

CIRCULAR No. 119/2001/TT-BNN OF 21 DECEMBER 2001 OF MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT ON THE IMPLEMENTATION OF DECREE No. 13/2001/ND-CP OF 20 APRIL 2001 OF THE GOVERNMENT ON THE PROTECTION OF NEW PLANT VARIETIES

To implement Decree No 13/2001/ND-CP dated 20 April 2001 of the Government on the Protection of New Plant Varieties (hereinafter referred to as "the Decree"), the Ministry of Agriculture and Rural Development has drawn up a circular on procedures for granting protection titles and transferring the right of ownership and the right to use new plant varieties as well as on the State Management of the protection of new plant varieties.

I. GENERAL PROVISIONS

1. New agricultural and forest plant varieties referred to in the Decree are new plant varieties which fall under those branches and species of plants protected by the State;
2. New plant varieties with a connection to national interests shall be awarded confidentiality before being granted protection titles, with the Ministry of Agriculture and Rural Development to consider whether to include them in the List of confidential plant varieties and to instruct the title holder to follow separate State procedures;
3. The Ministry of Agriculture and Rural Development shall periodically provide the List of Protected Plant Varieties.

II. REQUIREMENTS FOR THE DOCUMENTS, ORDERS AND PROCEDURES INVOLVED IN GRANTING PROTECTION TITLES

1. Provision on Attestation of Documents

- a. **Attestation of Signatures**
 - Entities with a lawful stamp shall have their signatures attested by putting the stamp on the signature;
 - Vietnamese entities without a lawful stamp shall have their signatures attested by a public notary authority, a local authority or the organization where the person works;
 - Foreign entities without a lawful stamp shall have their signatures attested by a public notary authority or an equivalent authority.
- b. **Attestation of Copies**

All copied documents to be used as official documents in the acquisition of protection titles for new plant varieties shall be attested as having been copied from the original documents by one of the following authorities:

 - A public notary authority;
 - A People's Committees or relevant competent authority;
 - The State agencies or social organizations that issued the original documents;
 - If the documents contain numerous pages, all pages shall be stamped or stamped on the line by an attesting authority.

c. **Attestation of Translations**

Any translation into Vietnamese of documents used for the relevant procedures shall be attested as having been accurately translated from the original documents.

The attestation of the translation shall be carried out by the following bodies:

- A notary service;
- The entity that issued the original document;
- All the parties involved in the contract or agreement (if the original document is the contract or the agreement);
- The competent authority entitled to use the translation during the relevant procedures.

2. The Application Requirements

a. The application must contain the following documents:

- Three copies of the request for protection;
- Three copies of the description and photographs (size 12 x 18 cm) of the main features and peculiarities of the variety samples ;
- One copy of the document certifying the legitimate right to file the dossier if the right has been transferred from others (Certification of inheritance; Certification or agreement on the transfer of the right to file the dossier), one copy;
- One copy of the power of attorney (if required);
- One copy of the original dossier, if requesting the right of priority under paragraph 2, Article 10 of the Decree;
- One copy of a receipt/evidence of payment of the preliminary verification fees (for checking the completion of the dossier);
- Three copies of the list of documents contained in the dossier;

b. Criteria for an Application:

- A single application is required for the issuance of a protection title for a single new plant variety;
- All the documents in the application must be done in Vietnamese with the exception of original documents, or their copies, submitted in support of the application;
- All documents must be written on white A4 paper with the exception of the supporting documents.

3. Provisions on entities that entitle to undertake the procedures for protection of new plant varieties:

The Office For The Protection of New Plant Varieties (hereinafter referred as The Office For Protection) only conducts direct communications with the following entities undertaking procedures for the protection of new plant varieties :

- a. Entities entitled to direct communications provided for in Article 5 of the Decree;
- b. Legitimate authorized representatives of such entities;

- c. The head of authorized representative offices or branches of entities;
- d. Industrial property agents.

4. Authorization Regulations:

The authorization to proceed with procedures for the protection of new plant varieties must be acknowledged in writing and must include : the full name, address, telephone number and facsimile number (if any) of the Parties authorized; the full name, address of Parties being authorized; the scope of the authorization (procedures that Parties being authorized carry out in the name of the Parties authorized); the terms of the authorization ; the place of the establishment of the power of attorney, and the attested signature of the authorizer under the attestation of signature regulations.

The Office for Protection should be informed in writing of any changes in the scope of authorization or any cancellation of the authorization ahead of the expiry date.

5. Agents for the Protection of New Plant Varieties

Those organizations that have acquired the certificate of industrial property agents are allowed to provide services related to the protection of new plant varieties. Only persons who have acquired the attorney cards have the right to perform jobs concerning the protection of new plant varieties.

6. The Filing and Management of Applications

a. Filing Applications

Applications may be directly filed with the Office for Protection or sent by registered mail.

b. Receiving Applications

Upon receiving an application, the Office for Protection is required to do the following :

- Check the list of documents required in an application;
- Stamp the date the application was received;
- Check the said list of documents against the actual number of documents;
- Conduct a preliminary check to see if the application has sufficient documents as required under the said point a) category 2 so as to enable a conclusion to be made on the receipt of the applications;
- Send the applicant the stamped application form acknowledging the receiving date and the serial number of the application as well as the result of the document list examination with the full name of the receivers (this form replaces the receipt of application)

c. Management of Applications

A valid application is then divided into 2 parts:

- One part is stored as the original application;
- The rest is examined under the steps outlined in the provisions of this Circular.

7. Right of Priority

Organizations or individuals who have filed a valid application in foreign countries, may enjoy the right of priority within 12 months of filing the subsequent application for the protection of this new plant variety in Vietnam. In the period of 90 days after the filing date of an application for the right of priority, organizations and individuals must complete the application in accordance with the Office For Protection's regulations. If this new plant variety is granted a protection title in the foreign countries, the valid filing date will be calculated based on the valid filing date determined in these foreign countries.

8. Procedures for the First Stage (formality) of the Examination of the Application

- a. Fixing the Filing Date:
 - In the case of applications filed directly with the Office for Protection, the date on which the Office receives the application constitutes the filing date of the application;
 - In the case of applications filed by guaranteed mail, the date on which the Office for Protection receives the application from the post office constitutes the filing date of the application.
- b. Fixing the Valid Filing Date:
 - The valid filing date is the date on which the Office of Protection receives a complete and accurate application;
 - In cases where the application needs to be modified and/ or amended, the valid filing date is the date on which the organizations or individuals have completed amendments requested by the Office for Protection.
- c. Determining the Validity of the Application
In the period of 90 days after receiving the application, the Office for Protection must decide:
 - If the applicant can be classed as having the right to file an application;
 - If the new plant variety belongs on the protected species and genera list;
 - If the new plant variety is from countries that signed agreements with Vietnam or subscribed with Vietnam to international agreements concerning the new plant varieties;
 - If the new plant variety is commercially new;
 - If the denomination of the plant variety is proper.
- d. During the first step of the examination, the applicant has the right to rename the filed new plant variety and pay fees for that procedure.
- e. Types of notifications to the applicants of the results of the first stage of examination:
 - Notification of whether the application is valid or not;
 - Notification on the amendment or supplement of the application;
 - Notification on the publication of the application on the official gazette; of the Ministry of Agriculture and Rural Development.

9. Procedures for the Second Step of the Examination of the Application

- Given the genera of the new plant variety, the Ministry of Agriculture and Rural Development designates which agency is to carry out DUS (distinctiveness, uniformity and stability) tests on the new plant variety.
- After the designation by the DUS test agency, the applicant submits an adequate quantity of qualified stocks as required under the test provisions to the DUS test agency.
- The applicant pays fees to the DUS test agency as required.
- The DUS test will be carried out under the DUS test regulations applicable to each species.
- The test agency reports the results of the DUS test (points out whether the plant meets the distinctness, uniformity and stability criteria required under the category 2,3, and 4 of Article 4 of the Decree) to the Office of Protection.

10. The Granting of Protection Titles

The Minister of Agriculture and Rural Development will make decisions on the granting of protection titles for new plant varieties that meet all the criteria laid out in the Decree.

The Ministry of Agriculture and Rural Development will grant original protection titles to any single new plant variety without exception.

Where the original protection title document is lost for plausible reasons, the Ministry of Agriculture and Rural Development will grant copies of the protection title documents under the category 5, Article 8 of the Decree.

11. Duration of Protection Titles

The period of protection for registered new plant varieties shall be 20 years from the date of the granting of protection titles. For trees, the said period shall be 25 years.

Where a protection title is nullified or cancelled, the duration of the protection titles shall be calculated from the date of the granting of the protection title to the date of nullity or cancellation.

12. Amendments of the Protection Title

- To amend the protection title, its holder must prosecute an application to amend the protection title. The application is made in a set form and attached with the following documents: the original protection title document, the amendment fee receipt, the letter of attorney (if required);

- The Office for Protection shall examine the amendment application, and may then make the necessary amendments to the protection title and register and publish the said amendments in the Agriculture and Rural Development Magazine. Where the requirements for the amendments have not been met, the Office shall give the applicant clear reasons for the refusal of the amendment.

13. Storing Plant Varieties

The designated test agency assumes the responsibility for storing the protected new plant varieties.

The designated test agency may require the holders of the protection title to continuously furnish stocks of the protected plant varieties to serve as standard samples.

III. THE TRANSFER OF OWNERSHIP AND RIGHT TO USE THE NEW PLANT VARIETIES

1. Licenses of Ownership and Right to Use New Plant Varieties:

- a. The holders of protected status must use the Office for Protection's license when transferring the ownership or right of use.
- b. In cases where the transfer of ownership or right to use is a sub-license of another license, the contents of the transfer of ownership of the new plant variety must be set up in a separate component and in conformity with categories a, c, d of this Point.
- c. Every license of ownership or right of use must get the prior approval of the Minister of Agriculture and Rural Development ahead of other procedures in accordance with the provisions in category 4, Article 12 of the Decree.
- d. The Office for Protection must assume the responsibility for receiving and examining the applications for a license, and must submit the applications to the leadership of the Ministry for approval within 2 months from the date of receiving the application.

2. Compulsory License

The application for a compulsory license is made under the Office for Protection's set format. The Ministry of Agriculture and Rural Development scrutinize and approve the application for compulsory licenses and the supporting materials proving the new plant variety's special significance for security, national defense, public health and environmental protection.

3. The Obligations of the Holders of Protection Titles

- a. The holder of a protected title is obliged to maintain the stocks of the protected variety and to provide them to the licensees of the license and the test agency at their request.
- b. The recipient of a protection title must pay the fee for the granting of the protection title, the renewal fee for the first year before the issuance, the renewal fees for following years, the fee for DUS test and other fees and charges as provided. The payment of a renewal fee for protection title may be after the deadline but no later than 6 months from the said deadline and the holders must pay an extra penalty fee of 10% for each month after that deadline. The rate of the fees and charges are set by the Ministry of Finance.

IV. STATE MANAGEMENT OF NEW PLANT VARIETIES

1. The Ministry of Agriculture and Rural Development has established the Office for Protection under the Department of Science, Technology and Product Quality.
The Office For Protection Of New Plant Varieties is responsible for issuing the necessary sample documents concerning the application for the issuance of protection titles; the approval and registration of licenses of ownership and the right of use of new plant varieties and compulsory licenses, as well as the promulgation of the regulations on the examination of applications.
2. The Departments of Agriculture and Rural Development in provinces and centrally-run cities are responsible for activities concerning the protection of new plant varieties in their respective localities. This includes guiding individuals and organizations on the production and commercialization of the protected new plant varieties, as well as the inspection and handling of infringements of rights over plant varieties in their localities.
3. This Circular will come into effect 15 days after the day of signing.

For the Minister of Agriculture and Rural
Development
Vice Minister

Bui Ba Bong
(signed)