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## **REGULATIONS ON ADMINISTRATIVE PROTECTION OF AGRICULTURAL CHEMICAL PRODUCTS**

[Note]=(Approved by the State Council on December 25, 1992 and promulgated by Decree No.7 of the Ministry of Chemical Industry on December 26, 1992)

### Chapter I General Provisions

Article 1 These Regulations are formulated with a view to expanding economic and technological cooperation and exchange with foreign countries and providing administrative protection for the lawful rights and interests of the owners of the exclusive right of foreign agricultural chemical products.

Article 2 The "agricultural chemical products" as mentioned in these Regulations refers to synthetic agricultural chemicals used in agricultural production such as herbicides, insecticides, fungicides, raticides and plant growth regulators produced by means of chemical synthesis.

Article 3 Enterprises and other organizations or individuals from the country or the region, which has concluded bilateral treaty or agreement with the People's Republic of China on administrative protection of agricultural chemical products, may apply for administrative protection of agricultural chemical products in accordance with these Regulations.

Article 4 The competent administrative department of chemical industry under the State Council shall accept and examine applications for administrative protection of agricultural chemical products, grant administrative protection to the agricultural chemical products which conform with the provisions of these Regulations and issue to the applicants the certificates of administrative protection.

### Chapter II Application for Administrative Protection

Article 5 An agricultural chemical product to be applied for administrative protection shall meet the following requirements:

- (1) Enjoying no protection of exclusive right in accordance with the provisions of the China's Patent Law prior to January 1, 1993;
- (2) Enjoying an exclusive right granted after January 1, 1986 and before January 1, 1993 to prohibit others from making, using or selling it in the country where the applicant resides;
- (3) Being not yet marketed in China prior to the date of filing the application for administrative protection.

Article 6 The right to apply for administrative protection of an agricultural chemical product belongs to the owner of the exclusive right of the agricultural chemical product.

Article 7 An owner of the exclusive right of a foreign agricultural chemical product intending to apply for administrative protection shall entrust an agency designated by the competent administrative department of chemical industry under the State Council to undertake the matter.

Article 8 An applicant shall provide the bilingual versions in Chinese and the original foreign language of the following documents:

- (1) An application for administrative protection of the agricultural chemical product;
- (2) A copy of the certificate issued by the competent authorities of the country where the applicant resides granting such exclusive right;
- (3) A copy of the document issued by the competent authorities of the country where the applicant resides approving the manufacturing or sale of such agricultural chemical product;
- (4) A copy of the contract for the manufacturing or sale of the agricultural chemical product in China formally signed between the applicant and a Chinese enterprise with legal personality (including foreign-capital enterprise, Chinese-foreign equity joint venture, and Chinese-foreign contracted joint venture).

Article 9 Before or after applying for the administrative protection, the owner of the exclusive right of a foreign agricultural chemical product shall apply to the competent administrative department of agriculture under the State Council for going through the registration procedures in accordance with China's laws and regulations.

### Chapter III Examination and Approval of Administrative Protection

Article 10 Within 15 days from the date of receipt of the application documents for administrative protection, the competent administrative department of chemical industry under the State Council, upon preliminary examination, shall handle the case in either of the following manners according to the specific circumstances:

- (1) Where the application documents are in conformity with the provisions of Article 8 of these Regulations, a notification of acceptance shall be issued and announced;
- (2) Where the application documents are not in conformity with the provisions of Article 8 of these Regulations, the applicant shall be required to complete them within a time limit; if, on the expiry of the limit, the requirement is not met, the application shall be deemed as not having been filed.

Article 11 The competent administrative department of chemical industry under the State Council shall finish the examination within six months from the date of receipt of the application documents, or from the date of receipt of the complementary documents stipulated in Article 10, Item (2) of these Regulations. If, under special circumstances, the examination cannot be finished within six months, the said department shall promptly notify the applicant, give the reason therefor and properly prolong the examination time.

After examination, where the application is in conformity with the provisions of these Regulations, the administrative protection shall be granted; where the application is not in conformity with the provisions of these Regulations, the administrative protection shall be denied, with the reason therefor given.

Article 12 Where an agricultural chemical product is granted with administrative protection, the competent administrative department of chemical industry under the State Council shall issue the certificate of administrative protection and make an announcement.

### Chapter IV Duration, Cessation, Revocation and Effect of Administrative Protection

Article 13 The duration of administrative protection of an agricultural chemical product is seven years and six months, and begins from the date on which the certificate of administrative protection is issued.

Article 14 The owner of the exclusive right of a foreign agricultural chemical product shall pay an annual fee beginning with the year in which the certificate of administrative protection of the agricultural chemical product is issued.

Article 15 In any of the following cases, the administrative protection shall cease before the expiration of its duration:

(1) Where the exclusive right of an agricultural chemical product proves invalid or becomes invalid in the country where the applicant resides;

(2) Where the owner of the exclusive right of an agricultural chemical product does not pay an annual fee as prescribed;

(3) Where the owner of the exclusive right of an agricultural chemical product waives the administrative protection by a written declaration;

(4) Where the owner of the exclusive right of an agricultural chemical product does not apply to the competent administrative department of agriculture under the State Council for going through the registration procedures within a year from the date on which the certificate of administrative protection of the agricultural chemical product is issued.

Article 16 After the certificate of administrative protection of an agricultural chemical product has been issued, any organization or individual that believes the grant of administrative protection to that product not in conformity with the provisions of these Regulations may request the competent administrative department of chemical industry under the State Council to revoke the administrative protection of the product in question. The owner of the exclusive right of the product that is not satisfied with the revocation decision made by the said department may institute legal proceedings in a people's court.

Article 17 The cessation or revocation of the administrative protection of an agricultural chemical product shall be announced by the competent administrative department of chemical industry under the State Council.

Article 18 In case of any manufacture or sale of an agricultural chemical product without authorization of the owner of the exclusive right of the agricultural chemical product who has obtained administrative protection, the owner of the exclusive right of the agricultural product may request the competent administrative department of chemical industry under the State Council to check the infringing act; the owner of the exclusive right of the agricultural chemical product that claims for economic compensation may institute legal proceedings in a people's court.

## Chapter V Supplementary Provisions

Article 19 The competent administrative department of chemical industry under the State Council shall take measures to keep secret of the materials provided by applicants which require to be kept secret.

Article 20 A fee shall be paid as prescribed for filing the application for administrative protection of agricultural chemical products and fulfilling any other relevant procedures with the competent administrative department of chemical industry under the State Council.

Article 21 The rules for the implementation of these Regulations shall be formulated by the competent administrative department of chemical industry under the State Council.

Article 22 The competent administrative department of chemical industry under the State Council shall be responsible for the interpretation of these Regulations.

Article 23 These Regulations shall enter into force as of January 1, 1993.