

(As published in PVP Gazette, Issue No. 87, March 2000)

MEXICO

MINISTRY OF AGRICULTURE, ANIMAL HUSBANDARY AND RURAL DEVELOPMENT

REGULATIONS OF THE FEDERAL PLANT VARIETY LAW*

CHAPTER I

OBJECT

ARTICLE 1st. The object of this enactment is to regulate the Federal Plant Variety Law. For administrative effects, its application and interpretation correspond to the Ministry.

ARTICLE 2nd. For effects of interpretation and application of these Regulations, the following terms shall be understood to mean:

- I. Pertinent characteristics: Phenotypic and genotypic expressions of the plant variety that permit its identification;
- II. Committee: The Plant Variety Assessment Committee;
- III. Plant improver: Any natural person who has developed and obtained a plant variety on another's account;
- IV. Genealogy: Set of elements that schematically define the ancestry and breeding process in obtaining a plant variety;
- V. Law: The Federal Plant Variety Law;
- VI. Propagation material: Any sexual or asexual reproduction material that may be used for the production or multiplication of a plant variety, including seeds for sowing and any whole plant or part of a plant from which whole plants or seeds may be obtained;
- VII. Breeder: juristic or natural person who, through an improvement process, has obtained and developed a plant variety of any genus or species;
- VIII. Improvement process: Technique or set of techniques and procedures that permit the development of a plant variety and that allow for its protection on the grounds of it being new, different, stable and homogeneous;
- IX. Registry: The National Registry of Plant Varieties referred to in article 33 of the Law;

*Published in the Official Gazette of the Federation on September 24, 1998.

- X. Ministry: The Ministry of Agriculture, Animal Husbandry and Rural Development;
- XI. SNICS: The National Service for the Inspection and Certification of Seeds, a decentralized Ministry body;
- XII. Breeders Certificate: Document issued by the Ministry that recognizes and protects the rights of the breeder of a new, different, stable, homogeneous plant variety; and
- XIII. Plant variety: Subdivision of a species that includes a group of individuals with similar characteristics and that is considered stable and homogeneous.

ARTICLE 3rd. The Ministry shall coordinate with the Federal Public Administration agencies and entities all aspects related to the protection of the rights of the breeder of new plant varieties. With this purpose, it shall liaise with state and municipal governments and with state, national and international, public and private institutions and organizations.

CHAPTER II

PROTECTION OF RIGHTS

ARTICLE 4th. The rights of the breeder and his/her assignees that are confirmed in the Law and in these Regulations shall be freely exercised, with no other limitations than those relevant to the protection of the biodiversity.

ARTICLE 5th. In relation to the provisions of section A, article 3rd of the Law, the rural communities shall, at all time, have the right to use and commercially exploit the plant varieties that result from their practice, uses and customs.

Said communities shall permit the development of research activities and study that public and private institutions may perform with such plant varieties in order to protect the biodiversity.

ARTICLE 6th. Recognition as plant breeder is a right that shall correspond to both the plant breeder him/herself and to the plant improvers who, on account of the former, have developed and obtained the plant variety.

Plant improvers shall have the right to participate in the profits produced from applying the Law and these Regulations, providing an express prior agreement is made in which the proportion they shall receive is determined in accordance with the applicable legal provisions.

ARTICLE 7th. Protection of foreign breeders' rights shall be granted in accordance with the provisions of the Law, these Regulations and the international treaties or agreements to which the United Mexican States are signatory.

The Ministry may refuse the registration of plant varieties to nationals of other countries when there is no international treaty or agreement with the country in question and the latter does not grant reciprocity to Mexican breeders.

ARTICLE 8th. The privilege of making use of a protected plant variety without the breeder's consent, in the case of self use for sowing, shall correspond only to natural persons and shall be restricted to the amount of propagation material that the agricultural producer keeps or

reserves to sow an area that does not exceed the limits established in the corresponding official Mexican norms.

ARTICLE 9th. Any waiver of the breeder's rights shall be expressed in the forms the Ministry issues to this end and shall be presented to the Ministry's Legal Office. The plant breeder or his/her expressly authorized legal representative must ratify the waiver no later than thirty calendar days after the date of presentation. Should the waiver not be ratified, it will be considered as not having been presented.

ARTICLE 10. No later than ninety calendar days after the plant variety becomes part of the public domain, the Ministry shall issue the corresponding declaration, which must be published in the official journal of the Federal Government (Diario Oficial de la Federación). The protection of the rights referred to in article 4, section 11 of the Law shall expire, even though the respective declaration has not been published.

CHAPTER III

THE APPLICATION

ARTICLE 11. Whosoever attempts to make use of and exploit a new plant variety and its propagation material must prove that they developed and obtained it by means of an improvement process inherent to the genus and species in question.

ARTICLE 12. Applications for the protection of the rights of plant varieties breeder shall be presented before the SNICS on a form that the Ministry shall give free of charge to those interested. The following data shall be specified in the form:

- I. The full name, nationality and address in national territory of the applicant for a breeders certificate;
- II The full name of the plant improver, should there be one;
- III. The full name of the common or legal representative, should there be one;
- IV. The genus and species of the plant variety;
- V. The proposed denomination of the plant variety;
- VI. The type, progenitors, origin, genealogy and genotechnique method of obtaining the plant variety;
- VII. Information, where appropriate, on the commercialization of the plant variety in Mexico or abroad;
- VIII. Where appropriate, the percentage share corresponding to each of the breeders in making use of and exploiting the plant variety;

- IX. The priority claim in terms of articles 10 and 11 of the Law and the relevant article of these Regulations; and
- X. The beneficiaries designated by the applicant. Similarly, the statement, made under protest to say in truth that the information and data given to the Ministry are correct, shall be inserted.

The forms and technical guides shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación).

ARTICLE 13. All applications shall be presented together with the following documents:

- I. A technical report giving details of the characteristics of the plant variety for which protection is requested, based on the technical guides or official Mexican norms issued by the Ministry for each genus and species;
- II. Proof of payment of duties; and
- III. The legal instrument, where appropriate, in which the legal status of the legal representative is verified.

The documents referred to in the article and the complementary information must be written in Spanish or, where appropriate, must be accompanied by the corresponding translation done by an authorized translator.

ARTICLE 14. The SNICS shall keep a book of applications in which entries shall immediately be made of the data necessary to identify each application, in strict progressive order, according to date of presentation. Within a period of three working days following receipt of an application, the SNICS shall send said application to the Committee.

ARTICLE 15. The Committee shall, in the first place, verify the data given in the application. When the application is seen to contain omissions, errors or defects not essential for the identification of the new plant variety the interested parties shall be required to proceed to make the corresponding correction, addition or clarification within a period of thirty working days.

Should the mistakes, omissions or misrepresentations be serious and imputable to the applicant and affect the determination with respect to the supposed new plant variety, the application shall be rejected out right and no corrections or rectification of the content will be admitted.

ARTICLE 16. The right of priority may be requested providing no more than twelve months have passed since presentation of the application abroad. To this end, the Ministry, through SNICS, shall be provided with data on the stage of the procedure or registration of said application and, within a period of three months, a certified copy of the corresponding documents.

The applicant for the breeder's certificate that has requested grant of the priority right shall have a period of four years, as of the date of expiry of the three month period referred to in the

paragraph above, to provide the Ministry with any information, and where appropriate, propagation material for examination of the application.

Should the application presented abroad be rejected or withdrawn, the request for priority rights shall be without effect, and the applicant shall have six months, as of the date of rejection or withdrawal, to present to the Ministry any information and, where appropriate, propagation material for examination of the application.

The granting of priority rights does not imply concession of a breeder's certificate in benefit of the applicant or third parties.

ARTICLE 17. The information contained in the files of applications being studied and their annexes, may only be consulted by the applicant or persons authorized by him/her, except when the documentation is required by an administrative or legal authority, and the necessary measures to conserve their confidentiality must be observed.

CHAPTER IV

THE QUALIFICATION

ARTICLE 18. The Committee shall be chaired by the Undersecretary for Agriculture and Animal Husbandry of the Ministry and its Technical Secretary shall be the Director of the SNICS. The Records Secretariat shall correspond to the Ministry's Legal Office.

The three other representatives of the Ministry shall be the directors in chief of the National Institute for Forestry, Agricultural and Fisheries Research, the National Commission for Agricultural Health and the Ministry's Director General for Agriculture. All proprietary representatives may appoint their deputies.

Likewise, a proprietary and a deputy representative from the Ministry of the Environment, Natural Resources and Fisheries, from the Mexican Industrial Property Institute and one more, that shall be appointed by common agreement by the national public agricultural research institutions, shall also form part of the Committee.

ARTICLE 19. The Committee may request, from those who appointed them, the removal of their proprietary and deputy members, as a result of both lack of attendance at sessions and lack of fulfillment in the exercise of their corresponding functions or functions they have been entrusted with.

ARTICLE 20. The President shall direct the work, assign functions to its members and chair the Committee sessions.

The Technical Secretary shall execute the Committee's agreements, coordinate the work of the technical support groups and receive and process applications for breeder's certificates.

ARTICLE 21. The technical support groups shall function in a collegiate way, they shall consist of a minimum of three and maximum of six members and shall be coordinated by the Technical Secretary or whomever he may appoint as deputy. One of the members of each

group shall be representative of the producers of the genus or species of plant variety in question, providing they are specialists in the matter. It will be the responsibility of the Technical Secretary to convene the corresponding organizations to integrate the respective technical support group. Should two or more candidates be proposed, the Committee shall decide who the representative will be.

Only producers' organizations duly registered with the Ministry may appoint representatives.

ARTICLE 22. Among other functions, the technical support groups shall act as experts in plant varieties, give their opinions on the identification of any plant variety, as well as on distinctness, stability and homogeneity as requisites for plant varieties.

ARTICLE 23. The Committee sessions will be private, unless there is prior agreement to hold them in public. In order for Committee resolutions to be valid, the attendance of 75% of its members will be necessary and these must include its proprietary or deputy President who shall have the deciding vote.

The Records Secretary shall call Committee sessions at least-five working days in advance of the date on which the sessions are to be held and shall invariably bring the order of the day and corresponding documentation.

The minutes of each session shall be drawn up in triplicate and signed by the attendants, including the Records Secretary; who shall bear witness to the proceedings and enter the minutes into the respective book.

ARTICLE 24. When the session called for cannot be held on the date previously established, a second session shall be called that must take place within the following fifteen working days and shall be held with the representatives that attend, providing the President and two other members are present.

ARTICLE 25. The Committee may do a study of the breeding work carried out by the applicant in order to develop and breed the plant variety.

ARTICLE 26. In accordance with article 7th, section I of the Law, the Committee shall determine if a plant variety satisfies the requirement of novelty, to which end it may seek the help of the competent areas of the Ministry and request the opinion of other agencies, entities or public institutions.

The Committee shall investigate if the plant variety has been commercialized outside the periods established in said section and shall consult the official registers of international organizations and of the countries with which agreements exist on the matter; similarly, the data and characteristics of the plant variety shall be circulated in media deemed to be suitable so that they become public knowledge.

ARTICLE 27. Each plant variety shall have a denomination that shall be considered as its generic designation. The denomination proposed by the applicant must meet the following requirements:

I. Permit that the plant variety be clearly identified;

- II. Be clearly distinguishable from any other denomination given to a pre-existing plant variety of the same botanical species or a similar species, and not be likely to lead to error or give rise to confusion as to the characteristics, value or identity of the plant variety or the breeder's identity; and
- III. Be subject, where relevant, to the provisions of the Industrial Property Law.

The use of the denomination shall not infringe on the previous rights of third parties even after protection has expired.

The denomination may not be composed of figures alone, except when it is a question of established practice in designating plant varieties.

ARTICLE 28. The Committee shall reject proposed denominations that do not meet the requirements established in the preceding article, in such a case the applicant will be required to propose another within a period of thirty calendar days after said applicant has received the corresponding notification.

The applicant may change the proposed denomination of the plant variety, providing the application is being processed and the change is justified to the satisfaction of the Committee.

ARTICLE 29. Having verified the requirement of novelty and approved the denomination of the plant variety, the Committee shall rule on the action to be taken with respect to the application. This resolution shall be immediately communicated to the Ministry so that the certificate of filing referred to in article 35 of these Regulations may be issued.

ARTICLE 30. The Committee may require that the applicant, in a period of three months, deliver the plant variety or its propagation material in the quantities it considers fitting, as well as the complementary documents and information it deems necessary. The application will not come into effect if the interested party does not comply with the requirements made in the period established.

ARTICLE 31. In order to verify the requirement of distinctness, the Committee may consider any characteristic that can be determined and accurately described as distinctive, so that the plant variety can be differentiated from others with no difficulty, independently of the nature of the pertinent characteristics mentioned in the technical report.

The pertinent characteristics that are used to distinguish a plant variety may be qualitative or quantitative. In both cases, variation shall be defined through levels of phenotypic expression, in terms of the needs of distinctness that, for levels that are not measurable, shall be of a discontinuous type and, in the case of the quantifiable levels, shall be continuous between two extremes that shall be described in the respective technical guides or in the official Mexican norms.

With respect to the process of review, research or consultation carried out by the Committee, it must be proved that the plant variety can be distinguished, by at least one pertinent characteristic, from other protected plant varieties or plant varieties of the public domain.

ARTICLE 32. The requirement of stability of a plant variety shall be complied with if its pertinent characteristics maintain a high level of homogeneity after successive multiplication's in terms of the respective technical guides.

ARTICLE 33. A plant variety shall be considered to be homogeneous when its plant population is practically uniform or has variations within a reasonable, foreseeable range given the repeated multiplication, which must be accurately described in the technical report.

ARTICLE 34. If it is ruled in the fundamental resolution that the plant variety for which protection is requested is not new or has not been the result of creative activity or plant improvement work or does not meet any of the requirements of distinctness, homogeneity or stability, the Ministry shall notify the applicants thereof in writing specifying the analyses and reasons for which a breeder's certificate cannot be granted.

The interested parties may, within a period of sixty calendar days as of the date of notification of the negative ruling, express what they see fit, or insist, at their own cost, on a new examination of the application, to which end they shall argue the motives, references, causes, data or other reasons on which they base their petition.

CHAPTER V

CERTIFICATE OF FILING

ARTICLE 35. With the ruling justifying the application and in accordance with the respective format, the Legal Office shall issue the applicant with a certificate of filing. The applicants shall be notified of this within five working days of receipt of said ruling which shall be recorded in the Registry and published in the Official journal of the Federal Government (Diario Oficial de la Federación).

The certificate of filing shall contain at least the full names of the breeder and, where appropriate, the full names of the plant improvers that developed the plant variety on the breeder's account; the vulgar, or common or scientific name of the genus and species in question; its denomination and register number.

Should issue of a certificate of filing be denied, the applicant shall have a period of thirty calendar days from the date of notification to dispute the resolution.

ARTICLE 36. The validity of the certificate of filing shall expire on the date of issue of the corresponding breeders certificate, or, should this be denied and the applicant has exhausted the respective means of defense, when the competent legal body declares a non-appealable judgement as regards the justification or illegality of granting a certificate.

During the period of validity of the certificate of filing, the owner of the certificate may only make use of and exploit the plant variety and its propagation material himself or through third parties with his consent; under no concept may a lien be placed upon it or may it be transferred.

ARTICLE 37. Should a declaration of expiration of the certificate of filing be issued, the application for a breeders certificate shall be deemed not to have been presented, and the relative records in the Registry shall be cancelled. Said declaration shall be issued by the Legal Office and shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación).

CHAPTER VI

THE GRANTING AND TRANSFER OF THE BREEDER'S CERTIFICATE

ARTICLE 38. The certificate must express, at least, the full name of the breeder and, where appropriate, the full names of the plant improvers; the common or vulgar and scientific name of the genus and species in question; its denomination; its register number and the dates of issue and end of validity.

ARTICLE 39. If, during the validity of the breeders certificate, the Ministry has elements and reasons to suppose that the protected plant variety has decreased or lost to a notable extent its identity as variety, the breeder or assignees may be required to contribute evidence or allow field inspections and laboratory tests, if necessary, in order to corroborate that the plant variety does not show alterations as to its original pertinent characteristics.

ARTICLE 40. Should the breeder's certificate be lost or destroyed, the Legal Office shall issue a certified copy of the document, which will have the same effects as the lost original. In all cases, the certified copies requested by the breeder or assignees shall be issued.

ARTICLE 41. The plant variety breeder or assignees may authorize third parties, through any legal title granted by a notary public, to make use of and exploit the plant variety and its propagation material, in an exclusive, total or partial way and on a temporary basis, for purposes of production, reproduction, distribution or sale, as well as for the production of other plant varieties and hybrids with commercial purposes.

The authorization referred to in the paragraph above may be subject to conditions established by the plant variety breeder that could be: concurrence in exploitation, production volumes, periods, payment of royalties or quality control.

CHAPTER VII

EMERGENCY LICENSES

ARTICLE 42. The Ministry, with the prior favorable opinion of the Ministry of Trade and Industrial Development, shall determine if extraordinary circumstances prevail in a region or in the whole country that affect the satisfaction of the basic needs of a sector of the population and if there is a risk that the production, provision or distribution of the benefits may be prevented, obstructed or made more expensive as a result the consequent deficiency in supply or provisions, a situation that could be solved in all or part with the exploitation of one or more protected plant varieties. This determination shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación).

In such an event, the Office of the Director General for Agriculture shall act in accordance with the provisions of article 26 of the Law and with these Regulations.

ARTICLE 43. If the breeder shows interest in covering or participating in the emergency situation, he shall do so with the knowledge of the Office of the Director General for Agriculture within a period of five working days from the date on which the corresponding notification was received.

In all cases, the participation of the breeder in the emergency will be subject to the terms and conditions established by the Office of the Director General for Agriculture.

ARTICLE 44. Should the breeder not wish to participate in the terms of the preceding article, a notice, calling for public bidding, shall be issued to cover the emergency; the bidding shall be governed by the procedures and requirements laid down in the Procurement and Public Works Law.

ARTICLE 45. The adjudication of emergency licenses, where appropriate, shall be governed by the bases and procedures established in the notice that shall be issued by the Office of the Director General for Agriculture.

When there are no interested parties, the Ministry may produce and dispose of the plant variety in the quantities necessary to cover the emergency, paying the corresponding compensation to the breeder. The breeder shall always conserve the right to continue exploiting and making use of the plant variety.

ARTICLE 46. The Ministry, through the Office of the Director General for Agriculture, shall grant an emergency license, which shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación). The license shall contain at least the following data:

- I. The full name of the licensee;
- II. The full names of the breeder or assignees and, where appropriate, of the plant improver that obtained the variety on account of the former;
- III. The denomination and registration number of the plant variety;
- IV. The amount of the compensation to be given to the breeder or assignees;
- V. Rights, obligations and restrictions of the licensee;
- VI. Mention that the license shall not be exclusive, may not be transferred nor subrogated under any circumstances; and
- VII. Duration of validity.

ARTICLE 47. Emergency licenses may be extended by the Ministry only and as long as the circumstances that gave rise to their issue persist.

ARTICLE 48. If, during the validity of the emergency license, the plant variety object of the same becomes public domain, from this last date the licensee shall have no obligation to pay the breeder or assignees the compensation established in the notice.

CHAPTER VIII

THE NATIONAL REGISTRY OF PLANT VARIETIES

ARTICLE 49. For any recordable act to have an effect against third parties, it must be entered in the Registry records.

ARTICLE 50. The Registry shall function in accordance with the system, methods and procedures specified in the guidelines issued to this end by the Ministry.

ARTICLE 51. For effects of the Registry, plant varieties shall be assigned an identification number as soon as the requirement of novelty has been fulfilled and denomination approved. Similarly, the full names of the plant breeders and, where appropriate, the claim to priority rights over a plant variety shall be entered.

ARTICLE 52. The Ministry shall keep up to date a catalogue of public and private agricultural research institutions; foreign and national researchers and plant improvers with their full names, specialty, place of work and private address. To this end, it shall be helped by the central administrative units, decentralized organizations, and parastatal entities of the sector coordinated by the Ministry as well as by Mexican and foreign agricultural enterprises.

ARTICLE 53. Upon petition of the interested parties and having received previous payment of the corresponding duties, the Legal Office shall issue certified copies of the entries and records in the Registry as well as certificates of existence or lack of existence of entries.

ARTICLE 54. The content of the entries to be found in the registry books may be rectified providing there are errors of style or contents with respect to the recordable documents.

There will be errors of style when some words are written instead of others, and the insertion of some circumstance is omitted; or when on copying them from the original document a mistake is made concerning proper nouns, amounts or dates that does not alter the general meaning of the text of the entry. Rectification will be made at the government's initiative or upon petition of the party, invariably keeping in sight the document in which there is understood to be a mistake.

Error of content shall be taken to mean any error arising from omissions or deficiencies in the original document. The rectification shall proceed on the petition of the legally interested party by means of the presentation of a new document for entry. All other interested parties must be notified of this rectification. In both cases, the rectification will be noted down in the corresponding entry.

CHAPTER IX

NULLITY AND REVOCATION

ARTICLE 55. The procedure to declare a breeder's certificate null shall be substantiated in the Legal Office, at the government's initiative or on request of the interested party, and must be presented within a period of fifteen working days as of the date of publication of the certificate in the Official Journal of the Federal Government (Diario Oficial de la Federación).

ARTICLE 56. Nullity shall proceed when it is proved that the plant variety does not meet one of the requirements of novelty, distinctness, homogeneity and stability on the date on which the breeder's certificate was issued or when the certificate is in the name of someone who does not have the right to it.

The statement of nullity shall produce retroactive effects as of the date of issue of the certificate of filing. Where appropriate, the certificate holder against whom nullity is declared shall be responsible for damages caused.

ARTICLE 57. The breeder's certificate shall be revoked should any situation contemplated in article 40 of the Law arise. The declaration of revocation shall produce the annulment of the rights to make use of and exploit the plant variety as of the date of notification thereof.

ARTICLE 58. When the nullity or revocation of a breeder's certificate is requested, the interested party shall express in writing the motives and arguments on which the action is based and shall annex the proof he deems convenient.

The breeder, his representative or assignees shall be notified of the motion of nullity or revocation at the address given to the Registry so that they may proceed in accordance with the provisions of article 41 of the Law and provide the proof they consider necessary.

All kinds of proof will be admitted with the exception of depositions. Only those that have no relation with the case shall be rejected, be they contrary to the law or contrary to morals and to rights. The Committee shall be responsible for hearing the proof and its report shall be the basis for dictating the definitive resolution.

ARTICLE 59. Should the Ministry have elements relating to the situations referred to in articles 39 and 40 of the Law, it shall proceed of its own initiative, observing the prescriptions in the preceding article.

CHAPTER X

VISITS OF INSPECTION

ARTICLE 60. In order to prove or corroborate compliance with the Law and the Regulations, the SNICS may directly or through the Ministry's state offices order and practice ordinary or extraordinary visits of inspection at any time or place. The ordinary visits will be made on working days and during work hours, the extraordinary visits may be made at any time.

ARTICLE 61. The visits of inspection shall be subject to the provisions of the Law and these Regulations and, with respect to any unforeseen matter, to the Federal Administrative Procedures law.

ARTICLE 62. The Ministry, through the Office of the Director General for Agriculture, the SNICS and its state offices may inspect goods, persons and transportation vehicles with the objective of proving compliance with the provisions of the Law and these Regulations.

ARTICLE 63. If, during the visit of inspection, it is proved that any one of the infringements foreseen in the Law has been committed, the inspectors shall cautiously seize the goods object of the infringement, proceeding in accordance with the provisions of the Law and these Regulations with respect to the seizure of goods.

CHAPTER XI

PROVISIONAL MEASURES

ARTICLE 64. In the administrative procedures for the imposition of sanctions for infringements established by the Law, the Ministry, through the SNICS and the state offices, may also adopt the following provisional measures:

- I. Order the withdrawal from circulation or prevent the circulation of plant varieties or propagation material that is infringing the rights protected by the Law;
- II. Order that the objects, packing, wrappings, cases, stationery, advertising material and such with which any one of the rights protected by the Law is being infringed be withdrawn from circulation;
- III. Seize the goods object of the violation of the rights protected by the Law; and
- IV. Order the presumed transgressor to suspend or stop the acts that constitute a violation of the provisions of the Law.

ARTICLE 65. The practice of proceedings related to the adoption of provisional measures may only be variety and its propagation material.

The petition shall be made in writing, providing the information necessary to identify the presumed responsible persons or the goods, services or establishments with which or where an infraction foreseen in article 48 of the Law is being committed; the petition shall be accompanied by the proof in their power.

ARTICLE 66. Taking into account the seriousness of the infringement and the nature of the measure requested, the SNICS or state office shall determine the practice of the appropriate provisional measure, as well as the amount of the bond and the indemnity bond. Only the presentation of sureties granted by legally authorized institutions should be accepted.

ARTICLE 67. An increase in the amount of the bond may be required when, from the execution of the provisional measures, it becomes clear that the amount granted is not

sufficient to respond to the damages that might be caused to the persons against whom the measure has been passed.

ARTICLE 68. The applicant for a provisional measure may attend the proceedings, in person or through an attorney, and make observations that will be set down in the records.

ARTICLE 69. The person responsible for executing the provisional measures must proceed as necessary in accordance with the provisions of the Federal Administrative Procedures Law.

ARTICLE 70. In the application of provisional measures, a circumstantial statement shall be drawn up in the presence of two witnesses proposed by the person involved in the proceedings, or appointed by the person responsible for them if the former refuses to propose them. The following information, as minimum, shall be set down in the statement:

- I. Place, date and time of the beginning and end of the proceedings;
- II. Name and position of the civil servant responsible;
- III. Number and date of the official letter authorizing the provisional measures;
- IV. Name, official name or trade name of the affected party, as well as of the persons involved in the proceedings;
- V. Name and address of the witnesses;
- VI. Brief list of facts and information relating to the proceedings;
- VII. Inventory and destination of the secured goods, where appropriate, as well as the names of the depositories;
- VIII. Observations made by the applicant for the measures;
- IX. Declaration of the affected party or of the persons involved in the proceedings, and
- X. Name and signature of those who took part include the witnesses.

The validity of the statement shall not be affected if any of the persons present decline to sign it, but their reason for not doing so must be expressed. In all cases, a copy of the statement shall be left with the person who attended to the proceedings.

ARTICLE 71. The persons against whom one of the provisional measures have been applied, shall have a period of thirty working days to present the observations they may have with respect to the adopted measure.

The SNICS may modify the terms of the measure applied, taking into account the arguments expressed by the affected party.

ARTICLE 72. The affected and the interested parties shall be notified of the application of the provisional measure adopted so that, within a period of thirty working days as of the date of notification, they may put down in writing what they deem fitting.

ARTICLE 73. The embargo of goods, based on the provisions contained in articles 42 and 45 of the Law shall be subject to the following:

- I. The person responsible for applying the provisional measure shall indicate the goods object of the embargo, make the inventory and appoint the depositaries;
- II. In the appointment of the depositaries, the persons or institutions proposed by the applicant for the measure, under his/her responsibility, shall be preferred;
- III. If the appointment of the depositary should fall on the person involved in the proceedings, that person shall be considered the person responsible for the establishment;
- IV. The depositary shall keep the seized goods in the address where the proceedings are to take place or, where appropriate, in the address indicated for such an end; for no motive may the depositary dispose of them and must keep them at the disposal of the Ministry;
- V. The seized goods that must be concentrated in the Ministry shall be kept on the premises indicated to that end and under the responsibility of the SNICS or the corresponding state office;
- VI. Could the seized goods lose value or deteriorate, the depositary shall look after them permanently and must inform the person so appointed of any damage observed or that he/she fears may reasonably ensue; and
- VII. Where appropriate, the SNICS or the competent office shall pronounce the opportune measures, on prior agreement with the interested parties, in order to avoid the deterioration or loss of value of the seized goods or in order to determine their sale in the best conditions with the purpose of preventing their total loss.

ARTICLE 74. When the definitive resolution on the background to the controversy determines that an administrative infringement has been committed, the following shall apply with respect to the destination of the seized goods:

- I. The petitioner and the transgressor may agree as to the destination of the goods or subject themselves to the decision of the Arbitration Commission in which case the goods may be put at the disposition of said Commission;
- II. If legal proceedings have begun for mending the material damage or for the payment of damages, they shall be put at the disposition of the competent legal authority; and
- III. If, after ninety calendar days from the date on which the definitive resolution was passed, none of the suppositions referred to in section I and II above have occurred, SNICS' Technical Council may:

- a) Donate the seized goods to agencies and entities belonging to the Federal, State and Municipal Administration and public welfare or social security institutions when this does not affect the public interest, or
- b) Destroy the goods.

ARTICLE 75. The embargo on the goods shall be lifted when:

- I. The definitive resolution establishes that no administrative infringement has been committed;
- II. The administrative sanction imposed is declared baseless or without effect in compliance with the legal resolution; and
- III. By order of the competent legal authority.

ARTICLE 76. The Ministry shall make use of the necessary legal measures, including help from the public forces, in order to achieve the adoption of the provisional measures, the execution of sanctions and the application of the security measures that may proceed.

ARTICLE 77. On applying the provisional measures, care must be taken that they are not used as a means to violate professional secrets or research or to carry out acts that could constitute unfair competition.

ARTICLE 78. The petitioner may use the documentation relating to the application of a provisional measure to begin the corresponding lawsuit or to exhibit it in the writs of the processes under way or in the arbitration proceedings and must abstain from using it for other purposes, from disclosing it or communicating it to third parties.

ARTICLE 79. The Ministry through the competent instances, shall try at all times to reconcile the interests involved in controversies relative to the adoption of provisional measures and infringement of the rights covered by the Law and these Regulations. In all cases, priority shall be given to arbitration proceedings.

CHAPTER XII

ARBITRATION

ARTICLE 80. The Ministry, upon the request of the interested parties, shall act as arbiter in the controversies that may arise as a result of the application of the Law, of this enactment, of the official Mexican norms and the guidelines issued on the matter. Arbitration shall proceed in the following cases, among others:

- I. In claims for payment for material damage or indemnity for damage;
- II. When the rights granted by the Law and these Regulations are contested; and
- III. In controversies on the maintenance, conservation, sale and destination of the seized goods.

ARTICLE 81. The Ministry shall appoint an Arbitration Commission to substantiate and resolve the matters submitted to its consideration. This Commission shall be comprised of three members including the Director General for Legal Affairs who shall chair it.

ARTICLE 82. The questions submitted to arbitration shall be processed and resolved in accordance with the provisions of the Law and these Regulations, by means of the procedure agreed to by the petitioners:

- I. As friendly conciliator; or
- II. Strictly following the arbitration procedure.

The interested parties shall opt for the procedure they deem fitting and shall express it formally as a commitment that shall be set down in the statement drawn up to that end, which they shall sign together with the members of the Commission.

ARTICLE 83. In the cases of a friendly settlement, the Commission, in a brief, clear and concise way, shall establish the questions to be subject to arbitration and shall make a resolution based on justice and good faith, without subjecting the proceedings to special formalities, but observing the essentials of the procedure. The carrying out of motions or objection processes shall not be accepted.

Any clarification on the resolution made may only be requested by the interested party and within a period of five working days following its notification.

None of the parties that may have opted for the procedure of a friendly settlement may change their decision after having fixed the points subject to arbitration.

ARTICLE 84. In the arbitration procedure that strictly follows the law the following terms shall prevail:

- I. Five working days, from the day after making the commitment, for the presentation of the corresponding initial writ, in which the proof considered fitting must be offered;
- II. Five working days, as of the day after the summons, for the reply and offering of proofs;
- III. Fifteen working days, as of receipt of reply, for the Commission to admit and process the proof offered;
- IV. Five working days for all parties, as of the termination of the probation stage, to formulate pleas; and
- V. Fifteen working days, as of the formulation of the pleas or expiry of the term in which to do so, to dictate the decision.

The terms shall not be extended and notifications shall be made personally at the address indicated by the interested parties; when the terms have expired, the procedure shall follow its

course, without the need to make accusations of nonappearance, and shall preclude the right that could have been exercised within these terms.

The Arbitration Commission shall decree expiration when one hundred and eighty calendar days have elapsed without a promotion being made by any of the parties.

ARTICLE 85. The Arbitration Commission may allege all the legal elements it deems necessary to resolve the questions relating to the controversy, without further limitations than those prohibited by the law or contrary to morals.

The administrative authorities shall help the Commission when so required and its resolutions shall admit no appeal.

ARTICLE 86. The decisions derived from the arbitration proceeding shall have the character of a definitive resolution.

CHAPTER XIII

ADMINISTRATIVE INFRINGEMENTS AND APPEAL FOR REVIEW

ARTICLE 87. All persons may denounce to the Ministry the existence of facts that may constitute any of the administrative infringements foreseen in the Law. The denouncer shall attempt to indicate them in writing, which shall be accompanied by any proof that can be offered.

ARTICLE 88. The SNICS shall impose the sanctions in accordance with the provisions of the Law, these Regulations and other applicable provisions.

Should there be seized goods, they shall be put at the disposition of the Treasury of the Federation for application in payment of the sanctions that may be imposed and costs incurred.

ARTICLE 89. The interested parties affected by the acts and resolutions of the Ministry that terminate the administrative procedure, a petition or that close a file, may file an appeal for review in the terms of the Federal Administrative Procedures Law.

TRANSITORY ARTICLES

FIRST. These Regulations shall come into effect the day after their publication in the Official Journal of the Federal Government (Diario Oficial de la Federación).

SECOND. The Ministry shall publish the formats referred to in article 12 of these Regulations within a period of sixty days after the publication of this enactment.