



## General Rules on the Protection of Plant Varieties

(Approved by Royal Decree No. 1674/1977 of June 10, 1977)\*

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### I. Purpose and Scope of These Rules

1. The purpose of these Rules is to lay down standards for the interpretation and implementation of Law No. 12/1975, of March 12, 1975,<sup>1</sup> hereinafter referred to as the Law on the Protection of Plant Varieties, concerning the recognition and protection of the right of the breeder of a new plant variety covered by a "Plant Variety Title," and of his successors, in accordance with the provisions of this Section and the following Sections.

Its application shall extend to all botanical genera and species. It shall come into effect in the ordinary manner within the following maximum periods of time, during which the protection of the species indicated has to be established. The said periods shall begin on the date of publication of the Decree approving these Rules.<sup>2</sup>

(a) Six months for: *Triticum aestivum* L. ssp. *vulgare* (Vill., Host) Mac Kay; *Triticum durum* Desf.; *Hordeum vulgare* L. s. *lat*; *Avena sativa* L.; *Avena byzantina* C. Koch; *Oryza sativa* L.; *Solanum tuberosum* L.; *Rosa hort.* and *Dianthus caryophyllus* L.

(b) Three years for: *Pisum sativum* L.; *Phaseolus vulgaris* L.; *Phaseolus coccineus* L.; *Helianthus annuus* L.; *Prunus persica* Batsch and *Citrus* sp.

(c) Six years for: *Zea mays* L.; *Medicago sativa* L.; *Lactuca sativa* L.; *Malus domestica* Borkh.

(d) Eight years for: *Trifolium pratense* L.; *Lolium* sp.

For species not mentioned in the preceding subsections, protection shall be established by the Ministry of Agriculture within the time and to the extent dictated by the sector concerned.

\* *Spanish title*: Reglamento general sobre protección de obtenciones vegetales.

*Entry into force*: July 11, 1977.

*Source*: *Boletín oficial del Estado*, No. 161, July 11, 1977.

\*\* This Table of Contents is added by WIPO for the convenience of the reader (*Editor's Note*).

<sup>1</sup> See *Industrial Property*, 1975, p. 289.

<sup>2</sup> Royal Decree No. 1674/1977 of June 10, 1977, published on July 11, 1977.

## II. Definition of the Plant Varieties Covered by the Protection and of the Breeder

2. In accordance with the provisions of the Law on the Protection of Plant Varieties, “plant variety” means any commercial variety (internationally known as a “cultivar”), clone, line, stock or hybrid that satisfies the conditions established in that Law and these Rules.

For the purposes of these Rules, the following definitions are established:

- (a) commercial variety: set of cultivated botanical individuals, which are distinguished by specific morphological, physiological, cytological, chemical or other characteristics of an agricultural or economic nature and which retain their distinctive characteristics in the course of sexual reproduction or vegetative propagation;
- (b) clone: set of individuals obtained by vegetative multiplication of a single plant which possess an identical genetic parentage;
- (c) line: natural or artificial group obtained by sexual reproduction, being sufficiently uniform. The line is called pure when the individuals that constitute it have been obtained by successive self-fertilization from a single homozygous parent;
- (d) stock: descendance of plants of one and the same origin obtained by breeding, which possess numerous common characteristics;
- (e) hybrid: plant obtained by spontaneous or voluntary crossing from parents generally having a different genetic parentage.

3. “Breeder” means any natural person or legal entity who proves that he is responsible for any improvement, selection or discovery by which a new plant variety has been obtained, in accordance with the provisions of Section 3 of the Law on the Protection of Plant Varieties.

## III. Conditions Required for Protection of a Plant Variety

### 4.—

(1) For a variety to be eligible for protection under the Law on the Protection of Plant Varieties it has to:

- (a) be new, that is, be differentiated from varieties the existence of which at the time of the application for protection is public knowledge. Such differentiation shall be established by one or more important morphological or physiological characteristics which fluctuate little and are susceptible of precise description and recognition; public knowledge may be determined by various references, such as growing or commercialization of the variety, in preparation or in progress, presence in a reference collection or precise description in a publication;
- (b) be homogeneous in its combined characteristics, according to its system of reproduction or multiplication;
- (c) be stable in its essential characteristics, in other words, remain true to the definition given by the breeder at the end of each cycle of reproduction or multiplication.

*Preliminary examination:*

(2) The verification of whether a variety meets the above conditions constitutes the “preliminary examination,” which shall take place when the procedure has been initiated and when examination of the application, in accordance with subsections (5) to (7), inclusive, of this Section, has been completed.

With regard to the conditions that have to be met by a plant variety in order to be eligible for protection, account shall be taken of the following:

- *Novelty:* the characteristics that are used to distinguish varieties shall be both qualitative and quantitative. In both cases the variation of the said characteristics, which shall be discontinuous for the non-measurable ones and continuous between two extremes for the quantitative ones, shall be defined by degrees of expression, the number of which shall be determined by the

needs of description. Characteristics the variation of which is least affected by environment shall be regarded as the most important;

- *Homogeneity*: for a variety to be considered homogeneous, all the component individuals have to be practically equal, or have a limited overall variation with respect to the characteristics concerned; in other words, the number of plants, the description of which is different from the variety under consideration, has to remain within reasonable limits and, as the case may be, fluctuations have to remain within a specific range;
- *Stability*: generally, when the sample supplied by the breeder is regarded as having a high level of homogeneity, the material may be considered stable. In the event of doubt, propagation of the material shall be effected with a view to ascertaining whether it remains true to its definition.

The Ministry of Agriculture shall lay down such standards for the interpretation of these Rules as are necessary for each species or group of species with respect to the carrying out of the preliminary examination, and which shall specify the following:

- (a) minimum amount of growing material required from the breeder in order to carry out the observations necessary in each case;
- (b) qualitative characteristics of the said growing material;
- (c) dates on which and places in which the said growing material has to be deposited;
- (d) characteristics that have to be taken into consideration for the definition of a variety;
- (e) duration of test growings, and manner in which these are to take place.

The “preliminary examination” may be effected in a foreign country where relevant international agreements have been previously established for the species concerned.

(3) A variety shall not be considered new for the purposes of the provisions of the Law on the Protection of Plant Varieties when, at the time of the application for a “Plant Variety Title,” it has already been marketed or offered for sale in Spain, with the authorization of the breeder or his successors in title, or more than four years previously in any foreign country, or where it has been the subject of sufficient advertising of any kind to be used.

Similarly, the variety shall not be considered new if it is described in an application for a “Plant Variety Title,” in a title that has not yet been published or in an application filed abroad that benefits from the priority provided for in Section 10(3) of these Rules.

In no case shall the sole fact that it has been recorded as such in an Official Register be regarded as destructive of novelty. For the purposes of this provision, “Official Register” means the Register of Commercial Varieties of the National Institute of Seeds and Nursery Plants, or any other similar register of a foreign country with which Spain has entered into an Agreement on the subject.

(4) In accordance with the Law on the Protection of Plant Varieties, the following shall not be regarded as marketing:

- (a) presentation at contests, collections or exhibitions, insofar as no commercial transactions take place at them;
- (b) production and distribution on an experimental scale.

#### *Application for a “Plant Variety Title”*

(5) Applications for “Plant Variety Titles” shall be governed by the following rules:

(a) Applicant: the applicant for a “Plant Variety Title” shall be the breeder or his successors in title, who shall provide adequate proof of their status; the application may be filed by a representative having his legal domicile in Spain; where the applicant is a foreigner, the aforesaid requirement shall be mandatory;

(b) Application: the application for a “Plant Variety Title” shall be filed with the Ministry of Agriculture (National Institute of Seeds and Nursery Plants, Madrid), and with its Provincial Delegations, in addition to the places provided for in Section 66 of the Law on Administrative Procedure.

The application shall be stamped by the office or center concerned, with an indication of the date, hour and minute of receipt of the filing.

If the office or center has a record only of the date, the submission of the documents included in the filing shall be deemed to have taken place at midnight on that date. If there is no record of the date of the submission to the office or center, such submission shall be deemed to have been made on the date of receipt and on the hour of opening of the package at the Registry of Protected Plant Varieties.

The application shall include at least the following indications:

- (b.1) the genera and/or species to which the variety belongs;
  - (b.2) the denomination proposed by the breeder or his successor in title;
  - (b.3) the name and postal address of the applicant; where the applicant is not the same person as the breeder, the name and address of the latter;
  - (b.4) nationality of the applicant and, where appropriate, of the breeder;
  - (b.5) description of the procedure according to which the variety has been obtained or discovered;
  - (b.6) indication of the country or countries in which a “Plant Variety Title” has been applied for and, where appropriate, obtained;
  - (b.7) indication, where appropriate, that the variety has been recorded in the Register of Commercial Varieties of another country, together with the date of such recording;
  - (b.8) when the right of priority referred to in Section 10(3) of these Rules is claimed, a mention should be made in the application of the date of the filing effected earlier in the other country, the denomination under which the variety was registered, or, failing that, a provisional breeder’s reference, the country in which protection was applied for and any other information that the applicant considers appropriate.
- (c) The application for a “Plant Variety Title” shall be accompanied by the following documents:
- (c.1) declaration by the applicant, specifying that the variety for which protection is requested is, in his opinion, a new plant variety within the meaning of Section 4(1) of these Rules, and that it has not been marketed or offered for sale with the authorization of the breeder or his successors in title in Spain, or in any foreign country more than four years previously;
  - (c.2) the authorization of the breeder concerned when, for the commercial production of plants or propagation material for the variety for which protection is sought, the repeated or systematic use of plants or parts of plants of another protected variety is necessary;
  - (c.3) where the applicant is the successor in title to the breeder, an authentic document attesting the transfer of the rights;
  - (c.4) where action is being taken by an agent, a document attesting his status as such;
  - (c.5) where the denomination proposed by the breeder or his successors in title is the subject of trademark rights or may create confusion with a trademark, a document shall be filed renouncing the said trademark in Spain and in other countries in which the variety may be protected by virtue of the conclusion of protection agreements;
  - (c.6) a technical questionnaire in which shall be specified the characteristics of the variety for which the application is filed and which are considered worthy of emphasis in the species to which the variety to be protected belongs, any differences in relation to similar varieties and all characteristics that are considered appropriate in individual cases; the Ministry of Agriculture (National Institute of Seeds and Nursery Plants) shall prepare technical questionnaires for this purpose, which shall be at the disposal of all applicants for “Plant Variety Titles.”

The application and the technical questionnaire to which the preceding paragraphs refer shall be drawn up in Spanish. For any other document sent to the National Institute of Seeds and Nursery Plants, Spanish shall be used or the document accompanied by an official translation.

#### *Initiation of the Procedure*

(6) When the application and the documents provided for in the preceding subsection have been filed, the Registry of Protected Plant Varieties of the National Institute of Seeds and Nursery Plants shall proceed to

undertake an examination of all the documentation available or received, with a view to ascertaining whether the following requirements are met:

- (a) compliance with the provisions of the Law on Administrative Procedure concerning the initiation of the procedure;
- (b) inclusion in the application file of the documents provided for in Section 4(5);
- (c) submission of proof of payment of the fees established by law for the processing of the application.

If, as a result of the examination undertaken by the National Institute of Seeds and Nursery Plants, it is considered that any one of the requirements mentioned above has not been met, the applicant shall be requested to remedy the defect within ten days or to submit the supporting documents, as the case may be, with the warning that, if this is not done, the application will be dismissed without further proceedings.

For the purpose of priority, dismissed applications shall be regarded as not having been filed.

#### *Examination of the Application*

(7) When the application has been filed and, where appropriate, the requirements referred to in the preceding subsection have been met, examination shall be undertaken by the National Institute of Seeds and Nursery Plants (Registry of Protected Plant Varieties) within a month following its receipt of the file. The examination shall be confined to:

- (a) determining the clarity of the description of the variety;
- (b) inspecting the documents submitted by the applicant;
- (c) verifying compliance with any other of the requirements provided for in Section 4(5).

If any defect is discovered in the course of the examination, the suspension of the proceedings shall be pronounced and the applicant shall be allowed a period of two months from the notification in which to remedy the defects or put forward appropriate arguments in his defense, being warned that, if this is not done, the application shall be rejected.

If the Registry of Protected Plant Varieties does not find any defect in the application and other documents, or if the applicant has rectified within the prescribed period the defects brought to his notice, it shall order the publication of the application concerned in the *Boletín* referred to in Section 17 of these Rules.

#### *Register of Applications*

(8) The Registry of Protected Plant Varieties shall send the applicant a copy of the application for a "Plant Variety Title," with a clear indication of the date and time of filing of the application and of the corresponding registration number. The filing date of the application shall be the one considered for the purposes of priority.

To this end, all applications shall be entered in a Register in the chronological order of their filing, and according to the number notified to the applicant, which number shall also appear in all notifications provided for in these Rules until such time as the "Plant Variety Title" is granted.

To this end, the following entries shall be made in the Register:

- (a) registration number;
- (b) date and time of filing of the application;
- (c) indication of the genus or species to which the variety belongs;
- (d) name and address of the applicant and of his legal representative, if any;
- (e) proposed denomination;
- (f) claim of priority, where appropriate.

The first page of the Register shall contain a notice stating the number of pages that it contains and the date of commencement of the entries in it, and the last page shall contain another notice indicating the total number of entries.

## IV. Rights of the Breeder

### 5.—

(1) Any breeding of a new plant variety may be the subject matter of a “Plant Variety Title” which, on recording thereof in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, gives the holder the exclusive right to produce for commercial purposes, introduce in the territorial area to which the Law on the Protection of Plant Varieties applies, sell or offer for sale, or use by any means permissible by law material for sexual reproduction or vegetative propagation, including whole plants. The breeder’s right shall extend to plants or parts thereof normally marketed for purposes other than propagation, especially as regards the commercial production of ornamental plants or cut flowers, provided that those plants or parts thereof are used as propagating material. The breeder’s right shall not be infringed by the use made by a farmer, in his own farm, of seeds or any other vegetative material produced by him (Law No. 12/1975, Section 5(1)).

A “Plant Variety Title” may be held by the breeder who corresponds to the definition set forth in Section 3 of these Rules, and by his successors in title who provide documentary evidence of their status as such, subject to the following conditions:

(a) where one and the same variety has been jointly created by two or more persons, the right conferred by the title shall belong indivisibly to all of them;

(b) where two or more applicants with equal rights claim the grant of breeders’ rights independently of one another, in respect of the same variety, the rights shall be granted to the party having filed the application earlier than the others;

(c) where the breeder is employed by an enterprise, the grant of the “Plant Variety Title” shall be governed by the provisions of Sections 29 and 30 of the Decree of January 26, 1944, approving the revised text of Book I of the Employment Contract Law, it being understood for such purposes that the breeder in question is acting as an employee of the enterprise and that the plant variety concept is equivalent to the invention concept provided for in the said Decree. The Ministry of Agriculture may, on a proposal by the Central Board of the Institute, enact as many additional provisions as are considered necessary for the proper implementation of the provisions of this paragraph.

(2) Authorization by the breeder or his successors in title shall not be required either for the utilization of the new variety as an initial source of variation for the purpose of creating other new varieties or for the marketing of such varieties (Law No. 12/1975, Section 5(2)).

(3) Authorization shall be required when the repeated or systematic use of the plants or parts thereof of the original variety is necessary for the commercial production of plants or propagating material of the new variety (Law No. 12/1975, Section 5 (3)).

### 6.—

(1) The grant and the benefits of the “Plant Variety Title” for a new variety may not be made subject to conditions other than those set forth in Sections 4, 10 and 11 of the Law on the Protection of Plant Varieties, insofar as the administrative formalities provided for in the said Law, in these Rules and in any additional provisions that may be enacted are complied with.

(2) The grant of a “Plant Variety Title” shall be granted without prejudice to the rights of third parties and subject to the limitations established by the Law on the Protection of Plant Varieties. Failure to observe those limitations shall render the title null and void in accordance with the provisions of Section 11 of the said Law and, where appropriate, the cancellation of its registration in the Register of Protected Varieties at the National Institute of Seeds and Nursery Plants.

### *Licenses for Use*

(3) The holder of a “Plant Variety Title” may, after notification of the Registry of Protected Plant Varieties, grant a license for the use of the variety covered by the said Title to any person who applies for one, subject to compliance with the conditions specified by the said holder and with any provisions on the subject in the Law on the Protection of Plant Varieties, these Rules and any additional provisions that may

be enacted. To this end, such contracts shall be registered at the National Institute of Seeds and Nursery Plants.

In all matters relating to licenses for use, the following shall be taken into account:

- (a) the contract by which the license for the use of a variety covered by a “Plant Variety Title” is granted shall be drawn up in writing and shall bear the signature of the contracting parties;
- (b) licenses for use may be exclusive or non-exclusive:
  - (b.1) unless the license contract provides otherwise, the grant shall not preclude the possibility of the holder granting licenses to other persons or undertaking the use of the new plant variety himself, in which case the license shall be considered non-exclusive;
  - (b.2) the grant of an exclusive license for use shall preclude the holder of the “Plant Variety Title” from granting licenses to other persons and, unless the license contract provides otherwise, from using the plant variety himself;
- (c) unless expressly provided otherwise, the license shall have the same duration as the “Plant Variety Title,” and shall cover the entire national territory, its maximum duration being limited to the time of expiration of the rights;
- (d) unless expressly provided otherwise, licensees may not assign their licenses to third parties or grant sub-licenses;
- (e) where a “Plant Variety Title” belongs to more than one person, they may only jointly grant licenses to third parties for the use of the variety covered by the said title;
- (f) clauses in license contracts that impose marketing restrictions on the licensee that are not derived from the rights conferred by the “Plant Variety Title” shall be considered null and void, and, in particular, clauses that impose obligations on the licensee for a period of time longer than the duration of the “Plant Variety Title” shall be regarded as exceeding the rights inherent in the said Title;
- (g) the license for use shall produce its effects in relation to third parties only after it has been registered with the National Institute of Seeds and Nursery Plants;
- (h) without prejudice to the rights conferred by these Rules on the Administrative Bodies, questions arising out of license contracts shall be within the competence of the Courts of Justice.

(4) Where the holder of a “Plant Variety Title” is an official body established in Spain, it shall be obliged to grant a license for the use of the variety covered by the said Title to any person who applies for one and presents legal, technical and professional guarantees. Such license may in no case have exclusive character. Where the applicant for a license is a foreigner, the transaction shall be governed by the principle of reciprocity (Law No. 12/1975, Section 6(4)).

Where the license for use is granted by an official body, paragraphs (a), (c), (e), (f) and (g) of the foregoing subsection shall apply, and the licensee may not in any case assign the license to third parties or grant sub-licenses.

#### *Prohibition to Exploit Certain Plant Varieties*

(5) Without prejudice to the rights belonging to the Public Administration in matters of health, the disclosure and use of certain plant varieties which, if a “Plant Variety Title” were obtained for them, could present a health risk or similar risks, may be prohibited by Decree approved by the Council of Ministers, on a proposal by the Minister of Agriculture.

#### **7.—**

(1) The Courts of Justice shall be competent in all questions relating to the ownership of a “Plant Variety Title.”

(2) The holder of a “Plant Variety Title” may institute civil or criminal proceedings before the Courts of Justice against any person who infringes the rights granted by the Law on the Protection of Plant Varieties.

(3) Legal proceedings concerning plant breeders’ rights may only be instituted by one of the parties.

(4) Plant breeders’ rights are transferable by any means admitted in law, without prejudice to the limitations established by the Law on the Protection of Plant Varieties; such transfer shall only be effective in relation to third parties when they have been recorded in the Register of Protected Plant Varieties.

(5) Unless expressly agreed otherwise, the licensee may be party to legal proceedings to the same extent as the holder of a “Plant Variety Title” without any formality other than notification in writing to the holder of having become a party to the legal proceedings, in the event that the latter should think it advisable to be a party (Law No. 12/1975, Section 7).

8.—

(1)

The “Plant Variety Title” shall be granted by order of the Ministry of Agriculture, on a proposal by the Central Board of the National Institute of Seeds and Nursery Plants, pursuant to Section 16 of these Rules. The effects of the “Plant Variety Title” shall begin on the date of its grant.

When the application has been accepted for processing and, subsequently, the “preliminary examination” carried out in accordance with the provisions of Section 4(2) of these Rules, the Protected Plant Variety Commission shall decide on the proposal that has to be made with respect to registration at the Registry of Protected Plant Varieties.

The “Plant Variety Title” shall be issued by the National Institute of Seeds and Nursery Plants, and shall contain the following particulars:

- (a) name of the applicant;
- (b) if the applicant is not the actual breeder, the name of the latter must appear in the “Plant Variety Title”;
- (c) denomination of the variety and description of it according to the minimum data appearing in the model descriptive form approved by the National Institute of Seeds and Nursery Plants.
- (d) date and hour of filing of the application, and date corresponding to the grant of the Title by the Ministry of Agriculture;
- (e) all particulars concerning priorities, where priorities have been claimed;
- (f) where the variety covered by the Title has different denominations in a country or countries with which a collaboration agreement has been signed, such denominations must be mentioned for information;
- (g) date of expiration.

The grant of the Title shall be published in the *Boletín del Registro de Variedades Protegidas*, pursuant to the provisions of Section 17 of these Rules, within a period of three months from the grant by the Ministry of Agriculture.

When the grant of the Title has been published in the *Boletín del Registro*, any person may, subject to payment of the fee established by law, obtain from the Registry of Protected Plant Varieties information regarding the documents that accompanied the application, the documents relating to the preliminary examination and the document containing the decision adopted.

Nevertheless, where this is considered necessary by the Protected Plant Variety Commission, such provisions shall be enacted as are required to safeguard secrets concerning the procedure whereby the new plant variety was obtained.

(2)

The grant of a “Plant Variety Title” shall immediately give rise to an entry in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, which is mentioned in Law No. 11/1971, and to the inclusion of the variety in the list of protected varieties which shall be periodically published by the above-mentioned Institute in the *Boletín del Registro de Variedades Protegidas*.

To this end, a Register shall be kept of “Plant Variety Titles,” which shall be ordered according to the date on which they were granted.

The following entries shall, in addition, be made in the Register:

- (a) serial number of the grant of the Title;
- (b) genus and species to which the variety belongs;
- (c) approved denomination, together with others under which the variety appears in a country or countries with which a collaboration agreement has been signed;
- (d) summary description of the variety;



(e) name and address of the owner of the Title, and name and address of the breeder, where the latter is not the same as the former;

(f) where applicable, claim of priority;

(g) dates on which protection begins and ends, and date on which, for any reason, it ends prior to the established term.

A mention shall also be made in the Register of judicial decisions, if upheld, in which the ownership of the right is specified, as well as all those that relate to transfers of the ownership of “Plant Variety Titles,” and licenses granted.

(3) The “Plant Variety Title” shall be provisional for two years, after which time it shall automatically become definitive if, within that two-year period, no objection is submitted to the act of making the said grant. Once definitive, either because the provisional period has expired, or by decision made on the above-mentioned objection pursuant to Section 121 on the Law on Administrative Procedure, the appropriate legal proceedings may be brought. The provisional character of the Title, while in force, shall be clearly stated on any document, packaging or advertisement relating to the product covered by the said Title (Law No. 12/1975, Section 8(3)).

(4) During the period in which the Title is provisional, the breeder shall enjoy all the rights granted under the Law on the Protection of Plant Varieties. The said period shall be included, in each case, in the period of protection (Law No. 12/1975, Section 8(4)).

#### 9.—

(1) The rights conferred on the breeder of a new plant variety shall be granted for a limited period, which may not be less than 15 years for herbaceous plants or 18 years for trees; this period shall run from the date of the grant of the “Plant Variety Title” (Law No. 12/1975, Section 9(1)).

(2) The maximum period of protection for any species or group of species may not exceed 20 years.

When detailed provisions are enacted by the Ministry of Agriculture for the entry into force of protection for each genus, species or group of species, the maximum period of protection shall be indicated in each case.

#### 10.—

(1) All foreign breeders shall enjoy the same rights as national breeders, provided that the legislation of their countries of origin applies the principle of reciprocity or that other international agreements to which Spain is party establish such reciprocity (Law No. 12/1975, Section 10(1)).

On a proposal by the Protected Plant Variety Commission, through the Central Board of the National Institute of Seeds and Nursery Plants, and after examination of the legislation on the protection of each species and country concerned, specific provisions shall be enacted by the competent Ministry or Ministries establishing the aforementioned reciprocities.

(2) The aforementioned foreign breeders shall, in their relations with the Spanish Public Administration and with the private producers or growers of the propagating material, be represented by a person lawfully resident in Spain, who shall be given sufficient authority to guarantee such commitments as the breeder or his successors in title may contract. The grant and the rights derived from it shall remain subject, in all cases, to the performance of the obligations of the Title holder (Law No. 12/1975, Section 10(2)).

(3) When applying for a “Plant Variety Title,” the applicant may claim the priority of any applications previously filed for the same plant variety in any State with which Spain has an agreement in this respect, on condition that the filing of the application in Spain takes place within a period of 12 months from the filing of the first application (Law No. 12/1975, Section 10(3)).

Subject to the transitional provisions of these Rules, the right of priority may only be claimed by breeders who:

(a) within three months from the date on which the application was filed, submit to the Registry of Protected Plant Varieties a copy of the documents relating to the application filed in another country, with certification by the competent authority of the authenticity of the said copies;

(b) within four years from the date on which the application was filed, supply all the additional documentation mentioned in Section 4(5) of these Rules, and, where the Registry of Protected Plant Varieties considers this necessary, propagating material for the carrying out of the preliminary examination.

**11.—**

(1) The “Plant Variety Title” shall be declared null and void:

(a) when the title holder does not have a right to obtain it according to the provisions laid down in Section 3 of these Rules;

(b) when the plant variety in respect of which the Title has been granted does not meet the requirement of novelty laid down in Section 4 of these Rules.

In the cases mentioned above, and in accordance with the provisions of Section 16 of these Rules, invalidation shall be pronounced by the Minister of Agriculture on a proposal by the Protected Plant Variety Commission and through the Central Board of the National Institute of Seeds and Nursery Plants.

(2) Action for nullity may be brought by any interested party during the entire period of protection afforded by the “Plant Variety Title” (Law No. 12/1975, Section 11(2)).

(3) The right of the breeder or his successors in title shall be extinguished in the following cases:

(a) at the request of the title holder himself; such request shall be filed in writing with the Office of the Registry of Protected Plant Varieties by the title holder or by a person specially empowered to do so; where the Title is shared equally by more than one person, the request for lapse shall be taken into consideration only if it is filed jointly by all those persons; where licenses for use of the variety covered by the Title have been granted by the title holder, renunciation may be taken into consideration only if it is accompanied by the appropriate document in which the consent of all the licensees to such renunciation is expressed;

(b) when there has been a failure to maintain the conditions of homogeneity and stability laid down in Section 4 of these Rules;

(c) when neither the title holder nor his licensees have reproductive or propagating material capable of producing the new variety, as defined when the “Plant Variety Title” was granted;

(d) when neither the title holder nor his licensees submit, within the required time limit, the reproductive or propagating material, or the information or documents deemed necessary for examining the variety, or do not allow inspection of the measures which have been taken for the maintenance of the same variety, according to the rules laid down for that purpose;

(e) when the legally established fees have not been paid within the prescribed period or the requests for payment have not been met;

(f) when the title holder does not agree to grant a license to use the new variety, pursuant to Section 12(1) of these Rules;

(g) when an objection or administrative appeal, filed pursuant to Section 8(3) of these Rules, has been upheld by a final and definitive decision;

(h) when the period of time laid down by Section 8 of these Rules expires.

When either paragraph (c) or (d) of the present subsection is applicable, the Protected Plant Variety Commission shall request of the Title holder that he remedy the situation that has given rise to such applicability. If such request has had no effect on expiration of a period of two months from its notification, the Commission may propose the extinction of the right.

When there is cause for the extinction of the right for any of the reasons specified in the paragraphs of the present subsection, such extinction shall take place by order of the Ministry of Agriculture, on the proposal of the Protected Plant Variety Commission through the Central Board of the Institute.

(4) Upon the extinction, for whatever reason, of the right of the breeder or his successors in title, the plant variety protected by that right shall fall into the public domain.

*Compulsory Licenses for Use*

**12.—**

(1) The Ministry of Agriculture shall be entitled to order that a plant variety for which a “Plant Variety Title” has been granted shall be subject to compulsory licensing, either because of unjustified failure to use or because the public interest so dictates (Law No. 12/1975, Section 12(1)).

(a) *Unjustified Failure to Use*

Upon expiration of a period of four years from the date on which a “Plant Variety Title” was granted in respect of a given variety, unjustified failure to use shall be considered to exist if any of the following circumstances are present:

- (a.1) the variety protected by the Title and susceptible of use in Spain does not cover adequately the needs of the national market, thereby prejudicing the general interest;
- (a.2) use of the variety in Spain is considerably hampered by the fact that it is imported;
- (a.3) the holder of the “Plant Variety Title” refuses to grant licenses for use on reasonable conditions, thereby unfairly and substantially limiting the satisfaction of such demand as may exist for the variety covered by the Title.

When an application for the grant of a compulsory license is received by the Registry of Protected Plant Varieties, it shall be transmitted to the Protected Plant Variety Commission, which, after having heard the breeder, and in the light of the provisions of the foregoing paragraphs, shall consider whether or not to propose to the Ministry of Agriculture, specifying the reasons for the insufficient use of the variety in respect of which the application for a compulsory license has been received, that it be made subject to compulsory licensing.

(b) *National Interest*

The Government may, by Decree passed in the Council of Ministers, decide that, in view of the vital importance of a variety to the defense, national economy or public health of the country, its use is regarded as being in the national interest. On publication of such Decree, the Ministry of Agriculture shall order that the variety concerned be made subject to compulsory licensing, according to the grant procedure specified hereafter; the holder of the “Plant Variety Title” shall nevertheless be allowed a period of six months from the publication of the said Order in which to provide for the adequate use of the variety, on expiration of which the variety shall be finally subject to compulsory licensing.

(2) For the purposes of subsection (1) of this Section, any person providing legal, technical and professional guarantees may apply to the Registry of Protected Plant Varieties for the grant of a compulsory license for use, which, once granted, shall have the following characteristics:

(a) *Characteristics of Compulsory Licenses for Use*

- (a.1) A compulsory license may in no case be exclusive, so that the holder of the corresponding “Plant Variety Title” shall retain the right to use the variety and to grant non-compulsory licenses; further compulsory licenses for use may likewise be granted;
- (a.2) the license agreement may contain obligations and restrictions on both the Title holder and the licensee;
- (a.3) the rights deriving from the compulsory license may not be transferred or assigned, neither may sub-licenses be granted;
- (a.4) their duration shall be not longer than that of the “Plant Variety Title,” and they may be cancelled at any time under the circumstances specified below.

(b) *Procedure for the Grant of Compulsory Licenses for Unjustified Failure to Use*

The grant of a compulsory license for use shall be governed by the provisions set forth below:

- (b.1) it shall be an essential requirement for an application for a compulsory license that the interested party previously approach the holder of the “Plant Variety Title,” requesting a license for use with the characteristics specified in Section 6(3) of these Rules; if, after two months following the said request, no agreement has been reached between the parties, the interested party may apply to the Registry of Protected Plant Varieties for the grant of a compulsory license, providing evidence of the circumstances justifying it and of the guarantees that he can offer in the event of the license being granted;
- (b.2) when the application has been received by the Registry of Protected Plant Varieties, it shall be communicated to the holder of the “Plant Variety Title,” who shall have a maximum period of one month within which to comment thereon; failure to reply shall constitute consent to the grant of the license;
- (b.3) in the event of the title holder giving his consent, the Registry of Protected Plant Varieties shall request the parties to attempt, within a further period of two months, to

agree on the royalty to be paid and on other conditions of the license, and, where applicable, to legalize the respective license agreement;

- (b.4) where the title holder refuses to grant a license, he shall notify the Registry of Protected Plant Varieties accordingly during the maximum period of one month referred to above and provide proof justifying his attitude; in this event, both the refusal on the part of the title holder and the proof he produces in support of it shall be transmitted to the applicant, who, within a period of one month, shall present such arguments as he considers appropriate to the Registry of Protected Plant Varieties;
- (b.5) after all the prior documents have been obtained, the Registry of Protected Plant Varieties shall inform the Protected Plant Variety Commission, which shall decide on the desirability of granting a compulsory license;
- (b.6) if the Commission considers adequate the arguments presented by the title holder to justify the non-use or insufficient use, it shall declare the suspension of the proceedings and shall indicate to the title holder the period within which he has to make effective use or extend such use; if the Commission considers the grant of a compulsory license appropriate, it shall again request the interested parties to endeavor to reach agreement within a maximum period of two months concerning payment and other conditions of the license;
- (b.7) if no such agreement is eventually reached, the Commission shall, within a period of two months, propose to the Ministry of Agriculture through the Central Board of the Institute that a compulsory license for use be granted fixing royalties and other conditions to which it shall be subject.

(c) *Procedure for the Grant of Compulsory Licenses for Reasons of National Interest*

On publication of the Ministerial Order by which a variety is declared subject to compulsory licensing for reasons of national interest, any interested party may apply to the Registry of Protected Plant Varieties for the grant of a license for use. When the application has been communicated to the holder of the "Plant Variety Title," the latter shall have a period of one month in which to reach an agreement with the applicant, on expiration of which the provisions of subparagraph (b.7), above, shall apply.

(d) *Special Compulsory Licenses for Use*

In duly justified cases the Ministry of Agriculture may, at any time, obtain *ex officio* a compulsory license for use where such use is to be made by the Ministry and for its own account. Such license shall be obtained by Order of the said Ministry, which Order shall specify the conditions governing the licence.

(e) *Cancellation of Compulsory Licenses for Use*

The cancellation of a license shall be granted by the Ministry of Agriculture on a proposal by the Protected Plant Variety Commission through the Central Board only at the request of the holder of the "Plant Variety Title" and in either of the following cases:

- (e.1) failure on the part of the licensee to comply with his obligations;
- (e.2) disappearance of the circumstances that caused the variety to be subject to compulsory licensing for use.

In the second of the above cases, the licensee shall be allowed a period not exceeding three years within which to discontinue his use of the variety covered by the license.

(3) In any of the cases referred to in the preceding subsections of this Section, the right of the breeder shall at all times be guaranteed.

## V. Denomination of Varieties

### 13.—

(1) A new plant variety shall be given a single denomination which permits its identification. Such denomination shall be considered the generic designation of the variety (Law No. 12/1975, Section 13(1)).

(2) The denomination of the new variety shall not be exclusively composed of figures, or be liable to mislead or cause confusion concerning its characteristics, its usefulness or the identity of the breeder. It shall be different from every denomination which designates other existing varieties belonging to species included in the same class, which species shall be specified in the list annexed to these Rules. In particular, the following provisions shall be complied with:

- (a) the denomination given shall not be different from that used in another country in which registration has been effected or is pending and with which Spain has entered into a collaboration agreement, provided that, where linguistic difficulties of pronunciation exist, the variety may, subject to approval, be designated by a translation of the original denomination or by another denomination;
- (b) the denomination shall consist of one to three words, with or without meaning, which shall be easy to pronounce and memorize, and shall be capable of use as the generic designation of the variety;
- (c) from one to a maximum of four figures may be included if they have some meaning in relation to the words they accompany;
- (d) a denomination may not consist in the substitution, addition or alteration of figures in a denomination that has already been approved and is in use;
- (e) where a variety is to be used exclusively for the protection of propagation materials for the production of other varieties, its denomination may consist of a combination of figures and letters, provided that, in the opinion of the competent authority, such a combination corresponds to an established international standard concerning denominations for the species concerned;
- (f) the denomination may not consist of any element which, at the end of the period of protection of the variety, would prevent or hamper the free use of the denomination or prevent the free marketing of the variety;
- (g) the denomination may not in any case be the botanical or common name of a genus or species, neither may it include that name if a risk of error or confusion is thereby created;
- (h) the denomination may not contain words such as variety, cultivar, form, hybrid or cross, or translations of such words;
- (i) the denomination given to a variety may not suggest that the same variety is developed from or related to another known variety when this is not certain;
- (j) a new variety may not be given a denomination that has been previously used for another variety belonging to another species in the same class, in accordance with the list appearing in the Annex to these Rules, if it is found by the competent authority that the variety is still being grown or that its denomination still has special importance;
- (k) the denomination shall permit identification of the new variety, without risk of confusion, by an averagely attentive buyer;
- (l) in particular, the denomination shall not:
  - (l.1) be liable to cause scandal;
  - (l.2) indicate solely properties that may be possessed by other varieties of the same species;
  - (l.3) be inadequate for linguistic reasons.

(3) In general, denominations shall comply with international conventions on the subject to which Spain is party. Consequently, the Ministry of Agriculture shall enact such provisions as are necessary for the adaptation of the standards laid down in sub-section (2) of this Section to the conventions concerned.

#### 14.—

(1) The denomination of a new plant variety shall be registered at the same time as the issuance of the “Plant Variety Title” (Law No. 12/1975, Section 14(1)).

(2) The breeder or his successor in title may not submit as the denomination of a new variety either a denomination already protected by a trademark relating to products which are identical or similar in Spain or in countries with which agreements on plant variety protection have been established, or a denomination liable to cause confusion with such a trademark, unless he undertakes to renounce his rights in the trademark as from the grant of the “Plant Variety Title.” If the breeder or his successor in title nevertheless submits such a denomination, he may not, as from the time when the “Plant Variety Title” is registered, continue to

exercise his rights under the trademark in respect of the products specified, unless international agreements require otherwise (Law No. 12/1975, Section 14(2)).

(3) The denomination given to a protected plant variety may not be registered as a trademark (Law No. 12/1975, Section 14(5)).

(4) Notwithstanding the foregoing paragraph, it shall be permitted, for marketing purposes, to add a trademark to the denomination of the new plant variety, if the breeder owns the trademark or is authorized to use it (Law No. 12/1975, Section 14(6)).

(5) Before a “Plant Variety Title” is entered in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, the denomination submitted for the new plant variety shall be notified to the Industrial Property Registry, in order that the latter may report on it (Law No. 12, 1975, Section 14(4)).

The said body shall have a period of 30 lawful days from the receipt of the communication in which to convey to the Registry of Protected Plant Varieties any objections that it may see fit to make, arising from the fact that the said denomination:

- (a) had been filed as a trademark;
- (b) may create confusion with a registered trademark.

After the grant of the “Plant Variety Title” for a given variety, and within a period of 15 lawful days from such grant by the Registry of Protected Plant Varieties, the following shall be communicated to the Industrial Property Registry:

- (a) the denomination under which the variety is registered;
- (b) where applicable, a copy of the instrument of renunciation, on the part of the holder of the “Plant Variety Title,” of his trademark rights if such were previously owned.

(6) Independently of the communications that have to be exchanged by the Registries referred to in the preceding subsection on the subject of denominations, all the communications that are prescribed by international collaboration agreements on protection that may be or have been concluded by Spain shall also be made.

(7) If the denomination submitted by the breeder or his successor in title does not meet the requirements provided for in these Rules, the Registry of Protected Plant Varieties shall inform the applicant accordingly, who shall be allowed 30 days from the date of the communication in which to propose a new denomination. Where such new denomination is also not accepted, up to two further denominations may be proposed within 15 days from the notification sent by the Registry.

Where the applicant exhausts the period or the number of denomination proposals specified above, the Registry of Protected Plant Varieties may propose to him two successive denominations before expiration of a period of two months from the first notification; if the latter denominations are not accepted, the proceedings shall be suspended and the applicant shall be informed accordingly.

## VI. Body in Charge of Plant Variety Protection

**15.** The functions entrusted to the Ministry of Agriculture under the Law on the Protection of Plant Varieties and under these Rules shall be exercised by the National Institute of Seeds and Nursery Plants, established by Law No. 11/1971, of March 30, 1971. The functions of the said Institute shall, in particular, be the following:

- (a) preparation of the technical questionnaires which, for every species or group of species, have to be filed with the application for a “Plant Variety Title”;
- (b) receipt and processing of applications for “Plant Variety Titles”;
- (c) conduct of the preliminary examination for the assessment of the novelty, stability and homogeneity of a variety; when circumstances so dictate, collaboration agreements may be concluded to this end with other national or foreign bodies and institutions;
- (d) publication of the *Boletín del Registro de Variedades Protegidas*;
- (e) issuance of “Plant Variety Titles” after their grant by the Ministry of Agriculture;

- (f) recording of registrations and cancellations of “Plant Variety Titles” in the Register referred to hereinabove;
- (g) recording of granted license contracts;
- (h) preparation and implementation of agreements concluded with international organizations or other countries on the protection of plant varieties;
- (i) conduct of relations with international bodies or countries with which Spain has entered into agreements on the protection of plant varieties, except where the general legislation of the Spanish State provides otherwise;
- (j) preparation and proposal of decisions concerning such sanctions as may be initiated by itself or at the request of third parties;
- (k) drafting of regulations and standards, reports and all such documents as are necessary for the implementation and control of protection, and which have to be submitted to the Protected Plant Variety Commission for consideration;
- (l) receipt of and compliance with requests addressed to it by judicial authorities in connection with any disputes that may arise concerning the protection of plant varieties;
- (m) all others that are entrusted to it by law.

#### *Protected Plant Variety Commission*

**16.** The Protected Plant Variety Commission, established by the Law on the Protection of Plant Varieties, within the Central Board of the National Institute of Seeds and Nursery Plants, organized by Law No. 11/1971 of March 30, 1971, shall be composed as follows:

*President:* the President of the Central Board of the National Institute of Seeds and Nursery Plants;

*Vice-President:* the Director of the National Institute of Seeds and Nursery Plants;

*Members:* those members of the Central Board appointed by its President, among whom there shall be a representative of the National Institute of Agrarian Research and two agrarian representatives of the Trades Union Organization;

*Legal Adviser:* the Head of the Legal Department of the Ministry of Agriculture;

*Technical Advisers:* persons with recognized competence in botany, genetics, reproduction of seeds and nursery plants and legal problems relating to plant variety protection, appointed by the President;

*Secretary:* the Technical Administrator of Laboratories and Registers of Protected Commercial Varieties.

#### *Tasks of the Commission*

Among other tasks, the Protected Plant Variety Commission shall:

- (a) propose to the Minister of Agriculture, after consideration of such reports as have been submitted to it, and through the Central Board of the Institute, the issuance, revocation, declaration of lapse and, if appropriate, annulment of “Plant Variety Titles”;
- (b) propose to the Minister of Agriculture, through the Central Board of the Institute, the grant or cancellation of compulsory licenses for use;
- (c) propose to the Ministry of Agriculture, through the Central Board of the Institute, such provisions as are necessary for the establishment of relations between an enterprise and its employees concerning the ownership of a plant variety;
- (d) enact such provisions as are necessary in order to safeguard the secrecy of plant varieties in respect of which “Plant Variety Titles” have been granted;
- (e) inform the competent Ministry or Ministries, through the proper channels, of all matters relating to the possible establishment of reciprocity with foreign countries, and of everything related to the establishment of international agreements under which Spain has to take action in the interests of protection;
- (f) propose, in general, the measures and rules intended for the protection of breeders’ rights;
- (g) propose, through the Central Board of the Institute, rules for the application of breeders’ rights to the different genera or species;

- (h) report on matters concerning plant variety protection submitted by the President for study;
- (i) carry out any other tasks which may be entrusted to it by any law or rules.

*General Standards Governing the Operation of the Commission*

The constitution and operation of the Protected Plant Variety Commission shall be governed by the following provisions:

- (a) the maximum number of members designated by the President that the Commission may comprise shall not exceed 12, a maximum of six of whom shall be ordinary members while the remainder shall be technical advisers;
- (b) the technical advisers and members shall be designated for a maximum period of four years; their appointment may be renewed on expiration of their term of office;
- (c) the President, and all the members constituting the Commission, shall observe secrecy regarding the deliberations and agreements that take place within the said Commission;
- (d) when any member of the Commission is involved in the grant or rejection of a "Plant Variety Title," he may not take part in the deliberations concerning the variety covered by the said Title;
- (e) the Commission may conduct business, and its agreements shall be valid, when the number of members present represents more than half of the total membership;
- (f) the functions of the President of the Protected Plant Variety Commission shall be to:
  - (f.1) assume the representation to the Commission as a whole;
  - (f.2) convene and preside over the meetings of the Commission, which functions he may delegate to the Vice-President thereof;
  - (f.3) implement, with the assistance of the Secretary, the agreements adopted within the Commission;
  - (f.4) present to the Ministry of Agriculture the proposals agreed upon by the Protected Plant Variety Commission and such decisions as are adopted in accordance with the tasks assigned to him under the Law on the Protection of Plant Varieties and these Rules;
  - (f.5) designate the technical advisers and the ordinary members for the prescribed period;
  - (f.6) constitute such expert commissions as he considers necessary, which commissions shall be presided over by the Secretary of the Protected Plant Variety Commission;
  - (f.7) invite the attendance, with the right to speak but not to vote, of persons who have a recognized competence considered desirable under certain circumstances.

*Bulletin of the Registry of Protected Plant Varieties (Boletín del Registro de Variedades Protegidas)*

**17.—**

(1) The National Institute of Seeds and Nursery Plants shall periodically publish a *Boletín del Registro de Variedades Protegidas*, in which applications for registration, denominations submitted and denominations approved shall be recorded, as well as the grant of "Plant Variety Titles" and other non-confidential information, in order to ensure better public knowledge of the area concerned (Law No. 12/1975, Section 17(1)).

This publication shall be issued at least quarterly. Its main purpose shall be to bring to the notice of the public all applications for "Plant Variety Titles" and other information, in order that any interested party may make such objections as he considers appropriate, which objections shall, in all cases, be submitted in writing to the Registry of Protected Plant Varieties of the National Institute of Seeds and Nursery Plants within the periods specified hereinbelow.

The following chapters shall appear in the said publication:

(a) Applications for "Plant Variety Titles": if, after examination of the application, it is found to be in order, it shall be published in the *Boletín*, with the indication for each application of the reference number in the Register of Applications, the name and address of the applicant, and of the breeder where it is not the same as that of the applicant, and the denomination proposed for the variety. Where this is considered



appropriate, one or more important characteristics may be mentioned which are thought to be capable of serving to classify the variety in any way;

(b) Denominations: all proposed denominations shall appear in another chapter, with references to the applicant and breeder. All proposals for changes in denomination of varieties previously covered by "Plant Variety Titles" shall also be published. Denominations that have been registered in different countries for the same variety may be indicated for the purposes of information;

(c) "Plant Variety Titles" Not Granted: another chapter shall include the varieties which are regarded as not warranting the grant of the corresponding Title, with an indication of the reference number in the Register of Applications, the name and address of the applicant and breeder, the denomination proposed and the date of rejection;

(d) "Plant Variety Titles" Granted: these Titles shall be published in the *Boletín* with an indication for each of them of the reference number in the Register of Applications, the reference number of the Title granted, the name and address of the title holder, and of the breeder where different from that of the title holder, the approved denomination of the variety covered by the Title, the duration of protection, and the date on which that protection expires;

(e) Licenses for Use: all licenses for use entered in the Register shall be mentioned, with an indication of the holder of the "Plant Variety Title," the licensee, the denomination of the variety and the date on which the license concerned was granted. Information shall also be published on plant varieties that have been made subject to compulsory licensing for use for reasons of national interest;

(f) Revocation and Lapse: another chapter shall record any revocation and lapse of granted Titles that occur, with a mention, in addition to the name and address of the title holder and breeder, of the dates on which the said acts took place and of the denominations of the varieties covered by the Titles.

In addition to the publication of the information specified above, a record shall be made in the *Boletín* of all transfers of Titles that take place, and, in general, of all information of a general character that is considered suitable for publication.

Any information concerning the Register of Commercial Varieties that has a bearing on the protection of plant varieties may also be included in the *Boletín*.

Any person who wishes to make an observation concerning the information published in the *Boletín del Registro de Variedades Protegidas* shall do so within a period of two months from its publication.

(2) The National Institute of Seeds and Nursery Plants shall issue such reports as are requested of it by the Courts of Justice concerning breeders' rights.

## VII. Infringement and Penalties

### 18.—

(1) For the purposes of Section 7, any person who infringes breeders' rights in any of the following ways shall incur civil liability, and be obliged in all cases to furnish compensation for the damage and loss caused thereby:

(a) producing for commercial purposes or marketing reproductive material of the protected plant variety, in disregard of the provisions of Section 5(1);

(b) marketing plants or parts thereof normally marketed for purposes other than propagation, if they are then used as propagation material, in disregard of the provisions of Section 5(1);

(c) repeatedly using reproductive material of a protected plant variety for the production of propagation material of a new plant variety;

(d) contracting for the transport of the propagation material of a protected plant variety to a territory outside the scope of application of the Law on the Protection of Plant Varieties without special authorization from the title holder.

(2) All those making any other use of the protected plant variety or those who in any other way infringe the breeders' rights granted by the Law on the Protection of Plant Varieties shall be obliged to furnish compensation for the damage and loss caused thereby only when their conduct involves fault or negligence. The existence of fault shall be presumed from the time when the person responsible for such acts has been

warned by the holder of the “Plant Variety Title” about the existence of the same and required to cease infringing the said Title.

(3) The compensation for damage and loss in favor of the holder of the “Plant Variety Title” shall include not only the amount of the loss and of the profit which would otherwise have been obtained, but also damages for the loss of the goodwill attaching to the plant variety caused by inadequate use made by the infringer.

(4) The relevant general legislation on limitation of actions shall apply to the civil action for compensation of damage and loss.

(5) In addition to compensation for damage and loss, the injured title holder shall be entitled to:

(a) the cessation of the act infringing his right;

(b) the withdrawal from circulation of all the plant material obtained through legal acts that is in the possession of any of the persons responsible, and its destruction if this is indispensable;

(c) reversion to himself, as his own property, of the plant material referred to in the last-mentioned paragraph, in which case allowance for its value shall be made in calculating the compensation for damage and loss. If the value of the above-mentioned plant material exceeds the damages granted, the injured title holder shall compensate the infringer for the excess;

(d) the publication of the judgment, at the expense of the losing party, in the *Boletín* referred to in Section 17 of these Rules (Law No. 12/1975, Section 18).

#### 19.—

(1) Any willful infringement of the exclusive right given by the “Plant Variety Title” to its holder shall be punished according to the provisions of Section 534 of the Criminal Code.

(2) Criminal proceedings may only be brought by the injured title holder or his licensee, or his successors in title.

(3) The relevant general legislation on limitation of actions shall apply to criminal proceedings and to the civil action resulting from the crime (Law No. 12/1975, Section 19).

#### 20.—

(1) Acts carried out that are not in compliance with the provisions of the Law on the Protection of Plant Varieties, these Rules and any additional provisions that may be enacted shall be considered administrative offenses and shall be punished according to the following Sections, without prejudice to the competence of the Courts of Justice, as regards the civil or criminal liabilities resulting from these acts.

(2) Administrative offenses shall be categorized according to the nature of the acts concerned; they may be fraudulent, clandestine or against the rules.

(3) The following shall be considered fraudulent:

(a) acts of assignment of plant material which, while purporting to be protected by a “Plant Variety Title,” do not correspond to the features recorded in the Register of Protected Plant Varieties;

(b) acts of noncompliance, imputable to any of the interested parties, with the conditions included in the license to use a protected plant variety and affecting the intrinsic qualities of the material and the circumstances upon which the decision to issue the “Plant Variety Title” was based.

(4) Those acts which evade or attempt to evade or make difficult the supervision of the activities governed by the Law on the Protection of Plant Varieties, these Rules and additional provisions shall be considered clandestine.

(5) Any other offense shall be considered merely against the rules.

**21.** The laws and rules on the suppression of fraud in respect of agricultural products or of materials necessary for agriculture shall apply as subsidiary legislation (Law No. 12/1975, Section 21).

#### 22.—

(1) Fraudulent offenses shall be punished with fines of between 20,000 and 100,000 pesetas; the expenses incurred in the verification of the fraud shall be borne by the offender and, where appropriate, the plant material giving rise to the fine shall be confiscated.

(2) Clandestine offenses shall be punished with fines of between 10,000 and 50,000 pesetas and by the confiscation of the merchandise.

(3) Offenses which are merely against the rules shall be punished with fines of between 1,000 and 25,000 pesetas (Law No. 12/1975, Section 22).

**23.** The determination, within given limits, of the amounts of the fines established in the last-mentioned Section, shall be fixed in each case according to the importance of the offense, the injury caused, the degree of bad faith on the part of the infringer, his behavior and his previous record and, in general, any circumstances which render him the more or the less responsible (Law No. 12/1975, Section 23).

**24.—**

(1) In the case of a second offense, the fines shall be 50 percent higher than those applicable under the Law on the Protection of Plant Varieties.

(2) Should the person committing a second offense have committed a clandestine or fraudulent offense, the fines may be raised to three times those applicable, and the suspension of the activity in relation to which the offense arose may be ordered for a period of up to one year.

(3) A person who has, within the preceding five years, been punished for disregarding the provisions of the Law on the Protection of Plant Varieties shall be considered a second offender.

(4) The Ministry of Agriculture may decide, if appropriate, on the publication of sanctions imposed in the Official Journal, for exemplary purposes (Law No. 12/1975, Section 24).

## VIII. Fees

**25.** The fees established by the Law on the Protection of Plant Varieties and subject to the legislation contained in the Law of December 26, 1958, on Fees and on Duties, the Consolidated Taxation Law of December 28, 1963, and the additional provisions under those Laws, shall be governed by the provisions of those Laws and those of these Rules.

**26.** For the purposes of the fees established in the aforementioned Laws, the plant species or groups thereof which are subject to protection shall be divided into the following groups:

- First group: cereals, oil seeds, lucerne, cotton, sugar and fodder beet, vetch, potatoes, peas, beans and broad butter beans;
- Second group: fruit trees, roses, carnations and strawberries;
- Third group: lettuce, tomatoes, onions, melons, sainfoin, red clover and white clover;
- Fourth group: the other species not included in the above-mentioned groups.

**27.—**

(1) The following fees shall be paid for the services listed below, according to the types which are also included:

[omitted]

(2) The natural persons or legal entities who receive either from the Public Administration or from the Registry of Protected Plant Varieties any of the services listed in the preceding subsections, whatever the nature of their request, shall be obliged to pay the fees.

(3) The fees for the processing of applications for "Plant Variety Titles," the claim of the right of priority, changes of denomination, dispatch of copies, certificates and duplicates of any documents, registration of licenses for use, dispatch of copies of Titles and certificates attesting the refusal and reinstatement of Titles shall be payable when the appropriate services are requested.

The fees for the carrying out of the trials that constitute preliminary examination shall be paid on presentation of an account by the National Institute of Seeds and Nursery Plants at the time of the rendering of the services.

The fee for the “Plant Variety Title” shall be payable on the date of grant, and the fee for the maintenance of breeders’ rights shall be payable on the day following that on which the period of one year covered by the previous fee expires. The appropriate accounts shall be computed and notified by the National Institute of Seeds and Nursery Plants and paid within the periods laid down by the Collection Statute of November 14, 1968.

When the payment of a fee for the annual maintenance of breeders’ rights has not been effected within the periods laid down by the legislation referred to above, the necessary procedures for the revocation of the Title shall be commenced in accordance with the provisions of Section 11(3) of these Rules.

(4) The management, charging and collection of the fees referred to above shall be effected, without prejudice to the higher authority of the Ministry of Finance, by the National Institute of Seeds and Nursery Plants, to which end it shall be empowered to:

(a) compute and notify the fees referred to in these Rules, the collection of which shall take the form of immediate payment to the Treasury, according to the instructions of the Ministry of Finance;

(b) open restricted accounts at a private bank or at savings banks in the manner provided for in Chapter III of the Ministerial Order on Finance of July 23, 1960, subject to the limitations and obligations specified therein, the credit balances of which accounts shall be paid to the General Directorate of the Treasury, in the “Group of Treasury Operations-Deposits-Proceeds from Fees and Parafiscal Levies,” Subsidiary Account 21, item 25: “Fees for the Protection of Plant Varieties,” for eventual application to the budget of the revenue of the State.

(5) The scales of charges to be made for subscriptions to, insertions in and sale of the *Boletín del Registro de Variedades Protegidas*, for photocopies, for information and documentation services and publications in general, incumbent on the National Institute of Seeds and Nursery Plants, shall be established in accordance with the provisions of Section 11 of the Law on the Legal Status of Autonomous State Bodies of December 26, 1958.

## IX. Procedure and Appeals

### 28.—

(1) The procedure to be followed for the processing of the dossiers governed by these Rules shall be, in addition to that specifically laid down therein, that established in the Law on Administrative Procedure of July 17, 1958, which shall also regulate the appeals which interested parties may bring against any act or decision pronounced.

(2) It shall be a function of the National Institute of Seeds and Nursery Plants to collect all available evidence and information on dossiers likely to involve a decision imposing a fine and to formulate proposals as to how dossiers should be decided, doing so on its own initiative or pursuant to a request from the interested parties or from the competent authorities (Law No. 12/1975, Section 28(2)).

(3) The decision shall be taken by:

(a) the Service for Defense against Frauds and for Agricultural Analyses, when the amount of the fine is not over 25,000 pesetas;

(b) the competent Director General, when the amount of the fine is over 25,000 and does not exceed 50,000 pesetas;

(c) the Minister of Agriculture, when the amount of the fine is over 50,000 pesetas.

(4) The limitation period for infringement of these Rules shall be five years from when they are committed.

## Additional Provisions

(1) The amounts of the fines established in absolute quantities in pesetas may be revised by the Government, through the application of coefficients of correction, according to the average price of the objects or products in question.

## Transitional Provisions

(1) The breeder of a plant variety which is no longer new at the time when protection of a corresponding species is established may, in the following instances and in accordance with the Law on the Protection of Plant Varieties, request the protection of his rights:

(a) if a patent has been granted for a plant variety in Spain or in any other country with which an international agreement on the protection of breeders' rights has been established;

(b) if a "Plant Variety Title" or equivalent title has been issued in any country or countries with which Spain has established an agreement on the protection of breeders' rights;

(c) if the plant variety has been registered in a list of commercial varieties officially published in Spain.

The application for the protection of breeders' rights in respect of the varieties shall be submitted within a period not exceeding six months in the cases referred to in paragraphs (a) and (b) of this transitional provision and within a period of 12 months in the case provided for in paragraph (c) thereof, from the time of promulgation of the detailed provisions on the entry into force of protection for each genus, species or group of species concerned.

(2) The "Plant Variety Title" for varieties referred to in the first Transitional Provision shall be effective as from the date of filing of the application. The period of time elapsed after the filing of an application for a patent, or after the grant of a "Plant Variety Title" or after its registration in the List of Commercial Varieties, shall, where the conditions set forth in paragraph (c) of the first Transitional Provision have been complied with, be deducted from the period of protection.

For these purposes, the date of recording of a variety in the List of Commercial Varieties shall be the date of publication of the said List or the date on which the reproductive material for the said variety has been officially produced for the first time. Where both circumstances coincide, the earlier date shall be considered the date of recording for the purposes of the provisions of the preceding paragraph of this Transitional Provision.

(3) Plant varieties that were being marketed before the Law on the Protection of Plant Varieties came into force may continue to be freely produced and offered for sale, as long as the breeder does not make use of the right granted to him by the first Transitional Provision.

If the said right is made use of, the breeder or his successor in title shall be obliged to grant licenses for use under reasonable conditions to any natural person or legal entity so requesting and having produced under official control seeds or reproductive material of the varieties concerned. For these purposes only, the National Institute of Seeds and Nursery Plants may, when it considers this appropriate, specify conditions that have to be included in the contract for the license for use.

(4) The National Institute of Seeds and Nursery Plants shall submit to the competent bodies for approval the plans for services that will be made necessary by the implementation of these Rules. The appointment of new staff shall be made in accordance with the provisions of Decree No. 2043/1971, by which the Statute Governing the Staff Employed by Autonomous Bodies was approved.

(5) The Protected Plant Variety Commission shall be established before any provision on the grant of protection to a genus, species or group of species enters into force.

(6) Until the additional provisions for the application of these Rules to the various species or groups of species enters into force, the system of protection applicable to them shall continue to be that contained in the Law on Industrial Property and the Orders of the Ministry of Agriculture of May 23, 1967, by which Rules were enacted for the application of the provisions in force on fraud to the growing of protected varieties of roses and carnations, and of June 26, 1973, by which the Provisional Register of Commercial Varieties of Plants was established.

## Final and Derogative Provisions

(1) These Rules shall be applicable to the entire national territory.

(2) The Ministry of Agriculture shall be empowered, within the bounds of his competence, to enact additional provisions for the implementation and adaptation of these Rules, as well as detailed provisions on the entry into force of the said Rules, with respect to each genus, species or group of species.

(3) Any provisions of equal or lesser rank that are contrary to the provisions of these Rules are hereby repealed and, in particular, without prejudice to the application of the sixth Transitional Provision under the conditions specified therein: Section 3(9) of Decree No. 2177/1973, of July 12, regulating the sanctions for fraud involving agricultural products; the Order of the Ministry of Agriculture of May 23, 1957, containing rules for the application of the provisions in force on fraud to the growing of protected varieties of roses and carnations; the Order of the Ministry of Agriculture of July 14, 1959, organizing the classification of fruit trees; the Order of the Ministry of Agriculture of July 26, 1973, establishing the Provisional Register of Commercial Varieties of Plants, but only insofar as they concern the protection of new plant varieties.

## Annex

### List of Classes

Classification of genera and species for the purposes of the provisions of Section 13(2) on the denominations of plant varieties.

- Class 1: Avena, Hordeum, Secale, Triticum.
- Class 2: Panicum, Setaria.
- Class 3: Sorghum, Zea.
- Class 4: Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum.
- Class 5: Brassica oleracea.
- Class 6: Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis.
- Class 7: Medicago, Ornithopus, Onobrychis, Trifolium.
- Class 8: Lupinus albus L., L. angustifolius L.; L. luteus L.
- Class 9: Vicia faba L.
- Class 10: Beta vulgaris L. var. alba DC; Beta vulgaris.
- Class 11: Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn. Beta vulgaris L. vat. rubra L.), Beta vulgaris L. var. cicla L.; Beta vulgaris L. ssp.
- Class 12: Lactuca, Valerianella, Cichorium.
- Class 13: Cucumis sativus.
- Class 14: Cucumis melo, Cucurbita.
- Class 15: Anthriscus, Petroselinum.
- Class 16: Daucus, Pastinaca.
- Class 17: Anethum, Carum, Foeniculum.
- Class 18: Chamaecyparis, Juniperus, Thuya, Taxus.
- Class 19: Picea, Abies, Pseudotsuga, Pinus, Larix.
- Class 20: Malus, Pyrus.
- Class 21: Solanum tuberosum L.
- Class 22: Nicotiana rustica L.; N. Tabacum L.
- Class 23: Helianthus tuberosus.
- Class 24: Helianthus annuus.



Any genus that is not included in this list shall be regarded as constituting a class of its own.