

License Application Instructions for Plant Varieties

Responses may be submitted on Form AD-761 or on letter size plain paper attached to Form AD-761. Please be sure to identify your responses by item number. Whether you use the form or separate sheets for your responses, the license application must be signed and dated by an authorized company representative. Responses should be concise and should include the applicant's business analysis used to make the decision to invest in the development and marketing of this invention.

Applying for a license from USDA is not a bidding process. Instead, USDA seeks commercial partners with the facilities, personnel and expertise to develop and market USDA inventions. License applicants must demonstrate a willingness to expend reasonable efforts and resources to commercialize the inventions to be licensed. The first license application received for a particular USDA invention is evaluated on its own merits. License fees and royalties are negotiated on a case by case basis and depend upon several factors, including the scope of the rights granted, the size of the potential market, and the time and financial investments required by the licensee to bring a product or service to market. Licenses may be exclusive, nonexclusive, or partially exclusive, and foreign patent rights are available for licensing in some cases.

Licenses are negotiated pursuant to the policy and objectives set forth in 35 U.S.C. 207-209 and 37 CFR 404. Pursuant to 35 U.S.C. 209, information submitted by a license applicant shall be treated as privileged and confidential and is not subject to disclosure under 5 U.S.C. 552 (Freedom of Information Act).

PLEASE READ THESE INSTRUCTIONS BEFORE COMPLETING THE LICENSE APPLICATION FORM. SUBMISSION OF AN INCOMPLETE APPLICATION MAY RESULT IN A DELAY IN THE LICENSE APPLICATION PROCESS. PLEASE BE AWARE THAT USDA CANNOT ASSURE THE CONFIDENTIALITY OF INFORMATION SUBMITTED ELECTRONICALLY.

Items 1, 2, 3 and 4 - These items are for the purpose of identifying the federally owned invention that is the subject of the license application. For a plant patent, please complete item 2, OR item 4, as appropriate. If you complete item 2, please include the issue date of the patent under item 3. For a Plant Variety Protection Certificate (PVPC) or application, please identify the Plant Variety Protection Number under item 4. If you do not have this information, you can rely on the variety name under item 6 below.

Item 5 - Indicate whether applicant is applying for an exclusive or nonexclusive license.

Item 6 – Identify the variety to be licensed. Please include both the common name and the variety name, as well as any identifying characteristics that are known to you.

Item 7 - Identify the individual, publication or other source of information concerning the availability for licensing of the identified invention. In many cases, the appropriate response will be "ARS, Office of Technology Transfer."

Item 8 - Provide the complete name and address of the business or individual applying for a license.

Item 9 - If different from the response to Item 8, provide the complete name and address of the appropriate contact person for all license discussions.

Item 10 - Provide the state of incorporation for a business applicant or the state of citizenship for an individual applicant.

Item 11 - Provide a telephone number, a fax number, and an email address for the contact person identified under item 9.

Item 12 - Provide a brief description of the applicant's current business, including similar varieties propagated and sold, and the geographic area of product distribution. The description should also include examples of any previous experience in licensing and introducing new varieties and basic business information concerning the applicant; e.g. the length of time the applicant has been in business, the size and location of business operations, etc. IN ALL CASES, please submit supporting documentation with your application; e.g., annual report, product catalogs, price lists, advertisements, etc. If such documents are available online, you may provide appropriate web sites or Internet addresses instead of paper documents.

Item 13 - Provide the number of employees employed by the applicant.

Item 14 - Indicate whether the applicant is a small business.

Item 15 – Respond as follows: Propagate, grow, market and sell (variety name designated under item 6 above).

Item 16 – Mark the “NO” box.

Item 17 - Indicate any special license terms or conditions desired by applicant. It is not necessary to respond to this item if it is not applicable.

Item 18 - Indicate applicant's best knowledge of any current propagation or sale of the variety for commercial purposes or any field testing of the variety by the public sector.

Item 19 - List the countries where applicant intends to propagate and/or market the variety. Plant Breeder's Rights may be available for some varieties in some countries.

Item 20 - THIS IS THE MOST CRITICAL ITEM ON THE APPLICATION FORM. Provide the applicant's plan for propagating, growing, marketing and selling the plant variety. Include the approximate time line from the date of receipt of propagation material until the date seeds, plants, vines, or trees are offered for sale. Identify any factors that may arise during propagation and field testing that may affect the ultimate

decision to sell the variety. Describe the production, marketing, financial and technical resources needed to carry out applicant's commercialization plan, and how these resources will be provided and/or obtained by the applicant (e.g., existing nursery facilities, contracted seed increase, in-house technical expertise, marketing through distributors, source(s) of financing, etc.). Provide applicant's best current estimates of potential market size and the customary royalties paid for similar varieties. Include documentation of applicant's capability to provide and/or obtain the financial resources necessary to carry out the submitted plan. Such documentation might include the most recent annual report, sales receipts, accounting statements, bank statements, written commitments from third party investors, or any other documented source of financing sufficient to cover the anticipated financial investment required to carry out the submitted plan.

Item 21 - Provide any additional information that applicant would like to submit in support of the license application. It is not necessary to respond to this item if it is not applicable.

Item 22 - The license application must be signed and dated by an authorized company representative.

Special Considerations for Exclusive and Partially Exclusive Licenses

Exclusive or partially exclusive licenses, including coexclusive, exclusive territory and exclusive field of use licenses, may be granted on a federally owned invention, or plant variety, only after certain requirements for public notification have been fulfilled. A notice that an invention is available for licensing must be published in the Federal Register for at least 90 days prior to the granting of an exclusive or partially exclusive license. A notice of intent to grant an exclusive license or partially exclusive license must also be published in the Federal Register, providing the opportunity for filing written objections within a 30-day period. The two notification periods may run concurrently. In addition to the public notification requirements, the agency granting an exclusive or partially exclusive license must prepare a written determination that such a license will best serve the interests of the Federal government and the public. For further information, please refer to 37 CFR 404.7.

Terms of License Agreements Granted by USDA

Licenses granted by USDA are royalty bearing, include provisions for reimbursement of patent or PVPC expenditures, and may include other fees and payments. **License fees and royalty rates are negotiable.** Information submitted by the applicant, including estimates of potential market size, is used to help determine fair and reasonable terms. Other factors, such as the scope of rights granted and the financial and resource investments required for commercialization, are also considered.

USDA license agreements include other terms required by law and regulation. (Please refer to 37 CFR 404.5). Licensees are granted the right to enforce licensed patents and PVPCs. Licensees are required to submit periodic progress reports detailing the progress being made to commercialize the licensed variety. After the first sale of royalty bearing products, licensees are required to submit royalty reports, setting forth the amount of products made, used and sold and the amount of royalties due to USDA. Pursuant to 35 USC 209, all such reports are treated as privileged and confidential and are not subject to disclosure under 5 U.S.C. 552 (Freedom of Information Act).

Agency Disclosure of Estimated Burden (Rev. 09/04)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0518-0003. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Applicants with suggestions for reducing this burden may contact: Coordinator, Technology Licensing Program, 5601 Sunnyside Avenue, Beltsville, MD 20705-5131.