

Regulations on the Protection of New Plant Varieties of the PRC

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Chapter I — General Provisions

Article 1 — These Regulations are formulated for the purpose of protecting the rights in new plant varieties, encouraging the breeding and use of new plant varieties, and promoting the development of agriculture and

forestry.

Article 2 — The term "new plant variety" as used in these Regulations refers to a plant variety that is artificially cultivated or developed from a discovered wild plant, and that possesses novelty, distinctness, uniformity, and stability, and whose denomination is properly designated.

Article 3 — The Ministry of Agriculture and Rural Affairs and the National Forestry and Grassland Administration (hereinafter collectively referred to as the "examination and approval authorities") shall, in accordance with the division of their respective functions and duties, be jointly responsible for the acceptance, examination, and granting of variety rights as well as other matters relating to variety rights.

Chapter II — Content and Ownership of Variety Rights

Article 4 — An entity or individual that has completed a new plant variety shall be entitled to file an application for the grant of variety rights. Where an application for variety rights is approved, the applicant shall be the variety rights holder.

Where a new plant variety is completed in the course of performing the tasks of the entity to which the applicant belongs, or is completed mainly by making use of the material and technical resources of the entity, the right to apply for variety rights shall belong to the entity. For a plant variety completed by an individual not in the course of performing the tasks of the entity, the right to apply shall belong to the individual who completed or jointly completed such variety, unless otherwise agreed upon by the parties.

Article 5 — Where a commissioned breeding or cooperative breeding is carried out, the ownership of the variety rights shall be determined by contract between the parties. In the absence of a contractual provision or where the provision is unclear, the variety rights shall belong to the party that was commissioned to carry out or that cooperated in carrying out the breeding.

Article 6 — The variety rights holder shall enjoy the exclusive right to his or her protected variety. No entity or individual may, without the consent of the variety rights holder, produce, propagate, or sell the propagating material of the protected variety for commercial purposes, or repeatedly use the propagating material of the protected variety in the production of the propagating material of another variety, except as otherwise provided for in these Regulations.

Article 7 — The following shall not require the consent of or payment of royalties to the variety rights holder:

- (1) the use of the protected variety for breeding and other scientific research activities;
- (2) the use by farmers of the propagating material harvested from the protected variety for propagation and production on their own holdings.

Article 8 — Where the public interest requires, the examination and approval authority may make a decision to grant a compulsory license for the exploitation of a new plant variety, and shall register and make a public announcement thereof. A party that has obtained a compulsory license shall pay reasonable royalties to the variety rights holder.

Chapter III — Conditions for Granting Variety Rights

Article 9 — A new plant variety for which variety rights are applied shall fall within the genera and species of plants included in the national list of protected plant varieties.

Article 10 — A variety for which variety rights are granted shall have an appropriate denomination that is distinct from the denomination of any known variety of the same or a closely related botanical species. The denomination shall not consist exclusively of figures and shall not be liable to mislead or to cause confusion concerning the characteristics, value, or identity of the variety or the identity of the breeder.

Article 11 — A new plant variety for the propagating material of which no sale has been made by or with the consent of the breeder in the territory of China for more than one (1) year prior to the filing date of the application; or where vines, forest trees, fruit trees, and ornamental trees are involved, no such sale shall have been made for more than six (6) years, or for other plants, for more than four (4) years, in any foreign territory prior to the filing date of the application, shall be deemed to possess novelty.

Article 12 — A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application.

Article 13 — A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 14 — A variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Chapter IV — Application for and Receipt of Variety Rights

Article 15 — Variety rights shall be granted on the basis of an application. Where a Chinese entity or individual applies for variety rights, it or he or she may file the application directly or through an agent with the examination and approval authority.

Where a foreigner, foreign enterprise, or other foreign organization applies for variety rights in China, the application shall be handled in accordance with the agreement concluded between the country to which the applicant belongs and China, or the international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

Article 16 — An application for variety rights shall be made in writing and shall be submitted, together with the application fee, to the examination and approval authority in the required number of copies in the Chinese language.

Article 17 — The filing date shall be the date on which the examination and approval authority receives the application. Where the application documents are sent by post, the filing date shall be the date of the postmark.

Article 18 — An applicant may, within twelve (12) months from the date on which the first application for variety rights was filed in a foreign country, enjoy priority when filing an application for variety rights in China for the same variety. Any applicant claiming the right of priority shall file a written statement when filing the application and submit a copy of the first-filed application documents within three (3) months. Failure to file the written statement or to submit the copy of the first-filed application documents within the prescribed time limit shall be deemed as failure to claim the right of priority.

Article 19 — An applicant may withdraw his or her application at any time before the variety rights are granted.

Chapter V — Examination and Approval of Variety Rights

Article 20 — Upon receipt of an application for variety rights, the examination and approval authority shall conduct a preliminary examination. Where, after the preliminary examination, the examination and approval authority finds that the application complies with the provisions of these Regulations, it shall publish the application within three (3) months from the date of completion of the preliminary examination.

Article 21 — From the date of publication of the application for variety rights to the date of grant of variety rights, any entity or individual may file an opposition with the examination and approval authority against a new plant variety for which variety rights do not meet the conditions for grant of variety rights, stating the reasons therefor.

Article 22 — For an application for variety rights that is found through preliminary examination to comply with the provisions of these Regulations, the examination and approval authority shall notify the applicant to submit propagating material for testing within three (3) months. Failure to submit the propagating material within the prescribed time limit shall be deemed as withdrawal of the application.

Article 23 — The examination and approval authority shall examine the distinctness, uniformity, and stability of the variety. Where, after examination, the variety meets the prescribed standards, the examination and approval authority shall make a decision to grant variety rights, issue a certificate of variety rights, and register and make a public announcement thereof.

Article 24 — Where the examination and approval authority rejects an application for variety rights, it shall notify the applicant in writing of the reasons therefor. Where the applicant objects to the decision of rejection, he or she may, within three (3) months from the date of receipt of the notification, request the examination and approval authority to conduct a re-examination.

Chapter VI — Term, Termination, and Invalidation of Variety Rights

Article 25 — The term of variety rights shall be twenty (20) years for vines, forest trees, fruit trees, and ornamental trees, and fifteen (15) years for other plants, counted from the date of grant.

Article 26 — The variety rights holder shall pay annual fees beginning with the year in which the variety rights are granted. Where the annual fees are not paid as prescribed, the variety rights shall be terminated before the expiration of the term.

Article 27 — Where it is found that a protected variety for which variety rights have been granted does not meet the conditions of novelty, distinctness, uniformity, or stability, the examination and approval authority may, on the basis of a request made by any entity or individual or on its own initiative, declare the variety rights invalid and register and make a public announcement thereof.

Article 28 — Any entity or individual that has objections to the decision of the examination and approval authority to invalidate variety rights may, within three (3) months from the date of receipt of the notification, file a lawsuit with the people's court.

Chapter VII — Penalties

Article 29 — Where any person, without the consent of the variety rights holder, produces, propagates, or sells the propagating material of a protected variety for commercial purposes, or repeatedly uses the propagating material of a protected variety in the production of propagating material of another variety, the variety rights holder or any interested party may request the administrative department for agriculture or forestry under the people's government at or above the provincial level to handle the matter. The administrative department may order the infringer to cease the infringing act, confiscate the illegal gains and the propagating material, and impose a fine of not less than one (1) time but not more than five (5) times the value of the goods.

Article 30 — Where any person passes off a protected variety as another variety, the administrative department for agriculture or forestry under the people's government at or above the county level shall order the cessation of the illegal act and confiscate the illegal gains and the propagating material. Where the value of the goods is 50,000 yuan or more, a fine of not less than one (1) time but not more than five (5) times the value of the goods shall be imposed concurrently. Where the value of the goods is less than 50,000 yuan or cannot be determined, a fine of not more than 250,000 yuan may be imposed concurrently.

Article 31 — Where staff members of the examination and approval authority or other state functionaries abuse their powers, neglect their duties, or engage in malpractices for personal gain, they shall be subject to administrative sanctions. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 32 — The examination and approval authority may formulate specific measures for the implementation of these Regulations.

Article 33 — These Regulations shall be effective as of October 1, 1997.

Disclaimer: This English translation is provided for reference purposes only and has been prepared with care to ensure accuracy. However, in the event of any discrepancy between this translation and the original Chinese text, the official Chinese version shall prevail. This translation does not constitute legal advice. For matters involving the interpretation or application of these Regulations, please consult qualified legal professionals.