

Content

Title :	The Enforcement Rules for the Plant Variety and Plant Seed Act 
Date :	2011.01.05
Legislative :	Full text of 29 articles promulgated on July 27, 1990 by Executive Yuan Order (79) Tai-Nung-Tzu No. 21193 Article 22 amended & promulgated on January 31, 2000 by Council of Agriculture, Executive Yuan Order (89) Nung-Liang-Tzu No. 890020058 Article 16 amended & promulgated on December 16, 2004 by Executive Yuan Order Yuan-Tai-Nung-Tzu No. 0930057284 Name and full text of 25 articles amended & promulgated on June 29, 2005 by Council of Agriculture, Executive Yuan Order Nung-Shou-Liang-Tsu No. 0941058001; original name of "Plant Seed and Seedling Act Enforcement Rules" revised as "The Enforcement Rules for the Plant Variety and Plant Seed Act" Articles 5, 10, 20, 25 amended & promulgated on January 5, 2011 by Council of Agriculture, Executive Yuan Order Nung-Shou-Liang Tzu No. 0991098847
Content :	<p>Article 1</p> <p>These enforcement rules are enacted in accordance with Article 64 of the Plant Variety and Plant Seed Act (hereinafter referred to as "this Act").</p> <p>Article 2</p> <p>Those plant variety right applications and plant seed enterprise registration applications specified in this Act shall be written in this country's characters and submitted to the competent authority.</p> <p>If the supporting documents to be attached to an application in the preceding Paragraph are in a foreign language, the competent authority may, when deemed necessary, notify the applicant to attach a translation or a summary translation in this country's characters.</p> <p>Translated scientific terms in the application form and attached documents shall in general follow the translations of the National Institute for Compilation and Translation, and the original foreign language terms shall be included as notes. The scientific names of plants shall be included.</p> <p>Article 3</p> <p>An applicant may appoint an agent. The applicant shall appoint an agent to perform the application if the applicant has no residence, office location or place of business in R.O.C. territory.</p> <p>The applicant shall submit a letter of appointment stating the extent of the agent's authorization and serving address to the competent authority when appointing an agent.</p> <p>The applicant shall notify the competent authority in writing prior to a change of the extent of an agent's authorization, otherwise the said change shall not take effect.</p> <p>Article 4</p> <p>The applicant shall apply to the competent authority for a change whenever the applicant's name, title, residence, office location or place of business changes.</p> <p>Article 5</p> <p>Any certifying document submitted pursuant to this Act and these</p>

Implementing Regulations shall be presented in its original form or exemplification. Upon clarifying that photocopied certifying document is identical to the original copy or exemplification, the applicant may submit the photocopy instead. However, the evidentiary proof of the application as accepted by the country or World Trade Organization member set forth in Article 17, Paragraph 2 of the Act shall be presented in exemplification. The original form or exemplification of the proof may be returned to the applicant upon the inspection of the competent authority.

Article 6

With regard to the serving of application forms in this Act, those forms submitted in written form shall be dated by the date served to the competent authority; and those forms submitted by registered mail shall be dated by the date on the postmark made on the day mailed.

Article 7

With regard to plant varieties not announced in accordance with Article 4 of this Act, concerned party may clearly state the following items and recommend a public announcement to the central competent authority:

1. name and residence of the recommender. The name, office location or place of business, and name and contact telephone of the legal representative or manager if the recommender is a juristic person or organization;
2. the plant species/genus and its scientific name;
3. the reasons for the recommended public announcement;
4. a trait table for the main cultivated varieties of that species/genus;
5. propagation methods;
6. cultivation methods;
7. seal or signature of the recommending person; and
8. date of submission.

Article 8

Those who seek to inherit or be assigned a plant variety right or the right to apply for a plant variety right shall fill out an application form, attach the following documents, and apply to the central competent authority:

1. Inheritance: Documents verifying death and inheritance.
2. Assignment: Assignment contract or supporting documents presented by the assignee. Documents verifying merger or acquisition in the case of those companies taken over due to merger or acquisition.

The plant variety right certificate shall be submitted when a plant variety right is inherited or assigned in the preceding Paragraph

Article 9

Plant variety right application forms shall state the following items:

1. the plant species/genus, scientific name, and the denomination of the variety;
2. the applicant's nationality, name, and residence. The name, office location or place of business, name, residence, and phone number of the legal representative or manager if the applicant is a juristic person or organization;
3. name and residence of the breeder;
4. the agent's name, residence, and phone number if the applicant has assigned an agent;

5. claimed items; and
6. a list of attached documents.

Article 10

An applicant shall make the following claims pursuant to Article 14, Paragraph 1 of the Act when the declaration is made:

1. within the prescribe period set forth in Article 12, Paragraph 2 of the Act;
2. the country or World Trade Organization member with which the applicant has applied for the plant variety right, application number, and application date where an applicant claims for the priority right pursuant to Article 17 of the Act;
3. information regarding business secrets that are not made public.

Article 11

If the origin of a plant variety as specified in Article 14, Paragraph 2, Subparagraph 4 of this Act is foreign, the central competent authority may, when deemed necessary, notify the applicant to attach the foreign application case number, search information or receive results within a specified time limit; review will look at existing information when some information has not been submitted within the specified time limit.

Article 12

If the application form of a plant variety right applicant claiming a priority right is deficient in its statements of information or supporting documents, after the applicant has been notified to remedy such deficiency within a specified time limit, the remedied portion shall be deemed to be already part of the prior claim for priority right application, and the original application date shall be taken to be the application date.

Article 13

Central competent authority's plant variety right approval and public announcement performed in accordance with Article 20, Paragraph 2 of this Act shall state the following items:

1. application case number and date;
2. public announcement case number and date;
3. certificate number and issuance date;
4. plant species/genus, scientific name, and the denomination of the variety;
5. summary of variety characteristics;
6. the name or title of the holder of the plant variety right; and
7. the rights period.

If the plant variety right information referred to in the preceding Paragraph contains errors or omissions after approval and public announcement, the holder of the plant variety right may apply to the central competent authority to rectify errors or remedy deficiencies. The central competent authority shall make a public announcement after approving the correction or remedied information.

Article 14

When plant variety right is licensed to a third party to exercise in accordance with Article 27, Paragraph 2 of this Act, the holder of a plant variety right or the licensee shall submit a written application with attached licensing contract or supporting documents to the central competent authority for registration.

The licensing contract or supporting documents in the preceding Paragraph shall state the license region and period.

Article 15

With regard to the creation, change, or expiration of a plant variety right pledge, the holder of a plant variety right or pledgee shall submit a written application with attached plant variety right certificate and the following documents to the central competent authority for registration:

1. the pledge creation contract for those who wish to register pledge creation;
2. supporting documents concerning the change for those who wish to register a pledge change; and
3. supporting documents concerning financial obligation repayment or supporting documents concerning the agreement among concerned parties to revoke the pledge for those who wish to register the expiration of a pledge.

The pledge creation contract in Subparagraph 1 of the preceding Paragraph shall state the plant species/genus, the variety denomination, the plant variety right certificate number, and the amount of financial obligation. The pledge period shall be limited to plant variety right period.

Article 16

When a person applies for a compulsory license to exercise a plant variety right in accordance with Article 30, Paragraph 1 or Paragraph 3 of this Act, the applicant shall state the reason and attach an implementation proposal and relevant documents, when applying to the central competent authority.

When a person applies to revoke a compulsory license to exercise a plant variety right in accordance with Article 30, Paragraph 8 or Article 31 of this Act, the applicant shall state the reason for revocation, and attach supporting documents.

Article 17

The holder of a plant variety right who wishes to abandon the plant variety right in accordance with Article 36, Paragraph 1, Subparagraph 2 of this Act shall submit a written statement of the following matters to the central competent authority:

1. the plant species/genus and the variety denomination of the plant variety right to be abandoned;
2. certificate number and issuance date;
3. the nationality, name, and residence of the abandoning person. The name, office location or place of business, and name, residence, and phone number of the legal representative or manager if the applicant is a juristic person or organization;
4. the seal or signature of the abandoning person;
5. the starting date of abandonment of the plant variety right; and
6. a letter of consent from the licensee or pledgee shall be attached if a third party will be licensed to exercise the plant variety right or create a pledge.

Article 18

Those applying to nullify or cancel a third party's plant variety right shall submit a written statement of the following matters to the central competent authority:

1. the plant species/genus and the variety denomination;
2. the certificate number and issuance date;
3. the nationality, name, and residence of the abandoning person. The name, office location or place of business, and name, residence, and phone number of the legal representative or manager if the applicant is a juristic person or organization;
4. the reason and evidence for nullification or cancellation;
5. the applicant's seal or signature and
6. the application date.

The applicant may submit the evidence specified in Subparagraph 4 of the preceding Paragraph within 30 days of the date of application for nullification or cancellation.

Article 19

The central competent authority shall serve a copy of the application form to the holder of the plant variety right or that person's agent after accepting an application in the preceding Article. The holder of the plant variety right shall make a defense within 30 days. Unless the holder of the plant variety right states a reason in advance and is granted an extension, the central competent authority will proceed with a review if no defense has been made within the given time limit.

Article 20

The central competent authority shall prepare a registration book for the plant variety right which contains the following information:

1. plant species/genus, scientific name, and the variety denomination;
2. the name and domicile/residence of the plant variety right holder and the name and domicile/residence of the representative;
3. the respective shares of the owners if the plant variety right is jointly owned;
4. application number and date;
5. public case number and date;
6. the approval and publication document number and date;
7. the certificate number and issue date;
8. variety characteristics;
9. the name and domicile/residence of the breeder;
10. succession or assignment of the plant variety right or date of succession or assignment and the name, domicile, and residence of the successor or assignee;
11. the country or World Trade Organization member with which the applicant has applied for the plant variety right, application number, and application date where an applicant claims for the priority right pursuant to Article 17, Paragraph 1 of the Act;
12. the licensee's name or title, and domicile/residence, and the license registration date;
13. the plant variety right pledge creation, change, or expiration registration date and the pledgee's name or title, and domicile/residence;
14. the name, nationality, and residence of a holder of a compulsory license to exercise the plant variety right and the approval, nullification, or cancellation dates;
15. the reason for replacement certificate issuance and issuance date;

16. the reason for plant variety right expiration and expiration date;

17. plant variety right period and annual fee payment record; and

18. other matters connected with the plant variety right.

If any of the rights holders in the preceding Paragraph are juristic persons or organizations, its name, office location or place of business, and the name, residence, and phone number of its legal representative or manager shall be stated.

Article 21

Municipality or county/city competent authorities shall forward information on changes involving registered plant seed enterprises to the central competent authority, and shall submit compiled registration and registration change information of the previous year to the central competent authority before January 15 of each year.

Article 22

The competent authority may take three sets of samples when sending inspectors in accordance with Article 50 of this Act to inspect whether a plant seed enterprise's plant seed markings are consistent with seed content. After sealing the samples in conjunction with the enterprise, one set of samples shall be given to the enterprise for preservation, and two other sets of samples shall be taken back by the inspectors for inspection and preservation; the taken seed samples shall be purchased at cost.

The competent authority may perform the sample inspection tasks in the preceding Paragraph in conjunction with an agricultural experimental research organization or may entrust such an organization to perform such tasks.

Article 23

A plant variety right certificate issued in accordance with Article 61 of this Act shall state the following items:

1. the name or title of the holder of the plant variety;
2. the plant species/genus, scientific name, and the variety denomination;
3. the rights period;
4. the respective shares of the owners if the plant variety right is jointly owned;
5. the certificate number; and
6. the issuance date.

Article 24

If a plant variety right certificate or plant seed enterprise registration certificate is lost or destroyed, the holder of the plant variety right or plant seed enterprise may apply to the competent authority for replacement or re-issuance with explanation of the reason.

Article 25

The Enforcement Rules shall come into effect upon enforcement.

The amended articles of the Enforcement Rules shall be enforced on September 12, 2010.