

# **DECREE Nº 2,366 OF THE 5TH OF NOVEMBER 1997**

Institutes regulations concerning Law No. 9,456, of April 25, 1997, which establishes Protection for Plant Varieties, rules on the National Plant Varieties Protection Service – SNPC, and provides other measures

**THE PRESIDENT OF THE REPUBLIC**, using his prerogatives as provided in Art. 84, Insert IV, of the Constitution, and with due regard to the provisions of Law No. 9,456 of April 25, 1997,

## **DECREES AS FOLLOWS:**

### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **SECTION I**

###### **Preliminary Provisions**

Art. 1st. The protection of plant varieties, as per the terms of Law No. 9,456 of April 25, 1997, shall be effected in accordance with the rules provided in this Decree.

Art. 2nd. The protection of intellectual property rights regarding plant varieties is performed through the granting of a Plant Variety Protection Certificate, which is considered a commodity for all legal purposes and the sole form of protection for plant varieties and legal form that may inhibit the free utilization of plants or of their reproduction or vegetative multiplication parts, in the Country.

##### **Section II**

###### **The Plant Variety Protection Agency**

Art. 3rd. The National Plant Varieties Protection Service – SNPC, created by Law No. 9,456, of 1997, within the scope of the Ministry of Agriculture and Supply, is the agency responsible for the protection of plant varieties in the Country, and are especially attributed to this agency:

I – the protection of novel plant varieties and of essentially derived plant varieties, granting the corresponding protection certificates thereto;

II – the progressive disclosure of the plant species and their respective minimum descriptors, as required to institute applications for protection, as well as the deadline, in the case provided in alinea “a” of § 1st. of Art. 6th. of this Decree, for the submission of the applications;

III – the preparation and submission to approval before the State Minister of Agriculture and Supply, of additional rules, within the scope of competence of the same, concerning the protection of novel plant varieties and of essentially derived plant varieties, as well as of protectable plant varieties under Art. 4th., § 1st., of Law No. 9,456 of 1997, of any plant kind or species, and establish the forms required for the proceedings concerning the application for protection;

IV – the reception, docketing, allowance and rejection of applications for protection, submitted in the form of a petition signed by the individual or business entity that obtained a plant variety, or by a duly empowered attorney of the same;

V – the reception, docketing, judgement, allowance and rejection of requests of impugnation submitted by third parties or by the applicant to the right of protection;

VI – the reception, docketing, instructing and forwarding to the State Minister of Agriculture and Supply the appeals as filed by third parties or by the applicant to the right of protection;

VII – the disclosure, by means of publication in the Official Gazette of the Union and in a specialized periodic publication, of the resumes of the applications for protection, the protection having been granted, the transfers of ownership, the declaration of compulsory license or of restricted public use, the transitory suspension, the extinction of the protection and the nullity or the cancellation of the certificates of protection and other actions, resolutions and administrative decisions arising from the protection of plant varieties;

VIII – the granting, upholding, transfer, cancellation and annulment of the Provisional Protection Certificate and of the Plant Variety Protection Certificate;

**IX – the creation of a structure, or the award of a license, for banks with a view to the conservation of live species which shall integrate the germoplasm collection relative to protected plant varieties;**

**X – the provision for the realization of field tests and laboratory testing to differentiate the plant variety, when it so deems necessary;**

**XI – the supervision of compliance of the pertinent legal rules regarding protection and right to protection;**

**XII – the provision of certificates relative to the matters dealt in Law No. 9,456 of 1977;**

**XIII – the establishment of models for protection certificates;**

**XIV – the issuance of conclusive technical opinions in procedures of request of compulsory licenses regarding protected plant varieties, as well as the adoption of complementary measures, regarding notice to interested parties and supervision of the implementation of licenses upon the granting thereof;**

**XV – the issuance of conclusive technical opinions with a view to substantiating declarations of restricted public use of protected plant varieties;**

**XVI – the creation of workgroups comprising experts to render assistance in connection with specific matters;**

**XVII – the statement of opinions on the convenience of execution, ratification or denunciation of conventions, treaties, covenants and agreements regarding the protection of plant varieties;**

**XVIII – the recording, in the protected plant variety registry, of the decisions concerning proceedings of compulsory license and of declaration of restricted public use;**

**XIX – the indication of the participation of officials in technical meetings, committees and workgroups both of a domestic and of international nature concerning the protection of plant varieties;**

**XX – the establishment of relationships with domestic, international and foreign public and private institutions, with a view to maintaining a database concerning plant varieties designations and descriptors, as well as for technical and scientific exchange within the plant varieties protection field;**

XXI – the implementation and updating of the National Registry of Plant Varieties – CNCP;

Sole paragraph. The technical services provided per Inserts IX and X of this Article may be performed through covenants or contracts or by the credentials system, with public or private concerns.

Art. 4th. The SNPC, whenever necessary, shall consult with the National Industrial Property Institute – INPI, in order to determine whether the proposed designation for the plant variety is already on record as a product or a service mark in connection with the plant field or with that of application of the plant variety, the application thereof having been filed or being already registered in that Institute.

Sole paragraph. The SNPC shall seek coordination with the INPI with a view to exchanging information pertaining to plant varieties protection with the trademarks filed and registered in that Institute.

### SECTION III

#### **Plant Variety Protection in General**

Art. 5th. There shall be considered, for the purposes of this Decree:

I – a breeder: the individual who obtains a plant variety and establishes descriptors that may distinguish the same from any others;

II – a descriptor: the morphological, physiological, biochemical or molecular characteristic which is genetically inherited and is utilized to identify the plant variety;

III – a minimum margin: the minimum set of descriptors, at the SNPC's discretion, deemed sufficient to distinguish a novel plant variety or an essentially derived plant variety from the remaining known plant varieties;

IV – a plant variety: the variety of any higher vegetable kind or species that is clearly distinct from other known plant varieties by a minimum margin of descriptors, by its own designation, being homogenous and stable as concerning the descriptors throughout successive generations and belonging to a species which is useful to the farming and forestry complex, being the object of description in an available specialized publication being accessible to the public, as well as the component strain of hybrids;

**V – a novel plant variety: the plant variety not having been offered for sale in Brazil for over twelve months of the date of the application for protection and that, with due regard to the term for commercialization in Brazil, has not been offered for sale in other countries, authorized by the breeder, for over six years for tree and vine species and for over four years for the remaining species;**

**VI – a distinct plant variety: the plant variety that is clearly distinct from any other which existence is acknowledged at the date of the application for protection;**

**VII – an homogenous plant variety: the plant variety that, when utilized in planting, on a commercial scale, presents a minimum degree of variance as to the descriptors which identify the same, in accordance with criteria having been established by the SNPC;**

**VIII – a stable plant variety: the plant variety that, when reproduced on a commercial scale, conserves its homogeneity throughout successive generations;**

**IX – an essentially derived plant variety: that being derived from another plant variety provided that, cumulatively:**

**a) it is predominantly derived from the initial plant variety or from another essentially derived plant variety, without ceasing to exhibit the essential characteristics resulting from the genotype or of the combination of genotypes of the plant variety from which it is derived, except as concerning the differences resulting from the derivation;**

**b) it is clearly distinct from the plant variety from which it derived, by a minimum margin of descriptors, in accordance with criteria established by the SNPC;**

**c) it has not been offered for sale in Brazil for over twelve months of the date of application for protection and, with due regard to the term for commercialization in Brazil, it has not been offered for sale in other countries, with the authorization of the breeder, for over six years for tree and vine species and for over four years for the remaining species;**

**X – strains: the homogenous genetic materials obtained through some continued autogamic process;**

XI – a hybrid: the immediate product of the crossing between genetically different strains;

XII – a test of distinctness, homogeneity and stability (DHE): the technical procedure to verify that the new plant variety or the essentially derived plant variety are distinct of another one which descriptors are known, are homogenous as regards the characteristics thereof in each cycle of reproduction and are stable as to recurrence of the same characteristics throughout successive generations;

XIII – a live sample: that which is supplied by the applicant to the right of protection, and which, if utilized in the propagation of the plant variety, serves to confirm the descriptors presented;

XIV – a seed: every and any plant structure utilized for the propagation of a plant variety;

XV – propagation: the reproduction and the multiplication of a plant variety, or the concurrence of such actions;

XVI – propagation material: every and any part of the plant or of the plant structure utilized in the reproduction and multiplication thereof;

XVII – a whole plant: the plant with all the parts thereof capable of being utilized in the propagation of a plant variety;

XVIII – a farming and forestry complex: the group of those activities related to the cultivation of plant kinds and species aiming, among others, at human and animal nourishment, the production of fuels, oils, dyes, fibers and other implements for industrial, medical, forestry and ornamental purposes.

Art. 6th. A novel plant variety or an essentially derived plant variety, of any plant kind or species, are entitled to protection.

§ 1st. The plant varieties not fitting within the provisions of the **caput** and having already been offered for sale before the date of the application shall also be entitled to protection, provided that the following cumulative conditions are met:

a) that the application for protection be submitted within twelve months of compliance with the provisions of § 2nd. of this Article, for each species or plant variety;

b) that the first instance of commercialization of the plant variety has occurred, at most, ten years before the date of the application for protection;

c) the protection shall be effective only for purposes of utilization of the plant variety to obtain essentially derived plant varieties;

d) protection shall be granted for the remaining period of the terms provided in Article 11 of Law No. 9,456, considering, to such end, the date of the first instance of commercialization.

§ 2nd. The SNPC is due to disclose, progressively, the plant species and the respective minimum descriptors required to initiate applications for protection, as well as the respective deadlines for the purposes of alinea "a" of the preceding Paragraph.

§ 3rd. The disclosure referred in the preceding Paragraph shall follow a scale of species, observing the following schedule, being expressed in cumulative total protected species:

a) on the date of initial effectiveness of this Decree: at least five species;

b) after three years: at least ten species;

c) after six years: at least eighteen species;

d) after eight years: at least 24 species.

Art. 7th. The designation of the plant variety to be protected shall include at least one word, and at most, three, one alphanumeric combination, a combination of words and letters, or a combination of words and numerals.

§ 1st. The holder of the right to protection shall not be able to use, as a designation for the plant variety, a designation that:

a) does not enable identification of the plant variety;

b) may induce errors or be confusing as to the origin, the source, the characteristics, the value or the identity of the plant variety, or as concerning the identity of the breeder;

c) is identical or possible to be mistaken for another designation indicating a formerly existing plant variety of the same botanical species or of a similar species;

d) is identical or possible to be mistaken for another designation over which a third party holds a previously acquired right to protection;

e) be opposed to morals and proper social behaviour;

f) refers solely to common attributes of other plant varieties of the same species;

g) is included in a botanical name or a common name of a kind or species;

h) implies that the plant variety is derived of another plant variety or is associated thereto, when that fact does not correspond to reality;

i) includes terms such as: variety, plant variety, form, hybrid, crossing, or translations thereof;

j) due to distinct reasons, does not result in a generic designation of the plant variety;

l) reproduces, wholly or in part, a product mark or service mark pertinent to the field of plants, or of to the field of application of plant varieties, or a trademark having notoriety.

§ 2nd. When the plant variety is already protected or in course of acquiring protection in another country, the same designation must be conserved, except when the same is inadequate due to language reasons or to any of the reasons listed in the preceding Paragraph, the applicant being therefore expected to propose another designation, subject to shelving of the application for protection.

Art. 8th. The individual or business entity that produces, for commercial purposes, that sells, offers for sale, reproduces, imports, exports, as well as packs or stores for such purposes, the propagation material of a protected plant variety, shall be bound to utilize the designation having been approved at the time of protection thereof.

Sole paragraph. For the purposes of the **caput** of this Article, the designation of the protected plant variety shall be associated to an industry or trade mark or to a trade name or yet to a similar designation, provided that it may be easily recognized and is duly authorized by the holder of the rights to the cited plant variety.

Art. 9th. During the term of protection of the plant variety, the holder of the rights thereto must ensure that the protected plant variety remains in conformity with the description thereof, after successive reproductions or multiplication or, when the same has defined a particular cycle of reproductions and multiplication, at the end of each cycle.

Art. 10. The original document of transfer by an action **inter vivos** of the ownership of protection of the plant variety shall include the complete qualification of the assignor and of the assignee, as well as that of the witnesses and the precise indication of the protected plant variety.

## CHAPTER II

### SPECIFIC PROVISIONS

#### SECTION I

##### **Plant Variety Protection Application**

Art. 11. An application requesting protection for a novel plant variety or for an essentially derived plant variety shall only be allowed if the SNPC has effected prior disclosure of the plant species and of the respective minimum descriptors.

Sole paragraph. The provisions of the **caput** shall also apply to protectable plant varieties, as per Article 4th, § 1st. of Law No. 9,456 of 1997.

Art. 12. The application for protection of a plant variety shall be submitted in a proper form, to be established by the SNPC.

Sole paragraph. In the case of an application for protection of an essentially derived plant variety, the interested party shall, notwithstanding the requirements provided in Article 14 of Law No. 9,456 of 1977, indicate, in addition to the genetic origin provided in Insert III thereof, the essentially derived condition.

Art. 13. The application for plant variety protection shall be submitted to the SNPC, which will undertake the preliminary formal examination thereof as to the existence of synonyms, and where these are found not to exist, shall docket the same, provided it is properly instructed.

Art. 14. The docket data concerning the application for protection of a plant variety shall include the date and the hour of the registration, the filing number of the application, the full name and address of the interested party and of the attorney of the same, if any, such that the protection requested be able to prevail.

Art. 15. Upon docketing the application for plant variety protection, there shall ensue an analysis to verify the legal and technical prescriptions, namely concerning the descriptors indicative of the DHE characteristics, evidence of performance of tests and analyses regarding the plant variety, among others.

§ 1st. Should there be found to exist a similarity between two or more plant varieties of the same species, while the process is under examination, there shall prevail the right to priority of the application for protection in the form provided in the preceding Article.

§ 2nd. When the application for protection does not provide sufficient data for a complete procedural analysis, the SNPC shall require that the applicant submit, within a delay of sixty days counted from receipt of notice, a new technical specification, as well as other complementary information.

§ 3rd. Upon compliance with the requirement provided in the preceding paragraph and there still remaining doubt as to the differentiation of the plant variety, the SNPC may perform the tests or comparative field experiments, the applicant bearing the burden thereof, if the same so agrees, or decide that the application be shelved.

§ 4th. In the case of a diligence, the term for publication of the application for plant variety protection, of up to sixty days, provided in Article 16 of Law No. 9,456 of 1977, shall therefore be counted from the date of full provision of the cited diligence.

§ 5th. Upon publication of the application, there shall ensue a term of ninety days for the submission of eventual impugnations.

§ 6th. Upon receipt of the impugnation, the SNPC shall serve notice, within thirty days, to the applicant for protection, forwarding to the same a copy of the entire contents of the impugnation, to submit a statement of reply within thirty days of the date of receipt of the notice.

§ 7th. Upon receipt of the applicant's defense relative to the impugnation, or upon expiry of the term of thirty days as provided in the preceding paragraph, and there not having been had a statement of reply thereto, the SNPC shall provide a decision as to the allowance or rejection of the application for protection.

§ 8th. The decision allowing or rejecting the application for protection may be appealed within sixty days of the date of publication thereof, as per the provisions of § 7th. of Article 18 of Law No. 9,456 of 1977.

§ 9th. Upon receipt and docketing of the appeal, the SNPC shall institute the proceedings in connection therewith, and submit the same to the State Minister of Agriculture and Supply, who shall provide a decision within a delay of sixty days, counted from that registration.

Art. 16. There falls upon the SNPC the issuance of official requirements, upon publication of the application for protection, as to changing the name of the plant variety, whenever:

I – there is ascertained the existence of some fact that may have inhibited the acceptance of the designation, provided it is identified at the time of examination of the application for protection;

II – it is requested by the holder of the right or by its legal representative, with due substantiation;

III – it is requested by a third party, should there be ascertained the existence of a prior right concerning the designation.

§ 1st. Upon allowance of the request of change of designation, as provided in Articles II and III of this Article, the SNPC shall require that the holder of the right indicate a new designation, within a delay of sixty days, counted from the date of receipt of the notification.

§ 2nd. Should the requirement fail to be complied with in the delay established in the preceding Paragraph, the application shall be shelved and the Provisional Protection Certificate, where issued, shall be canceled.

§ 3rd. Upon a new designation for a plant variety having been indicated, the application for protection shall be republished, there being thus reestablished the delay of ninety days for eventual impugnation, the applicant being thereby informed.

Art. 17. The holder of the right to protection of a plant variety shall provide to the SNPC all information and clarifications that may be requested thereon, including as to the inspection of the means adopted to conserve the living sample of the plant variety in the possession thereof.

§ 1st. The samples supplied in order to integrate the plant varieties germoplasm collection, to which refers Insert IX of Article 3rd. of this Decree, shall only be possible to utilize for purposes of evidence in questions concerning plant variety protection.

§ 2nd. The handling and examination of living samples referred in the sole paragraph of Article 22 of Law No. 9,456 of 1977, shall be restricted to evidencing the DHE test of the plant variety.

Art. 18. For the plant variety protection application, the term for offer for sale or commercialization to be observed, for the purposes provided in Article 6th. of this Decree, shall be that of the first commercial operation involving the plant variety under reference, as a basic seed, registered, certified or inspected.

Art. 19. There shall be considered valid, in order to instruct administrative proceedings regarding applications for protection of plant varieties, and to follow up the course of those proceedings, the certificates of the original documents of public powers of attorney, as issued by the competent agencies.

## SECTION II

### **National Registry of Protected Plant Varieties – CNPC**

Art. 20. The National Registry of Protected Plant Varieties – CNPC shall comprise, at least:

- I – the number in the docket file of the application for protection;
- II – the number of the Provisional Protection Certificate;
- III – the number of the Plant Variety Protection Certificate;
- IV – the name of the species (botanical name and common name);
- V – the designation of the plant variety;
- VI – the date of effectiveness of protection;

- VII – the date of extinction of protection;
- VIII – the name and address of the holder of the protection right;
- IX – the name(s) of the breeder(s);
- X – the name and address of the legal representative;
- XI – the name and address of the technical person in charge;
- XII – the indication of the country of origin of the plant variety;
- XIII – the changes in the protection certificate;
- XIV – the recorded annotations.

### SECTION III

#### **Compulsory License**

Art. 21. The compulsory license is the instrument used by the Public Office to authorize, on request of a legitimately interested party, the exploitation of the protected plant variety, regardless of authorization of the holder of the right thereto, for a delay of three years, renewable for identical periods, devoid of exclusiveness, and against remuneration, as provided in the present Decree.

§ 1st. For the purposes of request of a compulsory license, a legitimately interested party is considered to be the producer of seeds as defined in the Law, provided that against the same there does not stand an action of infringement of the economic establishment, as provided in Law No. 8,884, of 11 July 1994.

§ 2nd. The remuneration referred in the **caput** shall be arbitrated by the SNPC in the absence of an agreement between the holder of the right to the protected plant variety and the requester of the compulsory license, based on freely negotiated percentages in accordance with the current market practice for that species.

Art. 22. The request of compulsory license shall be instructed with:

- I – the qualification of the requester;
- II – the qualification of the holder of the right to the plant variety;

III – the designation and a sufficient description of the plant variety;

IV – the reasons for the request, with due regard to the provisions of Article 28 of Law No. 9,456 of 1977;

V – evidence in writing to the effect that the requester exhausted all measures at his disposal, towards negotiating a proposal of voluntary license presented to the holder of the right to the plant variety or to the attorney of the same;

VI – evidence to the effect that the requester is financially and technically able to exploit the plant variety, embodied in:

a) an area of which he is the owner, or belonging in a cooperative;

b) a capacity for seed processing;

c) a storage capacity;

d) a technical person being responsible;

e) an own or third party laboratory for seed analysis;

f) a seed distribution network;

g) a client listing;

h) a descriptive listing of the plant varieties that he produces and commercializes, sorted by kind or species of plant;

i) an evidence of his registration as a seed producer, in the Ministry of Agriculture and Supply;

j) a capital being compatible with the production costs;

VII – other evidence demanded in a specific action from the Administrative Board of Economic Defense – CADE, with due regard, where applicable, to the provisions of Article 35 of this Decree.

§ 1st. The requester shall indicate, in addition, the existence of a compulsory license in connection with the plant variety, granted to third parties, and of any pending court proceedings, concerning the same subject, should he possess information thereon.

§ 2nd. The SNPC and the CADE are bound to hold in secrecy, as provided in the Law, the information provided by the applicant.

Art. 23. Upon receipt of the request of compulsory license, the Ministry of Agriculture and Supply, where deeming the requisites of the preceding Article satisfactorily complied with, shall order:

I – the assessment of the request together with the attachments thereto;

II – the preparation by the SNPC of a technical statement of opinion;

III – the service of notice to the holder of the plant variety and, when applicable, to the holder of the compulsory license, towards submitting a reply, should the same wish to do so, within a delay of ten days, counted from the date when the service of notice is received;

IV – the publication of the resume of the compulsory license request, for the knowledge and impugnation of interested third parties, within the delay of ten days.

§ 1st. Upon expiry of the ten-day delay allowed to the holder of the protected plant variety and to the holder of the voluntary license, if any, provided in Insert III of this Article, the process, with or without manifestation, shall be forwarded to the CADE, instructed with the technical statement of opinion, as provided in the following Article, within a maximum delay of fifteen days.

§ 2nd. Should the requirement form not be sufficiently instructed with the documents that evidence the requirements provided in the preceding Article, the Ministry of Agriculture and Supply shall demand that the requester submit complementary documentation to the specified documentation, within the delay of fifteen days, counted from the date of receipt of the notification, subject to shelving of the request.

Art. 24. The technical statement of opinion of the SNPC regarding the request of compulsory license shall include:

I – a report concerning the request, which, in addition to duly regard the provisions of Article 22 of this Decree, shall indicate the existence, where applicable, of prior requests of compulsory license;

II – an objective appraisal of the adverse consequences to trade that the license is intended to remedy;

III – a proposal of allowance or rejection of the compulsory license, with an objective indication of the reasons for the recommendation.

Sole paragraph. The SNPC, when so requested, shall provide the CADE with the additional information needed to instruct the compulsory license proceedings.

Art. 25. In the case where no complementary diligences are found necessary, the CADE shall examine the request of compulsory license within a maximum delay of thirty days.

Art. 26. Save for legitimate reasons, at the discretion of the CADE, based on the technical statement of opinion provided by the SNPC, the compulsory license shall expire, regardless of notice if, within a delay of six months of publication of the granting thereof, the requester has not undertaken the necessary measures for implementation thereof.

Sole paragraph. The delay for implementation of the provisions of this Article may be renewed once, on request of the interested party, provided that it is duly substantiated.

Art. 27. The provisions considered in Law No. 9,279, of 14 May 1996, shall be applied, where applicable, to the compulsory license.

#### SECTION IV

##### **Restricted Public Use**

Art. 28. The protected plant variety shall be declared as being of restricted public use, *ex officio*, by the State Minister of Agriculture and Supply, based upon a technical statement of opinion by the respective competent agencies, *exclusively in the interest of the public, to meet the requirements of the agricultural policy, in cases of national emergency, abuse of economic power, or other circumstances of extreme urgency and in cases of non-commercial public use.*

§ 1st. The protected plant variety shall be deemed to be of restricted public use if, by means of an act of the Ministry of Agriculture and Supply, it is exploited directly by the Federal Union or by third parties indicated thereby, not exclusively, without authorization of the holder thereof, for a period of three years, renewable for equal periods, provided that the holder is notified and remunerated in the form of this Decree.

§ 2nd. The notice provided in the preceding paragraph shall be immediately issued upon the publication of the declaration of restricted public use and shall contain at least:

a) reasons of the declaration;

b) listing of the individuals and business entities authorized to exploit the plant variety, bearing the name, the address and the registration number in the CPF – Brazilian Individual Taxpayers Registry or the CGC – Brazilian Corporate Taxpayers Registry before the Ministry of Finance;

c) pertinent remuneration;

d) annual minimum volume of reproduction or vegetative multiplication of the plant variety, necessary for the exploitation thereof.

§ 3rd. The remuneration to be provided concerning the protected plant variety, having been declared as being of restricted public use, shall be calculated having as a basis the market prices for the species, as practiced at the date of the declaration, taking into consideration the factors that determined the same.

## SECTION V

### Public Services

Art. 29. The services provided per Article 53 of Law No. 9,456 of 1977, subject to remuneration by the regime of specific public service prices, comprise:

I – application for protection;

II – annuity;

III – transfer of ownership;

IV – other amendments to the protection certificate;

V – laboratory tests;

VI – comparative field experiments concerning the DHE of the plant variety;

VII – status certificates.

Art. 30. The Ministry of Agriculture and Supply is bound to establish, collect and apply the values obtained from the rendering of services provided in the preceding Article, as well as to update the same.

Sole paragraph. The product of collection, as referred in the **caput**, shall be applied in the training of personnel and in the implementation, provision of means, improvement and performance of the services provided in this Decree.

## SECTION VI

### **National Plant Varieties Protection Committee – CNPC**

Art. 31. There is hereby established, within the Ministry of Agriculture and Supply, in a consulting nature and to provide support to the SNPC, the National Plant Varieties Protection Board, under the presidency of the SNPC Top Official, comprised of a representative of each agency and entity described hereinafter:

- I – Farming and Livestock Defense Secretary Office, in the Ministry of Agriculture and Supply;
- II – Ministry of Foreign Affairs;
- III – Ministry of Industry, Trade and Tourism;
- IV – Ministry of Science and Technology;
- V – Ministry of the Environment, Hydric Resources and Legal Amazon;
- VI – a national entity uniting the Plant Breeders;
- VII – Brazilian Association of Seed Producers;
- VIII – Brazilian Cooperatives Organization;
- IX – National Agriculture Confederation;
- X – National Confederation of Agriculture Workers;
- XI – Federal Board of Engineering, Architecture and Agronomy.

§ 1st. The members of the CNPC shall be appointed by the State Minister of Agriculture and Supply for a two-year term in office, which renewal shall be permitted.

§ 2nd. Within a delay of thirty days, upon the publication of this Decree, the agencies and entities listed in the **caput** of this Article shall designate their representatives, with the respective substitutes, to form the CNPC.

§ 3rd. The board shall meet with the presence of the simple majority of the members thereof.

§ 4th. The decisions of the board shall be taken by the simple majority of the members in attendance, the President providing the quality vote.

§ 5th. The members of the SNPC shall not receive remuneration, the services rendered by the same being considered, for all purposes, as relevant in the cause of the Country's development.

§ 6th. The costs relative to travel and lodging arising from the participation of the members in the CNPC meetings shall be borne by their respective agencies and entities being represented.

§ 7th. The SNPC shall provide administrative and operational support to the CNPC.

§ 8th. The CNPC shall have a delay of sixty days, counted from the establishment thereof, to prepare its internal regulation, which shall be approved by means of an administrative ruling of the State Minister of Agriculture and Supply.

Art. 32. The CNPC is bound to:

I – issue statements concerning matters submitted to its appraisal by the SNPC;

II – suggest rules and regulations regarding plant varieties protection;

III – provide support to the SNPC concerning matters related to plant variety protection, and particularly, about domestic and international covenants and agreements.

### CHAPTER III

#### FINAL PROVISIONS

Art. 33. For the purposes of indemnities provided in Article 37 of Law No. 9,456 of 1977, the remuneration of the holder shall be calculated based upon the market prices for the species, practiced at the time of ascertainment of the infringement, notwithstanding the applicable legal additions.

Art. 34. For the purposes of opening the proceedings for plant variety protection, the following plant species are hereby disclosed: cotton, rice, potato, beans, corn, soy, sorghum and wheat, which minimum descriptors are defined in the form of Attachments I through VIII of this Decree.

Sole paragraph. The disclosure of the remaining plant species, their minimum descriptors and alterations, if necessary, shall be made by the SNPC.

Art. 35. The State Ministers of Agriculture and Supply and of Justice, within the scope of their respective prerogatives, shall provide complementary rules on the procedures and the conditions for appraisal and granting of the compulsory license, with due regard to the procedural requirements inherent to ample defense and protection of the right to property established by Law No. 9,456 of 1977.

Art. 36. The structure of the SNPC shall be defined in the body of regulations of the Ministry of Agriculture and Supply.

Sole paragraph. The State Minister of Agriculture and Supply, within a delay of sixty days of publication of this Decree, shall approve the internal regulations of the SNPC, as well as provide the reorganization of the departments in charge of activities related to seeds and seedlings, including those inherent to the laboratories of seed analysis, in order to render the same compatible with the SNPC structure.

Art. 37. The State Minister of Agriculture and Supply is hereby authorized, with due regard, where applicable, to the provisions of Article 35, to establish complementary rules as necessary for the practice of this Decree.

Art. 38. This Decree shall be effective from the date of publication thereof.

Brasilia, of 1997; 176th year since Independence and 109th year of the Republic  
ATTACHMENT I – MINIMUM DESCRIPTORS FOR COTTON  
(*Gossypium* L.)

# **INTERNAL REGIMENT OF NATIONAL PLANT VARIETY PROTECTION SERVICE – SNPC**

The SNPC, in charge of the enforcement of the Law 9.456, of April 1997, has its basic principles based, among others, on ethics, on secrecy, and on the security of knowledge and safety of the information, propagation material and of the property rights confident to it.

## **CHAPTER I**

### **Category and Finality**

Art 1º - The National Plant Varieties Protection Service SNPC, created by Law number 9,456 of April 25<sup>th</sup>, 1997, integrates the structure of Rural Development Secretary of the Ministry of Agriculture and Supply, is the designated organism to deal with the plant varieties protection in the Country, specially what's consonant in the Decree No. 2,366 of Nov. 5<sup>th</sup>, 1997 dispositions:

I) Protect the novel plant varieties and the varieties essentially derived, granting the correspondent Protection Certificate;

II) Divulge, progressively, the plant species and their minimum descriptors, necessary to the opening of the protection demands, as well as the time limits to the request presentations;

III) Elaborate and submit to the approval of State's Minister of Agriculture and Supply complementary norms, in its competence's limits, about the protection of novel plant varieties and essentially derived plant varieties, including the plant varieties that may be object of protection in form of art.4<sup>th</sup> Paragraph 1 Law number. 9,456, of any plant family or species, and establish the necessary application forms for the proceeding of the protection demand;

IV) Receive, protocol, concede and refuse protection demands, formalized through an application signed by the breeder or owner of the cultivar or by a legally sanctioned person;

V) Receive, protocol, judge, concede and refuse impugment demands presented by third party or by the demander of the protection right;

VI) Receive, protocol, instruct and conduct to Minister of Agriculture and Supply appeals presented by third parties or by the protection demander;

VII) Disclose, through publication in the Union's Official Diary and in periodic specialized publication, the extract of the protection demands, the conceded protection, the property transference's, the declaration of compulsory licenses or restricted public use, the transitory suspension, the extinction of protection and the nullity or the cancellation of the Protection Certificates and another acts, dispatches, administrative decisions elapsed from plant varieties protection;

VIII) Concede, maintain, transfer, cancel and undo Provisory Protection Certificate and Plant Varieties Protection Certificate;

IX) Create or authorize germoplasm banks destined to the conservation of live samples that will integrate the germoplasm collection of protected plant varieties;

X) Order the performance of field and laboratory tests to distinguish plant varieties, when necessary;

XI) Supervise the execution of the legal norms referred to the protection and to the protection right;

XII) Provide the certificates related to the subjects treated by the Plant Varieties Protection Law;

XIII) Establish the models of the Protection Certificate;

XIV) Issue final technical judgment in processes of compulsory license requirement, as well as adapt complementary norms, referred to the communication to interested parties supervision and of the conceded licenses implementation;

XV) Issue final technical judgment seeding to subsidize a protected objectifying the subsistence of the protected plant varieties restricted public use declaration;

XVI) Create workgroups composed by experts to render assistance in specific matters;

XVII) Opine about the convenience of signature, ratification or denunciation of the conventions, treaties, contracts and agreements about plants varieties protection;

XVIII) Include, in the Plant Varieties Register, the decisions related to the compulsory license process and declaration of restricted public use;

XIX) Indicate the participation of public officials in technical meetings, committees and workgroups of national and international ambit about plant varieties protection;

XX) Connect with public and private institutions of national, international and foreigner ambit, looking for the maintenance of denominations and plant varieties descriptors data banks, as well as for technical and scientific interchange in the plant varieties protection field;

XXI) Develop and update the Protected Plant Varieties National Register;

Sole Paragraph: The SNPC is still responsible for:

a) Give administrative and operational support to the National Plant Varieties Protection National Commission;

b) Orient, control and execute the activities of seeds inspection and plant production and commercialization, according to the Regulating Decree number. 81.771 of Jun. 7<sup>th</sup>, 1978;

c) Implant the execution and planning for financial resources coming from the application of the LPC the operational program derived from Plant Varieties Protection Law;

d) Promote technical and fiscal investigations related to its activities;

## CHAPTER II

### Organization

Art. 2 - The National Plant Varieties Protection Service – SNPC has the following structure:

I). Coordination for Register, Analysis and Protection – CAPRO/ SNPC;

II) Technical Coordination – COTEC/SNPC;

III) Laboratory of Analysis, Distinctness and Characterization of Plant Varieties – LACIC/SNPC;

§ 1º - The SNPC disposes of the functions of Service Chief, Coordinator, Attendant and Gratified Function of Intermediary Assistant, identified and quantified in the following items:

- a) 1 Chief of Service / DAS-101.4;
- b) 2 Coordinators DAS 101.3;
- c) 3 Attendants DAS 102.1;
- d) 1 Gratified Function of Intermediary Assistant - FG-1;
- e) 1 Gratified Function of Intermediary Assistant - FG-2;
- f) 1 Gratified Function of Intermediary Assistant - FG-3.

§ 2º - The Laboratory of Analysis, Distinctness and Characterization of Plant Varieties-LACIC/SNPC, corresponds to the Gratified Function of Intermediary Assistant - FG 1;

Art 3º - The SNPC will be directed by the Chief of Service, the Coordinations by Coordinator and Laboratory by Chief, which functions will be provided in the form of the specific legislation.

§ 1º - The SNPC Chief will be substituted by the CAPRO Coordinator, that will substitute and will be substituted by the COTEC's Coordinator, in their impediments or absences;

§ 2º - The choice of the office holders of the SNPC commission functions must to made over university level professionals, of proved administrative experience and notorious knowledge in the protection of plant varieties field, no having any kind of compatibility with public or private activities in agricultural research or seeds production.

Art 4º - The National Plant Varieties Protection Commission will perform as consultant and cooperative agency to the SNPC.

## CHAPTER III

### Assignments of the Units

Art 5º - The Coordination of Register, Analysis and Protection CAPRO is in charge of:

I) Receiving, protocolling, analysing and instructing, through conclusive opinion the request plant variety protection, the impugment demands and the appeals presented by third parties or by the protection rights demander;

II) Propose the concession, maintenance, transference, cancellation or annulment of the Provisional Protection Certificate and of the Plant Varieties Protection Certificate;

III) Promote the publication, in the Union's Official Diary and in a periodic specialized publication, the extracts of protection demands, conceded protection, certificates transfereces compulsory license or restricted public use declarations, transitory suspensions, protection extinction, and nullity or cancellation of Protection Certificates and other acts, dispatches and administrative decisions elapsed from Plant Varieties Protection Law;

IV) Provide certificates on matters indicated by Law number. 9,456 of 1997;

V) Organize and maintain, on reserve, the files relative to the protection of plant varieties request;

VI) Organize and maintain updated the National Plants Varieties Protection Register CNCP;

VII) Promote the annotation in the Plant Varieties Protection Certificate of the modifications related to the property transfereces, name, address home or office's owner, licensing conditions in the Protected the Plant Varieties Register, of the decisions related to the compulsory licensing and to the restrict public use declaration.

VIII) Maintain articulation with the National Institute of Industrial Propriety INPI, aiming at avoiding the duplicity of the proposed denomination the plant varieties with those of provision deposited and trade marks .

IX) Propose the remuneration values elapsed from rendered services related to the protection demands, annuity, property transfers, another modifications in the protection certificate, laboratory tests; comparable field practices about DUS (distinctness, uniformity and stability) of plant varieties and certificates,

X) Establish the necessary application forms to the proceeding of protection request, as well as the Protection Certificate model;

XI) Receive, codify and destinate the live samples of protected plant variety, received when the provisional protection certificate or plant varieties protection certificate was obtained;

XII) Maintain the denominations and minimum descriptors data bank, of national and international ambit;

XIII) Analyse conventions, treaties, contracts and agreements texts about plant varieties protection, emitting opinion about the convenience of its signature, ratification or denunciation;

XIV) Edit periodic specialized publication and promote the public knowledge of the Protected Plant Varieties Register.

Art. 6º - The Technical Coordination- COTEC is in charge of:

I) Elaborate and review the list of plant species and their minimum descriptors that will be divulged seeking the opening of protection request;

II) Promote the creation and maintenance of banks destined to the conservation of live samples and the germoplasm collection of protected plant varieties;

III) Promote the realization of field practices and laboratory tests to distinguish the plant varieties, when necessary;

IV) Inscribe, public or private institutions to performance technical services refereed to the conservation and collection of germoplasm samples, as well as accomplishment of field and laboratory tests to distinguish plant varieties;

V) Supervise or request a protected plant variety live samples in owner's property, as well as propose its substitution;

VI) Promote the collection of samples and the performance of laboratory tests or field trials of protected plant varieties multiplication or reproduction material;

VII) Promote the investigation of denunciations related to improper use or commerce of a protected plant variety;

VIII) Elaborate complementary norms and programming and promoting the execution of inspection activities of plant multiplication material's production and commerce;

IX) Exercise the coordination of the following programs and projects execution:

a) Certificate and fiscalized seed and plantlets production;

b) Genetic renovation of seeds and plantlets for the small farmer;

X) Implement the National Plant Varieties Register;

XI) Promote the studies and suggest the values of fees for of protection request; annuities; property transferences; another modifications on protection certificate; laboratory tests; comparative field trials in relative to DUS; as well as the indemnity remuneration conceded to a protected plant varieties owner by the compulsory license demander, in case of no agreement.

Art 7º -The Laboratory of Analysis, Distinctness and Characterization is charge of:

I) Routine analysis of seeds and plantlets examination;

II) Distinctness and characterization tests in plant varieties;

III) Protected plant varieties live samples conservation;.

IV) Maintenance and conservation of the protected plant varieties germoplasm bank, when necessary;

V) Collaborating in the elaboration and revision of the minimum descriptors of protected vegetables species or that ones that may be protected.

## CHAPTER IV

### Director's Attribution

Art 8° - The Chief of the National Plant Varieties Protection I Service, is in charge of:

I) Coordinate and control the technical and administrative activities of Service;

II) Execute and enforce the norms related to the plant varieties protection rights and the decisions that come from the National Plant Varieties Protection National Commission – SNPC;

III) Preside and convoke the meetings of CNPC;

IV) Submit to the CNPC the related subjects of that Commission;

V) Disclose the plant species and their minimum descriptors, necessary to the opening of the protection request;

VI) Approve the application forms related to the proceeding of the protection request and the Provisional Protection Certificate and Plant Varieties Protection Certificate;

VII) Sign, together with CAPRO's Coordinator, the Provisional Protection Certificate and Certificate Plant Varieties Protection;

VIII) Pronounce the judgment, in first instance, of the impugnants demands presented by protection right's demanders or third parties.

IX) Conduct judgment to the State's Minister Agriculture and Supply's, as a second and last administrative instance, through the Rural Development Secretary, property instructed, the appeals presented by third parties or by protection request demander;

X) Propose to the Rural Development Secretary, listened the CNPC, the celebration of contracts, conventions or national and international agreements, relative to subjects related with the Plant Varieties Protection;

XI) Propose to the State's Minister of Agriculture and Supply, through the Rural Development Secretary, the edition of necessary complementary norms to the execution of services connected to the plant varieties protection right;

XII) Indicate the public officials that will participate of technical meetings, committees and workgroups in the national and international ambit related plant varieties protection;

XIII) Create workgroups composed by experts to render assistance in specific subjects;

XIV) Arbitrate the remuneration that may be conceded to a protected plant variety owner, in cases where no agreement was reached with a compulsory license demander;

Art 9° - The Coordinators and Laboratory Chief have the following incumbencies:

I - Planning, orient and control the activities that competes to its own units;

II - Render assistance to the SNPC Chief;

III - Emit conclusive technical opinion in subjects related to its own sector;

IV Elaborate report of accomplished works;

V - Accomplish the necessary administrative actions to the execution of its units attributions.

## CHAPTER V

### **General Legal Disposition**

Art 10 - The omitted cases and the suscitated doubts in the application of this Regimant will be solved by the Rural Development Secretary.

**MINISTER'S REGULATION N° 503, FROM DECEMBER 3<sup>RD</sup>, 1997.**

The **State's Minister of Agriculture and Supply**, in use of the attribution conferred by art. 53, of Law N° 9.456, from April, 25th, 1997, published in Union's Official Diary, from April 28th, 1997, and considering what is in art. 29 and 30, of Decree N° 2.366, from Nov. 5th, 1997, published in Union's Official Diary, decides:

Art. 1<sup>st</sup> - To Approve the attached table, fixing the values of the services treated by Law N° 9.456, from 1997, and the Decree N° 2.366, from 1997.

Art. 2<sup>nd</sup> - The collection of the values determined in the form of the last article, will take place through Agricultural Federal Fund - FFAP, in conformity with the Delegated Law N° 8, from October 11<sup>st</sup>, 1962.

Art. 3<sup>rd</sup> - The National Plant Varieties Protection Service - SNPC, in articulation with the Agricultural Federal Fund - FFAP is in charge of:

I - Elaborating the Annual Working Plan, relative to the application of funds collected;

II - Make use of the funds collected in accordance with what was established in the sole paragraph of art 30, of Decree N° 2.366, from 1997;

III - Elaborate annual financial and technical reports of the activities corresponding to the project/activity.

Art. 4<sup>th</sup> - This Minister's Regulation becomes effective in the date of its publication in Union's Official Diary.

**ARLINDO PORTO**  
**STATE'S MINISTER OF AGRICULTURE AND SUPPLY**

**MINISTER'S REGULATION'S ANNEX N° 503,  
FROM DECEMBER 3<sup>RD</sup>, 1997.**

**TABLE OF THE SERVICE'S VALUES ELAPSED FROM LAW N° 9.456,  
FROM APRIL 25<sup>th</sup>, 1997 AND DECREE N°2.366,  
FROM NOVEMBER 5<sup>th</sup>, 1997**

| <b>SPECIFICATION</b>                                       | <b>GENERATOR FACT</b>             | <b>VALUE (R\$ 1,00)</b> |
|--|-----------------------------------|-------------------------|
| 1. Protection Demand                                       |                                   |                         |
| a) Requirement   | requirement                       | 200,                    |
| b) Expedition of the Provisional<br>Protection Certificate | certificate                       | 600,                    |
| 2. Annuity*  | maintenance of the<br>certificate | 400,                    |
| 3. Property Transferences                                  | transference                      | 600,                    |
| 4. Other Modifications in<br>Protection Certificate        | modification                      | 200,                    |
| 5. Laboratory Tests  | test                              | 60,                     |
| 6. Comparative Field<br>Practices (DHS)                    | field trial/year                  | 200,                    |
| 7. Certificates  | certificate                       | 50,                     |

\* Effective one year after the date of concession of the Protection Certificate date  
(art.26, of Law N° 9.456, from 1997);