§ 97.3

owner, for testing, or for experimental
use, and not for commercial sale of the
seed or the reproduced seed for plant-
ing purposes.

[58 FR 42435, Aug. 9, 1993, as amended at 60
FR 17189, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996;
70 FR 28785, May 19, 2005]

ADMINISTRATION

§ 97.3 Plant Variety Protection Board.

(a) The Plant Variety Protection
Board shall consist of 14 members ap-
pointed for a 2-year term. The Board
shall be appointed every 2 years and
shall consist of individuals who are ex-
erts in various areas of varietal de-
velopment. The membership of the Board,
which shall include farmer representa-
tion, shall be drawn approximately
equally from the private or seed indus-
try sector and from the government or
public sector. No member shall be eli-
gible to act on any matter involving
any appeal or questions under section
44 of the Act, in which the member or
his or her employer has a direct finan-
cial interest.

(b) The functions of the Board are to:
(1) Advise the Secretary concerning
adoption of rules and regulations to fa-
cilitate the proper administration of
the Act;

(2) Make advisory decisions on all ap-
peals from the examiner or Commis-
sioner;

(3) Advise the Secretary on the dec-
laration of a protected variety open to
use in the public interest; and

(4) Advise the Secretary on any other
matters under the regulations in this
part.

(c) The proceedings of the Board shall
be conducted in accordance with the
Federal Advisory Committee Act, Ad-
ministrative Regulations of the U.S.
Department of Agriculture (7 CFR part
25), and such additional operating pro-
cedures as are adopted by members of
the Board.

[58 FR 42435, Aug. 9, 1993, as amended at 61
FR 248, Jan. 4, 1996]

THE APPLICATION

§ 97.5 General requirements.

(a) Protection under the Act shall be
afforded only as follows:

(1) Nationals and residents of the
United States shall be eligible to re-
ceive all of the protection under the
Act.

(2) Nationals and residents of Mem-
ber States of the International Union
for the Protection of New Varieties of
Plants (including states which are
members of an intergovernmental or-
ganization which is a UPOV member)
shall be eligible to receive the same
protection under the Act as is provided
to nationals of the United States.

(3) Persons who are not entitled to
protection under paragraph (a)(1) or (2)
of this section, and who are nationals
of a foreign state which is not a mem-
ber of the International Union for the
Protection of New Varieties of Plants,
shall be entitled to only so much of the
protection provided under the Act, as
is afforded by such foreign state to na-
tionals of the United States, for the
same genus and species under the laws
of such foreign state in effect at the
time that the application for protec-
tion under the Act is filed, except
where further protection under the Act
must be provided in order to avoid the
violation of a treaty to which the
United States is a party.

(b) Applications for certificates shall
be made to the Plant Variety Protec-
tion Office. An application shall con-
sist of:

(1) A completed application form, ex-
cept that the section specifying that
seed of the variety shall be sold by va-
riety name only, as a class of certified
seed, need not be completed at the time
of application.

(2) A completed set of the exhibits, as
specified in the application form, un-
less the examiner waives submission of
certain exhibits as unnecessary, based
on other claims and evidence presented
in connection with the application.

(3) Language and legibility: (i) Appli-
cations and exhibits must be in the
English language and legibly written,
typed or printed.

(ii) Any interlineation, erasure, can-
cellation, or other alteration must be
made in permanent ink before the ap-
plication is signed and shall be clearly
initialed and dated by the applicant to
indicate knowledge of such fact at the
time of signing.