



Plant Variety Protection System of Japan



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01

Purpose of the Plant Variety Protection and Seed Act

lant varieties are the foundation of production in agriculture, forestry and fisheries, and breeding of new plant varieties with excellent characteristics in productivity, quality and pest and disease resistance, etc., constitutes an important pillar supporting development of agriculture, forestry and fisheries.

Breeding of new plant varieties requires long-term effort and substantial financial cost, in addition to specialized knowledge and technical skills. However, once a new plant variety is bred and placed onto the market, plant seeds or seedlings can be easily propagated on farmland. Therefore, it is necessary to properly protect the plant breeders' right for the new plant varieties in order to encourage the breeding of new plant varieties.

Since it is difficult for users of variety to identify its name, quality including germination rates, and place of origin only from external appearance, it is necessary to require seed dealers to properly label their products in order to ensure the proper distribution of seeds and to protect the producers who are the consumers of seeds and seedlings.

The Plant Variety Protection and Seed Act provides for a "plant variety registration system" for the protection of new varieties and a "designated seedling system" to ensure the proper distribution of seeds and seedlings, with the aim of contributing to the development of agriculture, forestry and fisheries by promoting the breeding of varieties and ensuring proper distribution of seeds and seedlings.

Development of Japan's agriculture



Enhancement of breeding for excellent plant varieties

- Increase of crop yield
- •Resilience to pest and disease damage
- •Excellent climatic resilience
- •Taste and appearance aligned with consumer preferences
- $\bullet \textbf{Responding to distribution issues (improved shelf life and robustness in handling)} \\$

Super high-yield rice

"TOYOMEKI" has a yield of 800 kg/10a or more, 1.5 times more than the normal yield.

HITOMEBORE TOYOMEKI KOSHIHIKARI



Pears resistant to pests and disease

"GOLD NIJUSSEIKI", Pears resistant to black spot disease which is the weaknesses of conventional varieties.



Easy-to-peel Chestnuts

Revolutionary Japanese chestnut "POROTAN" that can be easily peeled to remove the astringent skim and are easy to cook.

GIFU No1 POROTAN TSUKUBA

Cold-resistant and delicious rice

Paddy rice "KIRARA 397", which has achieved unprecedented savory flavor in addition to cold resistance, and which led to development of a lot of brand-name rice.



Japan's agricultural competitiveness supported by excellent new plant varieties

<Column> What is protected under the Plant Variety Protection and Seed Act? - non-Protected Varieties and Protected Varieties -

Only varieties which are newly developed could be protected and registered as "Protected Varieties" under the Plant Variety Protection and Seed Act. Other common varieties ["non-Protected Varieties"] will not be regulated by the Act.

Common varieties are native varieties, varieties that have never been registered, and varieties for which the variety registration period has expired.

Purpose of Plant Variety Protection System

lant Variety Protection System is a registration system under which new varieties of plants that meet certain criteria are registered with the Ministry of Agriculture, Forestry and Fisheries, granting "plant breeders' rights " to the person who has bred them and protecting them as intellectual property.

Since agricultural products made from superior new plant varieties are often sold at high prices, the protected varieties have high risk of unauthorized cultivation or unauthorized

outflow to overseas. Protection of intellectual property rights is essential to maintain the value of new plant varieties.

Once a variety is registered as a protected variety, the name, characteristic of the plant, breeder's name and address, and duration of registration for the variety will be listed on the Registry of variety, and will be also published in the Gazette. Information of the protected variety will also be provided on The Website of Plant Variety Protection Office, Ministry of Agriculture, Forestry and Fisheries.

1) Plant breeders' rights

Plant breeders' rights become effective upon variety registration.

- The holder of the plant breeders' rights has an exclusive right to exploit, propagating material, harvested products and certain processed product of the registered variety. Any other person than the holder of the plant breeders' rights may not use the variety without authorization of the holder. In order to propagate the protected variety, authorization of the holder of the plant breeders' rights is necessary.
- 2 The holder of plant breeders' rights may grant a non-exclusive exploitation license on the use of seeds and seedlings of the protected variety and receive a license fee.
- 3 The holder of plant breeders' rights may transfer those rights as property rights to others. He/she may also give the exclusive license as a pledge.



Unauthorized propagation



Transfer of harvested materials from unauthorized propagated seeds and seedlings



Unauthorized exports

2) Duration of the plant breeders' rights

The duration of plant breeders' rights is 25 or 30 years from the date of variety registration. However, the registration may be rescinded in following circumstances:

- 1 where the annual registration fee is not paid within the prescribed time period,
- (2) where it has turned out that the variety was registered without meeting the conditions for plant variety protection,
- 3 where it has turned out that, after grant, the protected variety no longer maintains the characteristics of the variety.

Duration of plant breeders' rights

25 years General plants (other than noted below)

30 years Woody plants such as fruit trees, forest trees, and ornamental trees

Main points in the 2020 amendment of the Plant Variety Protection and Seed Act

n recent years, Japan's agricultural exports have suffered due to the outflow of Japan's protected varieties overseas and localization of such varieties.

Before the amendment, once a seed or seedling of a protected variety is released to the market, taking that seed or seedling out of the country without authorization of the right holders was not restricted and there was no measure to prevent protected varieties being taken abroad.

Moreover, since farmers were able to propagate seeds and seedlings for their own use within their own holdings, it was difficult for the holders to track the number of the seeds or

seedlings which are propagated and by whom the propagation was conducted, making it almost impossible for them to make countermeasure against outflow of their varieties to overseas. In order to prevent the outflow of protected varieties abroad and to enable the holders to exercise their right effectively, the Plant Variety Protection and Seed Act has been amended. Through the amendment of the Act, it will become easier for the holders to manage their new plant varieties and prevent unauthorized use. The amendment also leads to the revitalization of local agriculture with the utilization of plant breeders' right.

Prevention of outflow abroad

- 1 Restrictions can be placed on the overseas export of seeds and seedlings of the protected varieties by submitting terms of use to restrict the export of seeds and seedlings at the time of application.
- 2 In order to prevent unauthorized propagation which is one of the causes of overseas outflow of seeds and seedlings, any acts in respect of the propagating material of protected varieties (including use of "farm saved seeds") shall require the authorization of right holders.



Promotion of production areas by protected varieties

- ① Submitting terms of use to limit the production area (production of a harvested material) at the time of application will prevent the production of the protected variety outside a designated area, making it easier to create a unique production area by using the new plant variety.
- ② By basing the propagation of the registered varieties, on the permission of the breeder's right holder, this will lead to the use of high-quality seeds, and will allow for appropriate production and quality control.

Measures to enable the holders to exercise their plant breeders' rights effectively

In order to conduct countermeasure against infringement, a new system is established, which enables to presume the infringement by comparing the characteristics of the allegedly infringing varieties with "variety description" of the protected variety. This new system can lead to an early settlement of disputes concerning suspected infringement case.

<Column> Exception of plant breeders' right

As plant breeders' rights do not extend to the use of a harvested material or processed products using authorized seeds and seedlings (exhaustion of the rights), these harvested material or processed products can be sold and distributed freely.

Moreover, plant breeders' rights do not extend to the use for the purposes of

breeding new varieties and for other experimental and research purposes. Private use of a protected variety for personal consumption, such as, repropagation on a private flower beds or vegetable gardens is unrestricted. However, to give seeds, seedlings and harvested material to others is prohibited.

Flow Chart of Procedures for Plant Variety Protection

1) Application for Plant Variety Protection

The breeder of the variety or its successor can submit an application for Plant Variety Protection addressed to the Minister of Agriculture, Forestry, and Fisheries.

- ① As of April 1st, 2022, Applications for Plant Variety Protection must include a "Variety Description," which states all necessary characteristics required in an examination. Payment for the application is also necessary.
- (2) "Restriction of overseas export" which restricts unauthorized export to other countries, and "Restriction of production area" which restricts production to the designated production area in Japan, can be submitted at the same time as the application.

2) Publication of application

After submission of the application, and if no errors are found, public announcement will be made that the variety is under the application process.

Information related to the publication of application can be obtained on The Website of Plant Variety Protection Office, Ministry of Agriculture, Forestry and Fisheries.

3) Provisional Protection

The term of examination for an applied variety will normally take 2-3 years. Therefore, the interests of applicants are safeguarded during the period between the publication of application for Plant Variety Protection and the registration of the plant variety.

After the variety has been registered as protected variety, applicants can claim compensation equivalent to the license fee from those who have propagated and transferred seeds and seedlings, or violated the restriction on overseas export during the provisional protection period.

4) Examination

After a publication of application, DUS examination will be conducted to examine whether it meets the requirements for Plant Variety Protection.

An examination fee needs to be paid for DUS examination (growing test or on-site inspection).

5) Notification of identified Characteristics

Once it is determined that the requirements for the variety registrations are met, applicants will receive a "Variety Description", which records the characteristics of the variety (color and shape of flower / leaves, etc) to be recorded on the registry of variety, prior to variety registration.

Applicants may request a correction of the "Variety Description" which they have received if they so wish.

6) Registration as protected variety

As a result of examination, if the applied variety is determined to fulfill the necessary requirements, it will be registered as protected variety.

A fee needs to be paid for registration.

<Column> Application and payment using the Electronic Plant Variety Protection Application System

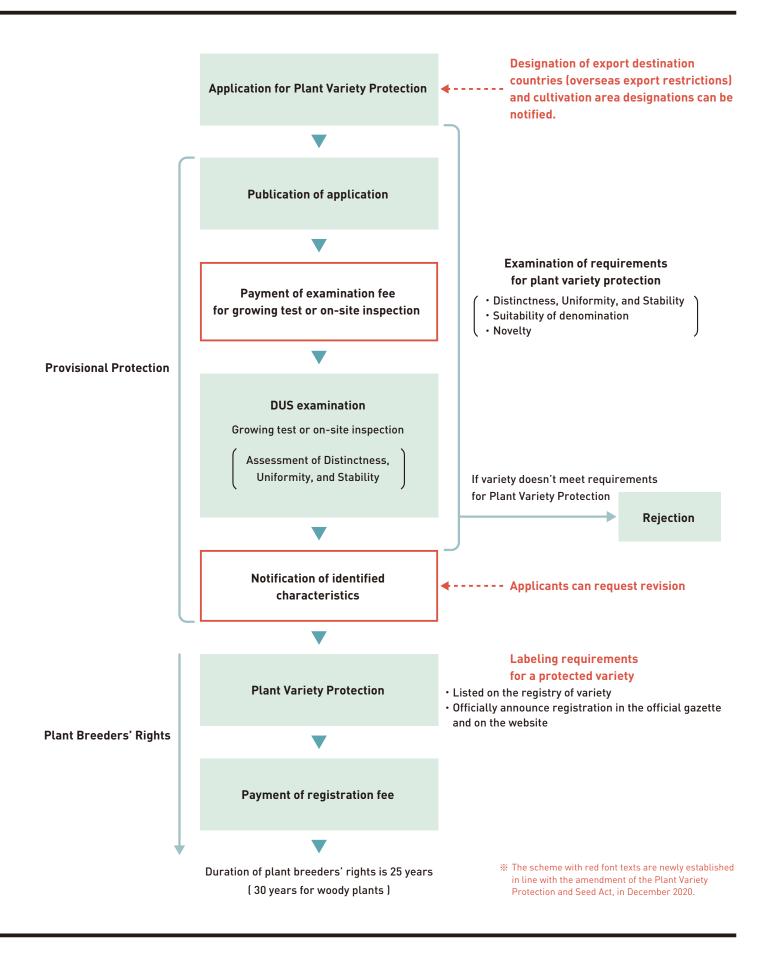
Applications for Plant Variety Protection can be submitted on paper or electronically using the Plant Variety Protection Application System on the website. Applicants can submit application document files through the system. After submitting their application, applicants can check the

receiving status of the application and submit amended application through the system.

Applicants may pay application and registration fees electronically as well.

URL http://www.hinshu2.maff.go.jp/info/yousiki/denshi/idpw01.html





Requirements for Plant Variety Protection

n order to register a new variety as protected variety, the following requirements, based on the Plant Variety Protection and Seed Act, must be met.

1 Distinctness

It should be clearly distinguishable from any other varieties of common knowledge in Japan and abroad at the time of the filing of the application, by all or parts of the relevant characteristics.

Within the same generation, all the relevant characteristics are sufficiently uniform (same plants are grown from the seeds or seedlings).

3 Stability

After propagation, all the relevant characteristics remain stable (same plants are grown after the repeated propagation for several generations).

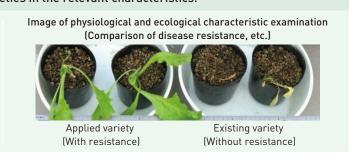
4 Novelty

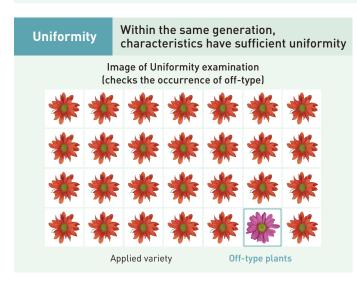
Seeds, seedlings or harvested materials of the applied variety have not been transferred in the course of business, in Japan earlier than 1 year from the date of application (in foreign states, earlier than 4 years, or earlier than 6 years for woody plant such as fruit trees).

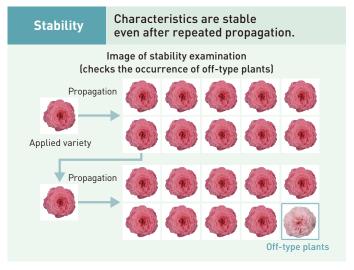
(5) Suitability of denomination

The denomination of the variety is not similar with any other existing varieties or registered trademark, etc.









Process of the DUS Examination

US examination confirms whether the characteristic of applied variety meets the characteristic requirement

(Distinctness, uniformity, and stability) or not. DUS examination will be conducted through a growing test or on-site inspection.

Growing test

A growing test will be conducted at The Center for Seeds and Seedlings, National Agriculture and Food Research Organization, (from hereon, referred to as "NCSS") where the applied variety will be grown alongside the most similar variety, and then comparing the varieties' characteristics.

On-site inspection

An on-site inspection will be conducted by officials from the Ministry of Agriculture, Forestry and Fisheries or NCSS who will compare the applied variety on the applicant's premises, with the most similar variety and compare the characteristics of the varieties.

**DUS examination can be done without conducting a growing test or on-site inspection if the applied variety is determined to have satisfied the requirements based on DUS test reports conducted by UPOV-member countries or detailed growing test results conducted by domestic applicants.



Growing test

Examination of novelty

f the applied variety has been transferred before applying for Plant Variety Protection, it is assumed that they have already been propagated and sold in the course of business,

and it may hinder secure transactions after registration as protected variety.

For this reason, it needs to be confirmed that propagated and harvested materials of the applied variety:

- ① Have not, in the course of business, been transferred 1 year prior to the application date in Japan, and 4 years in any foreign states (for woody plants, 6 years).
- (2) Have not been transferred for experimental or research purposes, or transferred against the will of the breeder.

Examination of the suitability of the denomination. (Examination of the Variety denomination)

he variety denomination has the function of identifying the seeds and seedlings which are difficult to distinguish by their outer appearance. For this reason, the denomination of the applied variety will be examined so that proper seed market will not be hindered by confusion in the identification of varieties.

Examination of the variety denomination will be conducted twice, first upon application, then again just before registration. After the examination, if it is determined that

the denomination is suitable, the application will be published. If it is determined the denomination is unsuitable, PVP Office will direct applicant to change the applied denomination. The applicant cannot arbitrarily change the denomination after filing their application.

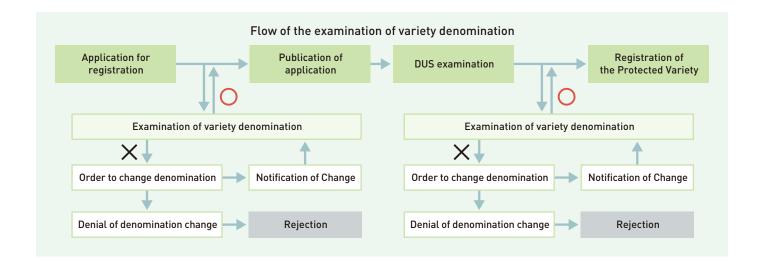
The variety denomination must be used when transferring its propagating material, even after plant breeders' rights are expired. Therefore, it is necessary to select a suitable denomination which is easily understandable for everyone.

Variety denominations which cannot be registered:

- 1) If there is more than one denomination of the applied-for variety.
- (2) If the denomination is identical or similar to a registered trademark for the propagating material for that applied-for variety or a registered trademark for goods similar to that propagating material.
- (3) If the denomination is identical or similar to a registered trademark for services relating to the propagating material for the applied-for variety or goods similar to that propagating material.
- (4) If the denomination is likely to cause misrepresentation of or confusion in identifying the applied-for variety (excluding the cases set forth in the preceding two items).

[Examples of denominations which cannot be used in Plant Variety Protection]

- Using denominations which are the same or similar to existing variety denominations or registered trademarks.
- Giving a white rose a denomination like "Red bloom" (Misrepresentation of characteristics).
- Including superlatives like, "Greatest..." etc. (Misrepresentation of value).
- Giving the candidate variety of apple a denomination like "FUJI", an existing variety denomination. (Overlapping in the range of genus).
- Using only numbers, extremely long denominations, etc. (Difficult to identify).
- Unusable characters and symbols, etc. (Examples: "III", "•", "①", foreign letters other than the 26 letters of the English alphabet, etc.).



Labeling of Protected Varieties

hen transferring, selling, exhibiting, or advertising a protected variety, it is necessary to indicate with a label that it is a protected variety. If there are restrictions on

export or production area, those restrictions need to be labeled as well.

Mandatory labeling for protected varieties

Those transferring the propagating material of a protected variety must put the label concerning \bigcirc , \bigcirc or \bigcirc on the propagating material or its package. It is not acceptable to only provide information at the store display.

- 1) The term "Protected Variety"
- 2 The term "Plant Variety Protection" and the Registration Number
- 3 The PVP mark ("PVP" "PVP" etc.)

In the case of transfer (sale) of propagating materials of protected varieties (including those which were protected in the past), the denomination of the protected variety must be used.

Variety Denomination: NORIN YELLOW (Protected Variety)

[Example of mandatory labeling]

Variety Denomination: NORIN YELLOW Plant Variety Protection number: 999999 **This variety is protected by PVP and Seed Act. (Until XXX, XX, XXXX)

Variety Denomination: NORIN YELLOW PVP



Mandatory labeling of export restrictions and production area restrictions in Japan

If the holder of plant breeders' rights has imposed conditions of use, such as a prohibition on taking the variety out of the country or limiting the domestic cultivation area, these conditions must be indicated along with the indication that the variety is a protected variety.

NORIN YELLOW (Protected Variety)

Taking this variety out of Japan is prohibited.

(Public Announcement (MAFF website))

[Example of mandatory labeling]

NORIN YELLOW (Protected Variety)

Taking this variety out of Japan is prohibited. Cultivation permit only in XXX area. (Public Announcement (MAFF website))

Procedure of the mandatory labeling

When transferring and selling seeds and seedlings in a store, necessary certification should be attached on those materials or their packages. It is acceptable to attach a certificate that shows the necessary information to the seeds and seedlings. The labeling is needed not only for exhibition and advertisement, but also for catalogues and order forms, etc. as well as websites for sales.

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Countermeasures against Infringement of Plant Breeders' Rights

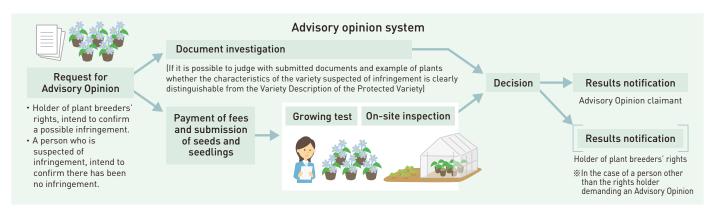
Measures initiated by the holder of plant breeders' rights

hen infringement of a plant breeders' rights is suspected, it is necessary for the holder to identify the fact and to provide evidence of the infringement in order to exercise his rights.

In order to facilitate proof of infringement and enable right holders to exercise plant breeders' rights much more effectively, a new "presumption provision" has been established allowing a presumption of infringement by comparing the characteristics of seed or seedling suspected of infringement, with the "Variety Description" which records the characteristics

of the protected variety at the time of variety registration.

By comparing a variety suspected of infringement with the Variety Description, the holder of the rights, or someone who suspects an infringement, can request Advisory Opinion by the Minister of Forestry, Agriculture and Fisheries ("Advisory Opinion System"). Such an Advisory Opinion can serve as strong evidence in a trial, and are expected to be useful in settlement negotiations between the parties concerned, which can help resolve disputes quickly. (However, the result of Advisory Opinion does not have any legally binding power).



Activities of NCSS

CSS; ①Offers consultation related to the infringement of plant breeders' rights and collection and provision of information, ②Records the circumstances of the infringement based on a request from the holder of plant breeders' rights,

③Keeps a deposit of seeds and seedlings which are suspected of infringement and may become evidence of infringement of the plant breeders' rights, and ④Conducts an examination of variety resemblance.

Border control measures at customs

apan customs are conducting border control measures on infringement of agricultural, forestry and fisheries products, based on petition for an export or import injunctions from the holders of plant breeders' rights.

The Ministry of Agriculture, Forestry and Fisheries

exchanges information with customs and shares technology used in variety identification including DNA technology, to improve the effectiveness of border control measures identifying infringing products.

<Column> Border control measures regarding SHINE MUSCAT

The National Agriculture and Food Research Organization (NARO), the holder of plant breeders' rights of "SHINE MUSCAT," sent a petition to restrict the import of "SHINE MUSCAT" to Japan customs, and on May 10, 2021, the petition was accepted. Import of "SHINE MUSCAT" fruit to Japan is subject to rejection at Japan customs.

Facts related to such petitions will be published on the website of Japan customs, alerting concerned parties within and outside of Japan. To stop illegal import of fruits at the border serves to protect the interests of Japanese agricultural producers.

Application, Examination and Registration Fees and Procedures for Requesting Certificates, etc.

1) Fees for examination and registration

When applying for Plant Variety Protection after April 1st, 2022, it is necessary to pay for a growing test or an on-site inspection. With the introduction of an examination fee, the application fee and registration fees required to maintain plant breeders' rights, have been reduced.

		Applications made up until March 31, 2022	Applications made after April 1, 2022	
Application fee		47,200 JPY	14,000 JPY	
Examination fee			In the case of growing tests General applied variety 93,000 JPY/test Fruit trees, tea trees, ornamental trees 279,000-465,000 JPY/test* Mushrooms 424,000 JPY/test Tomatoes, strawberries, peppers, melons, wheat that have characteristics which require special inspection 105,000-273,000 JPY/test In the case of on-site inspections 45,000 JPY flat rate covers all required inspections. [In most cases it is estimated that 2 inspections will be required.] In the case of requesting diseases and pest resistance tests In addition to the above fees, 8,500-275,000 JPY/characteristic tested	
	1st-3rd year	6,000 JPY/year	4,500 JPY/year	
Registration fee	4th-6th year	9,000 JPY/year		
Registi attori 166	7th-9th year	18,000 JPY/year		
	10th year and thereafter	36,000 JPY/year	30,000 JPY/year	

^{*}For growing tests for fruit trees, tea trees or ornamental trees (with some exceptions), payment of fees based on the length of the growing period (3-5 years) will be required.

2) Procedure for requesting certification

Requests for certification of application for Plant Variety Protection, a transcript or extract from the Register of Plant Varieties, or requests for inspection of documents, require fees as detailed in the following table.

Fees for requested items

Requested items	Fees
Certification of application for Plant Variety Protection or applied variety	1,500 JPY per instance
Delivery of transcript or extract from the Register of Plant Varieties	350 JPY per instance
Inspection or copying of the Register of Plant Varieties	220 JPY per instance
Inspection or copying of applications or other Plant Variety Protection-related documents	1,100 JPY per instance

Fast-growing trees such as Western hydrangea may be completed within one year. In this case, if the applicant has elected to pay the fee annually, the fee for the remaining years will not be collected.

Terminology

Scope of plant breeders' rights

The holder of plant breeders' rights has the exclusive right to exploit, in the course of business, propagating materials, harvested materials and certain processed products of the protected variety and varieties not clearly distinguishable from a protected variety.

Plant breeders' rights of a parental variety will extend to essentially derived varieties and hybrid varieties.

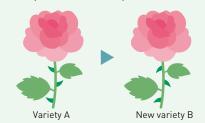
Essentially derived varieties are varieties that are produced using breeding methods outlined in the Ministerial Ordinance for Enforcement of the Plant Variety Protection and Seed Act (1) mutation selection 2 backcrossing 3 transformation by genetic engineering 4 cell fusion (limited to asymmetric cell fusion) and 5 genome editing technology) and are varieties that are bred to changed only an imperceptible

part of the characteristics of the protected variety.

Examples: Varieties that have only changed the shape of the thorns or improved disease resistance through the breeding methods mentioned above.

A hybrid variety (F1 variety) is a variety that requires constant crossbreeding of protected varieties for propagation.

Example of essentially derived variety



(All the characteristics except for the shape of the thorns are the same as the parental variety.)

Varieties bred in the course of duties

In the case where an employee, develops a new variety (Varieties bred in the course of duties), the title of the applicant of Plant Variety Protection belongs to the employee. However, when stipulated in the employment regulations, in advance, the employer may obtain the title of applicant of a protected variety which was developed by their employees.

When registering varieties bred in the course of duties, it depends on each organization's policy (Regulations for varieties bred in the course of duties), whether the title of applicant belongs to the employer originally or if the employee receives the title initially and succeeds to the employer.

Processed products encompassed by plant breeders' rights by Governmental Ordinance (as of April 2022)

Types of plants	Processed products	683a
Adzuki beans	Beans boiled in water (including where sugar is added), Sweet bean paste	
Rushes	Woven mat	
Rice plants	Cooked rice	
Kidney Beans	Beans boiled in water (including where sugar is added), Sweet bean paste	
Sweet potato	Dried sweet potato, Baked sweet potato	
Tea	Processed tea leaves or stems	
Peanuts	Products which are roasted or cooked with heat in other ways	

7 Japan's activities for International Cooperation

International Convention for the Protection of New Varieties of Plants (UPOV Convention)

he UPOV Convention is an international convention to set common rules to protect new plant varieties with 78 member countries and regions including EU, Canada, Japan, Australia. (As at the end of March 2022).

If breeder intends to gain plant breeders' rights for his new plant variety in UPOV-member countries, it is necessary to apply his new variety to each member country.



East Asia Plant Variety Protection Forum

n the East Asia region, which is also an important market for export, there is a lack of a sufficient environment in which new plant varieties can be properly protected. Therefore, the East Asia Plant Variety Protection Forum (EAPVP), a group of 13 countries (ASEAN + Japan, China, and Korea) established under the leadership of Japan, is working to develop a variety protection system.

In order to accelerate these developments, in 2018, The 10-Year Strategic Plan of the EAPVP Forum was formulated and approved in 2018, which includes, among other things, the goal of UPOV membership for all participating countries in East Asia.

Currently, based on the 10-Year Strategic Plan, with the cooperation of the UPOV secretariat and related countries, we engage to establish a platform (e-PVP Asia) which will enable breeders to apply for Plant Variety Protection in several countries simultaneously.



Contact for Agricultural Intellectual Property

We provide support and advice for the acquisition and utilization of intellectual property rights (including patents and trademarks) in the agriculture sector, such as plant breeders' rights overseas among other things.

Japan Plant Variety Protection Consortium

Representative organization:

Innovation Division, Japan Association for Techno-innovation in Agriculture, Forestry and Fisheries

Phone:+81-3-(3586)-8644 Open Mon-Fri, 10AM-5PM (except for noon-1PM) Email: jataff-pvp@jataff.or.jp

Inquiries **Please read the following before contacting us.

Before contacting us, please read The Website of Plant Variety Protection Office, Ministry of Agriculture, Forestry and Fisheries, which can deepen your understanding.

Plant Variety Protection Office, Intellectual Property Division, Export and International Bureau, Ministry of Agriculture, Forestry and Fisheries

1-2-1, Kasumigaseki, Chiyoda-ku, Tokyo, 100-8950, JAPAN
Phone:+81-3-3502-8111 (Main Number)
URL http://www.hinshu2.maff.go.jp/en/en_top.html (Home page of Plant Variety Protection)



Regarding information on growing tests and infringement of plant breeders' rights, you can also check the website of the Center for Seeds and Seedlings.

The Center for Seeds and Seedlings, National Agriculture and Food Research Organization (NCSS)

2-2 Fujimoto, Tsukuba, Ibaraki 305-0852, Japan
DUS Test Management Section: Phone:+81-29-838-6584
Plant Variety Protection Section: Phone:+81-29-838-6589
URL https://www.naro.go.jp/english/index.html

