

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independent - Freedom - Happiness

No: 172 /2007/NĐ-CP

Hanoi, 28th November 2007

DECREE

Revision and supplementing of some Articles of the Decree No 57/2005/NĐ-CP on 27th April, 2005 of the Government on penalties for the administrative violations in the field of Plant Varieties.

THE GOVERNMENT

Based on the Organizational Law of the Government on 25th December, 2001;

Based on the Intellectual Property Law No 50/2005/QH11 is approved on 29th November of 2005 by the Parliament of Socialist Republic of Vietnam, session 11;

Based on the Seed Ordinance No 15/2004/PL-UBTVQH11 of the National Assembly Committee;

Based on the Ordinance of the Penalties for the administrative violations No 44/2002/PL-UBTVQH10 of National Assembly Committee;

Pursuant to the Proposal of Minister of Agriculture and Rural Development,

DECREES:

Article 1. Revision and supplementing of some Articles of the Decrees No 57/2005/NĐ-CP on 27th April 2005 of the Government on penalties of the administrative violations in the field of Plant Variety:

1. Article 14 is revised and supplemented as follow:

“Article 14. Types and levels for penalties of the violations of the establishment and exercise of Plant Breeder’s Right:

1. For the Acts which reveal a secret related to the information on application of the Plant Breeder’s Right of the applicant will be punished from 2 millions to 3 millions Vietnam Dong.

2. Violating one of the following violations will be punished from 3 million to 5 million VN dong:

a) To make examination results become wrong therefore the granting, refusing, cancellation or nulify of the Protection Certificate are not follow the Law.

b) Publication of result of the Test for Distinctness, Uniformity and Stability (DUS Test Results) is not true;

c) Not follow the Test Guidelines which issued or accepted by Ministry of Agriculture and Rural Development (MARD) for implementation of Distinctness, Uniformity and Stability.

3. To punish from 20,000,000 to 30,000,000 Vietnam dong for the violation of one of the following acts without the agreement of the Protection Certificate's Holder:

a) Production or multiplication;

b) Processing for the purpose of propagation;

c) Offering for sale;

d) Selling or other marketing;

đ) Exporting;

e) Importing;

g) Stocking for any of the purpose listed in points a, b, c, d, đ and e of this paragraph.

h) To exercise one of the acts stipulated at point a, b, c, d, đ and e of this paragraph for the varieties those the production of which requires the repeated use of protected plant variety;

i) To exercise one of the acts stipulated at point a, b, c, d, đ and e of this paragraph for the varieties those are not clearly different from the protected variety;

k) To exercise one of the acts stipulated at point a, b, c, d, đ and e of this paragraph for the variety in paragraph 1 of the Article 187.

4. The additional penalties:

Confiscation of the violated exhibits for the acts are stipulated at paragraph 3 of this Article.

5. Remedies

a) Implementation follow the stipulations of the Law for the Acts which stipulated at Paragraph 1; point a and c, paragraph 2 of this Article;

b) The exact results of Growing Test must be publicized for the Acts stipulated at paragraph 2 of this Article.”

2. Article 15 is revised and added as follow:

“Article 15. Violating the Provisions of the Right and the Obligations for the Holder of Protection Certificate.

1. To punish from 3,000,000 to 5,000,000 Vietnam Dong for one of following Acts:

a) Using the variety which is same or similar denomination with it’s protected variety in the same species or a close species;

b) Exploitation of the Breeder’s Right of the protected variety but not pay the compensations follow stipulations at Article 189 of Intellectual Property Law;

c) Revising or erasing one of documents: Plant Variety Protection Certificate, Transference or Disposal Contract of Breeder’s Right and other relevant Decisions concern to the Plant Breeder’s Right;

d) Using of the Fake Plant Variety Protection Certificate; The Certificate has been finished of effectiveness or cancelled and nullified Certificate for the implementation of Plant Breeder’s Right.

d’) Breeder of the protected plant variety does not help Protection Certificate Holder in maintaining of propagating material of the Variety.

2. One of the following Acts will be punished from 10,000,000 to 15,000,000 VN dong:

a) Owner of the Protection Certificate does not transfer the Plant Breeder’s Right according to the Decision of the Authority Office;

b) Owner of the Protection Certificate does not pay the reimbursement to Breeder stipulated in the Agreement; or does not pay fees for maintainance of effectiveness of Protection Certificate stipulated by the Law;

c) Owner of the Protection Certificate does not reserve protected variety and refuse of supplying the propagating material to the State Management Office for Plant Breeder’s Right as well as not to maintain of the stability of protected variety according to the Law;

3. The Acts are punished from 15,000,000 to 20,000,000 VND including:

a) To supply documents, evidence and information which is wrong when require of cancellation, nullity or penalty for the infringements to the authorization offices;

b) Not to finish the infringement even though it is informed to stop the acts in writing by Owner of Protection Certificate.

4. Type of additional punishment:

Confiscation of violated exhibits and other papers for the infringements are stipulated at point a, c, d of paragraph 1 and point a of paragraph 3 of this Article;

5. Remedies

The Violations stipulated at paragraph 2 and point b of paragraph 3 of this Article must be repaired follow the Law.

Điều 2. Implementation effectiveness

This Decree enter into force after 15 (fifteen days) from it is publicized in Official Gazette. Articles 14 and 15 of the Decrees No 57/2005/ND-CP on 27th April, 2005 for penalties of administrative violations in the field of plant variety are deleted.

Điều 3. Responsible of implementation

1. The Ministry of Agriculture and Rural Development shall be responsible to provide the instructions for the implementation of this Decree.

2. Ministers, heads of ministerial level agencies, Heads of the offices under Government, Chairman of Provincial/city Peoples Committees, which are under Central Government shall have the responsibility to execute this Decree./.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER
(Signed)**

Nguyen Tan Dung