

Voluntary Report – Voluntary - Public Distribution

Date: November 29, 2022

Report Number: CH2022-0127

Report Name: China Releases Plant Variety Protection Regulations for
Comment

Country: China - People's Republic of

Post: Beijing

Report Category: Planting Seeds, Country/Regional FTA's, Trade Policy Incident Report, Trade
Policy Monitoring, WTO Notifications

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Report Highlights:

On November 21, 2022, the People's Republic of China's (PRC) Ministry of Agriculture and Rural Affairs of China (MARA) released the People's Republic of China Plant Variety Protection Regulations (Revised Draft for Comments) (Chinese) for public comment. This report provides an unofficial translation and comparison of the revised draft with the existing regulation. The original comparison in Chinese was provided by MARA. The comment period is open until December 22, 2022. U.S. stakeholders should submit comments either through the MARA website by following the instructions in this report or via email to zyspgc@agri.gov.cn.

Executive Summary

On November 21, 2022, the Ministry of Agriculture and Rural Affairs (MARA) released the People's Republic of China (PRC) Plant Variety Protection Regulations (revised draft for comments) for public comments. This report provides an unofficial translation of the article-by-article comparison between the revised draft and the existing regulations. All major changes are noted in blue text.

The comment period will close on December 22, 2022. Comments may be submitted via:

- 1) Log on the MARA website (www.moa.gov.cn), enter the “Solicitation of Opinions” in the “Interaction” column at the top, click “the People's Republic of China on the Protection of New Varieties of Plants (Revised Draft for Comments),” and provide comments.
- 2) Email: zyspgc@agri.gov.cn
- 3) Submit by mail to address: No. 11, Nongzhanguan Nanli, Chaoyang District, Beijing, 100125.
Addressee: Seed Industry Administration Department, MARA (Please indicate "Comments on Plant New Variety Protection Regulations" on the envelope)

MARA’s summary of the main revisions to the regulation include:

- 1) Make provisions on the implementation steps and methods of the Essentially Derived Varieties (EDV) system (Article 7 and 8)
- 2) Expand the scope of protection along the marketing channel. Consistent with the Seed Law, the draft for comments extends the scope of protection from propagation materials of authorized varieties to harvest materials, and extends the protection link from production, propagation, and sales to production, propagation, seed treatment for propagation, and promised sales, sales, import, export, storage and another eight steps in the marketing channel. (Article 7)
- 3) Extend the term of protection. The revised draft extends the protection period of variety rights, from 20 years to 25 years for woody and vine plants, and from 15 years to 20 years for other plants. (Article 36)
- 4) Improve measures for handling infringement and counterfeiting cases. (Article 42-45)
- 5) Clarify the circumstances of the restoration of rights. (Article 38)
- 6) Add regulations on punishment of dishonesty. (Article 49)

BEGIN UNOFFICIAL TRANSLATION

The People's Republic of China Plant Variety Protection Regulations
(Revised Draft for Comments)

Current Regulations	Draft Amendment to the Regulations
Chapter I General Provisions	Chapter I General Provisions
<p>Article 1</p> <p>These Regulations are formulated for the purpose of protecting the rights of new plant varieties, encouraging the cultivation and application of new plant varieties, and promoting the development of agriculture and forestry.</p>	<p>Article 1</p> <p>These Regulations are formulated for the purpose of protecting the rights of new plant varieties, encouraging the cultivation, popularization and application of new plant varieties, and promoting the development of agriculture, forestry and grasslands.</p>
<p>Article 2</p> <p>The new plant varieties referred to in these Regulations refer to plant varieties that have been artificially cultivated or developed from wild plants discovered,, which are novel, distinct, uniform and stable and appropriately named.</p>	<p>Article 2</p> <p>The new plant varieties referred to in these Regulations refer to plant varieties that have been artificially cultivated or improved from wild plants discovered, which are novel, distinct, uniform and stable and appropriately named.</p>
<p>Article 3</p> <p>The administrative departments of agriculture and forestry under the State Council (hereinafter collectively referred to as the examination and approval authority) shall be responsible for the acceptance and examination of the application for new plant variety rights in accordance with the division of responsibilities and shall grant the new plant variety rights (hereinafter referred to as the variety rights) to the new plant varieties</p>	<p>Article 3</p> <p>The administrative departments of agriculture and rural affairs, forestry and grasslands of the State Council (hereinafter collectively referred to as the examination and approval authority) shall be responsible for the protection and management of new plant varieties across the country according to the division of responsibilities; Carry out the acceptance and examination of applications for new plant variety rights, and grant new plant variety rights (hereinafter referred to as variety rights) to new plant</p>

<p>complying with the provisions of these Regulations.</p>	<p>varieties that meet the provisions of these Regulations.</p> <p>The competent departments of agriculture, rural affairs, forestry, and grasslands of the people's governments at or above the county level shall be responsible for the protection and management of new varieties of agricultural and forestry plants within their respective administrative regions in accordance with their respective duties.</p>
<p>Article 4</p> <p>Units or individuals that complete the breeding of new varieties of plants that are related to national interests or public interests and have significant application value shall be rewarded by the people's governments at or above the county level or relevant departments.</p>	<p>Article 4</p> <p>Units or individuals that complete the breeding of new varieties of plants that are related to national interests or public interests and have significant application value shall be commended or rewarded by the people's governments at or above the county level or relevant departments in accordance with relevant state regulations.</p>
	<p>Article 5 The state encourages the establishment of professional teams for variety rights agency, legal services, information services, commercialization services, consulting services and training services to provide services around the creation, protection, management, and utilization of variety rights.</p>
<p>Article 5</p> <p>The production, sale and promotion of new plant varieties (hereinafter referred to as authorized varieties) that</p>	<p>Article 6</p> <p>The production, sale and promotion of new plant varieties (hereinafter referred to as authorized varieties) that have been granted</p>

<p>have been granted variety rights shall be examined and approved in accordance with the relevant laws and regulations of the State.</p>	<p>variety rights shall comply with the relevant laws and regulations of the State.</p>
<p>Chapter II Contents and Ownership of Variety Rights</p>	<p>Chapter II Contents and Ownership of Variety Rights</p>
<p>Article 6</p> <p>The entity which or the person who has accomplished the breeding has an exclusive right in their protected variety. Except otherwise provided in these Regulations, no other entity or person shall, without the consent of the holder of the variety rights (hereinafter referred to as the “variety rights holder”), produce or sell for commercial purposes the propagating material of the said protected variety, or use for commercial purposes the propagating material of the protected variety in a repeated manner in the production of the propagating material of another variety.</p>	<p>Article 7 The variety right owner (hereinafter referred to as the variety right holder) shall enjoy the exclusive right to the authorized variety in accordance with laws and regulations. Except as otherwise provided by the relevant laws and these Regulations, no unit or individual shall engage in the following acts with respect to the propagation materials of the authorized variety without the permission of the variety right holder:</p> <ol style="list-style-type: none"> (1) Production, propagation and processing for propagation; (2) promise to sell, sell; (3) Import and export; (4) Provide storage for the implementation of items (1) to (3) of this article. <p>Where the conduct specified in the preceding paragraph involves harvested materials obtained from the unauthorized use of the propagation materials of the authorized variety, the permission of the variety right holder shall be obtained; However, it is except if the breeder has had a reasonable opportunity to exercise his rights in relation</p>

	<p>to the propagating material.</p> <p>To carry out the acts specified in the first and second paragraphs of the following items, the permission of the variety right holder of the authorized variety shall be obtained:</p> <p>(1) Essentially derived varieties (EDVs) of authorized varieties, but the authorized varieties are not EDVs;</p> <p>(2) Varieties that are not significantly different from authorized varieties;</p> <p>(3) Varieties that reuse authorized varieties for production or propagation for commercial purposes.</p>
	<p>Article 8 The implementation scope of EDVs shall be determined by the competent department of the State Council and announced in the form of a catalogue.</p> <p>The competent department of the State Council shall issue guidelines for the identification of EDVs, clarify the conditions and capabilities of identification institutions, and establish an expert committee to provide professional consultation.</p>
<p>Article 7</p> <p>In the case of job-related breeding accomplished by any person in undertaking tasks for the entity to which he belongs, or primarily by using the facilities of that entity, the right to file an application for variety rights in respect of the new plant variety shall belong to the entity in question; for breeding that is not job-</p>	<p>Article 9</p> <p>In the case of job-related breeding accomplished by any person in undertaking tasks for the entity to which he belongs, or primarily by using the facilities of that entity, the right to file an application for variety rights shall belong to the entity in question; If there is a contractual agreement between the unit and the individual who completed the breeding, the agreement shall</p>

<p>related, the right to file such an application shall belong to the person accomplishing the breeding. Upon approval of the application, the variety rights shall belong to the applicant.</p> <p>For commissioned breeding or jointly-conducted breeding, the ownership of the variety rights shall be agreed upon by the parties in a contract; failing such an event, the variety rights shall belong to the entity or person commissioned to conduct or jointly conducting the breeding.</p>	<p>prevail.</p> <p>For breeding that is not job-related, the right to file such an application shall belong to the person accomplishing the breeding. Upon approval of the application, the variety rights shall belong to the applicant.</p> <p>For commissioned breeding or jointly-conducted breeding, the ownership of the right to apply for variety rights shall be agreed upon by the parties in a contract; failing such an event, the right to apply for variety rights shall belong to the entity or person commissioned to conduct or jointly conducting the breeding.</p> <p>After the application is approved, the variety rights belong to the applicant.</p>
<p>Article 8</p> <p>One new plant variety shall be granted only one set of variety rights. If two or more applicants apply separately for variety rights in respect of the same new plant variety, the variety rights shall be granted to the person who applies first; in the case of a simultaneous application, the variety rights shall be granted to the person who has first accomplished the breeding of the new plant variety concerned.</p>	<p>Article 10</p> <p>One new plant variety shall be granted only one set of variety rights. If two or more applicants apply separately for variety rights in respect of the same new plant variety, the variety rights shall be granted to the person who applies first; in the case of a simultaneous application, the variety rights shall be granted to the person who has first accomplished the breeding of the new plant variety concerned.</p>
<p>Article 9</p> <p>The application rights and variety rights of a plant new variety can be transferred according to law.</p>	<p>Article 11</p> <p>The application rights and variety rights of a variety can be transferred according to law.</p> <p>Where a unit or individual in China transfers the right of application or variety to a foreigner for a new plant variety cultivated</p>

<p>Where a unit or individual in China transfers the right of application or variety to a foreigner for a new plant variety cultivated in China, it shall be approved by the examination and approval authority.</p> <p>Where a state-owned unit transfers the right of application or variety in China, it shall report to the relevant administrative department for approval in accordance with the relevant provisions of the State.</p> <p>Where the application right or variety right is transferred, the party concerned shall conclude a written contract and register with the examination and approval authority, and the examination and approval authority shall make an announcement.</p>	<p>in China, it shall be approved by the examination and approval authority.</p> <p>Where the application right or variety right is transferred, the party concerned shall conclude a written contract and register with the examination and approval authority, and the examination and approval authority shall make an announcement.</p> <p>The transfer is effective from the date of registration.</p> <p>If the variety rights are pledged, the pledgor and the pledgee shall jointly register the pledge with the examination and approval authority, and the examination and approval authority shall make an announcement. The pledge right takes effect from the date of registration.</p>
<p>Article 10</p> <p>The examining and approving authorities may, in the national or the public interest, decide to grant a compulsory license to exploit new plant varieties, which should be subsequently registered and published.</p> <p>The entity which or the person who is granted a compulsory license for exploitation shall pay the variety rights holder a reasonable exploitation fee, the amount of which shall be fixed by consultation between the two parties.</p> <p>Where the parties fail to reach an agreement, the examining and approving authorities shall adjudicate.</p>	<p>Article 12</p> <p>The examining and approving authorities may, in the national or the public interest, decide to grant a compulsory license to exploit new plant varieties, which should be subsequently registered and published.</p> <p>The entity which or the person who is granted a compulsory license for exploitation shall pay the variety rights holder a reasonable exploitation fee, the amount of which shall be fixed by consultation between the two parties. Where the parties fail to reach an agreement, the examining and approving authorities shall adjudicate.</p> <p>Where the variety rights holder is not satisfied with the decision to grant a</p>

<p>Where the variety rights holder is not satisfied with the decision to grant a compulsory license or is not satisfied with the adjudication regarding the fee payable for exploitation, he or it may, within three months from the date of receiving the notification, file a suit with the People's Court.</p>	<p>compulsory license or is not satisfied with the adjudication regarding the fee payable for exploitation, he or it may, within three months from the date of receiving the notification, file a suit with the People's Court.</p> <p>A unit or individual that has obtained a compulsory license for implementation does not enjoy the exclusive right to implement it, and has no right to allow others to implement it.</p>
<p>Article 11</p> <p>Without prejudice to other rights of the variety rights holder under these Regulations, the exploitation of the protected variety shall not require authorization from, or payment of royalties to, the variety rights holder for the following purposes:</p> <p>(1) exploitation of the protected variety for breeding and other scientific research activities;</p> <p>(2) the use for propagating purposes by farmers of the propagating material of the protected variety.</p>	<p>Article 13</p> <p>Without prejudice to other rights of the variety rights holder under these Regulations, the exploitation of the protected variety shall not require authorization from, or payment of royalties to, the variety rights holder for the following purposes:</p> <p>(1) exploitation of the protected variety for breeding and other scientific research activities;</p> <p>(2) the use for propagating purposes by farmers of the propagating material of the protected variety.</p>
<p>Article 12</p> <p>Regardless of whether or not the term of the protection of the protected variety has expired, the denomination of the protected variety as used in its registration must be used for sales thereof.</p>	<p>(moved to Article 19)</p>
<p>Chapter III Conditions for Granting</p>	<p>Chapter III Conditions for Granting Variety</p>

Variety Rights	Rights
<p data-bbox="207 279 342 306">Article 13</p> <p data-bbox="207 344 672 669">The new plant variety for which variety rights are applied for shall belong to the genus or species of plants listed in the national plant variety protection list. The list of protected plant varieties shall be determined and announced by the examination and approval authority.</p>	<p data-bbox="734 279 868 306">Article 14</p> <p data-bbox="734 344 1308 632">The new plant variety for which variety rights are applied for shall belong to the genus or species of plants listed in the national plant variety protection list. The list of protected plant varieties shall be determined and announced by the examination and approval authority.</p> <p data-bbox="734 669 1295 831">For new plant varieties that violate the law and endanger social public interests and the ecological environment, new plant variety rights shall not be granted.</p>
<p data-bbox="207 875 342 903">Article 14</p> <p data-bbox="207 940 708 1644">Any plant variety in respect of which variety rights are granted shall have the characteristic of novelty. Novelty means that the propagating material of the new plant variety in respect of which variety rights are applied for has not been sold prior to the filing date of the application, or has not been for sale, with the consent of the breeder, for more than one year within the territory of China; the propagating material of vines, forest trees, fruit trees and ornamental plants must not have been for sale for more than six years, or the propagating material of other plant varieties for more than four years, in a foreign territory.</p>	<p data-bbox="734 875 868 903">Article 15</p> <p data-bbox="734 940 1312 1602">Any plant variety in respect of which variety rights are granted shall have the characteristic of novelty. Novelty means that the propagating material or harvest material of the new plant variety in respect of which variety rights are applied for has not been sold prior to the filing date of the application, or has not been for sale, with the consent of the breeder, for more than one year within the territory of China; the propagating material or harvest material of woody and vine plants must not have been for sale for more than six years, or the propagating material or harvest material of other plant varieties for more than four years, in a foreign territory.</p> <p data-bbox="734 1640 1308 1881">For a genus or species of a plant that is newly included in the National Plant Variety Protection List after the implementation of these Regulations, if the application for variety rights is filed within one year from the date of publication of the list, and the</p>

	<p>propagating or harvesting materials of the variety have been sold within the territory of China for less than four years, the plant variety has the characteristic the novelty.</p>
<p>Article 15</p> <p>Any plant variety in respect of which variety rights are granted shall have the characteristic of distinctness. Distinctness refers to the application of new varieties of plant variety rights should be clearly distinguished from the known plant varieties before the application is submitted.</p>	<p>Article 16</p> <p>Any plant variety in respect of which variety rights are granted shall have the characteristic of distinctness. Distinctness refers to that a plant variety has more than one characteristic that is significantly different from the known varieties.</p>
<p>Article 16</p> <p>Any plant variety in respect of which variety rights are granted shall have the characteristic of uniformity. Uniformity means that the plant variety in respect of which variety rights are applied for is uniform, subject to the variation that may be expected, in its relevant features or characteristics after propagation.</p>	<p>Article 17</p> <p>Any plant variety in respect of which variety rights are granted shall have the characteristic of uniformity. Uniformity refers to characteristics of a plant variety are consistent with the performance of related features or characteristics among individuals in the group, except for the predictable natural variation.</p>
<p>Article 17</p> <p>Any plant variety in respect of which variety rights are granted shall have the characteristic of stability. Stability means that the plant variety in respect of which variety rights are applied for keeps its relevant features or characteristics unchanged after repeated propagation or at the end of a particular cycle of propagation.</p>	<p>Article 18</p> <p>Any plant variety in respect of which variety rights are granted shall have the characteristic of stability. Stability refers to the main traits of a plant variety remain unchanged after repeated propagation or at the end of a particular propagation cycle.</p>
<p>Article 18</p>	<p>Article 19</p>

<p>New plant varieties that confer variety rights should have appropriate names and be distinguished from the names of known varieties of same or similar plant genera or species. The name is registered and is the common name for the new plant variety.</p> <p>The following names may not be used for variety naming:</p> <ul style="list-style-type: none"> (1) consisting only of numbers; (2) Violating social morality; (3) It is easy to be misunderstood about the characteristics and features of new plant varieties or the identity of breeders. 	<p>New plant varieties that confer variety rights should have appropriate names and be distinguished from the names of known varieties of same or similar plant genera or species. The name is registered and is the common name for the new plant variety. Regardless of whether the protection period of the authorized variety has expired or not, the registered name of the authorized variety shall be used in the sale of the authorized variety.</p> <p>The following names may not be used for variety naming:</p> <ul style="list-style-type: none"> (1) Expressed only in numbers; (2) Violating social morality; (3) It is easy to be misunderstood about the characteristics and features of new plant varieties or the identity of breeders; (4) Names prohibited by other laws and regulations.
<p>Chapter IV Application and Acceptance of Variety Rights</p>	<p>Chapter IV Application, Acceptance and Examination of Variety Rights</p>
<p>Article 19</p> <p>Where Chinese entities and individuals apply for variety rights, they may apply directly to the examination and approval authority or the agency.</p> <p>Where a new plant variety of Chinese entities and individuals applying for variety rights involves national security or a major interest requires confidentiality, it shall be handled in accordance with relevant state</p>	<p>Article 20</p> <p>Where Chinese entities and individuals apply for variety rights, they may apply directly to the examination and approval authority or the agency.</p> <p>Where a new plant variety of Chinese entities and individuals applying for variety rights involves national security or a major interest requires confidentiality, it shall be handled in accordance with relevant state regulations.</p>

regulations.	
	<p>Article 21 The examining and approving authority shall strengthen technical research, publicity and training for new plant varieties protection, improve the testing system for new plant varieties, improve the management of preservation of propagation materials, and carry out international exchanges and cooperation.</p>
<p>Article 20</p> <p>If a foreigner, a foreign enterprise or any other foreign institution files an application for variety rights in China, the application shall be handled under these Regulations in accordance with any agreement concluded between the country to which the applicant belongs and the People’s Republic of China, or any international convention to which both countries are party, or on the basis of the principle of reciprocity.</p>	<p>Article 22</p> <p>If a foreigner, a foreign enterprise or any other foreign institution files an application for variety rights in China, the application shall be handled under these Regulations in accordance with any agreement concluded between the country to which the applicant belongs and the People’s Republic of China, or any international convention to which both countries are party, or on the basis of the principle of reciprocity.</p>
<p>Article 21</p> <p>For the purposes of applying for variety rights, an application and specification conforming to the prescribed forms as well as a photograph of the variety shall be submitted to the examining and approving authorities.</p> <p>The application documents shall be written in Chinese.</p>	<p>Article 23</p> <p>For the purposes of applying for variety rights, an application and specification conforming to the prescribed forms as well as a photograph of the variety shall be submitted to the examining and approving authorities.</p> <p>The application documents shall be written in Chinese.</p>
<p>Article 22</p> <p>The date on which the examining and approving authorities receive the variety rights application documents</p>	<p>Article 24</p> <p>The date on which the examining and approving authorities receive the variety rights application documents shall be the</p>

<p>shall be the filing date of the application. Where the application documents are filed by mail, the postmark date shall be the filing date of the application.</p>	<p>filing date of the application. Where the application documents are filed by mail, the postmark date shall be the filing date of the application.</p>
<p>Article 23</p> <p>Where, within 12 months from the date on which any applicant has first filed an application for variety rights in a foreign country, the said applicant files an application for variety rights in China in respect of the same new plant variety, he or it may, in accordance with any agreement concluded between the said foreign country and the People's Republic of China or any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.</p> <p>Any applicant who claims the right of priority shall make a written statement when the application is filed, and shall submit, within three months, a copy of the variety rights application documents that were first filed, as confirmed by the original receiving authority; if the applicant fails to make the written statement or fails to submit a copy of the variety rights application documents under the provisions of these Regulations, the claim to the right of priority shall be deemed not to have been made.</p>	<p>Article 25</p> <p>Where, within 12 months from the date on which any applicant has first filed an application for variety rights in a foreign country, the said applicant files an application for variety rights in China in respect of the same new plant variety, he or it may, in accordance with any agreement concluded between the said foreign country and the People's Republic of China or any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.</p> <p>Any applicant who claims the right of priority shall make a written statement when the application is filed, and shall submit, within three months, a copy of the variety rights application documents that were first filed, as confirmed by the original receiving authority; if the applicant fails to make the written statement or fails to submit a copy of the variety rights application documents under the provisions of these Regulations, the claim to the right of priority shall be deemed not to have been made.</p>
<p>Article 24</p> <p>Where the variety rights application</p>	<p>Article 26</p> <p>Where the variety rights application</p>

<p>conforms to Article 21 of the Regulations, the examining and approving authorities shall accept it, assign the filing date and a filing number and serve notice on the applicant within one month from the receipt of the application to pay an application fee.</p> <p>Where the variety rights application does not, or after amendment still does not, conform to Article 21 of the Regulations, the examining and approving authorities shall not accept it and shall notify the applicant accordingly.</p>	<p>conforms to Article 23 of the Regulations, the examining and approving authorities shall accept it, assign the filing date and a filing number and serve notice on the applicant within one month from the receipt of the application to pay an application fee.</p> <p>Where the variety rights application does not, or after amendment still does not, conform to Article 23 of the Regulations, the examining and approving authorities shall not accept it and shall notify the applicant accordingly.</p>
<p>Article 25</p> <p>The applicant may modify or withdraw the variety right application before the variety right is granted.</p>	<p>Article 27</p> <p>The applicant may modify or withdraw the variety right application before the variety right is granted.</p>
<p>Article 26</p> <p>Where a Chinese entity or individual applies for plant new variety right in a foreign country for a variety bred in China, it shall register with the administrative department of agriculture and forestry of the provincial people's government.</p>	<p>Article 28</p> <p>Where a Chinese entity or individual applies for plant new variety right in a foreign country for a variety bred in China, it shall register with the administrative department of agriculture and rural affairs and forestry and grassland of the provincial people's government.</p>
<p>Chapter V Review and Approval of Variety Rights</p>	<p>Chapter V Review and Approval of Variety Rights</p>
<p>Article 27</p> <p>Upon payment of the application fee, the examining and approving authorities shall carry out a preliminary examination on the variety rights application to determine the</p>	<p>Article 29</p> <p>Upon payment of the application fee, the examining and approving authorities shall carry out a preliminary examination on the variety rights application to determine the</p>

<p>following:</p> <ol style="list-style-type: none"> (1) whether it is part of the botanical genera or species included in the list of protected plant varieties; (2) whether it conforms to the provisions of Article 20 of the Regulations; (3) whether it conforms to the provisions on novelty; (4) whether the denomination of the new plant variety is adequate. 	<p>following:</p> <ol style="list-style-type: none"> (1) whether it is part of the botanical genera or species included in the list of protected plant varieties; (2) whether it conforms to the provisions of Article 22 of the Regulations; (3) whether it conforms to the provisions on novelty; (4) whether the denomination of the new plant variety is adequate.
<p>Article 28</p> <p>The examining and approving authorities shall complete the preliminary examination within six months after the variety rights application is formally received. Where the variety rights application is found acceptable on preliminary examination, the examining and approving authorities shall have it published and serve notice on the applicant to pay the examination fee within three months.</p> <p>Where the variety rights application is found unacceptable on preliminary examination, the examining and approving authorities shall invite the applicant to state his observations or make amendments; where an applicant fails to respond within the time limit or the application is still unacceptable after amendment, the application shall be refused.</p>	<p>Article 30</p> <p>The examining and approving authorities shall complete the preliminary examination within six months after the variety rights application is formally received. Where the variety rights application is found acceptable on preliminary examination, the examining and approving authorities shall have it published and serve notice on the applicant to pay the examination fee within three months.</p> <p>Where the variety rights application is found unacceptable on preliminary examination, the examining and approving authorities shall invite the applicant to state his observations or make amendments; where an applicant fails to respond within the time limit, the application shall be deemed to be withdrawn;</p> <p>where the application is still unacceptable after amendment, the application shall be refused.</p>

<p>Article 29</p> <p>After the applicant has paid the prescribed examination fee, the examining and approving authorities shall carry out a substantive examination of the distinctness, uniformity and stability of the variety in respect of which variety rights are applied for.</p> <p>Where the applicant has not paid the prescribed examination fee, the variety rights application shall be deemed to have been withdrawn.</p>	<p>Article 31</p> <p>After the applicant has paid the prescribed examination fee, the examining and approving authorities shall carry out a substantive examination of the distinctness, uniformity and stability of the variety in respect of which variety rights are applied for.</p> <p>Where the applicant has not paid the prescribed examination fee, the variety rights application shall be deemed to have been withdrawn.</p>
<p>Article 30</p> <p>The examining and approving authorities shall conduct the substantive examination on the basis of application documents and other relevant written information. Where they deem it necessary, the examining and approving authorities may entrust a designated testing institution with undertaking tests or with inspecting the results of growing tests or other trials that have already been carried out.</p> <p>For the purposes of examination, the applicant shall, at the request of the examining and approving authorities, furnish necessary information and the propagating material of the new plant variety in question</p>	<p>Article 32</p> <p>The examining and approving authorities shall conduct the substantive examination on the basis of application documents and other relevant written information. Where they deem it necessary, the examining and approving authorities may entrust a designated testing institution with undertaking tests or with inspecting the results of growing tests or other trials that have already been carried out.</p> <p>If there are specific associated genes for the relevant traits of the applied variety, distinctness review can be conducted based on genetic differences.</p> <p>For the purposes of examination, the applicant shall, at the request of the examining and approving authorities, furnish necessary information and the propagating material of the new plant variety in question.</p>

<p>Article 31</p> <p>Where the variety rights application is found to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall take a decision to grant the variety rights, issue the new variety rights title, and have it registered and published.</p> <p>Where the variety rights application is found not to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall refuse the application and notify the applicant accordingly.</p>	<p>Article 33</p> <p>Where the variety rights application is found to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall take a decision to grant the variety rights, issue the new variety rights title, and have it registered and published.</p> <p>Where the variety rights application is found not to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall refuse the application and notify the applicant accordingly.</p>
<p>Article 32</p> <p>The examining and approving authorities shall set up a Re-Examination Committee for New Varieties of Plants.</p> <p>Where any applicant is not satisfied with the decision of the examining and approving authorities refusing a variety rights application, that applicant may, within three months from the date of receiving the notification, request the Re-Examination Committee for New Varieties of Plants to carry out a re-examination. The Re-Examination Committee for New Varieties of Plants shall, within six months from the date of receiving the request for re-examination, take a decision and</p>	<p>Article 34</p> <p>The examining and approving authorities shall set up a Re-Examination Committee for New Varieties of Plants (Hereinafter referred to as the re-examination committee)</p> <p>Where any applicant is not satisfied with the decision of the examining and approving authorities refusing a variety rights application, that applicant may, within three months from the date of receiving the notification, request the Re-Examination Committee to carry out a re-examination. The Re-Examination committee shall, within six months from the date of receiving the request for re-examination, take a decision and notify the applicant accordingly. The time required for testing and identification according to law is not counted in the stipulated review period.</p>

<p>notify the applicant accordingly.</p> <p>Where any applicant is not satisfied with the re-examination decision of the Re-Examination Committee for New Varieties of Plants, that applicant may, within 15 days from the date of receiving the notification, file a suit with the People's Court.</p>	<p>Where any applicant is not satisfied with the re-examination decision of the Re-Examination Committee, that applicant may, within 15 days from the date of receiving the notification, file a suit with the People's Court.</p>
<p>Article 33</p> <p>After the variety rights have been granted, for the period beginning on the date on which an acceptable application is published on preliminary examination and ending on the date of grant of variety rights, the variety rights holder is entitled to claim compensation from an entity which, and a person who, has produced or sold the propagating material of the protected variety in question for commercial purposes without his consent.</p>	<p>Article 35</p> <p>After the variety rights have been granted, for the period beginning on the date on which an acceptable application is publicized on preliminary examination and ending on the date of grant of variety rights, the variety rights holder is entitled to claim compensation from any unit or individual that violates the provisions of Article 7 of these Regulations.</p>
<p>Chapter VI Term, Termination and Invalidation</p>	<p>Chapter VI Term, Termination and Invalidation</p>
<p>Article 34</p> <p>The term of protection of variety rights, counted from the date of grant thereof, shall be 20 years for vines, forest trees, fruit trees and ornamental plants and 15 years for other plants.</p>	<p>Article 36</p> <p>The term of protection for variety rights, counted from the date of authorization, shall be 25 years for woody and vine plants or and 20 years for other plants.</p>
<p>Article 35</p> <p>The variety rights holder shall pay annual fees from the year in which the variety rights are granted, and shall furnish propagating material of the</p>	<p>Article 37</p> <p>The variety rights holder shall pay annual fees from the year in which the variety rights are granted, and shall furnish propagating material of the protected variety for the</p>

<p>protected variety for the purposes of testing as required by the examining and approving authorities.</p>	<p>purposes of testing as required by the examining and approving authorities.</p>
	<p>Article 38</p> <p>If the party concerned delays the time limit stipulated in the "Regulations" or the time limit specified by the examination and approval authority due to force majeure, resulting in the loss of its rights, within 2 months from the date when the obstacle is eliminated, and at the latest within 2 years from the date of expiration of the time limit , may explain the reasons to the examination and approval authority, and attach the relevant supporting documents, and request the restoration of its rights.</p> <p>If the party concerned delays the time limit stipulated in the "Regulations" or the time limit specified by the examination and approval authority due to legitimate reasons, resulting in the loss of his rights, he may explain the reasons to the protection office within 2 months from the date of receipt of the notice and request to restore his rights.</p> <p>Where a party requests an extension of the time limit specified by the examination and approval authority, it shall explain the reasons to the examination and approval authority and go through relevant procedures before the expiration of the time limit.</p> <p>The provisions of the first and second paragraphs of this article do not apply to the time limit specified in Article 15, Article 25,</p>

	<p>Paragraphs 2 and 3 of Article 34, Article 36, and Paragraph 2 of Article 40.</p>
<p>Article 36</p> <p>Variety rights shall be terminated prior to the expiration of the term thereof in any of the following cases:</p> <p>(1) where the variety rights holder makes a written statement renouncing his variety right;</p> <p>(2) where the variety rights holder has not paid the annual fees as prescribed;</p> <p>(3) where the variety rights holder has not furnished, in the manner required by the examining and approving authorities, such propagating material of the protected variety necessary for test;</p> <p>(4) where, on test, the protected variety no longer conforms to the features and characteristics that existed when the variety rights were granted.</p> <p>The termination of the variety rights shall be registered and published by the examining and approving authorities.</p>	<p>Article 39</p> <p>Variety rights shall be terminated prior to the expiration of the term thereof in any of the following cases:</p> <p>(1) where the variety rights holder makes a written statement renouncing his variety right;</p> <p>(2) where the variety rights holder has not paid the annual fees as prescribed;</p> <p>(3) where the variety rights holder has not furnished, in the manner required by the examining and approving authorities, such propagating material of the protected variety necessary for test;</p> <p>(4) where, on test, the protected variety no longer conforms to the features and characteristics that existed when the variety rights were granted.</p> <p>(5) The name of the authorized variety does not meet the requirements, and the name is not corrected within the specified time limit;</p> <p>(6) Other circumstances leading to the termination of variety rights.</p>
<p>Article 37</p> <p>From the date on which the examining and approving authorities publish the grant of variety rights, the Re-Examination Committee for New Varieties of Plants may, ex officio or on the basis of a written request made by any entity or person, revoke the</p>	<p>Article 40</p> <p>From the date of granting of variety rights, the Re-Examination Committee may, ex officio or upon the written request made by any entity or person, revoke the variety rights in any variety that is not in conformity with the provisions of Articles 15-18 of these Regulations, or change the denomination of</p>

<p>variety rights in any variety that is not in conformity with the provisions of Articles 14, 15, 16 and 17 of these Regulations, or change the denomination of any variety that is not in conformity with the provisions of Article 18 of these Regulations. The decision to revoke variety rights and the decision to change the denomination shall be registered and published by the examining and approving authorities, and shall be communicated to the parties concerned.</p> <p>Where any party is not satisfied with the decision of the Re-Examination Board for New Varieties of Plants, he or it may, within three months from the date of receiving such communication, file a suit with the People’s Court.</p>	<p>any variety that is not in conformity with the provisions of Article 19 of these Regulations. The decision to revoke variety rights and the decision to change the denomination shall be registered and published by the examining and approving authorities, and shall be communicated to the parties concerned by the Re-examination Committee.</p> <p>Where any party is not satisfied with the decision of the Re-Examination Committee, he or it may, within three months from the date of receiving such communication, file a suit with the People’s Court.</p> <p>The specific regulations for re-examination shall be formulated and issued by the examination and approval authority.</p>
<p>Article 38</p> <p>The variety rights that have been revoked shall be deemed non-existent from the outset.</p> <p>The decision to revoke variety rights shall have no retroactive effect on any judgment or ruling pronounced and enforced by the People’s Court concerning the infringement of a new plant variety, or on any decision made and enforced by the administrative departments of agriculture and forestry of the People’s Governments at provincial level or above concerning the infringement of a new plant variety, or on any executed license</p>	<p>Article 41</p> <p>The variety rights that have been revoked shall be deemed non-existent from the outset.</p> <p>The decision to revoke variety rights shall have no retroactive effect on any judgment or ruling pronounced and enforced by the People’s Court concerning the infringement of variety rights, or on any decision made and enforced by the administrative departments of agriculture and rural affairs, forestry and grassland of the People’s government above the county level concerning the infringement of variety rights, or on any executed license contract for exploitation of variety rights or any</p>

<p>contract for exploitation of a new plant variety or any executed contract of assignment of the rights in a new plant variety. However, any damage caused to any other person due to bad faith on the part of the variety rights holder shall be equitably compensated.</p> <p>In accordance with the provisions of the preceding paragraph, if the variety owner or variety transferor does not return the use fee or transfer fee to the licensee or the transferee, which is obviously in violation of the principle of fairness, the variety owner or variety transferor shall give the licensee or assignee the whole or part of the use fee or transfer fee.</p>	<p>executed contract of assignment of the variety rights. However, any damage caused to any other person due to bad faith on the part of the variety rights holder shall be equitably compensated.</p> <p>Where the compensation for infringement of new plant varieties, fees for the use of variety rights, and fees for transfer of variety rights are not returned in accordance with the provisions of the preceding paragraph, which obviously violates the principle of fairness, all or part of them shall be returned.</p>
<p>Chapter VII Penalties</p>	<p>Chapter VII Penalties</p>
<p>Article 39</p> <p>Where the propagating material of the protected variety is produced or sold for commercial purposes without the consent of the variety rights holder, the variety rights holder or the party having an interest therein may request the administrative departments of agriculture and forestry of the People's Governments at provincial level or above to handle it in accordance with their respective competence, or directly file a suit with the People's Court.</p> <p>The administrative departments of agriculture and forestry of the People's Governments at provincial level or above may, according to their respective competence and based on</p>	<p>Article 42</p> <p>Violation of Article 7 of these Regulations shall be resolved through negotiation between the parties. If they are unwilling to negotiate or the negotiation fails, the breeder right holder or the interested party may request the agricultural and rural affairs, forestry and grassland departments of the people's government at or above the county level to handle it according to their respective competence, and may also apply for arbitration or directly file a lawsuit in the people's court.</p> <p>The administrative departments of agriculture and rural affairs, forestry and grassland of people's governments above the county level, based on the principle of free will of the parties, mediate the compensation of damages caused by the</p>

the principle of free will of the parties, mediate the compensation of damages caused by the infringement. Where accord has been reached through mediation, it should be executed by the parties concerned; where no accord has been reached through mediation, the variety rights holder or the party having an interest therein may file a suit with the People’s Court according to civil action procedures.

In handling cases of infringement of variety rights in accordance with their respective competence, the administrative departments of agriculture and forestry of the People’s Governments at provincial level or above may, for the purposes of safeguarding the public interest of the society, order the infringer to stop the infringing act, confiscate the unlawful earnings and plant variety propagation material; if value of the goods is above 50,000 yuan, punish him with a fine at least one but not exceeding five times more than value of the goods; if no value of the goods or less than 50,000 yuan, impose a fine of less than 250,000 yuan.

Article 40

Where any new plant variety is counterfeited, the administrative departments of agriculture and forestry of the People’s Governments at county level or above shall order the party concerned to stop the counterfeiting act, confiscate the unlawful earnings and the propagating material of the

infringement. Where accord has been reached through mediation, it should be executed by the parties concerned; where **Party fails to execute the agreement** or no agreement is reached in mediation, the variety rights holder or the party having an interest therein may file a lawsuit to the people's court according to law.

When requested to hand cases of infringement of variety rights, the administrative departments of agriculture and rural affairs, forestry and grassland of the People’s Governments at county level or above may, for the purposes of safeguarding the public interest of the society, order the infringer to stop the infringing act, confiscate the unlawful earnings and plant variety propagation material and harvesting materials. **If value of the goods is less than 50,000 yuan, impose a fine of 10,000yuan to 250,000 yuan; value of the goods is above 50,000 yuan, impose the fine of 5-10 times the value of the goods.**

Article 43

Where any new plant variety is counterfeited, the administrative departments of agriculture and rural affairs, forestry and grassland of the People's government at or above the county level shall order the party concerned to stop the counterfeiting act, confiscate the unlawful earnings and the propagating material and **harvesting**

<p>plant variety, and if value of the goods is above 50,000 yuan, punish him with a fine at least one but not exceeding five times more than value of the goods; if no value of the goods or less than 50,000 yuan, impose a fine of less than 250,000 yuan; where the circumstances of the case are so serious as to constitute a crime, the party concerned shall be subjected to criminal liability investigation in accordance with the law.</p>	<p>materials of the plant variety; If value of the goods is less than 50,000 yuan, impose a fine of 10,000yuan to 250,000 yuan; if value of the goods is above 50,000 yuan, impose the fine of 5-10 times the value of the good; where the circumstances of the case are so serious as to constitute a crime, the party concerned shall be subjected to criminal liability investigation in accordance with the law.</p>
	<p>Article 44 The competent departments of agriculture, rural affairs, forestry and grasslands of the people's governments at or above the county level may use the rapid testing methods prescribed by the state to test the propagating materials or harvesting materials for production and operation, and the test results may be used as the basis for administrative punishment. If the inspected person has any objection to the test result, he may apply for a re-examination, and the re-examination shall not use the same testing method. If the loss is caused to the party due to the wrong test result, it shall bear the liability for compensation in accordance with the law.</p>
<p>Article 41 Both the administrative departments of agriculture and forestry of the People's Governments at provincial level or above in handling cases concerning infringement of variety rights in accordance with their respective competence, and the administrative departments of agriculture and forestry of the People's Governments at county</p>	<p>Article 45 The competent departments of agriculture, rural affairs, forestry and grasslands of the people's governments at or above the county level may take the following measures as needed when investigating and handling cases of variety rights infringement and counterfeiting of authorized varieties: (1) Entering the production and operation</p>

<p>level or above in handling cases concerning counterfeited variety rights in accordance with their respective competence, may, as appropriate, seal up or detain the propagating material of the plant variety relevant to the cases, have access to, make copies of and seal up contracts, account books and other relevant documents related to the cases.</p>	<p>site for on-site inspection;</p> <p>(2) Carrying out sampling tests, tests or inspections on the propagating materials and harvesting materials of plant varieties;</p> <p>(3) Have access to, make copies of relevant contracts, bills, account books, production and operation files and other relevant materials;</p> <p>(4) Sealing up and detaining propagating materials and harvesting materials of plant varieties that are proved to be infringing on variety rights or counterfeiting authorized varieties, as well as tools, equipment and transportation tools used for the production and operation of infringing varieties or counterfeiting authorized varieties;</p> <p>(5) Sealing up places engaged in activities of variety right infringement or counterfeiting of authorized varieties.</p> <p>When the competent departments of agriculture, rural affairs, forestry and grasslands of the people's governments at or above the county level exercise the functions and powers prescribed in the preceding paragraph according to law, the parties concerned shall assist and cooperate, and shall not refuse or obstruct.</p>
<p>Article 42</p> <p>Where the protected variety is sold without using the denomination as used in its registration, the administrative departments of agriculture and forestry of the People's Governments at county level or above shall, in accordance with their respective competence, order a</p>	<p>(delete)</p>

<p>correction within a specified time limit, and may impose a fine not exceeding 1,000 yuan.</p>	
<p>Article 43</p> <p>Where disputes arise as to the right to apply for a new variety of plant and the ownership of the variety rights, the parties concerned may file a suit with the People’s Court.</p>	<p>Article 46</p> <p>Where disputes arise as to the right to apply for a variety right and the ownership of the variety rights, the parties concerned may file a suit with the People’s Court.</p>
	<p>Article 47 If the party concerned does not know and should not know that it is the propagating material or harvesting material of the infringing variety, and can prove that it has a legal source, the competent department of agriculture, rural affairs, forestry and grassland of the people's government at or above the county level shall order to stop the infringement, and may be exempted or reduce punishment according to law.</p>
<p>Article 44</p> <p>Where any staff member of the administrative departments of agriculture and forestry of the People’s Governments at county level or above and of other departments abuses his power, neglects his duty, engages in any malpractice for private gain, or extorts or receives bribes, that staff member shall be subjected to criminal liability investigation in accordance with the law if the case constitutes a crime; or he shall be punished with administrative sanctions in accordance with the law if it does not constitute a crime.</p>	<p>Article 48</p> <p>Where any staff member of the administrative departments of agriculture, rural affairs, forestry and grassland of the People’s Governments at county level or above and of other departments abuses his power, neglects his duty, engages in any malpractice for private gain, or extorts or receives bribes, that staff member shall be subjected to criminal liability investigation in accordance with the law if the case constitutes a crime; or he shall be punished with administrative sanctions in accordance with the law if it does not constitute a crime.</p>

	<p>Article 49</p> <p>Where there are dishonest acts such as deceit, concealment, forgery, etc. during the application process, the examination and approval organs shall include them in the credit records according to law and announce them to the public. Relevant applicants and responsible persons shall not apply for variety rights within 3 years, and shall be liable for compensation in accordance with the law if losses are caused.</p> <p>If the applicant or variety right holder fails to register in accordance with the provisions of Articles 11 and 28 of these Regulations and causes losses, it shall bear the corresponding liability for compensation according to law.</p>
Chapter VIII Supplementary Provisions	Chapter VIII Supplementary Provisions
<p>Article 45</p> <p>The examining and approving authorities may provide for flexible provisions on novelty requirement for the genera or species first included in the list of protected plant varieties before the entry into force of these Regulations and that for the genera or species included in the list of protected plant varieties after the entry into force of the Regulations.</p>	(move to Article 15)
	<p>Article 50</p> <p>The meanings of the following terms in these Regulations are:</p> <p>(1) Propagating materials refer to planting</p>

	<p>materials used for reproduction, including grains, fruits, roots, stems, seedlings, buds, leaves, flowers, etc.;</p> <p>(2) Harvesting material refers to the whole or part of a plant obtained from the propagating material of a variety after planting;</p> <p>(3) Farmers referred to in these regulations refer to members of rural collective economic organizations who sign rural land contract contracts in the form of the household contract responsibility.</p>
<p>Article 46</p> <p>Regulations shall enter into force as from October 1, 1997.</p>	<p>Article 51</p> <p>This Regulation shall enter into force as from XXXX</p>

Attachments:

No Attachments.