

**DECREE OF THE STATE FORESTRY ADMINISTRATION
OF THE PEOPLE'S REPUBLIC OF CHINA**

No. 3

**RULES FOR THE REGULATIONS
OF THE PEOPLES REPUBLIC OF CHINA
ON PROTECTION OF NEW VARIETIES OF PLANTS
(FORESTRY PART)**

**CHAPTER I
General Provisions**

Article 1

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

Article 2

The new varieties of plants referred to in the Rules shall mean the plant varieties that are in conformity with the provisions of Article 2 of the Regulations, including forest trees, bamboo, xyloid vine, ornamental woody plants (including woody flowers), fruit trees (dry fruit trees only), and woody oil-bearing, beverage and condiment plants, as well as woody medicinal materials.

The State Forestry Administration shall determine and publish lists of protected plant varieties.

Article 3

The State Forestry Administration shall receive and examine applications for rights in new varieties of plants (hereinafter referred to as variety rights), and shall grant such rights in accordance with the provisions of the Regulations and the Rules.

The Office of Protection of New Varieties of Plants under the State Forestry Administration (hereinafter referred to as the Office) shall be responsible for receiving and examining applications for variety rights in the new varieties of plants provided for in Article 2 of the Rules, organizing testing, depositing and other work related to the protection of new varieties of plants, and shall undertake international cooperation and other specific tasks related to the protection of new varieties of plants in accordance with relevant provisions of the State.

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

Article 4

The propagating materials referred to in the Regulations shall mean the whole plants (including nursery stock), seeds (including roots, stems, leaves, flowers, fruits) and other parts of a plant (including tissue and cell).

Article 5

Job-related breeding 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 separation from the entity to which he belongs, and related to his own duty in the said entity, or to the tasks assigned to him by that entity.
- (iv) breeding accomplished by using the financial resources, instruments and equipment, testing sites, breeding resources and other propagating materials of the entity, as well as its technical information whose disclosure to the public is not authorized.

Breeding other than those provided for in the fore-going paragraphs shall be non job-related.

Article 6

References to the individual who has accomplished the breeding of new varieties of plants, the applicant for variety rights and the variety rights holder in the Regulations shall be construed as including references to an entity or individual.

Article 7

Where two or more applicants apply separately for the variety rights of same variety on the same day, the Office may require the applicants to 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 may require the applicants to provide, within a prescribed time limit, evidence to prove that he is the individual who has first accomplished the breeding of the new variety of the plant concerned. Where no evidence is provided within the said time limit, the applications shall be deemed to have been abandoned.

Article 8

Where a Chinese entity or individual 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 approval by the State Forestry Administration.

Where 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.

Where assigning of the right to file an application or the variety rights, parties concerned shall conclude a contract in writing, and register the assignment before the State Forestry Administration for publication by the latter.

The assignment of the right to file an application or of the variety rights shall enter into force on the date of its registration.

Article 9

In accordance with Article 11 of the Regulations, the State Forestry Administration may decide, on its own initiative or upon request by parties concerned, to grant a compulsory license to exploit new varieties of plants under any of the following circumstances:

- (i) where it is necessary for particular needs such as those of the national or public interest;
- (ii) where the variety rights holder has no justifiable grounds not to exploit the variety himself or not to exploit it to the full, nor to authorize its exploitation by others under reasonable conditions.

An entity or individual who files a compulsory license for new varieties of plants, shall submit an application to that effect to the State Forestry Administration, stating the grounds thereof and accompanied by supporting documents each in two copies.

Article 10

Any party who requests for adjudication of the exploitation fees by the State Forestry Administration 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 State Forestry Administration 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

Article 11

Variety rights shall be granted pursuant to the provisions of Articles 13, 14, 15, 16, 17 and 18 of the Regulations and Article 2 of the Rules.

Article 12

In accordance with the provisions of Articles 45 of the Regulations, the plant varieties shall be deemed to have the characteristic of novelty where, within one year from the date of publication of the first list of the protected genera and species before the entry

into force of the Regulations and those added thereto in the subsequent lists after the entry into force of the Regulations, an application for variety rights is filed in request of the genera and species in said lists, 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 breeder, for more than four years within the territory of China.

Article 13

In addition to those provided for in Article 18 of the Regulations, the following denominations shall not be used for designating a variety:

- (i) those in violation of national laws and administrative regulations and rules, or those with ethnic discriminations;
- (ii) those using the names of countries;
- (iii) those using the names of places of administrative districts at or above a county level, or the names of well known places in foreign countries;
- (iv) those using the same or similar identifying names of intergovernmental international organizations or famous international organizations;
- (v) those that are the known denominations of the same or similar genera or species of plants;

CHAPTER IV

Application for Variety Rights and Receipt thereof

Article 14

Where Chinese entities and individuals apply for variety rights, they may file an application with the State Forestry Administration directly or through a representative agency designated by the said Administration.

Article 15

Where the new plant variety in respect of which Chinese entities and individuals 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 shall deal with it as a confidential application in accordance with relevant provisions of the State on secret guarding, and shall notify the applicant accordingly; where the Office 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 parties concerned accordingly.

Article 16

Where foreigners, foreign enterprises or other foreign organizations apply for variety rights or handle other matters in relation to variety rights before the State Forestry Administration, they shall entrust a representative agency designated by that Administration to deal with.

Article 17

Any applicant who appoints a representative agency to apply for variety rights or to handle other related matters before the State Forestry Administration shall file a power of attorney, specifying the scope of power entrusted.

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

Article 18

For the purpose of applying for variety rights, the applicant shall file with the Office, in the format prescribed by the State Forestry Administration, an application, a description and a photograph that is in conformity with Article 19 of the Rules, each in two copies.

Article 19

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 characteristics;
- (iii) in color;
- (iv) of a size of 8.5cm x 12.5 cm or of 10 cm x 15 cm;

The photograph shall be accompanied by a brief description; the Office may require the filing of a photograph in black and white where necessary.

Article 20

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

- (i) where some parts are missing or the specification is not used;
- (ii) where they are illegible or seriously altered;
- (iii) where Chinese is not used.

Article 21

The Office may require the applicant to 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.

Article 22

The applicant shall furnish the propagating materials within three months from the date of receipt of the notification to that effect by the Office. Where seeds are concerned, the applicant shall send them to the reference collection and storage institutions designated by the said Office; where asexual propagating materials are concerned, the applicant shall send them to the testing institutions designated by the said Office.

Where the applicant does not furnish the propagating materials within the time limit, the application shall be deemed to have been abandoned.

Article 23

The propagating materials furnished by the applicant shall be subject to quarantine in accordance with relevant provisions of the State. Those subject to quarantine but not quarantined or those found unacceptable upon quarantine shall be refused by the reference collection and storage institutions or testing institutions.

Article 24

Where the propagating materials furnished by the applicant are not sufficient for the purposes of testing or examination, and where the requirements are not complied with, the Office may require the applicant to furnish the missing amount.

Where the requirements are still not complied with even after the missing amount of the propagating materials has been furnished by the applicant for three times, the application shall be deemed to have been abandoned.

Article 25

The propagating materials furnished by the applicant shall comply with the following requirements:

- (i) in consistence with the propagating materials of the plant variety as described in the application documents for variety rights;
- (ii) recently harvested or collected;
- (iii) free from plant diseases and pests;
- (iv) not having been under chemical treatment;

Where the propagating materials furnished have been under chemical treatment, the applicant shall furnish, in addition, the name of the chemical used, and the method and purpose of the use.

Article 26

The reference collection and storage institution or the testing institution shall issue a written notice of acknowledgement upon receipt of the propagating materials furnished by the applicant.

Where the said materials are found acceptable upon examination, the reference collection and storage institution or the testing institution shall issue a written certificate of examination and notify the Office accordingly. Where the propagating materials are found unacceptable upon examination, the reference collection and storage institution or the testing institution shall notify the Office accordingly so that the latter could handle the case in accordance with relevant provisions.

Article 27

The reference collection and storage institution and the testing institution shall keep confidential and take good care of the propagating materials furnished by applicants both during the period of examination of the application for variety rights and within the term of protection of such rights.

Article 28

When a foreigner, a foreign enterprise or another foreign organization with no habitual residence or business office in China applies for variety rights or claims a priority right, the Office may require him 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 business office or its headquarters;
- (iii) documents certifying that the country to which the foreigner, the foreign enterprise or another foreign organization belongs recognizes the entitlement of Chinese entities and individuals, 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.

Article 29

Where an applicant files an application for variety rights in a foreign country after having filed one with the Office, he may request the Office to issue a certificate concerning the priority right; where the requirements are complied with, the Office shall issue such certificate.

Article 30

Where withdrawing an application for variety rights, the applicant shall make a request to the State Forestry Administration, indicating the denomination of the plant variety, and the number and filing date of the application.

Article 31

Where Chinese entities and individuals apply for variety rights in a foreign country in respect of the new variety of plant bred in China, they shall register such application before the State Forestry Administration.

CHAPTER V

Examination and Approval of Variety Rights

Article 32

In the course of its preliminary examination on an application for variety rights, the State Forestry Administration may require the applicant to make observations or amendments within a prescribed time limit on related issues.

Article 33

Where an application for variety rights involves two or more new varieties, the Office shall, before it carries out substantial examination, demand the applicant to file a divisional application within a prescribed time limit. If the applicant does not divide his application or does not give any response within the prescribed time limit, the application shall be deemed to have been abandoned.

Article 34

A divisional application filed under Article 33 of the Rules may keep the initial filing date of the application from which it is divided; where having priority right, the date of priority right may be kept, but does not go beyond the scope of the initial application.

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

Article 35

The State Forestry Administration shall publish the applications for variety rights that are found to be in conformity with the provisions of the Regulations and the Rules upon preliminary examination.

During the period beginning on the date of publication of the application and ending on the date of grant of variety rights, anyone may raise an objection with the State Forestry Administration to the application for variety rights which is not in conformity with the provisions of the Regulations and the Rules, and shall state the grounds thereof.

Article 36

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

Article 37

In respect of an application for variety rights found to be in conformity with the provisions of the Regulations upon substantial examination, the State Forestry Administration shall decide to grant variety rights, issue an certificate for variety rights to the applicant, and record and publish the grant.

The variety rights holder shall, within three months from the date of receipt of the notification concerning the certificate for variety rights, come and receive such certificate and pay the annual fee for the first year in accordance with relevant provisions of the State. Subject to justifiable reasons, the variety rights shall be deemed to have been renounced in the event of failure to receive the certificate for variety rights or to pay the annual fee within such time limit.

The variety rights shall come into force on the date of the grant thereof.

Article 38

The Re-Examination Board for New Varieties of Plants under the State Forestry Administration (hereinafter referred to as the Re-Examination Board) shall be composed of experienced specialists on plant breeding and cultivation as well as legal experts and administrative personnel.

The Chairman of the Re-Examination Board shall be designated by the responsible individuals of the State Forestry Administration.

The Office shall deal with matters related to re-examination pursuant to the decisions made by the Re-Examination Board.

Article 39

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 in the format prescribed by the State Forestry Administration, accompanied by relevant supporting documents. The request and the supporting documents shall be filed each in two copies.

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

Article 40

Where the request for re-examination does not comply with the prescribed requirements, the requesting party shall file supplements or revisions within the time limit fixed by the Re-Examination Board; where no supplements or revisions are filed

or still does not comply with the prescribed requirements within such time limit, the request for re-examination shall be deemed to have been abandoned.

Article 41

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

CHAPTER VI

Termination and Invalidation of Variety Rights

Article 42

Where variety rights are terminated prior to the expiration of the term thereof under Article 36 of the Regulations, such rights shall be terminated:

- (i) where the variety rights holder makes a written statement renouncing his variety rights, on the date of the statement;
- (ii) where the variety rights holder has not paid the annual fees as prescribed, on the date of expiration of the time limit on which the annual fee is due;
- (iii) where the State Forestry Administration has recorded the fact that the variety rights holder has not furnished, in the required manner, such propagating materials of the protected variety necessary for testing, or the fact that the furnished propagating materials do not comply with the requirements, on the date of such recordation;
- (iv) where, on testing, the protected variety no longer conforms to the features and characteristics that existed when the variety rights were granted, on the date of the recordation by the State Forestry Administration.

Article 43

Any entity or individual who requests the invalidation of variety rights under paragraph 1 of Article 37 of the Regulations shall make a request to that effect to the Re-Examination Board in the format prescribed by the State Forestry Administration, accompanied by relevant materials, each in two copies, stating the facts and grounds on which the request is based.

Article 44

Where the granted variety rights do not conform to any of the provisions of Articles 14, 15, 16 and 17 of the Regulations, the Re-Examination Board shall invalidate the variety rights *ex-officio* or upon request by any entity or individual in writing.

The State Forestry Administration shall record and publish the invalidation of variety rights, and the Office shall notify the parties concerned accordingly.

Article 45

Where a request for invalidation does not state the facts or grounds on which it is based, or where, after the Re-Examination Board has carried out examination on request for invalidation of one variety rights 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.

Article 46

The Re-Examination Board shall service on the variety rights holder a copy of the request for invalidation of variety rights and the relevant documents within 15 days from its receipt of such request. The variety rights holder shall make observations within three months from his receipt of the said materials; it shall not have any effect on the examination by the Re-Examination Board if no response is given within the time limit.

Article 47

After the Re-Examination Board has decided to change the denomination of a granted variety, the State Forestry Administration shall record and publish such a change, and the Office shall notify the variety rights holder accordingly and re-issue a certificate for variety rights.

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

Article 48

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, Service and Time Limit of Documents

Article 49

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

Article 50

All the documents under the Regulations and the Rules shall be filed in Chinese, and shall use the standard scientific and technical terms as prescribed by the State.

Names of foreigners or foreign places, and scientific and technical terms without a generally accepted Chinese translation may be indicated in the original language.

Supporting documents that are filed under the Regulations and the Rules in a foreign language shall be accompanied by a Chinese translation; where no such

translation is accompanied, the supporting documents shall be deemed not to have been filed.

Article 51

All the documents filed by the parties concerned shall be typed or written with a pen or writing brush, and shall be clear and neat. Only one side of the paper shall be used.

Article 52

In accordance with the provisions of the Regulations and the Rules, the party concerned may file any document by personal delivery or through a postal service. 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 unless the party concerned can prove otherwise.

In accordance with the provisions of the Regulations and the Rules, any document and relevant material to the party concerned may be serviced by personal delivery, through a postal service or by publication. Where the party concerned has appointed a representative agency, the document shall be serviced on the agency; where no such agency is appointed, the document shall be serviced on the party concerned.

In respect of any personally delivered document under paragraph 2 of this Article, the date of service shall be the date of such delivery; any document serviced by post shall be deemed to have been serviced on the day immediately after 15 days from the date of dispatch; any document serviced by publication shall be deemed to have been serviced before the expiration of two months from the date of publication.

Article 53

Any period under the Regulations and the Rules 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.

Article 54

Where a party fails to comply with a time limit prescribed in the Regulations and the Rules because of *force majeure* or other special reasons 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 State Forestry Administration.

Article 55

The date of application referred to in the Regulations and the Rules shall mean the priority date where there is a priority right.

CHAPTER VIII

Fees and Gazette

Article 56

An application fee, examination fee, and testing fee where necessary shall be paid in respect of an application for variety rights in accordance with relevant provisions. An annual fee shall be paid where variety rights are granted.

Article 57

The fees under Article 56 of the Rules may be paid by the party concerned directly or via a postal or bank remittance, but not via telegraphic remittance, to the Office.

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

Article 58

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 one month from the receipt of the notification for payment; 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.

The testing fee payable as prescribed shall be paid within one month from the receipt of the notification for payment; if the fee is not paid or is not paid in full within the time limit, the application shall be deemed to have been abandoned.

Article 59

The initial annual fee shall be paid at the time when the applicant receives the certificate for variety rights, and subsequent annual fees shall be paid one month in advance before the expiration of the term for the preceding year.

Article 60

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, the Office shall notify 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.

Article 61

Within three years from the entry into force of the Rules, any party who has difficulties in paying the fees prescribed in Article 56 of the Rules may reduce or retard the payment upon request to, and approval by, the State Forestry Administration.

Article 62

The State Forestry Administration shall regularly publish a gazette on the protection of new varieties of plants in which relevant data concerning the application, grant, assignment, succession and termination in respect of variety rights are published.

The office shall keep recording book for variety rights, in which relevant data concerning the application, grant, assignment, succession and termination in respect of variety rights are recorded.

CHAPTER IX Supplementary Articles

Article 63

When investigating and dealing with cases involving administrative punishment as provided for in the Regulations, the competent departments of forestry at county level or above shall apply the provisions in the administrative punishment procedures on forestry.

Article 64

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

- (i) using counterfeited certificates for, or counterfeited numbers of, the variety rights;
- (ii) using certificates for, or numbers of, the variety rights that have been terminated or invalidated;
- (iii) counterfeiting protected varieties with unprotected ones;
- (iv) counterfeiting one protected variety with another;
- (v) other acts that are liable to mislead others to assimilate an unprotected variety to a protected one.

Article 65

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 make a report to the State Forestry Administration, accompanied by the documents showing the acceptance of the case by

the People's Court. The State Forestry Administration shall decide to suspend or to terminate the relevant procedures.

Article 66

In the procedures of preliminary examination, substantive examination, re-examination and invalidation, any individual who carries out examination or re-examination under any of the following circumstances should make a request for withdrawal; the parties concerned or any other interested individual may also 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 individual carrying out examination shall be decided upon by the Office, and the withdrawal of a member of the Re-Examination Board shall be decided upon by the State Forestry Administration. The individuals who carry out examination and re-examination shall continue to perform their duties until the approval of the request for withdrawal.

Article 67

Subject to approval by the Office, any one may have access to, or make copies of, the files of published applications for variety rights and the registry of variety rights.

The Office shall destroy documentation concerning the applications for variety rights that are refused, withdrawn or deemed to have been withdrawn and concerning the variety rights that are renounced, invalidated or terminated.

Article 68

Where a change is requested for in the applicant for variety rights and in the variety rights holder, the requesting party shall go through the procedures before the Office for a change in the bibliographic data, and shall state the grounds on which such a change is based, and file supporting documents.

Article 69

The State Forestry Administration shall be responsible for the interpretation of the Rules.

Article 70

The Rules shall take effect as of the date of their promulgation.