

**DECREE OF THE MINISTRY OF AGRICULTURE
OF THE PEOPLE'S REPUBLIC OF CHINA**

No. 13

The Implementing Rules for the Regulations of the People's Republic of China on the Protection of New Varieties of Plants (Agriculture Part), adopted at the Sixth Executive Meeting of the Ministry of Agriculture on April 27, 1999, are hereby promulgated for implementation.

**IMPLEMENTING RULES FOR THE REGULATIONS
OF THE PEOPLES REPUBLIC OF CHINA
ON THE PROTECTION OF NEW VARIETIES OF PLANTS**

(AGRICULTURE PART)

CHAPTER I

General Provisions

Rule 1

These Rules are formulated in accordance with the Regulations of the People's Republic of China on the Protection of a New Varieties of Plants (hereinafter referred to as the Regulations).

Rule 2

New varieties of agricultural plants shall include those of grains, cotton, oil seeds, hemp, sugar crops, vegetables (including water melon and mask melon), tobacco, mulberries, tea shrubs, fruit trees (except dry fruit), ornamental plants (except woody plants), grass, green manure, herbaceous medicinal materials and tropical crops such as rubber.

The provisions of these Rules shall apply to the protection of new varieties of edible fungi.

Rule 3

The Ministry of Agriculture shall be the authority for examining and approving rights in new varieties of agricultural plants (hereinafter referred to as variety rights) under Article 3 of the Regulations, and shall grant such rights in accordance with the provisions of the Regulations.

The Office for the Protection of New Varieties of Agricultural Plants under the Ministry of Agriculture (hereinafter referred to as the Office of Agriculture) shall undertake the tasks of receiving and examining applications for variety rights, and shall deal with other related matters.

Rule 4

No variety rights shall be granted to any new variety of plants that is harmful to the public interest and the ecological environment.

CHAPTER II
Content and Ownership of Variety Rights**Rule 5**

The propagating materials referred to in the Regulations shall mean both the seeds and other parts of the body of a plant, which can propagate plants.

Rule 6

Entities or persons applying for variety rights are generically designated as applicants for variety rights; and entities or persons granted with variety rights are generically designated as variety rights holders.

Rule 7

Job-related breeding accomplished by any person in undertaking tasks for the entity to which he belongs as referred to in Article 7 of the Regulations shall mean the following:

- (i) breeding accomplished in the course of performing his own duty;
- (ii) breeding accomplished in the execution of any task other than his own duty, but assigned by the said entity;
- (iii) breeding accomplished within three years from his resignation, retirement or transfer, and related to his work in the entity from which he resigns, retires or is transferred, or to the tasks assigned to him by that entity

The facilities of the entity referred to in Article 7 of the Regulations shall mean the financial resources, instruments and equipment, and testing sites of the entity, as well as the breeding materials and technical information owned or held by the entity, whose disclosure to the public is not yet authorized.

Rule 8

The person who has accomplished the breeding of new varieties as referred to in Article 8 of the Regulations shall mean any entity or person who has accomplished the breeding of new varieties.

Rule 9

The person who has accomplished the breeding of new varieties (hereinafter referred to as the breeder) shall mean the person who has made creative contributions to the breeding of new varieties. Those who are responsible only for organizational and managerial work, facilitate access to facilities, or perform other auxiliary functions shall not be considered as breeders.

Rule 10

Where two or more applicants apply separately for the same variety rights simultaneously, the Office of Agriculture may require the applicants to provide, within a fixed time limit, evidence to prove that he is the person who has first accomplished the breeding of the new variety concerned. Where no evidence is provided within the said time limit or where the provided evidence is not sufficient to serve as the basis of a judgement, the applicants shall decide upon ownership of the right to file an application by consultation among themselves; where a decision cannot be arrived at by consultation, the Office of Agriculture may refuse their applications.

Rule 11

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 subject to examination and approval by the Ministry of Agriculture. Where it concerns job-related breeding, the assignment shall be examined, verified and approved by the administrative departments of agriculture of the provincial People's Governments (and for national entities, by their competent authorities) before its submission to the Ministry of Agriculture; where it does not concerns job-related breeding, it shall be submitted directly to the Ministry of Agriculture for examination and approval. If a State-owned entity wishes to assign the right to file an application or the variety rights within China, such assignment shall be subject to approval by the competent administrative department at a higher level, to which the entity is subordinate.

The Ministry of Agriculture shall publish the assignment of the right to file an application or of the variety rights, which shall enter into force on the date of its publication.

Rule 12

The Ministry of Agriculture may decide to grant a compulsory license to produce, sell and exploit new varieties of plants under any of the following circumstances:

- (i) where it is necessary for the national or public interest;
- (ii) where the variety rights holder has no justifiable grounds not to exploit the variety himself nor to authorize its exploitation by others under reasonable conditions;
- (iii) where, in respect of a variety of important crops, although the variety rights holder has already exploited them, his exploitation clearly cannot

meet the demands of the domestic market, and he does not authorize its exploitation by others under reasonable conditions.

Where a compulsory license is requested, a request to that effect shall be made to the Ministry of Agriculture, stating the grounds thereof and accompanied by supporting documents each in two copies.

Rule 13

Any party who requests for adjudication of the exploitation fees by the Ministry of Agriculture under paragraph 2 of Article 11 of the Regulations shall make a request to that effect, accompanied by supporting documents that can show the failure to reach an agreement. The Ministry of Agriculture shall adjudicate within three months from the date of receipt of the request and shall notify the parties concerned accordingly.

CHAPTER III

Conditions for the Grant of Variety Rights

Rule 14

In accordance with the provisions of Articles 45 of the Regulations, the Ministry of Agriculture may grant variety rights where, within two years from the date of publication of the list of protected new plant varieties, an application for variety rights is filed in respect of the genera and species first included in the said list before the entry into force of the Regulations and those added thereto after the entry into force of the Regulations, provided that the propagating materials of the variety in respect of which variety rights are applied for have not been for sale, with the consent of the variety holder, for more than four years within the territory of China, and that the requirements for distinctness, uniformity, stability and the denomination are complied with.

Rule 15

In accordance with the provisions of Article 18 of the Regulations, any of the following shall be avoided in the selection of a denomination for a new variety:

- (i) those consisting of only numbers;
- (ii) those in violation of national laws or social morals, or with ethnic discriminations;
- (iii) those using the names of countries;
- (iv) those using the names of places of administrative districts at county level or above, or the names of well known places in foreign countries;
- (v) those using the same or similar identifying names of intergovernmental international organizations or famous international or national organizations;
- (vi) those that are liable to mislead as to the features or characteristics of the new variety of plant, or as to the identity of the breeder;

- (vii) those that are the known denominations of the same or similar genera or species of plants;
- (viii) those with an effect of exaggeration in their promotion.

CHAPTER IV

Application for Variety Rights and Receipt thereof

Rule 16

Where Chinese entities and persons apply for variety rights, they may file an application with the Office of Agriculture directly or through a representative agency designated by the said Office.

Rule 17

Where foreigners, foreign enterprises or other foreign organizations with no habitual residence in China apply for variety rights, they shall file an application with the Office of Agriculture through a representative agency designated by the said Office for relations with foreigners.

Rule 18

Any applicant who appoints a representative agency to apply for variety rights or to handle other matters before the Office of Agriculture shall file at the same time a power of attorney, specifying the scope of power entrusted. The Office of Agriculture shall directly contact the representative agency for related procedures.

Where two or more applicants are concerned and no representative agency is appointed, one of them shall be indicated as the representative.

Rule 19

For the purpose of applying for variety rights, an application, a description (including the abstract of the description and the technical questionnaire) and a photograph shall be filed, each in two copies, with the Office of Agriculture.

Rule 20

An application shall include the following elements:

- (i) a provisional denomination of the new variety;
- (ii) the denomination both in Chinese and in Latin of the genera and species to which the new variety belongs;
- (iii) the name of the breeder;
- (iv) the name, address, postal code, contact person, telephone number and fax number of the applicant;
- (v) the nationality of the applicant;

- (vi) where the applicant is a foreign enterprise or another organization, the name of the country in which its headquarters is located;
- (vii) the starting and ending dates for the breeding of the new variety and the main region where the breeding is conducted.

Rule 21

A description shall include the following elements:

- (i) a provisional denomination of the new variety, which shall be the same as that in the application;
- (ii) the denomination both in Chinese and in Latin of the genera and species to which the new variety belongs;
- (iii) an indication on the background information concerning the comparison between the new variety and similar varieties both at home and abroad;
- (iv) an indication on the breeding process and methods, including the genealogical table, cultivating details and the parent seeds or propagating materials used;
- (v) an indication on its sale;
- (vi) a detailed description of distinctness, uniformity and stability;
- (vii) an indication on the region or environment suitable for its growing and on the cultivating techniques.

The description shall not contain statements with an effect of depreciating other plant varieties or exaggerating the practical value of the new variety. The technical questionnaire may be submitted when the examination fee is paid.

Rule 22

The photograph referred to in Article 21 of the Regulations shall conform to the following requirements:

- (i) helpful to illustrate the distinctness of the variety in respect of which the application is filed;
- (ii) showing on the same photograph the comparison concerning one kind of characters;
- (iii) in colour, or in black and white as may be required by the Office of Agriculture, where necessary;
- (iv) of a size of 8.5cm x12.5 cm or of 10 cm x15 cm;
- (v) accompanied by a brief graphic description.

Rule 23

The Office of Agriculture shall not receive any of the following application documents for variety rights:

- (i) where any of the request, description or photograph is missing;
- (ii) where Chinese is not used;
- (iii) where the prescribed format is not used;
- (iv) where they are not typed or printed;
- (v) where they are illegible or altered;
- (vi) where the name, address or postal code of the applicant is missing.

Rule 24

Where the Office of Agriculture deems it necessary, the applicant should furnish the propagating materials of both the variety in respect of which the application is filed and the variety for comparison, for the purpose of examination and testing of the variety in respect of which the application is filed.

Rule 25

The propagating materials furnished by the applicant shall be in consistence with those of the new variety of plant as described in the application documents for variety rights, and shall conform to the following requirements:

- (i) not having suffered from accidental damage or been under chemical treatment;
- (ii) free from quarantinable and harmful organisms;
- (iii) recently harvested if the propagating materials furnished are seeds.

The propagating materials shall be furnished in such a manner as to comply with the requirements concerning the date, quantity, quality and other requirements as prescribed by the Office of Agriculture and in Rules 26, 27 and 28 of the present implementing Rules. Where propagating materials are not furnished within the time limit or not in the prescribed manner, the application shall be deemed to have been withdrawn.

Rule 26

The applicant shall furnish the propagating materials within three months from the date of receipt of the notification to that effect by the Office of Agriculture. Where seeds are concerned, the applicant for variety rights shall send them to the culture collection centres published by the said Office; where asexual propagating materials such as seedlings, bulbs, tubers and roots are concerned, the applicant shall send them to the testing institutions designated by the said Office.

Rule 27

The propagating materials shall be subject to quarantine in accordance with relevant provisions. Those found unacceptable upon quarantine or not quarantined shall be refused by the culture collection centers or the testing institutions.

Rule 28

Where the quantity of the propagating materials furnished by the applicant is less than that prescribed by the Office of Agriculture, the culture collection centre or the testing institution shall notify the applicant to furnish the missing amount within one month from the date of receipt of the notification. In exceptional cases, however, where propagating materials have been furnished by the applicant in the prescribed quantity, but are still not sufficient for the purposes of testing or examination, the Office of Agriculture shall have the right to require the applicant to furnish the missing amount.

Rule 29

The culture collection centre or the testing institution shall issue a written note of acknowledgement upon receipt of the propagating materials furnished by the applicant, and shall finish its testing and examination on viability and other aspects within 20 days (except for plants with rest period) from the date of receipt of the propagating materials. Where the said materials are found acceptable upon examination, the culture collection centre or the testing institution shall issue a written certificate of examination, and shall notify the Office of Agriculture accordingly. Where the propagating materials are found unacceptable upon examination, the culture collection centre or the testing institution shall notify the applicant to furnish new propagating materials of the variety in question within one month from the date of receipt of the notification.

Rule 30

The culture collection centre and the testing institution shall have the responsibility to keep confidential the propagating materials furnished by applicants, and shall prevent the said materials from loss, theft or other accidents both during the period of examination of the application for variety rights and within the term of protection after the grant of such rights.

Rule 31

Where a priority right is claimed under Article 23 of the Regulations, the applicant shall indicate in the application the filing date and number of the initial application for variety rights as well as the name of the country that has received it; in the absence of such indications, the priority right shall be deemed not to have been claimed. The copy of the initial application submitted by the applicant shall be certified by the original receiving authority.

Rule 32

When an applicant with no habitual residence or establishments in China applies for variety rights or claims a priority right, the Office of Agriculture may, where it deems necessary, require him or it to file the following documents:

- (i) a certificate of his nationality;
- (ii) where the applicant is an enterprise or another organization, documents certifying the location of its establishments or its headquarters;
- (iii) documents certifying that the country to which the foreigner, the foreign enterprise or other foreign organization belongs recognizes the entitlement of Chinese entities and persons, under the same conditions as its own nationals, to the right to file an application for rights in new varieties of plants, the priority right and other rights related to variety rights in that country.

Rule 33

Where an applicant files an application for variety rights in a foreign country after having filed one with the Office of Agriculture, he or it may request the Office of Agriculture to issue a certificate concerning the priority right.

Rule 34

Where, under paragraph 2 of Article 19 of the Regulations, 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, the applicant shall indicate this fact in the application. The Office of Agriculture shall make a decision, upon examination, as to whether it should be dealt with as a confidential application, and shall notify the applicant accordingly; where the Office of Agriculture considers it necessary to keep an application confidential even though the applicant has not made such an indication, the said Office shall deal with it as a confidential application, and shall notify the applicant accordingly.

CHAPTER V

Examination and Approval of Variety Rights

Rule 35

In the procedures of preliminary examination, substantive examination, re-examination and invalidation, any person who carries out examination or re-examination under any of the following circumstances should withdraw on his own initiative; the parties concerned or any other interested person may challenge his presence:

- (i) where he is a close relative of the party concerned or his agent;
- (ii) where he has a direct interest in the application for variety rights or in such rights;
- (iii) where he has such other kinds of relations with the party concerned or his agent that might affect impartial examination and handling.

The withdrawal of a person carrying out examination shall be decided upon by the Office of Agriculture, and the withdrawal of a person carrying out re-examination shall be decided upon by the Ministry of Agriculture.

Rule 36

Where an application for variety rights involves two or more new varieties, the Office of Agriculture shall, before it sends an invitation for the payment of examination fee, request the applicant to file a divisional application. If the applicant does not divide his application or does not give any response within the fixed time limit, the application shall be deemed to have been withdrawn.

Rule 37

A divisional application filed under Rule 36 of these Rules may keep the filing date of the application from which it is divided, and where priority right is claimed, also the date of priority right, provided that the divisional application does not go beyond the scope of the initial application for variety rights.

A divisional application shall be subject to relevant procedures under the provisions of the Regulations and these Rules.

The number and the filing date of the application from which it is divided shall be indicated in the request for a divisional application. Where priority right is claimed, a copy of the priority document of the initial application shall be submitted.

Rule 38

In accordance with the provisions of Article 27 of the Regulations, the Office of Agriculture shall carry out a preliminary examination on the application for variety rights, and shall notify the applicant of its examination result. In the case of any doubts, the Office of Agriculture may request the applicant to make observations or amendments within a prescribed time limit; if the applicant does not make a response within such time limit, the application shall be deemed to have been withdrawn. Where the Office of Agriculture finds it not in conformity with the relevant provisions even after the applicant has made observations or amendments, the Office shall refuse the application.

Rule 39

With the exception of the application for variety rights, any document related to it filed by the applicant with the Office of Agriculture that has any of the following irregularities shall be deemed not to have been filed:

- (i) failure to use the prescribed format or to comply the requirements concerning the indications;
- (ii) failure to file supporting document as prescribed.

The Office of Agriculture shall notify the applicant of its findings that the application is deemed not to have been filed.

Rule 40

During the period beginning on the date on which an acceptable application is published upon preliminary examination and ending on the date of grant of variety rights, anyone may raise an objection with the Office of Agriculture to the application for variety rights which is not in conformity with the provisions of the Regulations, and shall state the grounds thereof.

Rule 41

Amendments to the description of the application for variety rights shall be in the form of replacement sheets in a prescribed format, except for the alteration, insertion or deletion of a few words.

Rule 42

In accordance with the provisions of the Regulations and these Rules, an application for variety rights shall be refused upon substantive examination under the following circumstances:

- (i) where any of the provisions in Articles 13, 14, 15, 16 and 17 is not complied with;
- (ii) as prescribed in Rule 4 of these Rules;
- (iii) where any amendment to the application or to the divisional application goes beyond the scope of the initial description in terms of its substance.

Rule 43

Applicants shall go through the procedures for receiving a certificate for variety rights and for paying the annual fee for the first year within three months from the date of receipt of the notification by the Office of Agriculture concerning such procedures. Where the procedures are completed within the prescribed time limit, the Ministry of Agriculture shall grant variety rights, issue a certificate for such rights, and publish the grant accordingly. The variety rights shall come into force on the date of issuance of the said certificate.

Where the procedures are not completed within such time limit, the granted variety rights shall be deemed to have been renounced.

Rule 44

The Ministry of Agriculture shall invite experienced specialists on plant breeding and cultivation as well as legal experts and administrative personnel to form the Re-

Examination Board for New Varieties of Plants (hereinafter referred to as the Re-Examination Board).

One leading cadre of the Ministry of Agriculture shall act concurrently as the Chairman of the Re-Examination Board. The Office of Agriculture may deal with matters related to re-examination pursuant to the mandates given by the Re-Examination Board.

Rule 45

Where the Re-Examination Board is requested to carry out re-examination under paragraph 2 of Article 32 of the Regulations, the applicant shall make a request to that effect, stating the grounds thereof and accompanied by relevant supporting documents. The request and the supporting documents shall be filed each in two copies.

The applicant may make amendments to his refused application for variety rights when requesting for re-examination, provided that the amendments are limited to the part to which the decision to refuse the application relates.

Rule 46

Where the request for re-examination is not in the prescribed format, the requesting party shall file supplements or corrections within the time limit fixed by the Re-Examination Board; where no supplements or corrections are filed within such time limit, the request for re-examination shall be deemed to have been withdrawn.

Rule 47

Where, upon re-examination, the Re-Examination Board finds that the request for re-examination does not conform to the provisions in the Regulations and these Rules, it shall notify the requesting party to make observations within a prescribed time limit; where no response is given within such time limit, the request for re-examination shall be deemed to have been withdrawn.

Rule 48

The requesting party for re-examination may withdraw his request before the Re-Examination Board has made a decision on it.

Rule 49

The Re-Examination Board may correct obvious mistakes in the application, and shall notify the applicant accordingly.

CHAPTER VI

Invalidation of Variety Rights

Rule 50

Any entity or person who requests the invalidation of variety rights under paragraph 1 of Article 37 of the Regulations shall make a request to that effect, and shall file relevant documents with the Re-Examination Board, each in two copies, stating the facts and grounds on which the request is based.

Rule 51

Invalidation of variety rights shall be based on the following facts and grounds:

- (i) that the granted variety rights do not conform to any of the provisions of Articles 13, 14, 15, 16 and 17 of the Regulations;
- (ii) that the granted variety rights fall into the categories prescribed by Rule 4 of these Rules.

Rule 52

Where a request for invalidation does not state the facts or grounds on which it is based or the stated grounds do not conform to the provisions in Rule 51 of these Rules, or where, after the Re-Examination Board has carried out examination on one request for invalidation and has decided to maintain the variety rights, the requesting party makes another request for invalidation on the basis of the same facts and grounds, the Re-Examination Board shall not accept the request.

Rule 53

The Re-Examination Board shall communicate to the variety rights holder a copy of the request for invalidation of variety rights and the copies of the relevant documents, and shall invite him to make observations within a prescribed time limit. It shall not have any effect on the examination by the Re-Examination Board if no response is given within such time limit.

Rule 54

After the Re-Examination Board has decided to change the denomination of a granted variety in accordance with paragraph 1 of Article 37 of the Regulations, the Ministry of Agriculture shall record and publish such a change, and the Office of Agriculture shall notify the variety rights holder accordingly in a timely manner and re-issue a certificate for variety rights.

The variety rights holder shall not use the initial denomination of the variety once it has been changed.

Rule 55

The requesting party for invalidation of variety rights may withdraw his request before the Re-Examination Board has made a decision on it.

CHAPTER VII

Filing, Communication and Time Limit of Documents

Rule 56

For the purposes of the various procedures prescribed in the Regulations and these Rules, a written form shall always be taken.

Rule 57

All the documents under the Regulations and these Rules shall be filed in Chinese, and shall use the standard scientific and technical terms as well as other standard terms as prescribed by the State. Names of foreigners or foreign places, and foreign scientific and technical terms without a generally accepted Chinese translation may be indicated in their original language.

Papers and supporting documents that are filed under the Regulations and these Rules in a foreign language shall be accompanied by a Chinese translation; where such a translation is not accompanied, the supporting documents shall be deemed not to have been filed.

Rule 58

All the documents filed by the parties concerned with the Office of Agriculture and the Re-Examination Board shall be typed or printed in black, and shall be clear and neat. The written part of the application shall run horizontally, and only one side of the paper shall be used.

Rule 59

All the documents filed by the parties concerned and those for other procedures shall be signed by, or affixed with a seal of, the applicant, the variety rights holder, any other interested person or his representative; if a representative agency is appointed, the documents may be affixed with a seal of the agency. Where a change is requested for in the name of the breeder, or in the name, nationality and address of the applicant or the variety rights holder, or in the name of the representative agency and the agent, the requesting party shall go through the procedures before the Office of Agriculture for a change in the bibliographic data, and in the meantime, shall file relevant supporting documents for the grounds on which such a change is based.

Rule 60

The party concerned may file any document by personal delivery or through a postal service. Filing through a postal service shall take the form of a registered mail, but not that of a parcel, and one letter shall contain only one application. In the case of filing through a postal service, the filing date shall be determined by the postmark. If the postmark on the envelope is illegible, the filing date shall be the date of receipt of the document by the Office of Agriculture and the Re-Examination Board unless the party concerned can prove otherwise.

Any document of the Office of Agriculture and the Re-Examination Board may be communicated to the party concerned through a postal service, by personal delivery or by publication. Where the party concerned has appointed a representative agency, the document shall be communicated to the agency; where no such agency is appointed, the document shall be communicated to the person first named in the request or to the representative. If the party concerned refuses to accept a document, the document shall be deemed to have been communicated.

Any document communicated through a postal service by the Office of Agriculture and the Re-Examination Board shall be deemed to have been received by the party concerned on the day immediately after 15 days from the date of dispatch.

In respect of any personally delivered document as may be required in accordance with relevant provisions, the date of communication shall be the date of such delivery.

Where a document cannot be communicated through a postal service due to an incorrect address for correspondence, it may be communicated to the party concerned by publication. The document shall be deemed to have been communicated before the expiration of two months from the date of publication.

Rule 61

In the calculation of any time limit prescribed in the Regulations and these Rules, the first day shall be excluded. Any period expressed in years or in months shall expire, in the relevant subsequent year or month, on the corresponding day in the last month of the period, except that, where the relevant month has no such corresponding day, the period shall expire on the last day of that month.

If a period expires on an official holiday, the period shall expire on the first working day after that official holiday.

Rule 62

Where a party fails to comply with a time limit prescribed in the Regulations and these Rules or fixed by the Office of Agriculture because of *force majeure*, and that failure has the consequence of causing a loss of variety rights, the party concerned may, within two months from the date on which the impediment is removed, but within two years

following the expiration of the time limit at the latest, explain the reasons, furnish relevant supporting documents, and make a request for re-instatement of rights to the Office of Agriculture.

Where a party fails to comply with a time limit prescribed in the Regulations and these Rules or fixed by the Office of Agriculture because of a justified reason, and that failure has the consequence of causing a loss of variety rights, the party concerned may, within two months from the date of receipt of the notification, explain the reasons and make a request for re-instatement of rights to the Office of Agriculture.

Where extension of any time limit fixed by the Office of Agriculture is requested for, the party concerned shall, before the expiration of the time limit, state the grounds to the Office of Agriculture and go through the relevant procedures.

The provisions in paragraphs 1 and 2 of this Rule shall not apply to the time limits prescribed in Article 23, paragraphs 2 and 3 of Article 32, Article 34 and paragraph 2 of Article 37 of the Regulations.

Rule 63

Subject to the provisions of Article 22 of the Regulations, the filing date referred to in the Regulations shall mean the priority date where there is a priority right.

CHAPTER VIII Fees and Gazette

Rule 64

An application fee, examination fee, annual fee and testing fee shall be paid in respect of an application for variety rights and other procedures to the Ministry of Agriculture in accordance with relevant provisions of the State.

Rule 65

The fees prescribed in the Regulations and in these Rules may be paid directly or via a postal or bank remittance, but not via telegraphic remittance.

Where fees are paid via a postal or bank remittance, indications shall be made as to the number of the application or of the variety rights, the name of the applicant or of the variety rights holder, the purpose of the payment and the denomination of the new variety.

In the case of payment via a postal or bank remittance, the date of payment shall be the date on which the payment is made.

Rule 66

The application fee under Article 24 of the Regulations may be paid by the applicant at the time of filing the application for variety rights, or within two months from the filing date at the latest. If the fee is not paid or is not paid in full within the time limit, the application shall be deemed to have been withdrawn.

Rule 67

In respect of an application for variety rights found to be acceptable upon preliminary examination, the applicant shall pay the examination fee, and the testing fee where necessary, within a prescribed time limit in accordance with the notification by the Office of Agriculture. If the fee is not paid or is not paid in full within the time limit, the application shall be deemed to have been withdrawn.

Rule 68

The annual fee for the first year after the grant of the variety rights shall be paid at the time when the applicant goes through the procedures of receiving the certificate for variety rights. Subsequent annual fees shall be paid one month in advance before the expiration of the term for the preceding year.

Rule 69

Where the applicant or the variety rights holder has not paid or has not paid in full, on time, the annual fee for the subsequent year after the first year of the grant of the variety rights, the Office of Agriculture shall invite the applicant to pay it or its missing part within six months from the expiration of the time limit within which the annual fee is due, together with a late payment fee which amounts to 25% of the annual fee. Where these fees are not paid within the time limit, the variety rights shall be terminated from the date of expiration of the time limit within which the annual fee is due.

Rule 70

Any applicant who has difficulties in paying some of the fees prescribed in Rule 64 of these Rules may make a request to the Office of Agriculture in accordance with relevant provisions for a reduction or retard of the payment, the details of which shall be prescribed separately.

Rule 71

The Ministry of Agriculture shall regularly publish relevant data concerning variety rights in a gazette on the protection of new varieties of plants.

CHAPTER IX

Penalty Provisions

Rule 72

Cases of infringement provided for in Article 39 of the Regulations shall be under the jurisdiction of the provincial administrative department of agriculture at the locality where the infringement takes place;

The case of infringement under the jurisdiction of two or more provincial administrative departments of agriculture shall be handled by the one that has first put the case on file for investigation and prosecution;

Where disputes arise between provincial administrative departments of agriculture as to the jurisdiction over a case of infringement, the Ministry of Agriculture shall designate the jurisdiction;

The Ministry of Agriculture may, where necessary, handle cases of infringement directly. Where a provincial administrative department of agriculture considers that the significance and complexity of a case of infringement merit involvement by the Ministry of Agriculture, a request to that effect may be made to the latter.

Rule 73

Handling of cases of infringement by the administrative departments of agriculture at provincial level or above shall be subject to the following conditions:

- (i) that the requesting party is the variety rights holder, or any entity or person that has a direct interest in the case of infringement of variety rights;
- (ii) that the request is made in respect of a definite party, with specific claims and factual basis;
- (iii) that the provisions in the Regulations and these Rules are complied with;
- (iv) that neither party has filed a suit with the People's Court.

Rule 74

Acts concerning counterfeited variety rights referred to in Articles 40 and 41 of the Regulations shall mean any of the following:

- (i) printing, making or using counterfeited certificates for protected varieties, counterfeited numbers or other identifications of applications for variety rights or of the variety rights;
- (ii) printing, making or using the number or other identifications of the applications for variety rights that have been refused, withdrawn or deemed to have been withdrawn;

- (iii) printing, making or using certificates for, or numbers or other identifications of, the variety rights that have been terminated or invalidated;
- (iv) producing or selling the varieties that fall into the categories included in items (i), (ii), (iii) of this Rule, and passing off an application or the denomination of a protected variety;
- (v) selling protected varieties without using their registered denominations;
- (vi) other acts that are liable to mislead others to assimilate an unprotected variety to a protected one.

Rule 75

Under Articles 40 and 41 of the Regulations, administrative departments of agriculture of the People's Government at county level or above shall be responsible for monitoring, investigation and handling of acts concerning counterfeited variety rights that take place within the area under their jurisdiction.

The case concerning counterfeited variety rights under the jurisdiction of two or more administrative departments of agriculture at county level or above shall be handled by the one that has first put the case on file for investigation and prosecution.

Where disputes arise between the administrative departments of agriculture at county level or above as to the jurisdiction over a case concerning counterfeited variety rights, the administrative departments of agriculture at an immediately higher level shall designate the jurisdiction;

Administrative departments of agriculture at an immediately higher level may, where necessary, handle cases concerning counterfeited variety rights under the jurisdiction of those at an immediately lower level. Where administrative departments of agriculture at a lower level considers that the significance and complexity of a case of infringement merit involvement by those at a higher level, a request to that effect may be made to the latter.

Rule 76

Administrative departments of agriculture shall pass an opinion of disposition within one month on the propagating materials of plant varieties sealed up or detained in accordance with the provision in Article 41 of the Regulations.

Rule 77

Where parties have filed a suit with the People's Court concerning their disputes over the right to file an application for variety rights or over the variety rights, and the People's Court has accepted it, the parties concerned shall request the Office of Agriculture to suspend the relevant procedures.

Where suspension of the relevant procedures is requested under the preceding paragraph, a request to that effect shall be made to the Office of Agriculture, accompanied by the copies of documents showing the acceptance of the case by the People's Court.

CHAPTER X

Supplementary Rules

Rule 78

Files of the applications for variety rights that are deemed to have been withdrawn, refused, or withdrawn on the initiative of applicants shall be kept until the end of two years from the date of lapse of the applications.

Files of the variety rights that are renounced, invalidated or terminated shall be kept until the end of three years from the date of lapse of the variety rights.

Rule 79

The Ministry of Agriculture shall be responsible for the interpretation of these Rules.

Rule 80

These Rules shall enter into force as from the date of their promulgation.