



Information on the procedure for Swiss plant variety protection

1. Protection of varieties

The protection of varieties is an intellectual property right pertaining to new plant varieties. It is a national right and applications must be submitted individually in each country, with the exception of the EU, where applications for a Community right of protection can also be submitted.

2. Office of Plant Variety Rights

In Switzerland the following federal office is responsible for the protection of plant varieties:

Federal Office for Agriculture
Office of Plant Variety Rights
Schwarzenburgerstrasse 165
3003 Bern

3. Applying for protection for plant varieties

3.1 Applicant

3.1.1 Owner of a plant variety

The natural or juridical person that owns the plant variety.

3.1.2 Nominated representative

Owners of plant varieties who are not resident or registered in Switzerland must appoint a representative in order to receive information and documents from the Office. The nominated representative shall also be responsible for ensuring that all invoices are paid by the due date.

Owners of plant varieties who are resident or registered in Switzerland may also nominate a representative if they so wish.

3.2 Application process

Applications must be submitted using the relevant official forms, which can be downloaded from the Internet (www.blw.admin.ch). Forms A and B and the technical questionnaire must include the relevant date and an original signature; photocopies will not be accepted.

The following documents must be submitted to the Office:

3.2.1 Application form (Form A)

Please fill in this form carefully. It should be noted that any nominated representative must confirm his mandate by signing the form. The representative's signature is not required if he has already confirmed to the Office that he will represent any variety belonging to the owner in question through a general power of attorney or an individual power of attorney is submitted for the variety.

3.2.2 Proposed denomination of variety (Form B)

If Form B is not submitted at the same time as the application and only a provisional denomination is given, a proposal for the definitive denomination should be submitted prior to conclusion of variety examination in order to avoid a delay in the processing of the application. Please note that each proposed denomination is to be published in the Swiss Plant Variety Rights Journal and that objections to a proposed denomination may be raised within a period of 3 months. If a proposed denomination is refused, a new proposed denomination must be submitted using Form B. If the proposed definitive denomination is not submitted at the same time as Form A, the application fee will be increased by Fr. 100, since the variety denomination will have to be published separately.

3.2.3 Technical questionnaire

The technical questionnaire serves as basic information for the technical examination and varies from species to species. It can be downloaded from the UPOV website (www.upov.int) or from the EU Community Plant Variety Office (www.cpvo.europa.eu). If a completed technical questionnaire already exists and has been submitted to another office, it can be copied and used for the application in Switzerland. However, this copy must be dated and signed again by the applicant to clearly indicate that the information is still correct.

3.2.4 Colour photos in the case of the first filing of an application

For all fruit and ornamental varieties, colour photos (please print out on paper if using an electronic medium) should be submitted in duplicate in the application, appended to the technical questionnaire. Photographs are required for the technical examination and Switzerland must supply them if it has to organise the examination. We ask you to enclose a photograph of the whole plant and, if necessary, a close-up of the flower/fruit or any other important part of the plant.

3.2.5 Power of attorney

In the case of the applicant nominating a representative, a copy of the power of attorney must be submitted to the Office unless a general power of attorney has already been submitted.

3.2.6 Proof of transfer of ownership

If the owner of the variety is not the initial breeder, a copy of a document proving the transfer of ownership from the initial breeder to the present owner must be added to the application. Such proof is not required if the initial breeder is an employee of the present owner of the variety.

3.2.7 Registration fee

Registration of a new variety shall only be considered complete once the registration fee has been paid.

The following fees shall apply:

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| a. Application including a proposed variety denomination | Fr. 300.-- |
| b. Application using a provisional denomination or later submission of a proposed variety denomination | Fr. 400.-- |

4. Examination Process

4.1 Checking the application

The Office will check that the application is complete. In the case of an incomplete application or unclear documentation the applicant will be asked to complete or clarify his application. Once the application is complete the Office will issue the applicant a receipt that includes the date of reception of the application and the number allotted to it, plus a draft text for publication.

Every two months, the Office publishes in the Swiss Plant Variety Rights Journal all new applications and any changes entered into the Register of Protected Varieties.

Objections to a proposed new variety may be lodged with the Office by third parties within three months of publication. Such objections may state that the proposed variety is not new, cannot be distinguished from all known varieties, is not uniform, is unstable or that the proposed denomination does not meet legal requirements. The applicant has the right to reply to any objections.

4.2 Technical examination

4.2.1 Field tests

As a rule the technical examination of a variety with regard to distinctiveness, uniformity and stability is conducted by foreign testing station. The Office shall decide where this examination is to be done. The designated foreign testing station will then ask the applicant to send it the relevant plant material, indicating the type of material, the required quantity and quality, plus the delivery date and address. The applicant must ensure that the testing station receives the correct material on time.

Normally the applicant will receive an interim report for each examination period plus a final report once the examination has been completed. The applicant is entitled to address his comments on these reports to the Office. Any questions regarding the technical examination must be settled between the applicant and the Office and not between the applicant and the testing station.

4.2.2 Use of technical reports

If an examination report has already been or is in the process of being drawn up by another UPOV Contracting Party, the Office will generally use that report.

4.2.3 Testing fees

The Office will invoice the applicant once a year for the cost of the technical examination. The fee depends on the type of plant material that is to be examined. The cost of using a report drawn up by a third party will also be charged to the applicant; for a report from the Community Plant Variety Office, for example, this amounts to 320 Euros.

5. Granting of protected status

If the technical examination shows that the variety is distinct, uniform and stable, and there are no valid objections as to its novelty or the variety denomination, the Office will confirm to the applicant that his variety will be granted protected status. Once the Office's decision comes into force the plant variety will be registered in the Swiss Plant Variety Rights and the applicant will receive an extract from the Register.

Once protected status has been granted, it will remain valid, subject to payment of the annual fee, for 30 years for vines and trees, 25 years for all other species (Art. 12 of the Federal Act on the Protection of Plant Varieties).

6. Annual fees

The annual fee is Fr. 240 per variety. For the year in which protected status is granted, the fee shall be prorated. If the annual fee is not paid, despite a reminder having been sent, the protected status of the variety shall expire.

7. Appeals

Appeals against the Office's decision may be lodged with the Federal Administrative Court.

8. Protected status under civil law

8.1 Legal action brought by the owner of the protected variety

If the protected status of a plant variety is threatened or breached, the owner may bring legal action in the competent civil court to demand that the illegal situation be rectified. The right to bring legal action shall apply once the application has been published on condition that the owner provides the opposing party an appropriate guarantee.

8.2 Legal action brought by a third party

Third parties who can prove a relevant interest may go to court to ascertain whether there is a legal breach of the terms of the Protection of Plant Varieties Act. If, for example, there is disagreement about the legal ownership of a plant variety, this must be decided through such court action.

9. Prosecution

The holder of protected status may file suit to prosecute in a criminal court any breach of the protected status of a plant variety. A request for prosecution should be submitted to the competent cantonal authorities.