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Revision of Plant Variety Protection Regulations

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Report Highlights:

On October 10, 2007, China's Ministry of Agriculture (MOA) published "The Implementation Rules for the Regulations on Protection of New Plant Varieties (Agriculture Part)". The new rules governing the application and review process for registration of new plant varieties falling under the responsibility of MOA will take effect on January 1, 2008. This report provides an UNOFFICIAL translation of these rules. The impact of these rules on trade remains unclear.

Includes PSD Changes: No
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Summary

On October 10, 2007, China's Ministry of Agriculture published "The Implementation Rules for the Regulations on Protection of New Plant Varieties (Agriculture Part)". The new rules governing the application and review process for registration of new plant varieties falling under the responsibility of MOA will take effect on January 1, 2008. These rules do not apply to plant genus and species that are registered by the State Forestry Administration. The Implementation Rules for the Regulations on the Protection of New Plant Varieties of the People's Republic of China (agriculture part) promulgated on June 16, 1996 will be simultaneously replaced by the new rule. This report provides an unofficial translation of the new rule. The impact of these rules on trade remains unclear.

BEGIN TRANSLATION

Implementation Rules for the Regulations on the Protection of New Plant Varieties of the People's Republic of China (Agriculture Part)

Date: October 10, 2007-10-31 Promulgated by: Ministry of Agriculture

The Implementation Rules for the Regulations on the Protection of New Plant Varieties of the People's Republic of China (Agriculture Part) was modified and approved by the 12th Executive Meeting of the Ministry of Agriculture on August 25, 2007, and hereby promulgate the revised Implementation Rules for the Regulations on the Protection of New Plant Varieties of the People's Republic of China (Agriculture Part), which shall become effective on January 1, 2008. The Implementation Rules for the Regulations on the Protection of New Plant Varieties of the People's Republic of China (Agriculture Part) promulgated on June 16, 1996 will be simultaneously annulled.

SUN Zhengcai Minister
September 19, 2007

The Implementation Rules for the Regulations on the Protection of New Plant Varieties of the People's Republic of China (Agriculture Part)

Chapter I General Provisions

Article 1 These rules are formulated in line with the Regulations on the Protection of New Plant Varieties of the People's Republic of China (hereinafter referred to as "the Regulations").

Article 2 The term "new plant variety" shall refer to any new variety of plant of the following: grains, cotton, oil plants, hemp, sugar crops, vegetables (including watermelon and mask melon), tobacco, mulberries, tea shrubs, fruit trees (excluding dry fruit), ornamental plants (excluding woody plants), grass, green manure, herbaceous medicinal materials, edible fungus, algae, and rubber plant, etc.

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

The Protection Office of New Agricultural Plant Varieties established under the Ministry of

Agriculture (hereinafter referred to as “the Plant Variety Protection Office”) shall assume the responsibilities of receipt, examination and approval of any application for variety rights, as well as the organization of both testing the new varieties of plants and preserving and collecting the propagating materials of such new varieties.

Article 4 No variety rights shall be granted to any new variety of plant that is harmful to either the public interest or the ecological environment.

Chapter II Content and Ownership of Variety Rights

Article 5 The propagating materials referred to in the Regulations shall mean the cultivated material and other parts of the body of a plant, including seeds, fruit, roots, stems, seedlings, buds (sprouts, shoots), and leaves, etc. which can propagate plants.

Article 6 Entities or persons applying for variety rights are generically designated as applicants for variety rights. Entities or persons granted with variety rights are generically designated as variety rights holders.

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

1. breeding accomplished in the course of performing his own duty;
2. breeding accomplished in the execution of any task other than his own duty, but assigned by the said entity;
3. breeding accomplished within three years from his resignation, retirement or transfer, and relevant to his previous job in the entity from which he resigns, retires, or is transferred to the tasks assigned to him by that entity.

The term “the material conditions of the entity” prescribed in Article 7 of the Regulations shall refer to the financial resources, instruments and equipment, and the testing/experimental field that belongs to the entity, as well as the breeding material and the technical information owned or held by the entity, whose disclosure to the public is not yet authorized.

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

Article 9 The person who has accomplished the breeding of a new variety of plant (hereinafter referred to as “the Breeder”) refers to the person who has made creative contributions to the breeding of the new variety of plant concerned. Those who are only responsible for organizational and managerial work, facilitate access to material conditions, or perform other auxiliary functions shall not be considered as breeders.

Article 10 One new variety shall be granted only one set of variety rights. When two or more applicants apply for rights of the same new variety of plant on the same effective date, the applicants themselves shall negotiate and decide who files for ownership of the new variety. If the parties concerned are unable to reach an agreement over the matter, the Plant Variety Protection Office may require the applicants to provide, within a fixed time limit, evidence to prove that he is the person who has first accomplished the breeding of the new variety of plant in question. If no evidence is provided within the stated time limit, the

applicant shall lose application status. Where the provided evidence is not sufficient to serve as the basis of a judgment, the Plant Variety Protection Office shall overrule the application.

Article 11 When a Chinese entity or individual wishes to assign a foreigner the right to file an application for variety rights or the variety rights granted in respect of a new variety of plant bred in China, such assignment shall be subject to examination and approval by the Ministry of Agriculture.

When an assignment of the right to file an application for variety rights or the variety rights are granted, the parties concerned shall conclude a written contract and register it with the Ministry of Agriculture. The assignment shall be published in a gazette by the Ministry of Agriculture and come into effect upon publication.

Article 12 The Ministry of Agriculture may decide and grant compulsory license over the variety rights of a new variety of plant under the following circumstances:

1. where it is necessary for the national or public interests;
2. where the variety rights holder has no justifiable grounds not to exploit the variety himself nor authorize its exploitation by others under reasonable conditions; or
3. where, in respect to an important plant variety, the variety rights holder has already exploited the variety, his exploitation clearly cannot meet the demands of the domestic market, and he does not authorize its exploitation by others under reasonable conditions.

When a compulsory license is requested, it shall be submitted to the Ministry of Agriculture stating the grounds thereof and accompanied by two copies of supporting documents.

The Ministry of Agriculture shall make out its decision within 20 working days from the date of receipt it was requested. In case it is necessary to have the case investigated and assessed by organizing a group of experts, it shall finish within three months. If the request for compulsory license is approved, the Ministry of Agriculture shall inform both the variety rights holder and the person who made the request for the compulsory license and publish it in the gazette. The Ministry of Agriculture shall also notify and explain to an applicant why a request for a compulsory license is denied.

Article 13 Any party who requests for adjudication of the exploitation fees by the Ministry of Agriculture under paragraph 2 of Article 11 of the Regulations shall make a request to that effect accompanied by supporting documents that can show the failure to reach an agreement over the matter. The Ministry of Agriculture shall adjudicate within three months from the date of receipt of the request and shall notify the parties concerned accordingly.

Chapter III Conditions for the Grant of Variety Rights

Article 14 In accordance with the provisions set forth in Article 45 of the Regulations, the Ministry of Agriculture may grant variety rights for a new variety of plant if the plant variety on the application is of the genus or species included in the national list of protected plant varieties. The application must also be filed within one year from the date of publication of the list of protected new varieties of plants as long as permission for filing such application has been obtained from the breeder, that the period of selling the propagating materials of this plant variety inside the territory of People's Republic of China has not exceeded 4 years from the date of filing the application for variety rights, and that the plant variety complies with such characteristics set forth in the Regulations, including appropriate distinctness, uniformity, and stability of the plant variety as well as it meets the requirements for denomination of the plant variety concerned.

Article 15 Any one of the following sales shall be deemed as the sale stipulated in Article

14 of the Regulations:

- 1.1 transferring the propagating materials of the plant variety to others through trading;
- 1.2 transferring the propagating materials of the plant variety to others through barter trade;
- 1.3 transferring the propagating materials of the plant variety to others through becoming a shareholder;
- 1.4 concluding a production agreement with the propagating materials of the plant variety; or
- 1.5 other ways of sales.

Any one of the following sales shall be deemed as the breeder-permitted sale stipulated in Article 14 of the Regulations:

- 2.1 sales conducted by the breeding entities (persons);
- 2.2 sales conducted internally within the organization;
- 2.3 sales conducted by the enterprise(s) invested by the breeding entities (persons) fully or as shareholders; or
- 2.4 other forms of sales stipulated by the Ministry of Agriculture.

Article 16 “The known plant varieties” prescribed in Article 15 of the Regulations shall include any plant varieties that have been published in gazettes for acceptance after preliminary examinations of the applications for plant variety rights, that have been examined and approved for plant variety rights, or that have been put into extensions.

Article 17 The term “relevant features or characteristics” referred to in Article 16 and 17 of the Regulations shall mean that they shall at least include those features and characteristics of the plant variety used for the measurement/testing of distinctness, uniformity and stability or those used for the description of the plant variety concerned when the variety rights are granted.

Article 18 Any of the following shall be avoided in the selection of a denomination for a new variety of plant:

1. those consisting of only numbers;
2. those in violation of national laws or social morals, or with ethnic discriminations;
3. those using the names of countries;
4. those using the names of places of administrative districts at county level or above, or the names of well known places in foreign countries;
5. those using the same or similar identifying names of intergovernmental international organizations or famous international or national organizations;
6. those that are liable to mislead the features or characteristics of the new variety of plant or the identity of the breeder;
7. those that are the known denominations of the same or similar genera or species of plants;
8. those with an effect of exaggeration in their promotion.

The denomination of any new variety of plant for which the plant variety rights are applied shall conform to the denomination used in the examination and approval for variety recognition or for concerning the safety of genetically modified agricultural organisms when the plant variety has been examined and approved for variety recognition or for issuance of “the Certificate on the Safety of Genetically Modified Agricultural Organisms (Production Application)” provided the denomination of the said plant variety is in conformity with the provisions concerning the denomination of a novel plant variety.

Chapter IV Application for Variety Rights and Acceptance

Article 19 When Chinese entities and persons apply for variety rights, they may file an application with the Plant Variety Protection Office directly or through an entrusted agency. If foreigners, foreign enterprises or other foreign organizations have no habitual residence in China apply for variety rights, they shall file an application with the Plant Variety Protection Office through an entrusted agency.

Any applicant who appoints a representative agency to apply for variety rights or to handle other matters shall file a power of attorney at the same time, specifying the scope of power entrusted. The entrusted agency shall submit the application for plant variety rights with the Plant Variety Protection Office together with the said power of attorney. The Plant Variety Protection Office shall directly contact the entrusted agency for relevant procedures.

Article 20 In order to apply for variety rights, applicants must submit two copies of the application with a description and photographs of the plant variety to the Plant Variety Protection Office. In addition, electronic versions of the application and description should be submitted.

The application and the description shall be filled out following the format issued by the Plant Variety Protection Office.

Article 21 A description furnished by the applicant shall include the following elements:

1. a provisional denomination of the new variety (the same used in the application)
2. the denomination both in Chinese and in Latin of the genera or the species to which the new variety belongs;
3. details about the breeding process and the methodology used in the breeding of the new variety, including genealogical table, cultivating details, and the parent plants, or a detailed instruction on the sources and names of other propagating materials;
4. evidence of its sale;
5. selected similar plant varieties;
6. a detailed description of the characteristics of distinctness, uniformity, and stability of the new variety of plant;
7. a description of the region or environment suitable for growing it and the cultivation techniques required;
8. a comparison of the new variety plant compared to similar plant varieties.

The similar plant varieties referred to in Clauses (v) and (viii) of this Article shall mean that the relevant features or characteristics of those plant varieties among all known plant varieties are most similar to that of the new variety of plant.

Article 22 The photographs furnished by the applicants shall conform to the following requirements:

1. are helpful to illustrate the distinctness of the plant variety in respect to the application filed;
2. show the same characteristics of the new variety of plant compared to the similar plant variety on the same photograph;
3. are printed in color, however, a black and white photograph may be requested by the Plant Variety Protection Office;
4. are 8.5cm x12.5 cm or of 10 cm x15 cm in size;
5. are accompanied by a brief written description.

Article 23 The Plant Variety Protection Office shall not accept the application for variety rights if any of the following apply:

1. the document is not prepared in Chinese;
2. any of the request, description or photograph is missing
3. the format used in the request, description or photograph does not comply with the guidelines set forth by these Rules;
4. the document is not typed or printed;
5. the document is illegible or altered;
6. the name, address or postal code of the applicant is missing or inadequate;
7. the entrusted agency is specified, but a power of attorney is not included.

Article 24 If any Chinese entities or persons apply to a foreign country for plant variety rights in respect of a new variety of plant bred in China, the applicants shall apply with the Ministry of Agriculture for registration.

Article 25 When a priority right is claimed under Article 23 of the Regulations, the applicant shall indicate in the application the filing date and the number of the initial application for variety rights as well as the name of the organization and /or the country that has received it; in the absence of such clear indications, the priority right shall be deemed not to have been claimed. The duplicate of the initial application submitted by the applicant shall be certified by the original recipient authority.

Article 26 When an applicant with no habitual residence or establishments in China applies for variety rights or claims a priority right, the Plant Variety Protection Office may, where it deems necessary, require the applicant to provide the following documents:

1. a certificate of his nationality where the applicant is an individual;
2. when the applicant is an entity, enterprise, or other type of organization, documents certifying the location of its establishments or its headquarters;
3. documents certifying that the country to which the foreigner, the foreign enterprise, or other foreign organization belongs to recognizes the entitlements of Chinese entities and persons under the same conditions as its own nationals the right to file an application for plant variety, the priority right, and other rights relevant to variety rights in that country.

Article 27 When an applicant files an application for variety rights in a foreign country within 12 months since having filed one with the Plant Variety Protection Office, the applicant may request the Plant Variety Protection Office to issue a certificate concerning the priority right in accordance with the agreement concluded between the country or organization to which the application files and the People's Republic of China, or the international convention to which both are contracting parties, or on the basis of the principle of reciprocity.

Article 28 The applicant shall indicate the new variety of plant with respect to the Chinese entities and persons when it involves national security or major interests, and therefore needs to be kept confidential in the application as indicated under paragraph 2 of Article 19 of the Regulations. The Plant Variety Protection Office shall make a decision upon examination as to whether it should be dealt with as a confidential application and shall notify the applicant accordingly. If the Plant Variety Protection Office considers it necessary to keep an application confidential even though the applicant has not made such an indication, the said Office shall deal with it as a confidential application and notify the applicant accordingly.

Article 29 The propagating materials furnished by the applicant shall be consistent with those of the new variety of plant as described in the application documents for variety rights and shall conform to the following requirements:

1. not having suffered from any accidental damage;
2. never under any chemical treatment;
3. free from chemicals and harmful organisms;
4. recently harvested if the propagating materials furnished are seeds or fruit.

Article 30 When the Plant Variety Protection Office deems necessary, the applicant for plant variety rights shall furnish the said Office with both the propagating materials of the new variety of plant to which the applicant applies for plant variety rights and that of the similar plant variety in order to carry out the examination and testing of the new variety of plant. When the new variety of plant is of a genetically modified plant variety, copies of documents such as the Approval on the Safety of Genetically Modified Agricultural Organisms or the Certificate on the Safety of Genetically Modified Agricultural Organisms (Production Application) to be issued for the stage of productive test shall be furnished.

The applicant for plant variety rights shall furnish the propagating materials within three months from the date of receipt of the notification of request by the Plant Variety Protection Office. The applicant for variety rights for seeds and fruit shall send them to the Collection Center of New Variety of Plants (hereinafter referred to as "the Collection Center") under the Plant Variety Protection Office. The applicant shall send asexual propagating materials such as seedlings, bulbs, tubers, and roots, them to the testing institutions designated by the said Office.

When the quantity of propagating materials furnished by the applicant is less than what is prescribed by the Plant Variety Protection Office, the Collection Center or the testing institution shall notify the applicant to furnish the missing amount within one month from the date of receipt of the notification. In exceptional cases where propagating materials have been furnished by the applicant in the prescribed quantity but are still not sufficient for the purposes of testing or examination, the Plant Variety Protection Office shall have the right to require the applicant to furnish the needed supplementary amount.

Article 31 The propagating materials shall be subject to quarantine in accordance with relevant provisions. Those found unacceptable upon quarantine or simply not quarantined shall be refused by the Collection Center or the testing institutions.

The Collection Center or the testing institution shall issue a written note of acknowledgement upon receipt of the propagating materials furnished by the applicant and shall finish its testing and examination on viability and other aspects within 20 days (except for plants with rest period) from the date of receipt of the propagating materials. Where the said materials are found acceptable upon examination, the Collection Center or the testing institution shall issue a written certificate of examination to that effect and shall notify the applicant accordingly. If the propagating materials are found unacceptable upon examination, the Collection Center or the testing institution shall notify the applicant to refurnish with propagating materials of the variety in question and to withdraw the unqualified one within one month from the date of receipt of the notification. If the applicant fails to withdraw the unqualified propagating materials within the fixed time limit, the Collection Center or the testing institution shall destroy them.

If the applicant fails to follow the prescriptions with respect to the provisions of the propagating materials, the application shall be withdrawn.

Article 32 The Collection Center and the testing institution shall have the responsibility to keep confidential the propagating materials furnished by applicants and shall prevent the said materials from loss, theft, or other accidents. No one shall have the right to replace the propagating materials accepted upon examination. If any accidents such as loss, theft, or replacement of the propagating materials take place, the responsibilities of relevant personnel shall be investigated by the law.

Chapter V Examination and Approval of Variety Rights

Article 33 In the procedures of preliminary examination, substantive examination, re-examination and invalidation, any person who carries out examinations or re-examinations under any of the following circumstances should make avoidance on his own initiative. The parties concerned or any other interested person may request him or her to make avoidance if:

1. he is a close relative of the party concerned or of its agent;
2. he has a direct interest in the application for variety rights or in such rights; or
3. he has such other kinds of relations with the party concerned or its agent that might have any impact on an impartial examination and handling.

The avoidance of the person carrying out examination shall be decided upon by the Plant Variety Protection Office, and the avoidance of the person carrying out re-examination shall be decided upon by the President of the Re-examination Board for New Varieties of Plants.

Article 34 Where an application for variety rights involves two or more new varieties of plants, the Plant Variety Protection Office shall request the applicant to file a divisional application. If the applicant does not divide his application or does not give any response within the time limit, the application shall be deemed to have been withdrawn.

A divisional application filed under Article 34 may keep the filing date of the application from which it is divided, when priority right is claimed and the date the priority right is awarded, provided that the divisional application does not go beyond the scope of the initial application for variety rights.

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

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

Article 35 The Plant Variety Protection Office shall carry out the preliminary examination on the following of the application for plant variety rights:

1. whether it is in conformity with the provisions of Article 27 of the regulations;
2. whether the selected similar plant variety is proper and whether the sources of the parent or other propagating materials for the new variety of plant have been disclosed.

The Plant Variety Protection Office shall notify the applicant of its examination result. In the case of any doubts, the said Office may request the applicant to make presentations or amendments within a prescribed time limit. If the applicant does not make any response within such time limit, the application shall be deemed to have been withdrawn. Where the Plant Variety Protection Office believes the application is still in conformity with the relevant

provisions even after the applicant has given his or her presentations or made his or her amendments, the application shall be overruled.

Article 36 With the exception of the application for variety rights, any other documents in connection with the application filed by the applicant with the Plant Variety Protection Office that has any of the following irregularities shall be deemed not to have been filed:

1. failure to use the prescribed format or to comply with the requirements in following the format;
2. failure to file supporting documents as prescribed.

Where such documents are filed by the party concerned personally, the recipient shall on the spot indicate the applicant of what problems the documents have and return them directly to the applicant. When such documents are delivered through postal service, the Plant Variety Protection Office shall return these documents to the applicant through postal service together with its examination result - the documents are deemed as not to have been filed. When the postal address is unavailable, such documents shall be returned the applicant through publication in the gazette.

Article 37 During the period starting on the date on which an application for plant variety rights is filed and before the date on which the variety rights are granted, anyone may raise an objection with the Plant Variety Protection Office to the application for variety rights which is not in conformity with the provisions of Article 4, Article 8, and Article 13 through 18 of the regulations, and shall present the grounds thereof. Any objection that does not come along with supporting evidence shall not be accepted by the Plant Variety Protection Office.

Article 38, The applicant shall not modify the following contents of the application documents before the grant of the plant variety rights is made without permission from the Plant Variety Protection Office:

1. the denomination of the plant variety with respect to which the applicant applies for variety rights, the names and sources of the parent or the names and sources of other propagating materials, and the breeding methodology for the new variety of plant;
2. the time of the first sale of the plant variety for which the variety rights are applied;
3. the contents concerning distinctness, uniformity and stability of the plant variety for which the plant variety rights are applied.

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

Article 39 The Plant Variety Protection Office shall carry out a substantial examination on the application for plant variety rights and notify the applicant of its examination result. The Plant Variety Protection Office may, if it deems necessary for the sake of examination on the application, request the applicant to make presentations or amendments within a prescribed time limit. If the applicant does not make any response within such time limit, the application shall be considered withdrawn.

Article 40 In accordance with the provisions of the regulations and these rules, an application for variety rights shall be overruled upon substantive examination under the following circumstances:

1. it does not conform to any of the provisions in Article 8, Article 13 through Article 17 of the Regulations;
2. it is a case prescribed in Article 4 of these Rules;

3. the denomination of the new variety of plant does not comply with the provisions, and the applicant does not follow the instructions of the Plant Variety Protection Office to modify it;
4. Plant Variety Protection Office still considers it not in conformity with the provisions after the applicant has made presentations and amendments.

Article 41 Applicants shall go through the procedures for receiving a certificate for variety rights and for paying the annual fee for the first year within three months from the date of receipt of the notification issued by the Plant Variety Protection Office concerning such procedures. Where the procedures are completed within the prescribed time limit, the Ministry of Agriculture shall grant variety rights, issue a certificate for such rights, and publish the grant accordingly. The variety rights shall come into force on the date of issuance of the said certificate.

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

Article 42 The Re-Examination Board for New Varieties of Plants under the Ministry of Agriculture shall be in charge of handling the re-examination of the applications for plant variety rights that have been overruled, the invalidation declaration of plant variety rights, as well as the change of the denomination of the plant variety rights granted. The Ministry of Agriculture shall formulate specific regulations on the issues separately.

Chapter VI Submission, Delivery and Time Limit of the Documents

Article 43 All the documents provided in accordance with prescriptions set forth in the regulations and these rules shall be prepared and filed in the Chinese language and in standard scientific and technical terms as well as other standard terms as prescribed by the State. Names of foreigners or foreign places, and foreign scientific and technical terms without a generally accepted Chinese translation may be written in their original languages. Papers and supporting documents that are filed under the regulations and these rules in a foreign language shall be accompanied by a Chinese translation. If a translation is not accompanied, the supporting documents shall be considered not have been filed.

Article 44 All the documents filed by the parties concerned with the Plant Variety Protection Office shall be clear, neat and typed or printed in black. The written part of the application documents shall run horizontally and only one side of the paper shall be used.

Article 45 All the documents filed by the parties concerned and those for other procedures shall be signed by, or affixed with a seal of, the applicant, the variety rights holder, and any other interested person or his representative. If a representative agency is appointed, the documents may be affixed with a seal of the agency. When a change is requested for the name of the breeder, or in the name, nationality and address of the applicant or the variety rights holder, or for the name of the representative agency and the agent, the requesting party shall go through the procedures before the Plant Variety Protection Office for a change in the bibliographic data. In the meantime, relevant supporting documents must be filed for the grounds on which such a change is based.

Article 46 The party concerned may submit any document by personal delivery or through postal service. Submission through postal service shall take the form of registered mail but not that of a parcel. One envelope shall only contain those documents in connection with one application. In the case of submission through postal service, the filing date shall be determined by the postmark. If the postmark on the envelope is illegible, the filing date shall

be the date of receipt of the document by the Plant Variety Protection Office unless the party concerned can prove otherwise.

Any document of the Plant Variety Protection Office may be delivered to the party concerned through postal service, by personal delivery, or by publication. If the party concerned has appointed a representative agency, the document shall be delivered to the agency. If no such agency is appointed, the document shall be delivered to the addressee (address) or to the person first named or to the representative in the request. If the party concerned refuses to accept a document, the document shall be deemed to have been delivered.

Any document delivered through postal service by the Plant Variety Protection Office shall be deemed to have been received by the party concerned on the day immediately after 15 days from the date of delivery.

In respect to any personally delivered document as may be required in accordance with relevant provisions, the date of delivery shall be the date to hand them over to the party concerned.

If a document cannot be delivered through postal service due to an incorrect address for correspondence, it may be delivered to the party by publication. The document shall be delivered before the expiration of two months from the date of publication.

Article 47 In the calculation of any time limit prescribed in the regulations and these rules, the first day shall be excluded. Any period expressed in years or in months shall expire in the relevant subsequent year or month on the corresponding day in the last month of the period. However, when the relevant month has no such corresponding day, the period shall expire on the last day of that month. If a period expires on an official holiday, the period shall expire on the first working day immediately following that official holiday.

Article 48 When a party fails to comply with a time limit prescribed in the regulations and these rules or fixed by the Plant Variety Protection Office because of *force majeure* and that failure has the consequence of causing a loss of variety rights, the party concerned may, within two months from the date on which the impediment is removed and within two years following the expiration of the time limit at the latest, explain the reasons, furnish relevant supporting documents, and make a request for reinstatement of rights to the Plant Variety Protection Office.

If a party fails to comply with a time limit prescribed in the regulations, these rules, or fixed by the Plant Variety Protection Office because of a justified reason, and loses variety rights, the party concerned may, within two months from the date of receipt of the notification, explain the reasons and make a request for reinstatement of rights to the Plant Variety Protection Office.

When an extension of any time limit fixed by the Plant Variety Protection Office is requested, the party concerned shall, before the expiration of the time limit, state the grounds to the Plant Variety Protection Office and go through the relevant procedures.

The provisions in paragraphs 1 and 2 of this Article shall not apply to the time limits prescribed in Article 14, Article 23, paragraphs 2 and 3 of Article 32, Article 34, and paragraph 2 of Article 37 of the Regulations.

Article 49 The filing date referred to in the regulations shall mean the priority date where there is a priority right subject to the provisions of Article 22 of the regulations.

Chapter VII Fees and Gazette

Article 50 An application fee, examination fee, annual fee and testing fee shall be paid in respect of an application for variety rights and other procedures to the Ministry of Agriculture in accordance with relevant provisions of the State.

Article 51 The fees prescribed in the regulations and in these rules may be paid directly or via postal or bank remittance.

If fees are paid via postal or bank remittance, the denomination of the new variety shall be indicated. Meanwhile the applicant shall send a copy of the money order to the Plant Variety Protection Office via facsimile or postal service together with an indication including the number of the application or of the variety rights, the name of the applicant or of the variety rights holder, and the purpose of the payment. The date of payment shall be the date on which the money is remitted in the case of payment via postal or bank remittance.

Article 52 The application fee under Article 24 of the regulations may be paid by the applicant at the time of filing the application for variety rights, or within one month at the latest from the filing date. If the fee is not paid or is not fully paid within the time limit, the application shall be deemed to have been withdrawn.

Article 53 When an application for variety rights is found to be acceptable upon preliminary examination, the applicant shall pay the examination fee within a prescribed time limit in accordance with the notification by the Plant Variety Protection Office. If the fee is not paid or is not fully paid within the time limit, the application shall be deemed to have been withdrawn.

Article 54 The annual fee for the first year of the grant of the variety rights shall be paid by the applicant before receiving the certificate of variety rights. Subsequent annual fees shall be paid one month in advance before the expiration of the term for the preceding year.

Article 55 If an applicant or the variety rights holder has not paid the annual fee for the subsequent year after the first year of the grant of the variety rights, or has not paid in full or on time, the Plant Variety Protection Office shall invite the applicant to pay it or its missing part within six months from the date of expiration of the time limit within which the annual fee is due. Where these fees are not paid within the time limit, the variety rights shall be terminated from the date of expiration of the time limit within which the annual fee is due.

Article 56 The Plant Variety Protection Office shall regularly publish relevant data concerning variety rights in a gazette on the protection of new varieties of plants.

Chapter VIII Supplementary Provisions

Article 57 Acts concerning counterfeited variety rights referred to in Articles 40 and 41 of the regulations shall mean any of the following:

1. counterfeited identifications on the application for plant variety rights and counterfeited identifications of plant variety rights including printing, making or using a counterfeited certificate of plant variety rights, using an invalid number of application for plant variety rights or number of the certificate of plant variety rights, or other;
2. printing, making or using the number or other identifications of applications for plant variety rights that have been denied, deemed to have been withdrawn or withdrawn;

3. printing, making or using the certificates for, or numbers or other identifications of, the plant variety rights that have been terminated, or invalidated;
4. producing or selling the plant varieties that fall into the categories included in items No.1, 2 and 3 of this Article;
5. producing or selling the plant varieties that pretended to be the same denominations as that of the plant varieties for which plant variety rights have been applied or of the plant varieties for which plant variety rights have been granted;
6. other acts sufficient to mislead others to take the plant varieties for which no applications for variety rights have ever been filed or for which no variety rights have ever been granted as that for which an application for variety rights has been already filed or for which plant variety rights have been already granted.

Article 58 Administrative departments of agriculture shall pass an opinion of disposition within one month of the propagating materials of plant varieties sealed off or sequestered in accordance with the provision in Article 41 of the regulations.

Article 59 When parties have submitted a suit with the People's Court concerning their disputes over the right to file an application for variety rights or over the variety rights, and the People's Court has accepted it, the parties concerned shall request the Plant Variety Protection Office to suspend the relevant procedures.

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

Upon formal ratification of the verdict of the People's Court, the party concerned shall make a request to the Plant Variety Protection Office to revive the relevant procedures. If the disputes over the ownership of the right to file an application for variety rights or of the plant variety rights have not concluded within one year from the date of suspension, and if there is a need to continue the suspension, the party who requested the suspension shall, within the time limit, request to extend the suspension. If such a request is not made, the Plant Variety Protection Office may revive the relevant procedures by itself.

Article 60 Files of the applications for variety rights that are deemed to have been withdrawn, refused, or voluntarily withdrawn shall be kept until the end of two years from the date of lapse of the applications.

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

Article 61 The present Implementation Rules shall enter into force on January 1, 2008. The Implementation Rules for the Regulations on the Protection of New Plant Varieties of the People's Republic of China (Agriculture Part) promulgated on June 16, 1996 shall be simultaneously repealed.

END TRANSLATION