

Frequently-asked question on licensing procedure for propagation for private cultivation of registered variety bred by NARO

Published: October 14, 2021

Updated: December 20, 2021

<Generalities>

Question: Why does NARO adopt a licensing system for propagation for private cultivation of all its registered varieties?

Answer: NARO develops superior varieties, like 'Shine Muscat', based on advanced knowledge accumulated for many years, makes them popular, and promotes their use. Currently some registered varieties are, because of their superiority, found taken overseas.

Therefore, it was necessary to create a reliable system to prevent the outflow of these varieties to ensure that domestic farmers can fully enjoy the value of the varieties developed by NARO. A licensing system was established for the propagation for private cultivation of registered varieties bred by NARO, based on the Revision of the Plant Variety Protection and Seed Act.

Question: Does the "propagation for private cultivation" differ from "private propagation"?

Answer: Prior to the revision of the Plant Variety Protection and Seed Act, breeder's rights did not extend to what is known as "private propagation". This is the activity where a farmer legally obtains a propagating material through a propagating-material dealer or an organizer of producers etc. (please see the list of licensees below) who produces and sells the propagating material of a registered variety (please see the list of the registered varieties below) based on a granted license, and uses a part of harvested material from the propagating material as a next propagating material on his/her own holding.

In some crops, a farmer obtains seed potato or mother plant for propagation and propagates them to obtain more next propagating material to use on his/her own holding. But since the new propagating material is produced from the obtained propagating material for propagation, this act does not correspond to "private propagation", which is an exception to breeder's rights. With this license, the act of propagation from the propagating material as a next propagating material on his/her own holding is broadly referred to as "propagation for private cultivation".

*List of licensees relating to registered variety of NARO

https://www.naro.go.jp/collab/breed/seeds_list/index.html

*List of registered varieties bred by NARO (to be updated as necessary)

https://naroprd.powercms.hosting/collab/breed/files/zoushokukyodakuhoushin_hinshu_202201.pdf

Question: Can the propagating material obtained through the propagation for private cultivation be transferred to others if the license is free of charge?

Answer: Transferring the propagating material obtained through the propagation for private cultivation to others as a propagating material needs a license agreement of which application process should be conducted

through a group etc., regardless of whether it is for a fee or free of charge (Please see Licensing the exploitation of registered varieties HP below).

NARO does not grant license agreements to individuals, so if you wish to obtain this type of license, please send an application in the name of a group.

*Licensing the exploitation of registered varieties

https://www.naro.go.jp/collab/breed/breed_exploit/index.html

Question: Does the propagation for private cultivation cover a home garden?

Answer: The Plant Variety Protection and Seed Act does not restrict the use and cultivation of your own produced propagating material for personal interest or household consumption when the harvested material obtained from your own produced propagating material is not transferred to others as a propagating material (regardless of whether it is for a fee or free of charge). The "propagation for private cultivation" mentioned here does not cover a home garden, and a license is not required.

However, the transfer of your own produced propagating material for personal interest or household consumption to others is an infringement of the breeder's rights.

Please manage a propagating material appropriately to prevent the overseas outflow of superior plant varieties.

Question: What are the criteria of "on and after April 1, 2022"?

Answer: The act of using harvested material, vine seedling, or scion (the planting action of raising seedling or direct sowing (e.g., rice), transplanting or laying in (e.g., sweet potato), and cutting (including top-grafting; e.g., fruit trees)) as propagating material on and after April 1, 2022, needs the license under the revised ACT.

Question: Does "a propagating material legally obtained from a licensee" cover propagation for private cultivation of a propagating material purchased in DIY stores?

Answer: Any propagating material transferred directly or indirectly from a licensee, not limited to DIY stores, corresponds to the "propagating material legally obtained from a licensee". "Indirectly" indicates that the propagating material is transferred from the licensee through a propagating-material wholesale company and agricultural cooperative, etc.

Question: How can I decide if a propagating material I am about to purchase is a registered variety of NARO or not?

Answer: Please refer to the registered variety list of NARO (registered variety list HP below) or the variety registration database of Ministry of Agriculture, Forestry and Fisheries (MAFF) (MAFF registered variety HP below). A propagating material of a fruit tree variety bred by NARO is sold with a certificate indicating that it is a variety bred by NARO; therefore, please refer to the certification.

The displaying information to indicate that it is a registered variety is legal obligation. Please let us know if this information is not displayed with a propagating material of a registered variety of NARO.

*List of registered varieties bred by NARO (to be updated as necessary)

https://naroprd.powercms.hosting/collab/breed/files/zoushokukyodakuhoushin_hinshu_202201.pdf

*Variety Registration Page of Ministry of Agriculture, Forestry and Fisheries (external link)

<http://www.hinshu2.maff.go.jp/>

Question: What will become of the license validity if a purchased propagating material is not a propagating material "legally obtained from a licensee"?

Answer: If the purchased propagating material is not a propagating material "legally obtained from a licensee", the validity of this license is negated. In these cases, the buyer and the seller may be supposed to clarify where the responsibility lies.

Question: The website titled "Licensing procedure for propagation for private cultivation of registered variety bred by NARO" says "A registered variety of which rights are jointly owned with others (jointly-owned variety) and a registered variety involved with patent rights owned by NARO may be handled differently, so please consult NARO individually". How can I decide if a variety is in such a case? Also, where may I consult?

Answer: Regarding the variety in question, please refer to the registered variety list (registered variety list HP below).

* List of registered varieties bred by NARO (to be updated as necessary)

https://naroprd.powercms.hosting/collab/breed/files/zoushokukyodakuhoushin_hinshu_202201.pdf

Unless otherwise specified in the above list, please contact NARO using the following inquiry contact information.

URL : <https://prd.form.naro.go.jp/form/pub/naro01/hinshu>

Attention: Breeder's Rights Management Section, Intellectual Property Department, NARO

Question: When I sell or transfer a propagating material, propagated for private cultivation, of a registered variety bred by NARO, is it necessary to describe how to apply a license and whether the license is for a fee or free of charge in catalogs or other such material?

Answer: NARO is asking licensees who are allowed to transfer propagating materials of registered varieties bred by NARO to a third party to inform (by whatever method) purchasers about the need for licenses for the propagation for private cultivation in an agreement subject to the revised ACT. NARO also welcomes the cooperation of distributors in disseminating this information. Several samples of brochure available on the NARO website are of your help in such notification.

<Applicable persons>

Question: Is a non-organized/non-incorporated community farming association eligible for license?

Answer: Yes, it is eligible. For the licensing procedures, please consider whether the individual management entities that comprise the community farming association will obtain licenses or whether a collective license will be obtained as a group.

Question: Is a corporation, other than corporation qualified to own cropland, who runs agriculture business on a leased cropland eligible for license?

Answer: Yes, it is eligible.

Question: Is an individual person or a legal person, who subleases cropland through a cropland intermediary management institution, eligible for license?

Answer: Yes, it is eligible.

Question: Whom may I contact if I have a question about bulk licensing through a local agricultural cooperative or an organizer of producers etc.?

Answer: Please contact NARO as follows:

URL : <https://prd.form.naro.go.jp/form/pub/naro01/hinshu>

Attention: Breeder's Rights Management Section, Intellectual Property Department, NARO

<Crop-specific procedures>

Question: Why is a crop handled differently as to whether it needs a license procedure or not?

Answer: NARO has decided to handle crops differently in consideration of the current status of propagation for private cultivation, the significance of a risk in case of smuggling, the seriousness of an influence of smuggling, and the current status of infringement of breeder's rights, etc.

Question: Why does NARO not require the licensing procedure for propagation for private cultivation until one year after legitimately obtaining the propagating materials of sweet potato, strawberry, and potato?

Answer: NARO had been allowing obtained crops to be propagated and used on his/her own holding prior to the partial revision of the Plant Variety Protection and Seed Act. Therefore, NARO have decided not to require the licensing procedure for propagation for private cultivation until one year after legitimately obtaining the propagating material under the revised ACT.

Question: Why are licensing fees for propagation for private cultivation charged only for fruit tree, despite an overseas outflow of plants such as sweet potato and strawberry?

Answer: NARO does not underestimate the risk of the overseas outflow of plants such as sweet potato and strawberry. However, fruit tree is a woody plant, and once there is an outflow of these plants, there is the risk of stable and long-term production of illegally harvested materials. Currently conducted domestic and overseas crackdowns on illegal propagating materials bred by NARO involve nothing other than fruit tree. As long as fruit tree is concerned, such a trend seems to necessitate more future investigation and exercise of the rights. We have decided to ask farmers to bear license fee equivalent to the license fee included in a seedling tree as a part of the cost for protecting the bland value of varieties, ensuring that domestic producers enjoy maximum benefit of the varieties, and controlling the breeder's rights appropriately.

Question: Licensing fees are charged only for fruit trees, but what action is NARO taking to prevent the outflow of fruit trees overseas?

Answer: We require licensees of propagation for private cultivation to put certificates to find out illegal propagation easily by visual judgement. We also conduct specific investigations based on information on suspicious farmers, and thus have established a framework capable of proactively exercising breeder's rights against such illegal activities if necessary. We also notify prohibition of overseas removal, file foreign applications for breeder's rights, and also proactively conduct investigation and exercise of breeder's rights. If in the unlikely event of smuggling plants, we prevent the reimportation into Japan by submitting an injunction request. Furthermore, in preparation of the above countermeasures, we keep working hard to develop DNA-based variety identification technology.

Question: How did NARO calculate licensing fees for fruit trees as JPY 100/scion for individuals and JPY 50/scion for organizers?

Answer: Administrative matters such as investigations and exercises of breeder's rights entail significant amount of expenditure. To ensure that this licensing fee is not an excessive burden for farmers, we have set the licensing fee which we believe is equivalent to the licensing fee formerly borne when purchasing propagating materials of registered varieties of fruit trees. This is considered a part of the cost for protecting the bland value of varieties, ensuring that domestic producers enjoy maximum benefit of the varieties. Furthermore, we will examine the appropriateness of the licensing fee diligently based on future operating performance.

The licensing fees of JPY 100/scion for individuals and JPY 50/scion for organizers refer to only legally licensed farmers conducting the propagation for private cultivation. However, people who conducts illegal propagation is liable to incurred damages including the value of the subject variety and profit lost by the illegal propagation.

Question: Why does the licensing fees of fruit trees differ between applications from individuals and organizers?

Answer: We set different licensing fees because organizers organize individual farmers, and thus can save the costs for certificate administration. We will examine the appropriateness of the licensing fees diligently based on future operating performance.

Question: May an organizer charge farmers for administration fees added on JPY 50/scion for propagation for private cultivation of fruit trees?

Answer: Setting such administration fees is at organizer's discretion.

Question: If five scions are top-grafted to one mature fruit tree, how many scions does NARO calculate as propagating materials?

Answer: Five. Each scion used for top-grafting is considered as one propagating material.

Question: If 20 scions are top-grafted to one mature fruit tree, will the licensing fee be for 100 scions?

Answer: If you apply for a license as an individual, the application will be for 100 scions. If you apply for a license collectively as an organizer (who organizes a plurality of persons), you may apply for a license by 20 scions for Farmer A, 20 scions for Farmer B, 30 scions for Farmer C, and 30 scions for Farmer D. Thus, the organizer can be efficiently granted a license for necessary quantity. Therefore, you may want to consider applying as an organizer.

Questions: Please show how to calculate licensing fees per "100 scions" of fruit trees in the following cases:

(1) Is it possible if an individual farmer may obtain a collective license for 100 scions by JPY 10,000 when he or she needs to graft 20 scions of Variety A, 30 scions of Variety B, and 50 scions of Variety C?

(2) Is it possible if an organizer may obtain a collective license for 100 pieces by JPY 5,000 when it needs to graft 20 scions for Farmer A, 30 scions for Farmer B, and 50 scions for Farmer C?

Answers: (1) It is no problem if an individual farmer applies for a collective license for 100 scions by JPY 10,000 by 20 scions of Variety A, 30 scions of Variety B, and 50 scions of Variety C. The application form is prepared to that effect.

(2) It is no problem if an organizer applies for a collective license for 100 scions by JPY 5,000 by 20 scions for Farmer A, 30 scions for Farmer B, and 50 scions for Farmer C. In this case, a collective license may be applied for 100 scions of a plurality of varieties, as described above.

Question: If a license for 100 scions of fruit trees has been granted for initially-planned propagation of 70 scions, and if additional scions needs to be propagated within a license period, may I have to pay licensing fee separately for the additional propagating material?

Answer: Since a license is granted per 100 scions, the additional payment of licensing fee is not required as long as the additional propagating material does not exceed 30 scions. If the additional propagating material exceeds 30 scions, please submit a new application and pay additional licensing fee.

Question: The license fee is for one grafted scion (graft), but not all the grafts will take successfully. Therefore, will NARO allow to licensees to pay license fee only for successful graft-take?

Answer: Please understand that each graft is considered as a propagating material whether or not the grafts successfully take. This also applies if the graft withers and dies after successful graft-take.

Question: Does NARO allow the rootstock of a registered fruit tree variety to be propagated for private cultivation?

Answer: Although breeder's rights did not cover the private propagation of a rootstock under the former ACT, NARO understands that there had been no such case of private cultivation. The revised ACT does not change the licensing policy. Licensing is still required for propagating rootstock.

Question: Is it necessary to report the type of rootstock when applying for a license for the propagation for private cultivation of fruit tree?

Answer: Currently, it is not necessary to report the type of rootstock.

Question: What information should be included in the NARO WEB application for the propagation for private cultivation of fruit tree? Also, is it necessary to report results (number of propagations, etc.)?

Answer:

[For an individual farmer] Information includes name, address, contact details, location of representative cultivated field, planned area of cultivation, variety name, and the number of propagated scions/grafts, etc.

[For an organizer] Information includes name, address and contact details for the organizer, location of representative cultivated field, total planned area of cultivation, the number of farmers propagating the scions (required number of certificates), variety name, and the total number of propagated scions/grafts, etc.

Reporting results is not necessary. The information required is kept to a minimum to ensure that the process is not a burden for the applicant.

<Compliance>

Question: "Compliance" No. ③ providing that "any problem such as diminished characteristics in the registered variety by exploiting the propagating material must be reported to NARO without delay", where should the report be sent?

Answer: Please report to the following contact of NARO.

URL : <https://prd.form.naro.go.jp/form/pub/naro01/hinshu>

Attention: Breeder's Rights Management Section, intellectual property department, NARO

Question: "Compliance" No. ⑤ providing that "the licensee must acknowledge and cooperate with NARO so that NARO may investigate documents and farm lands relevant to the license", what kind of documents do I need to organize and store in advance?

Answer: No other documents are required to be organized or stored in advance other than account books and documents prepared in ordinary agricultural management. However, please note that NARO may ask you to prepare some new documents if an investigation is needed.

<Miscellaneous>

Question: Is it possible to take a registered variety of NARO overseas?

Answer: It is prohibited to take any registered varieties of NARO overseas.

For details, please check the website of Ministry of Agriculture, Forestry and Fisheries below:

*Website of registration of varieties, Ministry of Agriculture, Forestry and Fisheries (Data search of registered variety is available)

<http://www.hinshu2.maff.go.jp/>

***If you have any other questions about the revision of Plant Variety Protection and Seed Act, please refer to the following website of the Ministry of Agriculture, Forestry and Fisheries.**

***Website of Ministry of Agriculture, Forestry and Fisheries**

<https://www.maff.go.jp/j/shokusan/syubyouhou/>