

ADMINISTRATIVE ORDER NO. 7

Series of 2003

SUBJECT: Implementing Rules and Regulations of the "Philippine Plant Variety Protection Act of 2002"

Pursuant to Sections 67 & 77 of Republic Act No. 9168, otherwise known as the "PHILIPPINE PLANT VARIETY PROTECTION ACT OF 2002", which was enacted on June 7, 2002 and became effective on July 19, 2002, the following rules and regulations are hereby adopted to implement the provisions of the said Act:

CHAPTER I. PRELIMINARY PROVISIONS

ARTICLE 1. Title – These rules and regulations, including any subsequent amendments thereto, shall be known as the Implementing Rules and Regulations of the Philippine Plant Variety Protection Act of 2002, hereinafter referred to as the "Rules".

ARTICLE 2. Purpose – The purpose of these Rules is to ensure the effective and efficient implementation and enforcement of the provisions of Republic Act No. 9168.

CHAPTER II. DEFINITIONS

ARTICLE 3. Definition of Terms – When used in these Rules, the following terms shall be defined as follows:

- a) "Act" means Republic Act No. 9168, otherwise known as the "PHILIPPINE PLANT VARIETY PROTECTION ACT OF 2002".
- b) "*Applicant*" means the breeder who applies for the grant of a Certificate of Plant Variety Protection in accordance with these Rules. [Sec. 3(a)]
- c) "*Board*" means the National Plant Variety Protection Board created by the Act. It shall also refer to the National Seed Industry Council during the transition period from the effectivity of this Act up to the time that the National Plant Variety Protection Board has been organized and operating. [Sec. 3(b)]
- d) "*Breeder*" means:
 - 1) The natural person who bred, or discovered and developed, a new plant variety; or
 - 2) The employer of the person in Article 3(d)(1), unless he has waived his right to the plant variety protection in accordance with Article 20; or

- 3) *The person who commissioned the person in Article 3(d)(1) to breed or discover and develop, a new plant variety, provided there is written agreement in accordance with Article 21; or*
- 4) *The successor-in-interest of the foregoing persons as the case may be; or*
- 5) *The holder of a plant variety protection certificate issued by the relevant authority in another country: Provided, qualified under Article 23. [Sec. 3(c)]*
- e) *"Certificate of Plant Variety Protection" means the document issued by the Board pursuant to the Act and these Rules for the protection of a new plant variety. It is prima facie evidence that the person to whom it is issued is the owner of the plant variety protection. [Sec. 3(d)]*
- f) *"Commission" means to engage the services of a person to develop new plant varieties in exchange for monetary or any material consideration. [Sec. 3(e)]*
- g) *"Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government, and all its branches, subdivision and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions or organizations.*
- h) *"Examiner" means any duly qualified person authorized by the Board to evaluate the distinctness, uniformity, stability and newness of a plant applied for plant protection. An examiner shall have at least a college or post-graduate degree in plant science and at least three (3) years experience in plant research.*
- i) *"Genebank" means the facility duly accredited by the Board where samples of propagating materials are stored, maintained or otherwise grown.*
- j) *"Harvested material" means any part of a plant with potential economic value or any product made directly therefrom in proper cases. [Sec. 3(f)]*
- k) *"Holder" means a person who has been granted a Certificate of Plant Variety Protection or his successors-in-interest. [Sec. 3(g)]*
- l) *"Person" includes natural persons and juridical persons. [Sec. 3(h)]*
- m) *"Plant" includes terrestrial and aquatic flora. [Sec. 3(i)]*
- n) *"Plant Variety Protection (PVP)" means the rights of breeders over their new plant variety as provided in the Act. [Sec. 3(j)]*
- o) *"Plant Variety Protection Office" or "PVP Office" means the Office of the National Plant Variety Registrar, which is headed by the Registrar and performs the functions listed in Article 12.*
- p) *"Propagating material" means any part of the plant that can be used to reproduce the protected variety. [Sec. 3(k)]*

- q) "Registrar" means the person *appointed by the President of the Philippines*, upon recommendation of the Board, to exercise general supervision over the Plant Variety Protection Office. *The Director of the Bureau of Plant Industry shall be the Acting Registrar until the Board is fully organized or July 19, 2005, whichever comes first.* [Secs. 74 and 76]
- r) "Small farmer" means any natural person dependent on small-scale subsistence farming as his primary source of income.
- s) "Variety" means a plant grouping within a single botanical taxon of the lowest known rank, that without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant groupings by the expression of at least one (1) characteristic, and considered as a unit with regard to the suitability for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other form.

CHAPTER III

THE NATIONAL PLANT VARIETY PROTECTION BOARD

ARTICLE 4. *Composition.* - *The National Plant Variety Protection Board shall be composed of the following or their duly designated representatives:*

- a) *The Secretary of the Department of Agriculture, as Chairman;*
- b) *The Secretary of the Department of Science and Technology, as Co-Chairman;*
- c) *The Director-General of the Intellectual Property Office, as Vice Chairman;*
- d) *The Director of the Bureau of Plant Industry;*
- e) *The Director of the Institute of Plant Breeding of the University of the Philippines Los Baños;*
- f) *The President of the Philippine Seed Industry Association;*
- g) *A representative from a federation of small farmers' organizations to be nominated by the Secretary of Agriculture;*
- h) *A representative from the scientific community to be nominated by the National Academy of Science and Technology; and*
- i) *The Registrar* [Sec. 66, para. 1]

All members of the Board shall serve *ex officio*, except for the representatives of the federation of small farmers' organizations and the scientific community who shall each serve for three (3) years, renewable for another three-year period.

ARTICLE 5. *Designation and Authority of Representatives.* - The members of the Board may designate their respective representatives by written notice to the Registrar. All actions and decisions made by the representative shall be considered as those of the member, unless the latter notifies the Board in writing of the limits of authority of his representative.

ARTICLE 6. *Qualifications of Members.* - *The members of the Board or their representatives must be Filipino citizens, have good moral character and should not have been convicted of a crime involving moral turpitude.* [Sec. 66, para. 2]

ARTICLE 7. *Functions of the Board.* - The functions of the Board are to:

- a) *Promulgate policy guidelines for the effective implementation of the provisions of the Act;*
- b) *Have original and exclusive appellate jurisdiction over all decisions of the Registrar;*
- c) *Have original jurisdiction over petitions for compulsory licensing, nullity and cancellation of the Certificates of Plant Variety Protection;*
- d) *Establish and maintain a database of existing plant varieties, collected from foreign and local databases, within one (1) year from the effectivity of the Act;*
- e) *Call on resource persons to provide inputs that will be relevant in the performance of the tasks of the Board;*
- f) *Organize the Plant Variety Protection Office as it sees fit;*
- g) *Approve capital expenditures and contracts of experts;*
- h) *Encourage farming communities and bona fide farmers' organizations to build an inventory of traditional and locally-bred materials as an option to protect these resources from misappropriation and unfair monopolization; and*
- i) *Perform all other functions as may be required in the implementation of the Act.*
[Sec. 66, para. 3; Sec. 72]

ARTICLE 8. *Meetings.* - The Board shall meet at least twice a year ; *Provided*, that the Chairman or the Co-Chairman, or in their absence, the Vice Chairman may call special meetings whenever necessary. A majority of the Board members must be present or represented in order to constitute a quorum. If no quorum is constituted, the meeting shall be adjourned until the requisite number of Board members is present or represented. All decisions of the Board shall be by a majority vote of all members present, provided there is a quorum.

Notices for regular or special meetings of the Board may be sent by personal delivery, by mail, by facsimile or by electronic mail at least one (1) week prior to the date of the meeting: *Provided*, that if sent by facsimile or electronic mail there is evidence to show receipt thereof by the addressee. The notice shall state the place, date and time of the meeting, and the purpose or purposes for which the meeting is called.

When the meeting of the Board is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the reconvened meeting, any business may be transacted that should have been transacted on the original date of the meeting.

Meetings of the Board shall be presided over by the Chairman or Co-Chairman, or in their absence, the Vice Chairman, or if none of the foregoing is in office and present and acting, by a chairman to be chosen by the remaining Board members. The Registrar shall act as Secretary of every meeting, but if not present, the chairman of the meeting shall designate the Associate Registrar or any other member of the Board to act as secretary of the meeting.

ARTICLE 9. *Compensation.* - The Board members shall not receive any compensation. However, they shall be entitled to *per diem* and allowances for their attendance in meetings of the Board in such amounts as shall be in accordance with law.

CHAPTER IV THE NATIONAL PLANT VARIETY PROTECTION REGISTRAR

ARTICLE 10. *The Registrar.* – There shall be a National Plant Variety Protection Registrar appointed by the President of the Philippines upon recommendation of the Board. The Registrar shall be under the control and supervision of the Board and shall have a term of six (6) years. However, the Registrar who shall be first appointed shall serve for a term of seven (7) years. [Sec. 74, para. 1]

ARTICLE 11. *Qualifications of a Registrar.* – The Registrar shall be a citizen of the Philippines with good moral character, extensive executive experience and capability, and preferably with proven track record in the field of plant science. [Sec. 74, para. 2]

ARTICLE 12. *Functions of the Registrar.* – The Registrar shall have the following functions:

- a) *Has original and exclusive jurisdiction to receive, process, examine all applications for Certificates of Plant Variety Protection in accordance with the Act , and in meritorious case, issue the said certificates and sign them in the name of the Board;*
- b) *Issue and maintain a systematic record of all Certificates of Plant Variety Protection and transactions related thereto;*
- c) *Implement the rules and regulations issued by the Board;*
- d) *Institutionalize, maintain and continuously update a database of existing plant varieties collected from foreign and local databases, including community inventories;*
- e) *Maintain a library of scientific and other works and periodicals, both foreign and local, to aid plant variety protection examiners in the discharge of their duties and the applicants in the filing of their applications for Certificates of Plant Variety Protection;*
- f) *Maintain samples of the propagating materials of the protected variety; and*
- g) *Perform such other functions as may be prescribed by the Board.* [Sec. 74, para. 3]

ARTICLE 13. *The Associate Registrar.* – There shall be an Associate Registrar appointed by the President of the Philippines upon recommendation of the Board. The Associate Registrar shall be under the control and supervision of the Board and shall have a term of six (6) years. The Associate Registrar shall have the same qualifications as that of the Registrar, and shall perform such functions as the Registrar may assign to him.

CHAPTER V THE PLANT VARIETY PROTECTION OFFICE

ARTICLE 14. *The Plant Variety Protection Office.* – There shall be established a Plant Variety Protection Office under the Department of Agriculture, which shall be headed by the Registrar.

ARTICLE 15. Functions of the PVP Office. – The PVP Office shall receive and conduct examination of applications for plant variety protection; receive petitions for compulsory license for transmittal to the Board; and maintain a systematic record of all Certificates of Plant Variety Protection, a database of existing plant varieties collected from both local and foreign sources, and samples of the propagating materials of the protected variety.

ARTICLE 16. Qualifications and Appointment of Staff. – The Registrar shall recommend to the Board the number and qualifications of the staff of the PVP Office.

CHAPTER VI

APPLICATION FOR CERTIFICATE OF PLANT VARIETY PROTECTION

ARTICLE 17. Who May Apply. - Any person who:

- a) *Bred, or discovered and developed, a new plant variety; or*
- b) *Is the employer of the person in Article 17(a), unless he has waived his right to the plant variety protection in accordance with Article 20 hereof;*
- c) *Commissioned the breeding, or discovery and development, of a new plant variety, if provided in a written agreement; or*
- d) *The successors-in-interest of the foregoing persons as the case may be;*
- e) Any person who has obtained a plant variety protection for the variety being applied for in another country which by treaty, convention or law affords similar privileges to Filipino citizens.

may apply for a Certificate of Plant Variety Protection upon compliance with the requirements of the Act and these Rules. [Sec. 17 in relation to Sec. 3(c)]

ARTICLE 18. First to File Rule. – *If two (2) or more persons develop a new plant variety separately and independently of each other, the Certificate of Plant Variety Protection shall belong to the person who files the application first. In case two (2) or more persons file an application for the same plant variety, the right shall be granted to the person who has the earliest filing date or priority date. [Sec. 20]*

ARTICLE 19. Joint Ownership. – *If two (2) or more persons contribute to the development of a new plant variety, all of them shall be named in the Certificate of Plant Variety Protection and shall be entitled to such rights as agreed upon in writing or in the absence thereof, the rights in proportion to their contribution in the development of the plant variety. If there is no such written agreement and their respective contributions in the development of the plant variety cannot be established, the co-owners shall be deemed to have equal rights to the new plant variety. [Sec. 18]*

ARTICLE 20. Employee-Employer Relationship. – *In case an employee develops a plant variety in the course of his employment as a result of the performance of his regular duties, the plant variety protection shall belong to the employer, unless there is a written stipulation to the contrary. If the employee developed the plant variety outside of his regular duties, the plant variety protection shall belong to the employee. [Sec. 19]*

ARTICLE 21. *Commissioned Work.* The person who commissions the breeding, or discovery and development, of a new plant variety shall own the plant variety protection, if so provided in a written agreement.

ARTICLE 22. *Priority Date.* – Any application for a Certificate of Plant Variety Protection previously filed by a person in another country, which by treaty, convention or law affords similar privileges to Filipino citizens, shall be considered as filed locally as of the date of filing of the foreign application: *Provided, that:*

- a) *The local application expressly claims priority;*
- b) *It is filed within twelve (12) months from the filing date of the earliest foreign application;*
- c) *The applicant submits, within six (6) months from the filing of the local application, authenticated copies of documents which constitute the foreign application, samples or other evidence showing that the variety which is being applied for protection is the same variety which has been applied for protection in a foreign country. The documents shall be in the English language. [Sec. 21]*

The applicant shall submit proof that the country in which the application for protection was first filed affords similar privileges to Filipino citizens, such as copies of the relevant laws, rules and regulations in said country, together with the English translation thereof, duly certified by the Philippine embassy or consulate.

ARTICLE 23. *National Treatment.* - Any application filed locally for a Certificate of Plant Variety Protection previously granted to a breeder in another country which by treaty, convention or law affords similar privileges to Filipino citizens, shall be issued a Certificate of Plant Variety Protection upon compliance with all the provisions of the Act and these Rules. [Sec. 23]

This shall also apply to the nationals of foreign countries that are members of intergovernmental organizations or party to any multilateral agreement or convention concerning the granting of intellectual property protection to plant varieties. A person shall be considered a national of a foreign country if he is a citizen of such country according to its laws, a natural person residing therein, or is a legal entity whose office is registered in such foreign country. [Secs. 22 & 23]

A country shall be considered to afford similar privileges to Filipino citizens if:

- a) it imposes the same requirements upon, and provides the same terms of protection to, qualified Filipino breeders as it does its own citizens, and
- b) it accords a priority date on any application of Filipino citizens for a Certificate of Plant Variety on the basis of the date of previous application in the Philippines.

ARTICLE 24. *Filing of Application.* – Applications shall be personally filed with the PVP Office during regular business hours or sent by registered mail with the required application fee, The filing date shall be the date of actual receipt by the PVP Office of the minimum application requirements specified in Article 25.

ARTICLE 25. *Minimum Requirements for Application.* – An application for Certificate of Plant Variety Protection shall consist of the following:

- (a) One copy of the completed application form signed by, or on behalf, of the applicant, together with all the required exhibits;
- (b) Official receipt to prove payment of the prescribed, non-refundable application fee. Application fee shall be paid in cash if filing is done personally; otherwise, it shall be paid in postal money order;
- (c) Samples of propagating materials, which are the subject of the application.
 - a. In the case of seeds: (i) at least three thousand (3,000) untreated viable seeds or (ii) a certificate that sufficient samples have been deposited with an accredited gene bank.
 - b. For a tuber propagated variety and fruit, plantation and ornamental crops: (i) certification that a viable culture has been deposited with an accredited depository genebank; or (ii) a certification that a plot of vegetative material has been established in an accredited depository and will be maintained for the required period..

The PVP Office may, at any time after the filing of the application, require the applicant to submit additional propagating materials as may be required for purposes of substantive examination.

Applications and exhibits must be in the English language and typed or printed in standard size (A4) bond paper. Any erasures or alterations must be made in permanent ink before the application and initialed and dated by the applicant to confirm knowledge of such modifications.

ARTICLE 26. *Contents of the Application Form.* – The application form for a Certificate of Plant Variety Protection shall contain the following information::

- a) *Name of the applicant/breeder;*
- b) *Contact details of the applicant/breeder in the Philippines, including address, telephone number, fax number, and electronic mail address;*
- c) *Name of resident agent and address in the Philippines, if applicable;*
- d) *The description of the variety and particulars of the variety bred, including particulars of its characteristics;*
- e) *The variety denomination;*
- f) *If the applicant is not the actual breeder, a statement of the basis of his right to file the application; and*
- g) As applicable, a statement expressly claiming priority under an application for a Certificate of Plant Variety Protection previously filed by the applicant in another country, which by treaty, convention or law affords similar privileges to Filipino citizens. [Sec. 24 and 25]

h) Statement of newness

The Registrar shall design and issue the Application Form.

ARTICLE 27. Exhibits. – The application must include the following exhibits:

- a) Exhibit A – Detailed Origin and Breeding History of the Variety, including (i) the source of the germplasm and *the results of other plant variety tests or trials that have already been done* on the Variety. [Sec. 28]
- b) Exhibit B – Statement of Distinctness, Uniformity and Stability;
- c) Exhibit C – Statement of Ownership;
- d) Exhibit D – Photographs, drawings or plant specimens and other additional information;
- e) Such other exhibits as the Board may require from time to time.

ARTICLE 28. Other Information Required. - *The applicant shall furnish such information regarding any application filed by him in other countries as may be required by the Board, including all pertinent documents relating thereto. If the applicant has successfully claimed priority in accordance with the Act and these Rules, he shall be given a period of two (2) years from the priority date to comply with such other information requirements.*

ARTICLE 29. Number of an Application. – The applications shall be dated and numbered in the order received at the PVP Office.

ARTICLE 30. Formal Examination and Filing Date. – The PVP Office shall examine the application and supporting documents for completeness within five (5) days from receipt thereof. If the application is complete and sufficient, it shall be given a filing date corresponding to the date the application was received at the PVP Office. *For purposes of according a filing date, the applicant must complete the relevant requirements listed in Articles 26 and 27.* Within ten (10) days from receipt by the PVP Office of the application, the applicant shall be notified in writing of either (i) the allowance of the application and effective filing date; or (ii) the deficiencies in the application and the decision of the PVP Office not to give it due course.

ARTICLE 31. Time to Complete Deficiency in Application. - The applicant shall have thirty (30) days from date of the notice of deficiencies to correct or complete his application. Within this period, the applicant may request for an extension of the submission deadline for another thirty (30) days upon payment of the prescribed fee.

ARTICLE 32. Abandonment of an Application. -- If the applicant fails to complete the application within the time given by the Registrar, the application shall be considered as abandoned.

ARTICLE 33. Voluntary Withdrawal of an Application. – An application may be voluntarily withdrawn by submitting to the PVP Office a duly signed written request for withdrawal.

ARTICLE 34. Publication of the Application. – *After the Board, through the PVP Office, has accorded a filing date, the application shall be published within sixty (60) days, at the expense of the applicant, in the Plant Variety Gazette pursuant to Section 30 of the Act. The*

published application shall contain the application number and date of filing, name and address of the applicant, name of the variety or temporary denomination, and a description of the variety. [Sec. 30, para. 1]

Prior to such publication, the application and all related documents shall not be made available to the public without the written consent of the applicant. [Sec. 30, para. 2]

After publication of the application, any person may inspect the application documents: Provided, that a written request for inspection to the Registrar stating the purpose thereof. The inspection shall be conducted only during reasonable office hours and under the supervision of a PVP Office staff. [Sec. 30, para. 3]

ARTICLE 35. *Opposition to the Grant of Plant Variety Protection. – Any person who believes that the applicant is not entitled to the grant of the Certificate of Plant Variety Protection may file an opposition thereto within sixty (60) days from the date of its publication in the Plant Variety Gazette and before the issuance of the Certificate of Plant Variety Protection. Opposition to the application may be made on the following grounds:*

- a) that the person opposing the application is entitled to the breeder's right as against the applicant*
- b) that the variety is not registrable under the Act*

If the opposition is based on the conditions of Plant Variety Protection, such opposition shall be considered together with the examination of the application. [Sec. 31]

CHAPTER VII

SUBSTANTIVE EXAMINATION OF THE PVP APPLICATION

ARTICLE 36. *Issuance of Test Guidelines.* – The Board shall issue species -specific test guidelines for use in examining the distinctness, uniformity and stability of the plant samples subject of the application. These guidelines shall prescribe the propagating material requirements, procedures for the conduct of tests, methods and observations, set of descriptors or table of characteristics and such other information as the Board may deem necessary. In the absence of any test guidelines for a specific species, complete applications shall nevertheless be accepted and accorded a filing date by the PVP Office. However, substantive examination shall be deferred until after the issuance of the relevant guidelines.

ARTICLE 37. *Substantive Examination of Application.* – Examinations of applications shall include a review of all available documents, publications, or other materials relating to varieties of the species involved in the application.

ARTICLE 38. *Requirements for the Grant of Plant Variety Protection.- Plant variety protection shall be granted for varieties that are:*

- (a) New;*
- (b) Distinct;*
- (c) Uniform; and*

(d) *Stable.* [Sec. 4]

ARTICLE 39. Newness. – *A variety shall be deemed new if the propagating or harvested material, which may be the entire plant or its other parts, of the variety has not been sold, offered for sale or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety in the following instances:*

- a) *In the Philippines for more than one (1) year before the date of filing of an application for plant variety protection; or*
- b) *In other countries or territories in which the application has been filed, for more than four (4) years or, in the case of vines or trees, more than six (6) years before the date of filing of an application for plant variety protection.*

However, the requirement of novelty provided for in the Act shall not apply to varieties sold, offered for sale or disposed of to others for a period of five (5) years before July 19, 2002 ; Provided, that the application for PVP shall be filed within one (1) year from July 19, 2002. [Sec. 5]

ARTICLE 40. Distinctness. – *A variety shall be deemed distinct if it is clearly distinguishable from any commonly known variety at the time of the filing of the application. The filing of an application for the granting of plant variety protection or for the entering of a new variety in an official register of variety in the Philippines or in any country, shall render the said variety a matter of public knowledge from the date of the said application; Provided, that the application leads to the granting of a Certificate of Plant Variety Protection or the entering of the said other variety in the official register of variety as the case may be.* [Sec. 6]

ARTICLE 41. Uniformity. – *A variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics. Distinctiveness of a variety shall require that it be sufficiently uniform in all its relevant characteristics enabling it to be distinguishable from other varieties of the same species.* [Sec. 7]

ARTICLE 42. Stability. – *A variety shall be deemed stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of such cycle.* [Sec. 8]

ARTICLE 43. Manner of Conducting Tests. – *The Board may carry out the necessary tests, cause the conduct of tests, or consider the results of other tests or trials that have already been done within and outside the country. For this purpose, the Board shall require the applicant to furnish all the necessary information, documents or materials, other than those listed in Articles 26, 27 and 28, within such period as it may prescribe.*

ARTICLE 44. DUS Testing Centers. – *Test to determine the distinctness, uniformity and stability of the plant samples subject of the application shall be performed only in DUS Testing Centers that have been duly accredited by the Board. The Board shall designate appropriate state colleges and universities, bona fide research institutions, or appropriate non-governmental research centers as testing centers for the distinctness, uniformity and stability of varieties to assist the Examiner in determining whether the variety meets the conditions for granting plant variety protection under the Act.* [Sec. 69, para. 2]

ARTICLE 45. *Plant Variety Registry.* – All plant varieties accorded plant variety protection shall be recorded in the Plant Variety Registry. The Plant Variety Registry shall have a separate list for traditional varieties, landraces and commercial varieties not eligible for plant variety protection.

ARTICLE 46. *Rejection of an Application.* – An application shall be rejected where:

- a) the variety is determined to be not new, distinct, uniform, or stable;
- b) it is filed by a person who is not entitled to plant variety protection.

When an application is rejected, the Board, through the Registrar, shall immediately inform the applicant of the reasons for rejection of the application, and when applicable, identify and provide the documents used as the basis for rejection. [Sec. 35]

ARTICLE 47. *Reasons for Rejection.* –The following documents may be used to support the rejection:

- a) When the reason for rejection involves the citation of a complex material, the particular part of the material relied upon by the Examiner shall be identified. The relevance of each reason, if not obvious, shall be clearly explained to the applicant.
- b) If prior domestic certificates are cited as a reason for rejection, their numbers and dates and the names of the owners shall be stated in the notice of rejection;
- c) If prior foreign certificates or rights are cited as a reason for rejection, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished, as may be necessary to enable the applicant to identify the relevant certificates or rights;
- d) If printed or electronic publications are cited as reason for rejection, the author (if any), title, date, pages or plates, websites and places of publication, or place where a copy of the publication can be found shall be provided to the applicant;
- e) When the rejection is based on facts known to the Examiner, and upon request by the applicant, the rejection shall be supported by the affidavit of the examiner.

ARTICLE 48. *Request for Reconsideration of a Rejected Application.* – *Within two (2) months from receipt of the rejection notice, the applicant may file an amended application or a request for reconsideration to the Board. The request for reconsideration shall explain in detail the alleged errors in the Examiner's action. The applicant shall respond to each reason that the Examiner cited as basis for rejection. The Board may reverse its initial finding or issue a final rejection within two months from the date of filing of the amended application or request for reconsideration: Provided, that a decision on any request for reconsideration on the ground of faulty form or procedure may be held in abeyance by the Registrar until the question of the variety being new, distinct, uniform, and stable is settled. [Sec. 35(a)]*

ARTICLE 49. *Reconsideration and Final Action.* – If the Board reverses its initial finding, the application shall be deemed as filed on the date of the original filing. However, if, despite the amendment of the application or request for reconsideration, the application is still

denied by the Board, the Registrar shall notify the applicant of the reason or reasons for denial in the same manner as prescribed in Article 47.

The decision of the Board is final except for fraud or manifest error on the part of the Board, in which case, the applicant may appeal it to the proper court within two months from the date of receipt of denial. [Sec. 35(a)]

CHAPTER VIII VARIETY DENOMINATION

ARTICLE 50. *Designation of Variety. – The variety shall be designated by a denomination which shall be its generic description. It must:*

- (a) be different from any denomination that designates an existing variety of the same plant species or closely related species; [Sec. 9]*
- (b) enable the variety to be identified. It may not consist solely of figures, except when it is an established practice for designating such a variety; [Sec. 11];*
- (c) not mislead or cause confusion concerning the characteristic value or identity of the variety or identity of the breeder; [Sec. 12]*
- (d) not be already registered to another breeder or is being used by a third party in relation to the sale or offering for sale of a particular variety prior to the filing date or priority date of an application for a Certificate for Plant Variety Protection; [Sec. 10] and*
- (e) not be contrary to public order or morality.*

ARTICLE 51. *Refusal of Denomination. – If the denomination does not satisfy the requirements listed in Article 50, its registration shall be refused and the applicant shall be required to propose another denomination within thirty (30) days from receipt of notice of disallowance from the Registrar. The denomination shall be registered together with the grant of the plant variety protection, and no plant variety shall be registered without a variety denomination approved by the Board. [Sec. 13]*

ARTICLE 52. *Right of Priority over Denomination. – In case two or more applicants apply for the registration of the same denomination, the applicant who has the earliest filing date or priority date shall have the right to register the same to the exclusion of the other applicant. [Sec. 10]*

ARTICLE 53. *Denomination Used in an Application Previously Filed Abroad. – An application filed in the Philippines, the subject matter of which is the same as that of an application previously filed abroad, shall use the same denomination as the latter. However, if such denomination does not conform to the conditions listed in Art. 50, the applicant shall be required to submit a new denomination. [Sec. 14]*

ARTICLE 54. *– Obligation to Use Denomination. – Any person who offers for sale or markets in the Philippines the propagating material of a protected variety shall use the denomination of that variety even after the expiration of the breeder's right to use it except when a third person has acquired a prior right to the use of the denomination. [Sec. 15]*

ARTICLE 55. *- Use of Marks. – When a protected variety is offered for sale or marketed, it may be associated with a trademark, trade name or other similar indication with a*

registered denomination. Such indication shall not be used without the denomination, which must at all times be easily recognizable.

CHAPTER IX ISSUANCE AND PUBLICATION OF PVP CERTIFICATE

ARTICLE 56. *Issuance of Certificate. – When the Board, through the PVP Office, has tested and examined the variety, or considered the supporting materials and literature pertinent thereto, and found everything in order, it shall issue a Certificate of Plant Variety Protection. [Sec. 32]*

ARTICLE 57. *Publication of Certificate. – The Certificate of Plant Variety Protection shall be published in the Plant Variety Gazette, at the expense of the holder, within thirty (30) days of its issuance and upon payment by the applicant of the publication fee. The publication shall contain the PVP Certificate Number, the name or denomination of the variety, the crop species, and the name of the certificate holder.*

CHAPTER X RIGHTS OF HOLDERS

ARTICLE 58. *Rights of Holders of Plant Variety Protection. – In respect of the propagating materials, holders of a Certificate of Plant Variety Protection shall have the right to authorize any of the following acts:*

- a) Production or reproduction;*
- b) Conditioning for the purpose of propagation;*
- c) Offering for sale;*
- d) Selling or other marketing;*
- e) Exporting;*
- f) Importing; and*
- g) Stocking for any purpose mentioned above. [Sec. 36]*

The holder may make his authorization subject to conditions and limitations. [Sec. 37]

ARTICLE 59. *Acts in Respect of Harvested Materials. – Except for Articles 67 and 68, the rights in Sections 36 and 37 of the Act shall also extend to the harvested materials which may be the entire plant or its other parts, if the production thereof resulted directly from the unauthorized use of the plant's propagating materials. However, the right to the harvested material can not be invoked if the holder has had the reasonable opportunity to exercise his right in relation to the said propagating materials, [Sec. 38]*

ARTICLE 60. *Coverage of Protection. – The rights of a holder of a Certificate of Plant Variety Protection under Articles 58 and 59 shall also apply in relation to:*

- a) *Varieties which are essentially derived, as defined under Articles 63 and 64, from the protected variety, where the protected variety is not itself an essentially derived variety;*
- b) *Varieties which are not clearly distinct from the protected variety; and*
- c) *Varieties whose production requires the repeated use of the protected variety. [Sec. 39]*

ARTICLE 61. Terms of Protection. – *For trees and vines, the period of protection shall be twenty-five (25) years from the date of the grant of the Certificate of Plant Variety Protection and twenty (20) years from the said date for all other types of plants, unless declared void ab initio or cancelled otherwise, as provided under Articles 92 and 93, respectively. [Sec. 33]*

ARTICLE 62. Provisional Protection. – *An applicant for a Certificate of Plant Variety Protection shall be entitled to equitable remuneration from any person who, during the period between the publication of the application for the certificate and the grant of that certificate, has carried out acts which, once the certificate is granted, require the holder's authorization as conferred under these Rules; provided, that the applicant shall initiate the legal action against the alleged infringer within two (2) years from the date of the granting of his Certificate of Plant Variety Protection. [Sec. 42]*

ARTICLE 63. Essentially Derived Varieties. – *For purposes of Article 60, a variety shall be deemed to be essentially derived from the initial variety when:*

- a) *It is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;*
- b) *It is clearly distinguishable from the initial variety; and*
- c) *Except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety. [Sec. 42]*

ARTICLE 64. Manner of Developing Essentially Derived Varieties. – *Essentially derived varieties may also be obtained through processes which include, but are not limited to: (i) the selection of a natural or induced mutant or of a somaclonal variant; (ii) the selection of a variant individual from plants of initial variety; and (iii) backcrossing or transformation by genetic engineering. [Sec. 41]*

A variety derived by means of backcrossing shall be deemed essentially derived on the fourth backcross.]

ARTICLE 65. Transmission of Rights. *Plant variety protection or application for plant variety protection shall be considered as a property right and the transmission thereof shall be governed in the same manner and extent as other property rights. They may be assigned or transmitted by inheritance or bequest or be the subject of a license agreement. [Sec. 46]*

Any transmission of rights, by assignment, inheritance, bequest or license, may pertain to the entire right, title or interest in and to the plant variety protection or application for plant variety protection, or of an undivided share in the plant variety protection or application for plant variety protection.

Unless by inheritance, the transmission of plant variety protection or application for plant variety protection shall be in writing and acknowledged before a notary public or any officer authorized to administer oaths. An original or authenticated copy and one duplicate copy of the transmission instrument shall be submitted to the PVP Office for recording in the Plant Variety Registry. Upon recording, the PVP Office shall retain the duplicate copy return, the original or authenticated copy to the party who filed the same and publish a notice of the recording in the Plant Variety Gazette. A transmission of rights not recorded in the PVP Office shall not bind any third party who has had no knowledge of such transmission.

ARTICLE 66. *Right of Attribution.* – The person who bred, or discovered and developed, the variety has the right to be identified as such in the *Certificate of Plant Variety Protection*: Provided, however, that this right may only be asserted in writing to the Board *within one (1) year* from publication of the Certificate of Plant Variety Protection in the Plant Variety Gazette. [Sec. 45]

CHAPTER XI EXCEPTIONS TO PLANT VARIETY PROTECTION

ARTICLE 67. *Exceptions to Plant Variety Protection.* – *The Certificate of Plant Variety Protection shall not extend to:*

- a) *Acts done for noncommercial purposes;*
 - b) *Act done for experimental purposes;*
 - c) *Acts done for the purpose of breeding other varieties, except when Sections 39 and 40 of the Act apply; and*
 - d) *The traditional right of small farmers to save, use, exchange, share or sell their farm produce of a variety protected under the Act, except when a sale is for the purpose of reproduction under a commercial marketing agreement. The Board shall determine the conditions and issue the guidelines under which this exception shall apply, taking into consideration the nature of the plant cultivated, grown or sown. This exception shall also extend to the exchange and sale of seeds among and between said small farmers: Provided, That the small farmers may exchange or sell seeds for reproduction and*
 - e) *replanting in their own land.* The right granted to small farmers under this provision does not include the right to sell the protected variety under the trademark or trade name of the holder which is associated with the registered denomination. [Sec. 43]
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ARTICLE 68. *Exhaustion of Plant Variety Protection.* – The Certificate of Plant Variety Protection shall not extend to acts concerning any material of the protected variety, or a variety covered by Articles 57 and 58, which has been sold or otherwise marketed by the breeder or with his consent in the Philippines, or any material derived from the said material, unless it:

- a) *Involves further propagation of the variety in question; or*
- b) *Involves the export of the variety, which enables the propagation of the variety, into a country that does not protect the variety of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes. [Sec. 44]*

CHAPTER XII COMPULSORY LICENSING

ARTICLE 69. *Grounds for Compulsory Licensing.* - The Board may grant a license to exploit a protected variety, even without the agreement of the holder, in favor of any person who has shown his capability to exploit the plant variety, *when it is for the public interest to grant such compulsory licensing and :*

- a) *The reasonable requirements of the public for any part of the variety are not met; or*
- b) *There is an overseas market for the sale of any part of the variety and the same are not met by the holder; or*
- c) *The plant variety developed relates to or is required in the production of medicine and/or any food preparation. [Sec. 57]*

ARTICLE 70. *Who may file petition for compulsory licensing; time for filing the petition.* – Upon the payment of the required fee, *any interested person may file a petition for compulsory licensing with the Board at any time, after two years after the grant of the Certificate of Plant Variety Protection when it is for the public interest to grant such compulsory licensing. [Sec. 57]*

ARTICLE 71. *Scope of Compulsory Licensing.* – The Board, upon petition by any interested party and upon proof of any of the foregoing grounds, may issue a decision:

- a) *Allowing the petitioner to produce in commercial quantity and distribute the variety protected or any part thereof; or*
 - b) *Requiring the holder to ensure the availability of the propagating materials of the variety protected; or*
 - c) *Requiring the petitioner to pay the holder with the license fees in the form of reasonable royalties; and*
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- d) *Other such additional remedies as the Board may determine to be consistent with appropriate circumstances.* [Sec. 58]

ARTICLE 72. *Form and Contents of Petition.* - The petition for compulsory licensing must be in writing, verified by the petitioner and accompanied by payment of the required filing fee. It shall contain the name and address of the petitioner as well as those of the respondents, the number and date of issue of the Certificate of Plant Variety Protection in connection with which compulsory license is being sought, the name of the holder of the PVP Certificate, the denomination of the plant variety, the statutory grounds upon which compulsory license is sought, the ultimate facts constituting the petitioner's cause of action, and the relief prayed for.

ARTICLE 73. *Notice of Hearing.* - Upon filing of a petition, the Board shall forthwith serve notice of the filing thereof upon the holder and all persons having licenses or any other right, title or interest in and to the Certificate of Plant Variety Protection and the plant variety covered thereby as appears on the record of the PVP Office, and of notice of the date of hearing thereon, on such persons and petitioner.

ARTICLE 74. *Publication of Notice.* - In every case, the Board shall cause the notice to be published once in a newspaper of general circulation and once in the PVP Gazette at the expense of the applicant.

ARTICLE 75. *Grant of License.* - If the Board finds that a grant of license under Article 65 has been made out, it shall, within three (3) months from the date the petition was filed, order the grant of an appropriate license.

ARTICLE 76. *Terms and Condition of Compulsory License.* - The Board shall fix the terms and conditions including the rate of royalties of the compulsory license subject to the following conditions:

- a) The scope and duration of such license shall be limited to the purpose for which it was authorized;
- b) The license shall be non-exclusive;
- c) The license shall be non-assignable, except with the part of the enterprise or business with which the plant variety is being exploited;
- d) The license may be terminated upon proper showing that circumstances which led to its grant have ceased to exist and are unlikely to recur: *Provided*, that adequate protection shall be afforded to the legitimate interest of the licensee;
- e) The holder shall be paid adequate remuneration taking into account the economic value of the grant or authorization, except that in cases where the license was granted to remedy a practice which was determined after judicial or administrative process to be anti-competitive, the need to correct the anti-competitive practice may be taken into account in fixing the amount of remuneration.

ARTICLE 77. *Amendment of Compulsory License.* - Upon the request of the holder or licensee, the Board may amend the decision granting the compulsory license, upon proper showing of new facts or circumstances justifying such amendment.

ARTICLE 78. Duration of Compulsory License. - - A compulsory license shall be effective until the ground(s) for its issuance has been terminated as determined by the Board *motu proprio* or upon the petition by parties and resolution by the Board. [Sec. 59]

ARTICLE 79. Cancellation of a Compulsory License. - Upon the request of the holder, the Board may cancel the compulsory license:

- a) if the ground for the grant of the compulsory license no longer exists and is unlikely to recur;
- b) if the licensee has neither begun to supply the overseas market nor made serious preparation therefore;
- c) if the license has not complied with the prescribed terms of the license.

ARTICLE 80. Surrender of the License. - The licensee may surrender the license by a written declaration submitted to the Board.

ARTICLE 81. Publication of the Amendment, Surrender, or Cancellation of the License. - The Board shall cause the amendment, surrender, or cancellation of a license to be recorded in the appropriate register of the PVP Office, notify the holder, and cause notice thereof to be published, at the expense of the petitioner, in the PVP Gazette.

CHAPTER XIII

INFRINGEMENT OF PLANT VARIETY PROTECTION

ARTICLE 82. What Constitutes Infringement. - Except as otherwise provided in the Act, any person who without being entitled to do so, performs any of the following acts:

- a) *Sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;*
- b) *Import the novel variety into, or export it from, the Philippines; or*
- c) *Sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or*
- d) *Use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or*
- e) *Use seed which had been marked "unauthorized propagation prohibited" or "unauthorized seed multiplication prohibited" or progeny thereof to propagate the novel variety; or*
- f) *Dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or*
- g) *Fails to use a variety denomination the use of which is obligatory under Section 15; or*

h) *Perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid Philippine plant patent; or*

i) *Instigate or actively induce performance of any of the foregoing acts,*

may be sued by the holder, who may also avail of all such relief as are available in any proceeding involving infringements of other proprietary rights. [Sec. 47]

ARTICLE 83. *Where to Commence Action. – Any holder may petition the proper regional trial court for infringement of his plant variety protection. [Sec. 48]*

ARTICLE 84. *Presumption of Validity. – Certificates of Plant Variety Protection shall be presumed valid and the burden of proof of their invalidity shall rest on the party assailing them. [Sec. 49]*

ARTICLE 85. *Defenses Against Infringement Charges. – The following shall be valid defenses against infringement charges:*

a) *Non-infringement;*

b) *The plant variety does not possess at the time of its application criterion of novelty or distinctness;*

c) *The alleged infringement was performed under a right adverse to it, prior to the notice of infringement; and / or*

d) *Other defenses that are made available under this Act. [Sec. 50]*

ARTICLE 86. *Notice. – No damages shall be awarded unless there is actual or constructive notice made upon the alleged infringer. [Sec. 51]*

ARTICLE 87. *Damages. – The court may award actual, moral, exemplary damages and attorney's fees according to a proven amount including a reasonable royalty for the use of the protected variety. [Sec. 52]*

ARTICLE 88. *Injunction. – The court may also enjoin the infringer(s) from further performing any act of infringement on the rights of the holder(s) as defined in the Act. [Sec. 53]*

ARTICLE 89. *Court to Order Confiscation of Infringing Materials. – Upon petition by the complainant, the court may order the confiscation of infringing materials, and:*

a) *Cause their distribution to charitable organization;*

b) *Cause the sale and provide the proceeds thereof to research organizations; or*

c) *Cause the return to the petitioner for further scientific use. [Sec. 54]*

ARTICLE 90. *Prescription. – No recovery of damages for any infringement case shall prosper when the cause of action has reached more than six (6) years from the time the alleged infringement case was committed. [Sec. 55]*

ARTICLE 91. Criminal Penalty. – Any person who violates any of the rights of the holder provided for in this Act may also suffer the penalty of imprisonment of not less than three (3) years but not more than six (6) years and/ or a fine of up to three (3) times the profit derived by virtue of the infringement but in no case should be less than One Hundred Thousand pesos (P100,000.00). [Sec. 56]

CHAPTER XIV CANCELLATION AND NULLITY OF PLANT VARIETY PROTECTION

ARTICLE 92. Grounds for Nullity. – The Certificate of Plant Variety Protection shall be declared void *ab initio* on any of the following grounds:

- a) The grant of the Certificate of Plant Variety Protection was essentially based upon information and documents furnished by the applicant, wherein the conditions of distinctness, uniformity, stability, and newness were not complied with at the time of the grant of the certificate; or
- b) The Certificate of Plant Variety Protection was granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

The effect of the declaration of nullity is that as if the Certificate of Plant Variety Protection was not issued. [Sec. 61]

ARTICLE 93. Grounds for Cancellation. – The plant variety protection shall be cancelled on any of the following grounds:

- a) The breeder does not provide the required information, documents, or materials necessary for verifying the maintenance of the variety; or
- b) The breeder fails to pay the required fees to keep his or her rights in force or provides false information in his or her application; or
- c) The breeder does not propose, within the time/period provided under the regulations, another suitable denomination if the denomination of the variety is cancelled after the grant of the Certificate of Plant Variety Protection; or
- d) The conditions of uniformity and stability could not be maintained although these were present at the time of the issuance of the Certificate of Plant Variety Protection; or
- e) The breeder entitled to the Certificate of Plant Variety Protection or the holder has relinquished his/her rights through a declaration in a public instrument filed with the registrar. [Sec. 62]

The effect of cancellation is that the plant variety protection ceases to be valid from the date the order of cancellation becomes final and executory.

ARTICLE 94. Who May File. – Any interested person may, upon payment of the required fee, petition to nullify a Certificate of Plant Variety Protection or cancel a plant variety protection on any of the grounds respectively specified in Articles 92 and 93. The Registrar may

motu proprio file such petitions: *Provided*, that no fee shall be required of the Registrar in his exercise of this authority.

ARTICLE 95. *Requirements of the Petition.* – The petition to nullify or cancel shall: (i) be in writing and verified by the petitioner or by any person in his behalf who knows the facts; (ii) specify the grounds on which it is based; (iii) and filed with the Board. Copies of documents mentioned in the petition shall be attached thereto, together with their translation in the English, if not in the said language.

ARTICLE 96. *Venue.* – Any petition to cancel a Certificate of Plant Variety Protection shall originally be under the jurisdiction of the Board. Decisions of the Board may be appealable with the Court of Appeals within fifteen (15) days from the receipt of notice of the Board's final decision. [Sec. 63]

ARTICLE 97. *Prescription.* – The right to nullify a Certificate of Plant Variety Protection or cancel a plant variety protection shall be instituted at any time within the term of protection of such right. [Sec. 64]

ARTICLE 98. *Publication.* – A notice of the filing of a petition to nullify a Certificate of Plant Variety Protection or cancel a plant variety protection, as the case may be, and the final order/decision on the same shall be published at the expense of the petitioner, as far as practicable, in the earliest issue of the Plant Variety Gazette following such notice or order/decision. [Sec. 65]

CHAPTER XV PLANT VARIETY GAZETTE

ARTICLE 99. *Contents.* – The Plant Variety Gazette shall contain applications for plant variety protection, Certificates of Plant Variety Protection issued, petitions to cancel a Certificate of Plant Variety Protection, cancelled/nullified Certificates of Plant Variety Protection, and such other matters as the Board deems necessary to be published therein.

ARTICLE 100. *Editorial Board.* – The Editorial Board shall be composed of the Registrar as Editor and the technical staff of the PVP Office as contributors. The Chairman, Co-Chairman and Vice Chairman of the Board shall serve as Editorial Advisers.

ARTICLE 101. *Translation.* – The Plant Variety Gazette shall be translated into Filipino. However, in case of any conflict in the interpretation of the English and Filipino versions of the Plant Variety Gazette, the former shall prevail.

ARTICLE 102. *Frequency of Publication.* – The Plant Variety Gazette shall be published monthly, or such other period as the Board may deem proper.

ARTICLE 103. *Distribution.* – Copies of the Plant Variety Gazette, either in print or electronic form, shall be distributed for free to all public and private breeding institutions, the members of the Senate and House Committees on Agriculture and to small farmer-groups and indigenous communities who have requested to be included in the mailing list of the PVP Office.

CHAPTER XVI FEES AND RELATED CHARGES

ARTICLE 104. *Fees and Related Charges.* – Fees and other shall be paid by the applicant for the following services and actions:

- a) Filing of the application
- b) Publication of the application
- c) Substantive Examination
- d) DUS Testing
- e) Publication of certificate
- f) Revival of an abandoned application
- g) Reproduction of records, drawings, certificates, exhibits or printed material (copy per page of material)
- h) Authentication (each page)
- i) Amendment of the Certificate of Plant Variety Registration, unless the mistake be on the part of the PVP Office
- j) Re-issuance of a certificate
- k) Additional fee for reconsideration
- l) Additional fee for late payment
- m) Appeal to Board
- n) Field inspections by a representative of the PVP Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence) in accordance with standard government travel regulations
- o) Filing for extensions to comply with PVP Board requirements
- p) Any other service not covered above will be charged for at rates prescribed by the Registrar

The schedule of fees shall be approved by the Board upon recommendation of the Registrar. It shall be reviewed, and may be adjusted, by the Board periodically to take into account any increase or decrease in the cost of implementing the Act.

ARTICLE 105. *Where and When to Pay.* – All fees and other related charges shall be paid at the PVP Office and deposited in the PVP Fund. The application and examination fees shall be paid by the applicant at the time of filing the application. The search fee shall be paid upon request. The testing fee shall be paid within 30 days from date of notice to pay. All other fees and related charges shall be paid upon avilment of such service or action.

ARTICLE 106. *Method of Payment.* – Fees shall be paid in cash, money order, or cashier's checks payable to the PVP Office.

ARTICLE 107. *Annual Fees.* – To maintain the validity of the Certificate of Plant Variety Protection, the holder shall pay an annual fee to be prescribed by the Board. Annual fee shall be paid starting from the fourth anniversary of the issuance of the certificate and every

year thereafter within the first three (3) months of said years. The holder has the option to pay in advance this annual fee for a maximum of twenty (20) years; Provided, that any such payment is deemed non-refundable.

The Certificate of Plant Variety Protection shall expire and cease to have force and effect upon the holder's failure to pay the annual fees within the prescribed period. A notice of such cancellation shall be published in the Plant Variety Gazette one (1) year after the term of protection has expired. Before such publication, any holder who fails to pay the annual fees may request for a reinstatement of his or her certificate. Provided, that he or she settles his unpaid accounts including surcharges to be determined by the Board. [Sec. 34]

CHAPTER XVII

PVP FUND AND GENE TRUST FUND

ARTICLE 108. *The PVP Fund. – There is hereby created a PVP Fund, hereinafter referred to as the fund, to be administered by the Board. All fees, fines and charges collected by the Board under the Act, shall be deposited in the fund. The Board is hereby authorized to use and disburse the fund without need of approval by any government agency, and subject only to existing accounting and auditing rules and regulations for purposes of defraying the cost of operations in the delivery of its services to the public. [Sec. 70]*

ARTICLE 109. *Gene Trust Fund. – There shall be an independent and separate trust fund to be administered by the Board, for the benefit of bona fide organizations or institutions managing and operating an accredited gene bank. An amount to be determined by the Board but not to exceed twenty percent (20%) of the fees and charges shall be used for the purposes of the gene trust fund. The trust fund may also accept donations from national and international institutions and other organizations and individuals interested in strengthening genetic conservation. Any juridical person based in the Philippines with the facilities and competent personnel to conserve and maintain the viability of seeds or other propagating materials may be accredited by the Board as a gene bank. Within six months from the effectivity date of these Rules, the Board shall issue the guidelines for the accreditation of gene banks. [Sec. 71]*

Chapter XVIII

MISCELLANEOUS PROVISIONS

ARTICLE 110. *Severability. - The provisions of these Rules are hereby declared to be separable. In the event that one or more of its provisions are held to be invalid, the validity of the other provisions shall not be affected thereby.*

ARTICLE 111. *Effectivity. – These Rules shall take effect thirty (30) days after its publication in a national newspaper of general circulation.*

LUIS P. LORENZO Jr.
Secretary Agriculture and
Chair, National Seed Industry Council