

REGULATIONS

**OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROTECTION
OF NEW VARIETIES OF PLANTS**

CHAPTER I

GENERAL PROVISIONS

Article 1

These Regulations are formulated to protect the rights in new varieties of plants, to encourage the breeding and use of new varieties of plants, and to promote the development of agriculture and forestry.

Article 2

The new plant variety referred to in these Regulations means a cultivated plant variety, or a developed one based on a discovered wild plant, which is new, distinct, uniform and stable, and whose denomination is adequately designated.

Article 3

The administrative departments of agriculture and forestry under the State Council (both referred to hereinafter as the "examining and approving authorities") are jointly responsible, according to the division of their job responsibilities, for the receipt and examination of applications for rights in new varieties of plants, and for the grant of rights in new varieties of plants (hereinafter referred to as "variety rights") in respect of those new varieties of plants that conform to the provisions of these Regulations.

Article 4

The people's governments at county level or above or other relevant departments shall reward the entity which or the person who has accomplished the breeding of a new plant variety that has a bearing on the national or the public interest, and is of great value for use.

Article 5

The production, sale and dissemination of a new plant variety in respect of which variety rights have been granted (hereinafter referred to as the "protected variety") is subject to review and approval under the provisions of relevant national laws and regulations on seeds.

CHAPTER II

CONTENT AND OWNERSHIP OF VARIETY RIGHTS

Article 6

The entity which or the person who has accomplished the breeding has an exclusive right in their protected variety. Except otherwise provided in these Regulations, no other entity or person shall, without the consent of the holder of the variety rights (hereinafter referred to as the "variety rights holder"), produce or sell for commercial purposes the propagating material of the said protected variety, or use for commercial purposes the propagating material of the protected variety in a repeated manner in the production of the propagating material of another variety.

Article 7

In the case of job-related breeding accomplished by any person in undertaking tasks for the entity to which he belongs, or primarily by using the facilities of that entity, the right to file an application for variety rights in respect of the new plant variety shall belong to the entity in question; for breeding that is not job-related, the right to file such an application shall belong to the person accomplishing the breeding. Upon approval of the application, the variety rights shall belong to the applicant.

For commissioned breeding or jointly-conducted breeding, the ownership of the variety rights shall be agreed upon by the parties in a contract; failing such an event, the variety rights shall belong to the entity or person commissioned to conduct or jointly conducting the breeding.

Article 8

One new plant variety shall be granted only one set of variety rights. If two or more applicants apply separately for variety rights in respect of the same new plant variety, the variety rights shall be granted to the person who applies first; in the case of a simultaneous application, the variety rights shall be granted to the person who has first accomplished the breeding of the new plant variety concerned.

Article 9

The right to file an application for variety rights in respect of a new plant variety and the variety rights may be assigned in accordance with the law.

If a Chinese entity or person wishes to assign to a foreigner the right to file an application or the variety rights in respect of a new plant variety bred in China, such assignment shall be approved by the examining and approving authorities.

In the case of an assignment within China of the right to file an application or of the variety rights by a State-owned entity, it shall be submitted in accordance with the relevant national regulations for approval by the competent administrative departments concerned.

The parties involved in the assignment of the right to file an application or of the variety rights shall conclude a written contract, and shall register the assignment before the examining and approving authorities, which in turn shall published the assignment.

Article 10

Without prejudice to other rights of the variety rights holder under these Regulations, the exploitation of the protected variety shall not require authorization from, or payment of royalties to, the variety rights holder for the following purposes:

- (i) exploitation of the protected variety for breeding and other scientific research activities;
- (ii) the use for propagating purposes by farmers, on their own holdings, of the propagating material of the protected variety harvested on their own holdings.

Article 11

The examining and approving authorities may, in the national or the public interest, decide to grant a compulsory license to exploit new plant varieties, which should be subsequently registered and published.

The entity which or the person who is granted a compulsory license for exploitation shall pay the variety rights holder a reasonable exploitation fee, the amount of which shall be fixed by consultation

between the two parties. Where the parties fail to reach an agreement, the examining and approving authorities shall adjudicate.

Where the variety rights holder is not satisfied with the decision to grant a compulsory license or is not satisfied with the adjudication regarding the fee payable for exploitation, he or it may, within three months from the date of receiving the notification, file a suit with the People's Court.

Article 12

Regardless of whether or not the term of the protection of the protected variety has expired, the denomination of the protected variety as used in its registration must be used for sales thereof.

CHAPTER III CONDITIONS FOR THE GRANT OF VARIETY RIGHTS

Article 13

The new plant variety in respect of which variety rights have been applied for shall be part of the botanical genera and species included in the national list of protected plant varieties. This list of protected plant varieties shall be determined and published by the examining and approving authorities.

Article 14

Any plant variety in respect of which variety rights are granted shall have the characteristic of novelty. Novelty means that the propagating material of the new plant variety in respect of which variety rights are applied for has not been sold prior to the filing date of the application, or has not been for sale, with the consent of the breeder, for more than one year within the territory of China; the propagating material of vines, forest trees, fruit trees and ornamental plants must not have been for sale for more than six years, or the propagating material of other plant varieties for more than four years, in a foreign territory.

Article 15

Any plant variety in respect of which variety rights are granted shall have the characteristic of distinctness. Distinctness means that the plant variety in respect of which variety rights are applied for must noticeably distinguish it from any other plant variety known prior to the filing of the application.

Article 16

Any plant variety in respect of which variety rights are granted shall have the characteristic of uniformity. Uniformity means that the plant variety in respect of which variety rights are applied for is uniform, subject to the variation that may be expected, in its relevant features or characteristics after propagation.

Article 17

Any plant variety in respect of which variety rights are granted shall have the characteristic of stability. Stability means that the plant variety in respect of which variety rights are applied for keeps its relevant features or characteristics unchanged after repeated propagation or at the end of a particular cycle of propagation.

Article 18

Any plant variety in respect of which variety rights are granted shall have an adequate denomination, which shall be distinguishable from that for any other known plant variety of the same or similar botanical genus or species. The denomination, after its registration, shall be the generic designation of the new plant variety in question.

The following shall be avoided in the selection of a denomination for a new variety:

- (a) those consisting of only numbers;
- (b) those violating social morals;
- (c) those that are liable to mislead as to the features or characteristics of the new plant variety, or the identity of the breeder.

CHAPTER IV APPLICATION FOR VARIETY RIGHTS AND RECEIPT THEREOF

Article 19

Where Chinese entities and persons apply for variety rights, they may file an application with the examining and approving authorities directly or through a representative agency commissioned for the purpose.

Where the new plant variety in respect of which Chinese entities and persons apply for variety rights involves national security or major interests and therefore needs to be kept confidential, it shall be dealt with in accordance with the relevant national regulations.

Article 20

If a foreigner, a foreign enterprise or any other foreign institution files an application for variety rights in China, the application shall be handled under these Regulations in accordance with any agreement concluded between the country to which the applicant belongs and the People's Republic of China, or any international convention to which both countries are party, or on the basis of the principle of reciprocity.

Article 21

For the purposes of applying for variety rights, an application and specification conforming to the prescribed forms as well as a photograph of the variety shall be submitted to the examining and approving authorities.

The application documents shall be written in Chinese.

Article 22

The date on which the examining and approving authorities receive the variety rights application documents shall be the filing date of the application. Where the application documents are filed by mail, the postmark date shall be the filing date of the application.

Article 23

Where, within 12 months from the date on which any applicant has first filed an application for variety rights in a foreign country, the said applicant files an application for variety rights in China in respect of the same new plant variety, he or it may, in accordance with any agreement concluded

between the said foreign country and the People's Republic of China or any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.

Any applicant who claims the right of priority shall make a written statement when the application is filed, and shall submit, within three months, a copy of the variety rights application documents that were first filed, as confirmed by the original receiving authority; if the applicant fails to make the written statement or fails to submit a copy of the variety rights application documents under the provisions of these Regulations, the claim to the right of priority shall be deemed not to have been made.

Article 24

Where the variety rights application conforms to Article 21 of the Regulations, the examining and approving authorities shall accept it, assign the filing date and a filing number and serve notice on the applicant within one month from the receipt of the application to pay an application fee.

Where the variety rights application does not, or after amendment still does not, conform to Article 21 of the Regulations, the examining and approving authorities shall not accept it and shall notify the applicant accordingly.

Article 25

An applicant may amend or withdraw his or its variety rights application at any time before the variety rights are granted.

Article 26

Any application filed by a Chinese entity or person with a foreign country for variety rights in respect of a new plant variety that has been bred in China shall be registered before the examining and approving authorities.

CHAPTER V

EXAMINATION AND APPROVAL OF VARIETY RIGHTS

Article 27

Upon payment of the application fee, the examining and approving authorities shall carry out a preliminary examination on the variety rights application to determine the following:

- (a) whether it is part of the botanical genera or species included in the list of protected plant varieties;
- (b) whether it conforms to the provisions of Article 20 of the Regulations;
- (c) whether it conforms to the provisions on novelty;
- (d) whether the denomination of the new plant variety is adequate.

Article 28

The examining and approving authorities shall complete the preliminary examination within six months after the variety rights application is formally received. Where the variety rights application is found acceptable on preliminary examination, the examining and approving authorities shall have it published and serve notice on the applicant to pay the examination fee within three months.

Where the variety rights application is found unacceptable on preliminary examination, the examining and approving authorities shall invite the applicant to state his observations or make amendments; where an applicant fails to respond within the time limit or the application is still unacceptable after amendment, the application shall be refused.

Article 29

After the applicant has paid the prescribed examination fee, the examining and approving authorities shall carry out a substantive examination of the distinctness, uniformity and stability of the variety in respect of which variety rights are applied for.

Where the applicant has not paid the prescribed examination fee, the variety rights application shall be deemed to have been withdrawn.

Article 30

The examining and approving authorities shall conduct the substantive examination on the basis of application documents and other relevant written information. Where they deem it necessary, the examining and approving authorities may entrust a designated testing institution with undertaking tests or with inspecting the results of growing tests or other trials that have already been carried out.

For the purposes of examination, the applicant shall, at the request of the examining and approving authorities, furnish necessary information and the propagating material of the new plant variety in question.

Article 31

Where the variety rights application is found to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall take a decision to grant the variety rights, issue the new variety rights title, and have it registered and published.

Where the variety rights application is found not to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall refuse the application and notify the applicant accordingly.

Article 32

The examining and approving authorities shall set up a Re-Examination Board for New Varieties of Plants.

Where any applicant is not satisfied with the decision of the examining and approving authorities refusing a variety rights application, that applicant may, within three months from the date of receiving the notification, request the Re-Examination Board for New Varieties of Plants to carry out a re-examination. The Re-Examination Board for New Varieties of Plants shall, within six months from the date of receiving the request for re-examination, take a decision and notify the applicant accordingly.

Where any applicant is not satisfied with the re-examination decision of the Re-Examination Board for New Varieties of Plants, that applicant may, within 15 days from the date of receiving the notification, file a suit with the People's Court.

Article 33

After the variety rights have been granted, for the period beginning on the date on which an acceptable application is published on preliminary examination and ending on the date of grant of variety rights, the variety rights holder is entitled to claim compensation from an entity which, and an

person who, has produced or sold the propagating material of the protected variety in question for commercial purposes without his consent.

CHAPTER VI TERM, TERMINATION AND INVALIDITY

Article 34

The term of protection of variety rights, counted from the date of grant thereof, shall be 20 years for vines, forest trees, fruit trees and ornamental plants and 15 years for other plants.

Article 35

The variety rights holder shall pay annual fees from the year in which the variety rights are granted, and shall furnish propagating material of the protected variety for the purposes of control as required by the examining and approving authorities.

Article 36

Variety rights shall be terminated prior to the expiration of the term thereof in any of the following cases:

- (a) where the variety rights holder makes a written statement renouncing his variety right;
- (b) where the variety rights holder has not paid the annual fees as prescribed;
- (c) where the variety rights holder has not furnished, in the manner required by the examining and approving authorities, such propagating material of the protected variety necessary for control;
- (d) where, on control, the protected variety no longer conforms to the features and characteristics that existed when the variety rights were granted.

The termination of the variety rights shall be registered and published by the examining and approving authorities.

Article 37

From the date on which the examining and approving authorities publish the grant of variety rights, the Re-Examination Board for New Varieties of Plants may, *ex officio* or on the basis of a written request made by any entity or person, revoke the variety rights in any variety that is not in conformity with the provisions of Articles 14, 15, 16 and 17 of these Regulations, or change the denomination of any variety that is not in conformity with the provisions of Article 18 of these Regulations. The decision to revoke variety rights and the decision to change the denomination shall be registered and published by the examining and approving authorities, and shall be communicated to the parties concerned.

Where any party is not satisfied with the decision of the Re-Examination Board for New Varieties of Plants, he or it may, within three months from the date of receiving such communication, file a suit with the People's Court.

Article 38

The variety rights that have been revoked shall be deemed non-existent from the outset.

The decision to revoke variety rights shall have no retroactive effect on any judgment or ruling pronounced and enforced by the People's Court concerning the infringement of a new plant variety, or on any decision made and enforced by the administrative departments of agriculture and forestry of the People's Governments at provincial level or above concerning the infringement of a new plant variety, or on any executed license contract for exploitation of a new plant variety or any executed contract of assignment of the rights in a new plant variety. However, any damage caused to any other person due to bad faith on the part of the variety rights holder shall be equitably compensated.

If no repayment of the fees for the exploitation of the new plant variety or of the price for the assignment of the variety rights, pursuant to the provisions of the preceding paragraph, is made by the variety rights holder or the assignor of the variety rights to the licensee or the assignee, and if this is obviously contrary to the principle of equity, the variety rights holder or the assignor of the variety rights shall repay the whole or part of the fees for the exploitation of the variety or of the price for assignment of the variety rights to the licensee or the assignee.

CHAPTER VII

PENALTY PROVISIONS

Article 39

Where the propagating material of the protected variety is produced or sold for commercial purposes without the consent of the variety rights holder, the variety rights holder or the party having an interest therein may request the administrative departments of agriculture and forestry of the People's Governments at provincial level or above to handle it in accordance with their respective competence, or directly file a suit with the People's Court.

The administrative departments of agriculture and forestry of the People's Governments at provincial level or above may, according to their respective competence and based on the principle of free will of the parties, mediate the compensation of damages caused by the infringement. Where accord has been reached through mediation, it should be executed by the parties concerned; where no accord has been reached through mediation, the variety rights holder or the party having an interest therein may file a suit with the People's Court according to civil action procedures.

In handling cases of infringement of variety rights in accordance with their respective competence, the administrative departments of agriculture and forestry of the People's Governments at provincial level or above may, for the purposes of safeguarding the public interest of the society, order the infringer to stop the infringing act, confiscate the unlawful earnings and punish him with a fine five times more than the unlawful earnings.

Article 40

Where any new plant variety is counterfeited, the administrative departments of agriculture and forestry of the People's Governments at county level or above shall order the party concerned to stop the counterfeiting act, confiscate the unlawful earnings and the propagating material of the plant variety, and punish him with a fine at least one but not exceeding five times more than the unlawful earnings; where the circumstances of the case are so serious as to constitute a crime, the party concerned shall be subjected to criminal liability investigation in accordance with the law.

Article 41

Both the administrative departments of agriculture and forestry of the People's Governments at provincial level or above in handling cases concerning infringement of variety rights in accordance with their respective competence, and the administrative departments of agriculture and forestry of the People's Governments at county level or above in handling cases concerning counterfeited variety rights in accordance with their respective competence, may, as appropriate, seal up or detain the

propagating material of the plant variety relevant to the cases, have access to, make copies of and seal up contracts, account books and other relevant documents related to the cases.

Article 42

Where the protected variety is sold without using the denomination as used in its registration, the administrative departments of agriculture and forestry of the People's Governments at county level or above shall, in accordance with their respective competence, order a correction within a specified time limit, and may impose a fine not exceeding 1,000 yuan.

Article 43

Where disputes arise as to the right to apply for a new variety of plant and the ownership of the variety rights, the parties concerned may file a suit with the People's Court.

Article 44

Where any staff member of the administrative departments of agriculture and forestry of the People's Governments at county level or above and of other departments abuses his power, neglects his duty, engages in any malpractice for private gain, or extorts or receives bribes, that staff member shall be subjected to criminal liability investigation in accordance with the law if the case constitutes a crime; or he shall be punished with administrative sanctions in accordance with the law if it does not constitute a crime.

CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 45

The examining and approving authorities may provide for flexible provisions on novelty requirement for the genera or species first included in the list of protected plant varieties before the entry into force of these Regulations and that for the genera or species included in the list of protected plant varieties after the entry into force of the Regulations.

Article 46

These Regulations shall enter into force as from October 1, 1997.