

## **NORWAY**

### **REGULATIONS Concerning the Plant Breeder's Right**

Laid down by the Royal Ministry of Agriculture on 6 August 1993, pursuant to Act No. 32 of 12 March 1993 relating to the Plant Breeder's Right and the Royal Decree of 14 May 1993, and amended on 6 February 1995 and 16 July 1997.

#### **CHAPTER I GENERAL PROVISIONS**

##### *Scope of Regulations*

##### **Section 1.**

The plant breeder's right may be granted for varieties of all genera or species of plants, including hybrids between genera and species.

##### **Section 2.**

In addition to variety owners who are resident or have their registered office in or are nationals of a State which is a member of the Union of New Varieties of Plants, plant breeders right may be granted to variety owners who are resident or have their registered office in or are nationals of a State which is a member of the World Trade Organisation.

In respect of plant varieties of particular significance to Norwegian plant production, or when warranted by other considerations, the Plant Variety Board may grant plant breeder's right to applicants from countries which are not member states of the Union for the protection of New Varieties of Plants or the World Trade Organisation. (cf. Act relating to the Plant Breeder's Right, Section 1, third paragraph)

##### *Priority*

### **Section 3.**

To secure priority rights as provided in the third paragraph of Section 2 of the Act relating to the Plant Breeder's Right, the applicant must:

- (a) submit a written claim thereof together with an application for breeders' rights in Norway
- (b) within three months of filing a priority claim, furnish to the Plant Variety Board a copy of the documents which constitute the application upon which the priority claim is based. These documents must be certified by the authority which received the first application.

## **CHAPTER II APPLICATION FOR PLANT BREEDERS' RIGHTS**

### *The Application*

### **Section 4.**

A written application in Norwegian shall be submitted to the Plant Variety Board. The application shall be signed by the applicant or by his agent if the applicant is so represented. The application shall contain:

- (a) The name and address of the original breeder and the applicant, and the name and address of any agent representing the applicant.
- (b) A specific power of attorney for any agent representing the applicant.
- (c) The grounds for the applicant's title to the variety in question if the applicant is not the original breeder.
- (d) A description of the variety specifying its botanical classification, origin and the characteristics which distinguish it from other varieties, together with the

results of any tests carried out on the variety and a description of the propagation of the material.

- (e) A proposed denomination.
- (f) Information stating whether protection has been sought in other countries for the variety in question, the name or names under which protection has been sought, and the decisions of the authorities in these countries on the applications.
- (g) If a right of priority is claimed, the name of the country where the application invoked was filed, as well as the date of filing of this application and the application number.
- (h) Information on previous exploitation of the variety which according to litra (d) of the first paragraph of Section 2 of Act relating to the Plant Breeder's Right may hinder the granting of breeders' rights.

Applications shall be submitted together with payment of such application fees as specified in Section 18 of these Regulations.

### *Processing of Applications*

#### **Section 5.**

The Plant Variety Board shall first undertake a provisional examination of the application in accordance with Section 6 of the Act relating to the Plant Breeder's Right. Information pertaining to the application shall be sent to the relevant authorities in the other member states for their comments (cf. Act relating to the Plant Breeder's Right, Section 5, third paragraph).

The Plant Variety Board shall enter into agreements concerning verification of the originality of varieties with the domestic and foreign institutions responsible for this task, and the board shall decide, for each individual application, whether

the variety shall be tested, the scope of testing and where such testing shall be carried out (cf. Act relating to the Plant Breeder's Right, Section 9).

When the originality of the variety has been verified, the Plant Variety Board shall determine whether the application fulfils the requirements of the Act relating to the Plant Breeder's Right, Section 2, first paragraph, litra (a) to (c).

Where a right of priority is claimed in accordance with Section 2 of the Act relating to the Plant Breeder's Right, the Plant Variety Board cannot direct the applicant to provide the information and the plant material required to consider the application earlier than four years after the expiry of the time limit for priorities.

If the application comprising the basis of a right of priority claim is decided with the result that neither a breeder's right nor a patent is granted, the Plant Variety Board may set a new deadline for supplying information and plant material.

The Plant Variety Board may obtain expert opinions.

The results of the verification of originality shall be submitted to the applicant before the Plant Variety Board proceeds with the application in question.

### *Registration*

#### **Section 6.**

The Plant Variety Board shall maintain a register of applications for plant breeders' rights. This register shall be open to the public. For each application, the register shall contain:

- (a) The application number and date of receipt.
- (b) The original breeder's name and address.
- (c) The applicant's name and address.
- (d) The name and address of any agent representing the applicant.

- (e) If a right of priority is claimed, the country where the application invoked was filed, as well as the date of filing of this application and the application number.
- (f) The variety's botanical classification.
- (g) The proposed denomination
- (h) Incoming communications and statements of fees which have been paid.
- (i) Outgoing communications and any decisions made in respect of the application.
- (j) Delays in dealing with the application due to conflicts with previously submitted applications. Correlating remarks shall also be entered into the prior application's register entry.
- (k) Lists of any transfers of applications (cf. Act relating to the Plant Breeder's Right, Section 8).

### *Public Information*

#### **Section 7.**

As of the date upon which the Plant Variety Board publishes notice of an application pursuant to Section 7 of the Act relating to the Plant Breeder's Right, all documents pertaining to the case shall be accessible to the general public.

If so requested by the applicant, the documents shall be made accessible sooner than the date stipulated in the foregoing paragraph.

If a document contains business secrets which have no bearing on the plant variety for which breeder's right is sought, the Plant Variety Board may, when special grounds so indicate, and upon application, determine that the document in question shall be withheld from the public. If an application to this effect has been filed, the document shall be withheld from access until such time as the said application is turned down.

Proposals, drafts, considerations and other working documents of a similar nature, produced by the Plant Variety Board in the process of dealing with a case, shall not be accessible to the public unless the Plant Variety Board determines that they shall be.

### *Public Notice*

#### **Section 8.**

The Plant Variety Board shall, in a publication issued periodically, publish notice of the application (cf. Section 7 of the Act relating to the Plant Breeder's Right). The notice shall contain:

- (a) The application number and date of receipt.
- (b) The original breeder's name and address.
- (c) The applicant's name and address.
- (d) The name and address of any agent representing the applicant.
- (e) If a right of priority is claimed, the name of the country where the application invoked was filed, as well as the date of filing of this application and the application number.
- (f) The variety's botanical classification.
- (g) The proposed denomination.
- (h) Time limit for objections.

#### **Section 9.**

Upon publication of notice of an application for a breeder's right in accordance with Section 7 of the Act relating to the Plant Breeder's Right, if any demand or proposal is forthcoming to change the denomination of the variety, the Plant Variety Board shall publish notice thereof.

Such notice shall contain, in addition to the information specified in Section 8 litra (b), (c), (d) and (f), the application number, the date of the proposal, the denomination previously published and the proposed new denomination.

### **Section 10.**

Notice of the granting of a plant breeder's right shall be published together with the information specified in Section 8, litra (b), (c), (d), (f) and (h) as well as the registration number, the approved denomination and the date when the right was granted (cf. Section 10 of the Act relating to the Plant Breeder's Right).

### **Section 11.**

Notice of reconsideration of an application due to objections to the granting of a breeder's right, together with the result of the reconsideration, shall be published.

Such notice shall contain the items of information specified in Section 8 litra (b), (c), (d) and (f) in addition to the application number, the denomination and changes resulting from the objections (cf. Section 11 of the Act relating to the Plant Breeder's Right).

Notice of the result of the reconsideration shall be published together with the information specified in Section 8 litra (b), (c), (d) and (f) in addition to the registration number, approved denomination, and the date when the right was granted, or in addition to the proposed denomination and the date when the application was turned down.

### **Section 12.**

Notice of expiration of a breeder's right shall, in addition to the items of information specified in Section 8 litra (c) and (f), shall state the registration number of the variety, the approved denomination, the date of expiration of the breeder's right and the reason for the expiration.

## *Objections*

### **Section 13.**

Any objection filed against published applications or denominations shall state the grounds of the objection.

If the objection is submitted by an agent, the said agent shall also submit his power of attorney.

Objections shall be written in Norwegian.

The Plant Variety Board shall notify the applicant of any objections.

## *Registration in the Register of Plant Varieties*

### **Section 14.**

If a breeder's right is granted pursuant to Section 10 of the Act relating to the Plant Breeder's Right, the variety shall be entered in the Register of Plant Varieties. The Register of Plant Varieties shall contain:

- (a) The registration number.
- (b) The original breeder's name and address.
- (c) The name and address of the holder of the breeder's right.
- (d) The name and address of any agent representing the holder of the breeder's right.
- (e) The variety's botanical classification.
- (f) The approved denomination.
- (g) The date of



- receipt of the application
  - published notice of the application
  - registration and granting of breeder's right
  - any changes in denomination
- (h) Information on reconsideration of applications due to objections, and the final outcome of the reconsideration.
- (i) If a right of priority is claimed, the name of the country where the application invoked was filed, as well as the date of filing of this application and the application number.

*Annotations in the Register of Plant Varieties*

**Section 15.**

The following annotations shall be recorded in the Register of Plant Varieties:

- (a) Annual fees paid or deferrals granted.
- (b) Forfeiture of a breeder's right due to non-payment of annual fee.
- (c) Request for reinstatement, and reinstatement fees paid.
- (d) Action to have a breeder's right annulled, transferred, or to obtain a compulsory license.
- (e) Annotation of a final judgement in a court of law. The main elements of the decision shall be included in this entry.
- (f) Declared expiration of a breeder's right.
- (g) Transfer of a breeder's right or granting of a compulsory license, the name and address of the holder

of the right and the date of the transfer or the granting of the compulsory licence.

- (h) Attachment of a breeder's right, cf. Enforcement Act, Section 7-20, eighth paragraph.
- (i) Changes in respect of agents.

### *Reinstatement*

#### **Section 16.**

An applicant who has exceeded a time limit laid down in the Act relating to the Plant Breeder's Right shall, upon application, be accorded reinstatement if he has made every effort which may reasonably be required. Such application shall be submitted in writing to the Plant Variety Board no later than two months following the termination of the hindrance which prevented him from meeting the deadline, though no later than one year after the deadline.

The omission must be rectified by the close of the stated period and the stipulated fee paid.

### *The Plant Variety Board*

#### **Section 17.**

The Plant Variety Board shall consist of seven members with personal deputies.

The Plant Variety Board shall be composed of members having a thorough knowledge of the plant varieties in question, as well as members competent in trade mark law and administration and/or legal experts.

The Ministry of Agriculture shall appoint the members of the Plant Variety Board.

The Norwegian Agricultural Inspection Service shall act as secretariat for the Plant Variety Board.

## *Fees*

### **Section 18.**

For activities conducted in connection with implementation of the Act relating to the Plant Breeder's Right, the following fees shall be paid:

Application fee		NOK 1,500
Annual fee for a protected variety	"	1,800
Additional charge for extension of deadline for payment of the annual fee	"	500
Appeal fee	"	1,300
Resumption fee	"	500
Reinstatement request fee	"	1,000
Printing fee, per page	"	200
Fee for annotation of transfers and denomination changes in the Register	"	200
Fee for annotation of changes in respect of agents in the Register	"	200
Fee for transcripts from the Register	"	200

A fee shall additionally be paid for verification of the originality of a variety. The Plant Variety Board shall set the verification fee after assessing each individual case, on the basis of the fees of testing institutions.

No annual fee shall be paid for the year in which a breeder's right is granted. The Plant Variety Board may, in special cases, defer payment of annual fees.

## *Deadlines for Payment of Fees*

### **Section 19.**

Where no specific deadlines are stipulated in the Act relating to the Plant Breeder's Right or in these Regulations for payment of fees, they fall due no later than one month after the Plant Variety Board has requested payment.

Fees paid by mail, cable, postal money order, postal giro or bank giro, are held to be paid on the date stamped on the letter or instrument of transfer by a domestic Norwegian post office or bank.

Deadlines expiring on a day on which the Norwegian Agricultural Inspection Service is not open for business shall be extended to the next subsequent day on which the Norwegian Agricultural Inspection Service is open for business.

### *Fee Refunds*

#### **Section 20.**

Fees which are not paid in due time, or which are not paid in full by the deadline with the result that payment cannot be validated, shall be refunded.

### *Entry into Force*

#### **Section 21.**

These Regulations enter into force as of 16 July 1997.