

DECREE No. 104/2006/ND-CP OF SEPTEMBER 22, 2006, DETAILING AND GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE INTELLECTUAL PROPERTY LAW REGARDING RIGHTS TO PLANT VARIETIES

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to November 29, 2005 Law No. 50/2005/QH11 on Intellectual Property;

At the proposal of the Minister of Agriculture and Rural Development,

DECREES:

Chapter I
GENERAL PROVISIONS

Article 1.- Scope of regulation

This Decree details and guides the implementation of a number of articles of the Intellectual Property Law regarding rights to plant varieties, covering responsibilities for state management of rights to plant varieties; order and procedures of establishment of rights to plant varieties; rights and obligations of protection title holders and breeders of plant varieties; assignment or transfer of rights to protected plant varieties.

Article 2.- Subjects of application

This Decree applies to:

1. Vietnamese organizations and individuals;
2. Foreign organizations and individuals that have permanent residence addresses or establishments producing or trading in plant varieties in Vietnam;
3. Organizations and individuals that are citizens of countries which have concluded with Vietnam agreements on protection of rights to plant varieties.
4. Foreign organizations and individuals that are not citizens of countries which have concluded with Vietnam agreements on protection of rights to plant varieties but have permanent residence addresses or lawfully registered offices in the territory of a country which has concluded with Vietnam an agreement on protection of rights to plant varieties.

Article 3.- Interpretation of terms

In this Decree, the terms below are construed as follows:

1. “*Plant variety*” referred to in this Decree means a complete plant variety, or a propagating material or harvested material of any plant variety belonging to an agricultural, forest or aquatic plant species or a fungus species newly selected and bred or discovered and developed from a plant species on the list of protected plant varieties;
2. “*Plant variety protection title holder*” means an organization or individual granted a title of protection of rights to a plant variety;

3. “*Propagating material*” means plant organs capable of developing into a full-grown plant, such as seed, spore, stem, root, seedling, grafted branch, grafted stemma, grafted plant, hypha, tuber, fruit, bud, flower, tissue, cell or other organs of a plant;

4. “*Harvested material*” means a full-grown plant or any plant organ obtained from the planting of a propagating material of a plant variety;

5. “*Formal examination*” means the examination of the completeness and validity of an application according to the provisions of Article 10 of this Decree;

6. “*Substantive examination*” means the examination of the novelty, distinctness, uniformity, stability and denomination of a plant variety;

7. “*Detailed description of a plant variety*” means a document expressing characteristics of a plant variety made under the distinctness, uniformity and stability (DUS) test guidelines and certified by the agency in charge of protection of plant varieties. A detailed description is considered having been already published when it has been made available to the public in such form as scientific report or news report, or an article in newspapers, magazines or other printed matters;

8. “*Agency in charge of protection of plant varieties*” referred to in this Decree means the Office for Protection of Plant Varieties at the Agriculture and Rural Development Ministry.

9. “*Lawful representative*” of a foreign organization or individual registering for protection of plant varieties in Vietnam means an organization or individual, including Vietnamese citizens, foreign organizations or individuals having a production or business establishment or a permanent residence address in Vietnam in accordance with the law of Socialist Republic of Vietnam, that is authorized in writing by an organization or individual owning a plant variety registered for protection to register for protection of rights to that plant variety;

10. “*Plant variety breeder*” means a person who directly performs part or whole of the work of selecting and breeding or discovering and developing a new plant variety.

11. “*Country having concluded with Vietnam an agreement on protection of rights to plant varieties*” means any country which has concluded with Vietnam a bilateral agreement, or countries being members of an inter-governmental organization which has concluded with Vietnam an agreement on protection of rights to plant varieties.

Article 4.- Responsibilities of ministries and ministerial-level agencies for protection of rights to plant varieties

1. The Agriculture and Rural Development Ministry shall perform the state management of protection of rights to plant varieties nationwide, having the following responsibilities:

a/ To submit to competent authorities for promulgation or to promulgate according to its competence legal documents on protection of rights to plant varieties and organize the implementation thereof;

b/ To grant, withdraw, revoke or cancel plant variety protection titles;

c/ To promulgate a list of protected plant varieties; process and procedures of technical testing of plant varieties;

d/ To define the organization, functions, tasks and powers of the agency in charge of protection of plant varieties;

e/ To organize the communication, education and dissemination of law on protection of rights to plant varieties;

f/ To examine, inspect and handle administrative violations in the protection of rights to plant varieties;

g/ To promote international cooperation on protection of rights to plant varieties.

2. The Science and Technology Ministry, the Fisheries Ministry, the Finance Ministry and other ministries, ministerial-level agencies and government-attached agencies shall, within the ambit of their assigned tasks and vested powers, coordinate with the Agriculture and Rural Development Ministry in performing the state management of protection of rights to plant varieties.

Article 5.- Responsibilities of provincial/municipal People's Committees for protection of rights to plant varieties

1. To organize the implementation of the policies and law on protection of rights to plant varieties.
2. To organize the dissemination and popularization of the law on protection of rights to plant varieties.
3. To examine, inspect and handle administrative violations to protect rights to plant varieties.
4. To direct People's Committees of districts, provincial towns or cities in taking state management measures to protect rights to plant varieties in their localities.

Chapter II

ORDER AND PROCEDURES OF ESTABLISHMENT OF RIGHTS TO PLANT VARIETIES

Article 6.- Registrants of protection of rights to plant varieties

1. Registrants of protection of rights to plant varieties are defined in Clause 2, Article 164 of the Intellectual Property Law.
2. When a plant variety is selected and bred or discovered and developed with state budget capital or under a state-managed project, the organization or individual that directly selects and breeds that plant variety shall carry out the registration of protection of rights to that plant variety.

Article 7.- Applications for registration of protection of rights to plant varieties

1. An application for registration of protection of rights to a plant variety as defined in Article 174 of the Intellectual Property Law shall be made in three sets and submitted to the agency in charge of protection of plant varieties.
2. Apart from the documents specified in Clauses 1, 2 and 3, Article 174 of the Intellectual Property Law, the applications of organizations or individuals of countries which have concluded with Vietnam agreements on protection of rights to plant varieties as defined in Clause 2, Article 157 of the Intellectual Property Law who have neither permanent residence addresses nor production or business establishments in Vietnam shall be enclosed also with necessary papers to constitute sufficient grounds for certification of the nationality of those organizations or individuals.
3. If an applicant is not a citizen of a country which has concluded with Vietnam an agreement on protection of rights to plant varieties, he/she is required to show documents evidencing his/her

permanent residence address or lawfully registered office in another country which has concluded with Vietnam an agreement on protection of rights to plant varieties.

Article 8.- Requirements for applicants claiming priority right

To enjoy priority right, an applicant whose application satisfies all the conditions for claiming priority right specified in Clause 1, Article 167 of the Intellectual Property Law shall carry out the following procedures:

1. Registering his/her claim for priority right in the written registration for protection under regulations;
2. Paying the fee for consideration of claims for priority right;
3. Within three months after the date of filing of the protection registration application, an applicant shall supply the following documents:
 - a/ Copies of all documents in support of the first application, which are notarized or certified by the agency that has previously received the protection registration application;
 - b/ Evidence proving that plant varieties registered in the two applications are the same, including the description of the plant variety, its photos, other relevant documents (if any).

Article 9.- Receipt of protection registration applications

1. The agency in charge of protection of plant varieties shall receive applications by one of the following modes:
 - a/ Directly from applicants or their lawful representatives;
 - b/ By post. If an applicant files his/her application by post, the filing date is the date the application reaches the agency in charge of protection of plant varieties.
2. Upon receipt of an application, the agency in charge of protection of plant varieties shall stamp the application to certify the date of arrival, record the serial number of the application, make an entry in the register of received applications, and send one set of these documents to the applicant.

Article 10.- Formal examination of applications

1. Examination time limit:

Within fifteen days after receiving an application for registration of protection of a plant variety, the agency in charge of protection of plant varieties shall complete the formal examination of that application.

2. Formal examination of an application covers:

Inspection of the completeness of documents in support of the application and the validity of the application according to the provisions of Article 174 of the Intellectual Property Law and Articles 6 and 7 of this Decree.

Article 11.- Applications invalid in terms of formality and handling of invalid applications

1. An application is invalid in terms of formality when:

a/ The application lacks one of the documents specified in Clause 1, Article 174 of the Intellectual Property Law and Article 8 of this Decree (for applications claiming priority right);

b/ Documents included in the application are made improperly or information declared in the registration form is insufficient;

c/ The application is not written in Vietnamese;

d/ Documents in the application are erased, modified, torn or unreadably faded;

e/ Copies of documents are neither notarized nor certified by competent authorities;

f/ The plant variety described in the application is not on the list of protected plant varieties promulgated at the time of protection registration;

g/ The application is filed by a person who is not entitled to file according to the provisions of Article 164 of the Intellectual Property Law and Article 6 of this Decree.

2. Handling of invalid applications

a/ The agency in charge of protection of plant varieties shall reject protection registration applications falling into the cases specified at Points f and g, Clause 1 of this Article and notify in writing the applicants of the rejection;

b/ For applications falling into the cases specified at Points a, b, c, d and e, Clause 1 of this Article, the agency in charge of protection of plant varieties shall notify the applicants of contents which need to be revised. Within thirty days after receiving such a notice, an applicant shall correct errors in his/her application at the request of the agency in charge of protection of plant varieties. Past that time limit, if the applicant fails to correct errors or the corrected contents fail to satisfy requirements, the agency in charge of protection of plant varieties may reject the application;

c/ The time limit of thirty days specified at Point b of this Clause is determined according to the postmark of the place where the notice is received. If the postmark fades away, that time limit is forty five days after the agency in charge of protection of plant varieties sends the notice.

Article 12.- Substantive examination of applications

The substantive examination of a protection registration application provided for in Article 178 of the Intellectual Property Law is carried out in the following order:

1. Examination of the plant variety denomination according to Article 13 of this Decree;

2. Examination of the plant variety novelty according to Article 14 of this Decree;

3. Technical test to assess the plant variety distinctness, uniformity and stability according to Articles 15 and 16 of this Decree;
4. Examination of technical test results according to Article 19 of this Decree.

Article 13.- Examination of denominations of plant varieties

1. Pursuant to Article 163 of the Intellectual Property Law, the agency in charge of protection of plant varieties shall examine the appropriateness of the proposed denomination of a plant variety to that of a plant variety of the same species or a species close to the species of denominated plant variety which has been recognized by Vietnam or by any country which has concluded with Vietnam an agreement on protection of rights to plant varieties. If the plant variety denomination registered for protection is improper, the agency in charge of protection of plant varieties sends a notice to the applicant, requesting the change of that plant variety denomination in accordance with regulations.
2. Within thirty days after receiving such a notice of the agency in charge of protection of plant varieties, the applicant shall propose a new plant variety denomination in accordance with regulations. Past that time limit, if the applicant fails to propose an appropriate denomination, the agency in charge of protection of plant varieties may reject the application.
3. If wishing to change the plant variety denomination, the applicant shall, within the period from the filing date to the date of grant of protection title, request the change of plant variety denomination and concurrently propose a new denomination for the registered plant variety and pay a fee according to regulations.
4. The agency in charge of protection of plant varieties shall notify all information on plant variety denominations to competent authorities of the countries which have concluded with Vietnam agreements on protection of rights to plant varieties.
5. Official denominations of plant varieties are those recognized at the time of issuance of decisions on grant of protection titles for those plant varieties.

Article 14.- Examination of novelty

Pursuant to Article 159 of the Intellectual Property Law, the agency in charge of protection of plant varieties shall examine the novelty of a plant variety registered for protection in the following order:

1. Examining information in the written declaration for protection registration;
2. Considering and responding to feedback and complaints (if any) about the novelty of the plant variety registered for protection after the application is published.

Article 15.- Technical test

A technical test specified in Clause 2, Article 178 of the Intellectual Property Law is conducted specifically as follows:

1. The agency in charge of protection of plant varieties shall base itself on the practical conditions to select one of the following forms of technical test:
 - a/ Technical test conducted by a qualified testing agency defined in Article 16 of this Decree;
 - b/ Technical test conducted by an organization or individual fully capable of conducting testing experiments;

c/ Using available test results supplied by the breeder or from other sources.

2. Testing experiments must be conducted according to procedures for testing the distinctness, uniformity and stability, for the case specified at Point b, Clause 1 of this Article.

3. Technical test results must be finalized according to a form set by the agency in charge of protection of plant varieties. Organizations or individuals supplying technical test results defined at Point c, Clause 1 of this Article shall take responsibility for those results.

4. If the test results are unsatisfactory, the applicant is entitled to request the agency in charge of protection of plant varieties to conduct a second test and shall pay a fee as required, for the cases specified at Points a and b, Clause 1 of this Article. A request for a second test must be made in writing, clearly indicating the proper reason(s) for and evidence supporting that request;

5. If the results from a second test show that the reason(s) and evidence furnished by the applicant are right, the fee mentioned in Clause 4 of this Article shall be refunded to the applicant.

Article 16.- Agencies conducting technical test

An agency conducting technical tests defined at Point a, Clause 1, Article 15 of this Decree shall fully satisfy the following conditions:

1. Having a location large enough for the testing process and the required growth and development of each plant variety;

2. Having specialized equipment and facilities satisfying the requirements of testing of each plant variety according to regulations of competent state agencies;

3. Having technical staff professionally qualified for the test or having conditions for employing such a staff.

Article 17.- Submission of example varieties

1. The agency in charge of protection of plant varieties shall request applicants that are subject to the test in the case specified at Point a, Clause 1, Article 15 of this Decree to submit example varieties at least twenty days before a crop season to agencies conducting technical tests.

2. Applicants specified at Points b and c, Clause 1, Article 15 of this Decree are not required to submit example varieties to the agencies conducting technical test but are required to submit them to the example variety-keeping agency for preservation according to the provisions of Clause 3 of this Article. The deadline for submission of example varieties is set by the agency in charge of protection of plant varieties.

3. The keeping of example varieties of registered varieties mentioned in Clause 2 of this Article is conducted as follows:

a/ An example variety in seeds is kept at the example variety-keeping agency designated by a competent state agency;

b/ An example variety of an asexual plant species is kept by the applicant who shall indicate the keeping place in the protection registration application.

4. When necessary and upon the request of the agency conducting technical tests, the agency in charge of protection of plant varieties may request an applicant to supply example varieties of a variety similar to the variety registered for protection, if the applicant is able to do so.

5. Upon receipt of an example variety, the agency conducting technical tests or the variety-keeping agency shall check the quality of that example variety and issue a written certification if it satisfies the set requirements. If the example variety fails to satisfy the set requirements, the agency conducting technical tests or the variety-keeping agency may request the applicant to supply the example variety again.

6. Within twenty days after receiving an example variety, the example variety-receiving agency shall test the quality thereof and notify the test results to the applicant. If the example variety is not up to standards set for the testing process, the example variety-receiving agency requests the applicant to supply the example variety again. Within thirty days after receiving the request, the applicant shall supply an example variety up to standards.

7. The example variety-keeping agency shall ensure the safety of kept example varieties. When properly requested by applicants, the example variety-keeping agency shall keep secret information on kept example varieties.

Article 18.- Reports on technical test results

Within thirty days after the completion of a technical test, the agency conducting the technical test defined at Points a and b, Clause 1, Article 15 of this Decree shall send a report on the technical test results to the agency in charge of protection of plant varieties.

Article 19.- Assessment of technical test results

1. Within ninety days after receiving technical test results, the agency in charge of protection of plant varieties shall complete the assessment of those results.

2. If facing professional difficulties, the Agriculture and Rural Development Ministry shall set up a specialized council to assess technical test results. The time limit for assessment does not exceed sixty days after such a specialized council is set up.

Article 20.- Grant of plant variety protection certificates

1. If examination results affirm that a plant variety registered for protection satisfies the conditions specified in Articles 159, 160, 161, 162 and 163 of the Intellectual Property Law, the agency in charge of protection of plant varieties shall propose the Agriculture and Rural Development Minister to sign a decision on grant of a plant variety protection certificate and publish it in the Agriculture and Rural Development Ministry's specialized magazine on plant varieties.

2. Past the time limit of thirty days after a decision on grant of a plant variety protection certificate is published in the specialized magazine on plant varieties, if receiving no written objection or complaint about the grant of protection certificate, the agency in charge of protection of plant varieties shall grant a plant variety protection certificate to the applicant and record it in the national register of protected plant varieties.

3. Within thirty days after a decision on grant of a plant variety protection certificate is published in the specialized magazine, if the agency in charge of protection of plant varieties receives written objections or complaints about the grant of the plant variety protection certificate, it shall handle them according to the provisions of Article 184 of the Intellectual Property Law and Article 24 of this Decree.

4. For a plant variety protection certificate, only one (01) original is granted. If wishing to have more than one copy of that protection certificate, the applicant shall make a prior registration therefor with the agency in charge of protection of plant varieties. The forms of protection certificates and the national register of protected plant varieties are specified in Article 168 of the Intellectual Property Law.

5. Applicants shall pay fees and charges for the grant of plant variety protection certificates according to regulations. The holder of a protection certificate which is torn, damaged or lost or changes hand may apply for re-grant or renewal thereof and shall pay a fee according to regulations.

Article 21.- Termination of validity of plant variety protection certificates

1. If a plant variety protection certificate has its validity terminated under Point a, Clause 1, Article 170 of the Intellectual Property Law, the agency in charge of protection of plant varieties shall effect the termination as follows:

a/ Within thirty days after receiving any third party's written request for termination of the validity of a plant variety protection certificate, the agency in charge of protection of plant varieties shall complete the verification of information supplied in that written request and notify the holder of the plant variety protection certificate of the verification results. A request for termination of the validity of a plant variety protection certificate must be made in writing and supported by evidence proving that the protected plant variety fails to satisfy the uniformity and stability requirements by time of grant of the protection certificate, and the charge for the second test must be paid (when a second test is necessary). If the results of the second test conducted at the request of the holder of a plant variety protection certificate show that the reasons for the request for termination of the validity of that protection certificate are right, the charge for the second test shall be refunded to the requester.

b/ Past the time limit of thirty days after receiving a notice of the agency in charge of protection of plant varieties on the feedback, if the holder of a plant variety protection certificate fails to file a written objection, the Agriculture and Rural Development Ministry shall issue a decision on termination of the validity of that protection certificate. The time of validity termination is the date on which the decision on termination of validity of the protection certificate is published in the specialized magazine on plant varieties.

c/ When the plant variety protection certificate holder files a written objection, the agency in charge of protection of plant varieties shall request him/her to carry out procedures for conducting a second test as specified in Clause 4, Article 15 of this Decree. If the results of the second test conducted by an agency defined at Point a, Clause 1, Article 15 of this Decree show that the plant variety in question fails to satisfy the uniformity or stability requirement by the time of grant of the protection certificate, the agency in charge of protection of plant varieties shall carry out procedures for termination as specified at Point b of this Clause.

2. If facing difficulties in making a decision on termination of the validity of a protection certificate, the Agriculture and Rural Development Ministry shall set up a specialized council to provide consultations on matters related to the termination of the validity of the protection certificate.

Article 22.- Restoration of validity of plant variety protection certificates

1. Basing itself on the results of a second test, the Agriculture and Rural Development Ministry shall decide to restore or not to restore the validity of a plant variety protection certificate, for the case specified at Point a, Clause 1, Article 170 of the Intellectual Property Law.
2. Basing itself on the results of the remedy of the reasons for validity termination as specified in Clause 5, Article 170 of the Intellectual Property Law, the Agriculture and Rural Development Ministry shall decide to restore or not to restore the validity of a plant variety protection certificate, for those plant varieties with their protection certificates' validity terminated under Points b, c and d, Clause 1, Article 170 of the Intellectual Property Law.

Article 23.- Invalidation of plant variety protection certificates

1. When there exist sufficient grounds to determine that a plant variety falls into one of the cases specified in Clause 1, Article 171 of the Intellectual Property Law, the Agriculture and Rural Development Ministry shall decide to invalidate the protection certificate for that plant variety.
2. When an organization or individual files a request for the invalidation of a plant variety protection certificate, the Agriculture and Rural Development Ministry shall, after considering the request and arguments of involved parties, decide to invalidate or not to invalidate that protection certificate and notify its decision to the applicant.

Article 24.- Grounds for complaining about the grant of protection certificates

When complaining about the grant or non-grant of a plant variety protection certificate, an organization or individual shall base itself/himself/herself on one of the following grounds:

1. A registrant for protection of rights to a plant variety holds that the refusal to grant a protection certificate insufficient lacks legal grounds;
2. A plant variety protection certificate is granted to a person who does not have the right to receive such a certificate, except when that right is assigned to a right holder;
3. A protected plant variety is neither new nor distinct from others;
4. A protected plant variety is neither uniform nor stable;
5. A plant variety denomination is inappropriate.

Article 25.- National registration

The agency in charge of protection of plant varieties shall compile and keep the national register of protected plant varieties. All information on plant variety protection certificates and changes within the valid term of plant variety protection certificates are recorded in the national register of protected plant varieties.

Chapter III
RIGHTS AND OBLIGATIONS OF PROTECTION CERTIFICATE HOLDERS AND BREEDERS
OF PLANT VARIETIES

Article 26.- Rights of plant variety protection certificate holders

1. The rights of plant variety protection certificate holders provided for in Article 186 of the Intellectual Property Law apply to harvested materials obtained from the use of propagating materials of protected plant varieties without permission of protection certificate holders. If a protection certificate holder has reasonable conditions to exercise his/her rights to propagating materials of a plant variety, a user is not required to ask for permission of that protection certificate holder for use of harvested materials of the same plant variety.
2. The rights of plant variety protection certificate holders provided for in Clause 1 of this Article apply to plant varieties specified in Article 187 of the Intellectual Property Law.

Article 27.- Claims for provisional protection rights

Owners of plant varieties are entitled to provisional protection rights for a term defined in Clause 1, Article 189 of the Intellectual Property Law. When a person uses a plant variety for commercial purposes in the term of provisional protection rights, the owner of that plant variety shall carry out procedures specified in Clauses 2 and 3, Article 189 of the Intellectual Property Law. To enjoy provisional rights to a plant variety, the protection certificate holder may, as from the time of being granted the protection certificate, claim those provisional rights and shall carry out the following procedures:

1. Reaching an agreement on compensation level with the party that has exploited the plant variety for commercial purposes.
2. When no agreement is reached, the protection certificate holder may file a petition to a competent agency defined in Article 200 of the Intellectual Property Law to request the settlement. A petition to claim provisional protection rights must be made in writing and supported by evidence proving that he/she has all conditions to enjoy the provisional protection rights.

Article 28.- Limitations on rights to plant varieties

According to the provisions of Article 190 of the Intellectual Property Law on limitations on rights of plant variety protection certificate holders, the following acts are not regarded as infringement of rights to a protected plant variety:

1. Using that plant variety for personal and non-commercial purposes;
2. Using that plant variety for scientific research purpose;
3. Conducting activities for the purpose of selecting and breeding other plant varieties, except for the cases specified in Article 187, and taking acts related to plant varieties specified in Article 186 of the Intellectual Property Law and Article 26 of this Decree.
4. Using by individual production households the products harvested from that protected plant variety for propagation and planting by themselves for subsequent crops on their land areas.

Article 29.- Obligations of plant variety protection certificate holders

According to the provisions of Clause 1, Article 191 of the Intellectual Property Law, a protection certificate holder has the following obligations:

1. To pay a remuneration to a plant variety breeder by one of the following modes:

a/ Under an agreement between them;

b/ If no agreement is reached, the remuneration payable to the breeder is equal to 30% of the collected copyright royalty.

c/ For a plant variety selected and bred or discovered and developed with the state budget funds, the protection certificate holder shall pay a remuneration to the breeder according to an internal regulation. If such an internal regulation contains no provision on payment of remuneration, the protection certificate holder shall pay an amount equal to 30% of the collected royalty to the breeder.

2. To pay the fee for maintenance of the validity of the plant variety protection certificate to the agency in charge of protection of plant varieties within three months after the grant of the protection certificate, for the first valid year, or within the first month of the subsequent valid years.

3. To preserve the protected plant variety, supply information, documents and propagating materials of the protected plant variety at the request of the agency in charge of protection of plant varieties; to maintain the stability of the protected plant variety according to its characteristics described at the time of grant of the plant variety protection certificate.

Article 30.- Obligations of plant variety breeders

According to the provisions of Clause 2, Article 191 of the Intellectual Property Law and for the valid term of a plant variety protection certificate, a breeder is obliged under an agreement with the protection certificate holder to maintain the protected plant variety according to its characteristics described at the time of grant of the protection certificate.

Chapter IV

ASSIGNMENT OR TRANSFER OF RIGHTS TO PROTECTED PLANT VARIETIES

Article 31.- Procedures of registration of contracts for assignment of rights to protected plant varieties

1. After finalizing a contract for assignment of rights to a plant variety in accordance with law, the assignee shall register the assignment contract with the agency in charge of protection of plant varieties and pay a fee according to regulations.

2. The agency in charge of protection of plant varieties shall receive the written registration of the assignment contract and carry out the procedures for notifying the assignee of the certification of rights of the plant variety protection certificate holder.

Article 32.- Transfer or assignment of rights to state-owned protected plant varieties

1. The assignment of rights to a state-owned protected plant variety must be conducted in accordance with the law on management of state assets.

2. The management and use of proceeds from contracts for transfer or assignment of rights to protected plant varieties shall comply with the provisions of the Government's Decree

No. 43/2006/ND-CP of April 25, 2006, providing for the right to autonomy and accountability for the task performance, organizational apparatus, payroll and finance of public non-business units.

Article 33.- Cases of compulsory licensing of protected plant varieties to satisfy urgent social needs

The compulsory licensing of protected plant varieties is provided for at Point a, Clause 1, Article 195 of the Intellectual Property Law.

Urgent social needs which must be satisfied mean the needs for overcoming such emergency circumstances as natural disasters, epidemics, wars and widespread environmental pollution.

Article 34.- Bases for determination of compensation levels for compulsory licensing of protected plant variety

The compensation level for a compulsory licensing shall be determined on the following grounds:

1. The agreement between the licensor and the licensee;
2. Where no agreement is reached, the compensation level shall be calculated on the following bases:
 - a/ The value of the latest contract for licensing of the same variety to another subject according to the licensing duration and the quantity of the compulsorily licensed variety;
 - b/ The profit generated by the plant variety protection certificate holder from the exploitation of copyright to that plant variety, corresponding to the quantity of the licensed variety and the licensing duration.
3. The agencies competent to decide on licensing as defined in Article 35 of this Decree shall assume the prime responsibility for, and coordinate with concerned ministries and branches in, examining specific compensation plans for the cases specified in Clause 2 of this Article.

Article 35.- Competence to decide on compulsory licensing of protected plant varieties

1. The Agriculture and Rural Development Ministry shall issue decisions on compulsory licensing of protected varieties of agricultural and forest plant species.
2. The Fisheries Ministry shall issue decisions on compulsory licensing of protected varieties of aquatic plant species.
3. The Health Ministry shall issue decisions on compulsory licensing of protected varieties of plant species used for medicinal purpose.
4. The agencies specified in Clauses 1, 2 and 3 of this Article shall designate units responsible for carrying out the procedures relevant to the compulsory licensing of protected plant varieties.

Article 36.- Procedures for compulsory licensing of protected plant varieties under decisions

1. Agencies defined in Clauses 1, 2 and 3, Article 35 of this Decree shall publicly announce demands for plant varieties, denominations of plant varieties, use purposes and quantity of varieties needed for use, scope and duration of satisfaction of licensing purposes.
2. Organizations and individuals that wish to be licensed plant varieties shall file their dossiers of registration for licensing of plant varieties to competent state agencies defined in Article 35 of this Decree.

A dossier for licensing of a plant variety comprises:

- a/ An application for licensing, stating the scope and duration of compulsory licensing;
 - b/ Certificate of registration of a business line of producing or trading in plant varieties;
 - c/ Documents evidencing the licensee's financial capability to pay compensation to the licensor according to regulations.
3. Responsibilities of competent state agencies for compulsory licensing of protected plant varieties:
- a/ To receive dossiers defined in Article 2 of this Article;
 - b/ To organize the examination of valid dossiers within fifteen days after receiving those dossiers, and propose competent authorities to issue compulsory licensing decisions if licensing applicants have enough conditions;
 - c/ To notify applicants of the refusal to issue decisions and reasons therefor if the applicants do not have enough conditions;
 - d/ To notify their decisions to compulsory licensors and licensees for execution.

Chapter V IMPLEMENTATION PROVISIONS

Article 37.- Transition provisions

1. Applications for plant variety protection registration filed with the agency in charge of protection of plant varieties before the effective date of this Decree shall be processed according to the provisions of relevant legal documents on protection of plant varieties effective at the time of filing.
2. Applications for plant variety protection registration filed as from the effective date of this Decree shall comply with the provisions of this Decree.

Article 38.- Effect

This Decree takes effect 15 days after its publication in "CONG BAO" and supersedes the Government's Decree No. 13/2001/ND-CP of April 20, 2001, on protection of plant varieties.

Article 39.- Implementation provisions

1. The Agriculture and Rural Development Ministry shall guide the implementation of this Decree.
2. The Finance Ministry shall assume the prime responsibility for, and coordinate with the Agriculture and Rural Development Ministry in, guiding the collection, management and use of fees and charges for protection of rights to plant varieties.

3. Ministers, heads of ministerial-level agencies and government-attached agencies, and presidents of provincial/municipal People's Committees shall implement this Decree.

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG
