _____ under the denomination _____

8. *(answer both (a) and (b))*

(a) The variety –

- has not been offered for sale or sold in BZ
- was offered for sale or sold in BZ for the first time in
Country _____
on (date) _____
under the denomination _____

(b) The variety –

- has not been offered for sale or sold abroad.
- was offered for sale or sold abroad for the first time in –
(country) _____
on (date) _____
under the denomination _____

9. Plant material.

I/We declare that the material provided, or to be provided, in relation to this variety is, or will be, representative of the variety.

(Important: With certain kinds of plants a specified quantity of seed or colour photographs to be determined by the Registrar must be supplied at the time of application).

I/We apply for Plant Variety Rights.

I/We declare that, to the best of my/our knowledge, the information necessary for the examination of the application, given in this form and in any attachments is complete and correct.

Signature(s): _____ Date: _____

Part 7 - Priority may be claimed in respect of an earlier application for plant variety protection that has been duly filed with the Authority of a Contracting Party. If there has been more than one such application, priority may be claimed only in respect of the first. A further proviso is that this overseas application should be claimed within a period of 12 months from the date of the filing of the earliest application, but the day of filing shall not be included in the said period. The advantage of claiming priority is that the date of application overseas becomes regarded in effect as the application date in BZ. This may give you precedence over competitors that you would not otherwise have enjoyed. If you do claim priority, you must supply to the Intellectual Property Office, within 3 months of the application date in BZ, a copy of the documents constituting the first application certified as being correct by the overseas authority.

(Section 14 (2) of the Act)

FORM NO. 2
[Regulation 19 (1)]

AUTHORISATION OF AGENT

I/We hereby authorize
 to sign any application, notice or other document given, delivered to or served
 upon the Registrar in accordance with the Protection of New Plant Varieties
 Act (Chapter 255 of the Substantive Laws of Belize, Revised Edition 2000)
 and the Protection of New Plant Varieties Regulations, 2001, and to make all
 attendances upon the Registrar relating to the plant variety(ies) with proposed
 denomination(s)*

.....

Signed:

Date:

Address:

.....

*If a denomination has not yet been proposed, give the breeder's reference or
 temporary designation.

(Section 39(1) of the Act)

FORM NO. 3
[Regulation 19 (1)]

GRANT OF BREEDER'S RIGHT

The Intellectual Property Office of Belize

WHEREAS an application has been presented to the Registrar of the Intellectual Property Office for the grant of a plant variety right for a novel, distinct, homogeneous and stable variety;

AND WHEREAS it has been determined that the requirement of the Protection of New Plant Varieties Act, Chapter 255 of the Substantive Laws of Belize, Revised Edition 2000, have been complied with;

NOW THEREFORE this grant entitles the applicant, and any subsequent legal representatives of the applicant, to all the benefits of the Act and to the relevant period of protection stated in section 21 of the Protection of New Plant Varieties Act, Chapter 255 of the Substantive Laws of Belize, Revised Edition 2000, subject to the conditions contained in the Act and any adjudication of the Supreme Court affecting those rights.

In testimony whereof this document bears the seal of the Office affixed to it at Belmopan.

Granted this _____ day of _____ in the year 20 _____.

Registrar
Intellectual Property Office

(Section 41 of the Act)

FORM NO. 4
[Regulation 19 (1)]**NOTICE OF OPPOSITION TO GRANT OF
BREEDER'S RIGHT**

(To be submitted in duplicate)

IN THE MATTER OF **an opposition by** _____
_____ to application No. _____
of _____

I/We ' _____

hereby give notice of my/our opposition to the grant of the breeder's right
advertised under the above number in the Journal of the _____

_____ day of _____,
20 _____.

The grounds of opposition are as follows:

Address for service in Belize in these proceedings:

Dated the _____ day of _____, 20 _____

2

**To the Registrar
Intellectual Property Office
BELIZE.**

1. Here state full name and address of the person who opposes the application.
2. Signature.

(Section 28 (3) of the Act)

Schedule III
[Regulation 24 (1)]

**QUANTITY OF REPRODUCTIVE MATERIAL TO
ACCOMPANY APPLICATION**

| Item | Kind of variety | Quantity of reproductive material |
|------|---|---|
| 1. | Tree | Such quantity of reproductive material as is sufficient to produce 40 plants. |
| 2. | Vine | Such quantity of reproductive material as is sufficient to produce 40 plants. |
| 3. | Edible fungus | 1 gram (measured by dry weight) net of reproductive material. |
| 4. | Edible microscopic alga | 1 gram (measured by dry weight) net of reproductive material. |
| 5. | Edible macroscopic alga that is propagated by spore | 1 gram (measured by dry weight) net of spore. |
| 6. | Edible macroscopic alga that is not propagated by spore | 50 grams (measured by dry weight) net of reproductive material. |

-
- | | | |
|-----|--|---|
| 7. | Gramineae that is propagated by seed | 500 grams of seed. |
| 8. | Gramineae that is not propagated by seed | 2 kilograms of reproductive material. |
| 9. | Any kind of variety that is propagated by seed and does not fall within any item in items 1 to 8 | 500 grams of seed. |
| 10. | Any kind of variety that is not propagated by seed and does not fall within any item in items 1 to 8 | Such quantity of reproductive material as is sufficient to produce 60 plants. |

Schedule IV
[Regulation 24 (2)]
(Section 20(1) of the Act)

**STOCK OF REPRODUCTIVE MATERIAL
REQUIRED TO BE MAINTAINED**

| Item | Kind of variety | Stock of reproductive material. |
|------|--|---|
| 1. | Any variety of tree | Such stock of reproductive material as is sufficient to produce 100 plants. |
| 2. | Any variety of vine | Such stock of reproductive material as is sufficient to produce 100 plants. |
| 3. | Any variety of edible fungus | 2 grams (measured by dry weight) net of reproductive material. |
| 4. | Any variety of edible microscopic alga | 2 grams (measured by dry weight) net of reproductive material. |
| 5. | Any variety of edible macroscopic alga that is propagated by spore | 2 grams (measured by dry weight) net of spore. |

-
- | | | |
|-----|--|---|
| 6. | Any variety of edible macroscopic alga that is not propagated by spore | 100 grams (measured by dry weight) net of reproductive material. |
| 7. | Any variety of Gramineae that is propagated by seed | 1 kilogram of seed. |
| 8. | Any variety of Gramineae that is not propagated by seed | 4 kilograms of reproductive material. |
| 9. | Any variety that is propagated by seed and does not fall within any item in items 1 to 8 | 1 kilogram of seed. |
| 10. | Any variety that is not propagated by seed and does not fall within any item in items 1 to 8 | Such stock of reproductive material as is sufficient to produce 120 plants. |
-