of discretion in the exercise of an examiner's authority, or such other matters as may be deemed proper to consider. Any such petition, if not filed within 20 days from the decision complained of, may be dismissed as untimely.

§ 97.402 Service of papers.
(a) Every paper required to be served on opposing parties and filed in the Office in any priority, protest, or appeal proceeding, must be served by the Secretary in the manner provided in §97.403.
(b) The requirement in certain sections that a specified paper shall be served includes a requirement that all related supporting papers shall also be served. Proof of such service upon other parties to the proceeding must be made before the supporting papers will be considered by the Commissioner or Secretary.

§ 97.403 Manner of service.
Service of any paper under this part must be on the attorney or agent of the party if there be such, or on the party if there is no attorney or agent, and may be made in any of the following ways:
(a) By mailing a copy of the paper to the person served by certified mail, with the date of the return receipt controlling the date of service;
(b) By leaving a copy at the usual place of business of the person served with someone in his or her employ;
(c) When the person served has no usual place of business, by leaving a copy at his or her home with a member of the family over 14 years of age and of discretion; and
(d) Whenever it shall be found by the Commissioner or Secretary that none of the above modes of serving the paper is practicable, service may be by notice, published once in the Office Journal.

REVIEW OF DECISIONS BY COURT

§ 97.500 Appeal to U.S. Courts.
Any applicant dissatisfied with the decision of the Secretary on appeal may appeal to the U.S. Court of Customs and Patent Appeals or the U.S. Courts of Appeals, or institute a civil action in the U.S. District Court as set forth in the Act. In such cases, the appellant or plaintiff shall give notice to the Secretary, state the reasons for appeal or civil action, and obtain a certified copy of the record. The certified copy of the record shall be forwarded to the Court by the Plant Variety Protection Office on order of, and at the expense of the appellant or plaintiff.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

CEASE AND DESIST PROCEEDINGS

§ 97.600 Rules of practice.
Any proceedings instituted under section 128 of the Act for false marking shall be conducted in accordance with §§202.10 through 202.29 of this chapter (rules of practice under the Federal Seed Act) (7 U.S.C. 1551 et seq.), except that all references in those rules and regulations to “Examiner” shall be construed to be an Administrative Law Judge, U.S. Department of Agriculture, and not an “Examiner” as defined in the regulations under the Plant Variety Protection Act.

PUBLIC USE DECLARATION

§ 97.700 Public interest in wide usage.
(a) If the Secretary has reason to believe that a protected variety should be declared open to use by the public in accordance with section 44 of the Act, the Secretary shall refer the matter to the Plant Variety Protection Board for advice, including advice on any limitations or rate of remuneration.
(b) Upon receiving the advice of the Plant Variety Protection Board, the Secretary shall advise the owner of the variety, the members of the Plant Variety Protection Board, and the public, by issuance of a press release, of any decision based on the provisions of section 44 of the Act to declare a variety
open to use by the public. Any decision not to declare a variety open to use by the public will be transmitted only to the owner of the variety and the members of the Plant Variety Protection Board.

**§ 97.800 Publication of public variety descriptions.**

Voluntary submissions of varietal descriptions of “public varieties” on forms obtainable from the Office will be accepted for publication in the Official Journal. Such publication shall not constitute recognition that the variety is, in fact, distinct, uniform, and stable.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

**§ 97.900 Form of official identification symbol.**

The symbol set forth in Figure 1, containing the words “Plant Variety Protection Office” and “U.S. Department of Agriculture,” shall be the official identification symbol of the Plant Variety Protection Office. This information symbol, used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection, has been approved by the Office of Communications to be added to the USDA/AMS inventory of symbols. It is approved for use with AMS materials.

Figure 1. Official identification symbol of the Plant Variety Protection Office.

[65 FR 47244, Aug. 2, 2000]