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Plant Variety Protection

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By Kenyon L. Schuett
May 6, 1996

"[t]he greatest service which can be rendered any country is to add a useful plant to its culture."

--Thomas Jefferson

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INTRODUCTION

Of all the forms of intellectual property protection available for technological innovations, perhaps the least well-known, understood, and discussed is that protection extended to plants. Interestingly, there are oftentimes more forms of protection available to plants than traditional inventions. This paper will address the various forms of intellectual property protection available to plants, with particular attention to the protection provided for under the Plant Variety Protection Act (PVPA).

The paper will begin by discussing some of the basics of plant breeding and genetics, which will give the reader a greater understanding of plant variety protection issues. Next, there will be a discussion on the various forms of protection available and the advantages and disadvantages associated with each of them. Third, the paper will provide a detailed analysis of *Asgrow Seeds v. Winterboer*, a case which addresses the problematic farmer's exemption/crop exemption provision found in the Plant Variety Protection Act. Finally, the paper will address the impact of the Supreme Court's recent decision in *Asgrow Seeds v. Winterboer* on farmers and the seed industry.

The author hopes to bring a unique perspective to this topic as a result of his background and training. The author grew-up on a family farm in Eastern Nebraska where corn and soybeans are the primary crops. At the University of Wyoming he earned minor degrees in both Plant Biology and Crop Production. While attending school, he worked for over four years as a student research associate in the University's plant biotechnology laboratory. In this capacity, he was involved in all facets of plant breeding and genetics from classical plant breeding to advanced regeneration of plants from tissue

cultures. Hopefully, these experiences will allow the author to develop the perspective of both the farmer and the plant breeder, as well as presenting some of the implications of the administration and enforcement of intellectual property protection for plants on both of these individuals.

A BRIEF PLANT BREEDING AND GENETICS OVERVIEW

Plants reproduce either asexually or sexually. Asexual reproduction, vegetative propagation, is accomplished by taking a "cutting" (a stem, root, or leaf) from a parent plant and inducing formation of roots, shoots, or both.[1] This process is accomplished more easily in some plants than others and sometimes horticulturalists must resort to alternative methods, such as grafting a shoot to the rootstock of another plant. A plant resulting from the process of asexual reproduction is termed a clone because the plant has the exact genetic makeup of the parent plant from which it originated.[2] An example of a well-known clone is the 'Thompson Seedless' grape, having millions of plants scattered around the world and each originating from a single parent plant.[3]

If a clone is an exact replica of a parent plant, then how do new, unique plants come into existence? On very rare occasion, a single cell in a plant has its genetic makeup altered during cell division, i.e. a mutation. This single cell continues to divide in the

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[1]Hudson T. Hartmann *et al.*, Plant Science: Growth Development, and Utilization of Cultivated Plants 91 (2d ed.1988).

[2]*Id.* at 92.

[3]*Id.*

process of normal plant growth and may develop into a shoot with characteristics different from those on the rest of the plant.[4] Many of these mutations are minor, inferior, or go unnoticed. However, sometimes the mutation is quite striking and is superior to the characteristics of the parent plant on which it is growing. A skilled plant breeder will notice this striking, superior characteristic and will asexually propagate the shoot using the methods already described. For example, many of the 'Red Delicious' apple varieties originated from mutations found on regular 'Delicious' apple trees.[5]

Sexual reproduction in plants is much more complex than asexual reproduction. For brevity, discussion of sexual reproduction in plants will be limited to that found in corn and soybeans, the latter being the crop of interest in *Asgrow Seeds v. Winterboer.* Sexual reproduction in these crops involves the fusion of male and female reproductive cells, gametes, in a process called pollination. Pollination occurs differently in different species of plants. In corn, the male gametes are produced by the tassel found at the top of the plant and the female gametes are produced by the ear found on the middle of the plant. This spatial separation of the tassel from the ear creates a means by which plant breeders can easily produce hybrids, discussed *infra.* In contrast, the organs producing the male and female gametes are not spatially separated on the soybean plant; they are in the same flower. Usually pollination occurs prior to the flower even opening.[6]

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[4]*Id.* at 94.

[5]*Id.*

[6]Telephone Interview with Dr. Robin W. Groose, Associate Professor of Plant Genetics at the University of Wyoming, (Feb. 11, 1996). Dr. Groose worked extensively on a soybean breeding project during his post-doctoral training at Iowa State University.

As a result, soybeans are referred to as a "self-pollinated" crop while corn is referred to as a "cross-pollinated" crop.

The development of hybrids has been heralded as "one of the outstanding scientific breakthroughs in agricultural history," since it has more than doubled the yield of corn.[7] As a result of the yield increase of hybrid corn over non-hybrid corn, virtually all corn grown by U.S. farmers is hybrid corn. Hybrids have also made plant breeding companies very happy because the process by which hybrids are produced can be closely controlled. Thus, farmers must buy new hybrid seed from the plant breeding companies each year to achieve the high yields that hybrids offer over non-hybrids.

Plant breeding companies maintain strict control over the production of hybrids through closely guarding inbred lines, which take many years to develop.[8] Inbred lines are produced by forcing corn plants to self-pollinate over many generations until all alleles in the plant are homozygous.[9] A gene contains two forms of a given characteristic referred to as alleles. If both alleles on a single gene are the same, then the gene is homozygous for that characteristic. In the alternative, if both alleles on a single gene are different, then the gene is heterozygous for that characteristic.[10] For instance, consider the alleles on a single gene for the characteristic of plant height-- a single allele for "tall" and a single allele for "short." Thus, if both alleles for "tall" are present or both alleles for "short" are

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[7]Hartmann *et al.*, *supra* note 1, at 84.

[8]John M. Poehlman, Breeding Field Crops 14 (3d ed. 1987).

[9]William S. Klug and Michael R. Cummings, Concepts of Genetics 38-39 (2d ed. 1986).

[10]*Id.*

present, the plant is homozygous for that characteristic. If one allele for "tall" is present and one allele for "short" is present, the plant is heterozygous for that characteristic.

To explain the production of hybrids, it is easiest to refer to an illustration in conjunction with a written explanation. Please see Appendix A. By allowing male gametes produced in the tassel of one inbred line, B or D, to fuse with the female gametes in the ear of another inbred line, A or C, a hybrid is created. The process of producing hybrids is easy to achieve by removing the tassel from one of the plants used in a breeding pair, commonly referred to in the seed industry as detasselling.[11] The hybrid created is referred to as an F1 hybrid or a single cross hybrid. The F1 hybrid exhibits heterosis or hybrid vigor and is sold to farmers. Heterosis is defined as "the increased vigor, growth, size, yield, or function of a hybrid progeny over the parents that results from crossing genetically unlike organisms."[12]

If a farmer were to save the seed from the F1 hybrid and plant it the following year it would not exhibit heterosis. Furthermore, the farmer does not possess the inbred lines so he cannot produce his own F1 hybrid seed. Thus, the farmer must go to the commercial plant breeder each year and buy new F1 hybrid seed.

Soybeans are an entirely different story. Because the organs producing the male and female gametes are within the same flower, soybeans do not readily lend themselves to the production of hybrids. Furthermore, the organs producing the male gametes are so

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[11]Hybrid seed corn companies in the Midwest hire thousands of teen-agers each summer to walk the rows of corn in the company's breeding plots, removing the tassel from each plant.

[12]Poehlman, *supra* note 8, at 706.

small that they must be removed using a pair of small forceps. One soybean breeder describes the process of hybridizing soybeans as "very frustrating and painstaking" and is "impossible on a commercial scale."[13] For this reason, it is relatively easy for farmers to save seed from one year to use as seed the following year. Likewise, it is easy to purchase one's initial seed from a commercial seed company, plant the seed, harvest the seed, and then save a portion of the crop for planting the following year or sell the crop to another farmer to plant.

FORMS OF PLANT VARIETY PROTECTION OUTSIDE THE PVPA

The United States has gone through a gradual evolution in the protection of plant varieties. Initially, most research in plant variety development was conducted by state and federal governments as there were no financial incentives for private-sector interest.[14] In the early 1900's, several bills were introduced in Congress to give plant breeders the same type of protection for their newly-developed plant varieties as inventors were given for industrial inventions. However, even with the support of such well-known inventors as Thomas Edison, none of these bills ever passed.[15]

The Plant Patent Act

In 1930, asexually propagated plant varieties finally became protectable in the

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[13]Telephone Interview with Dr. Robin W. Groose, *supra* note 6.

[14]Robert J. Jondle, *Overview and Status of Plant Proprietary Rights, in* Intellectual Property Rights Associated with Plants 5 (1989).

[15]Sidney B. Williams, Jr. and Kenneth A. Weber, *Intellectual Property Protection and Plants, in* Intellectual Property Rights Associated with Plants 91, 92 (1989).

United States when the Plant Patent Act (PPA), also known as the Townsend-Purnell Act, was passed by Congress.[16] Plant varieties that reproduce sexually, i.e. by seed, were specifically excluded from protection. At the time of the passage of the Act, varieties reproducing by seed were thought not sufficiently identifiable, uniform, and stable to be protectable.[17] The PPA provided the incentives for private companies to invest in research and development by granting the plant breeder the exclusive right to propagate the plant for a period of 20 years from the date of filing of the patent application.[18]

An amendment to the Act in 1953 extended protection to wild, newly-found plants once they were asexually propagated and placed into a cultivated state.[19] Despite restricting protection to asexually propagated varieties, the Act has met with much success. Today, over 6,000 patents have been issued under the Act fostering the development of a wide array of plant varieties from fruit trees to ornamental shrubs.[20]

Among the advantages of a plant patent, is the fact that it is relatively easy to obtain compared to a utility patent, discussed *infra*. However, new varieties with only

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[16]*Id.*

[17]Kenneth H. Evans and Eldon E. Taylor, *Issues and Challenges in the Administration of the Plant Variety Protection Act, in* Intellectual Property Rights Associated with Plants 157 (1989).

[18]Prior to June 8, 1995, the term of protection was *17 years* from the *date of grant* of the patent. With the passage of GATT-TRIPS, the plant patent act was amended to its current form. 4 Tex. Intell. Prop. L.J. 99, 122.

[19]Williams and Weber, *supra* note 15.

[20]*Id.*

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minor differences can also obtain a plant patent.[21] Thus, the overall protection of the variety is quite limited.

The Utility Patent

Utility patents have always been available on plant *methods and processes*, such as tissue culturing.[22] However, it was not until the landmark decision in *Ex parte Hibberd et al.*[23] that plant varieties *themselves* became eligible for utility patent protection. In order to receive a utility patent, a plant must be new, useful, and nonobvious-- the same requirements that apply to all other inventions. In addition to protecting plant breeding methods and processes, utility patents can also be issued for recombinant DNA, genes, and plant parts.[24] During the 17 year period of protection that the utility patent grants,[25] the seed of the protected variety may be used by the public for testing purposes, but may not be used in a breeding program to develop new varieties.[26] Like other utility patents, once this period of protection ends, the seed is in the public domain and may be used to develop new varieties.[27]

An advantage of the utility patent over the other forms of protection available, is a

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[21]Jondle, *supra* note 14, at 12.

[22]*Id.* at 8.

[23]227 U.S.P.Q. 440 (Bd. Pat. App & Int. 1985).

[24]Jondle, *supra* note 14, at 9.

[25]Presently, the law provides for 20 years from the date of filing. *See supra* note 18.

[26]Jondle, *supra* note 14, at 9.

[27]For a comparison of protection under the Plant Variety Protection Act and Utility Patent laws, see Table 1-2 *in* Jondle, *supra* note 14, at 10.

broader scope of protection if the patent has been carefully drafted. However, the utility patent is also more expensive than the other forms of protection, as well as being more difficult to obtain.[28] Moreover, the period of time involved in getting a utility patent is much longer than the other forms of variety protection. One practitioner notes that the "average pendency for patents in 1992 that defined seeds by reference to their ATCC (American Type Culture Collection) accession numbers was 45.6 months."[29]

Trade Secret Protection

Trade secret protection is generally confined to hybrids, particularly hybrid seed corn. As discussed *supra*, hybrids are the result of crossing two inbred lines to produce a plant that exhibits heterosis, hybrid vigor. By keeping the identity of the inbred lines confidential, seed companies can prevent other companies from duplicating the hybrid resulting from crossing the two inbred lines.[30] Moreover, the nature of hybrids prevents farmers from saving seed and planting the seed the following year, as discussed *supra*. This simple means by which hybrids can be protected has resulted in many seed companies attempting to hybridize other crops, such as soybeans, cotton and wheat.[31] However, plant breeders have had virtually no success due to self-pollinating mechanisms, as

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[28]Jondle, *supra* note 14, at 13.

[29]Herbert I. Cantor, *Brown Bagging It-- Free Lunch for Farmers*, J. Pat. & Trademark Off. Soc'y. 754, 756 n.12 (1993).

[30]Neil D. Hamilton, *Why Own the Farm If You Can Own the Farmer (and the Crop)?: Contract Production and Intellectual Property Protection of Grain Crops,* 73 Neb. L. Rev. 48, 92 (1994).

[31]*Id.*

discussed *supra.*

Other Contractual Provisions

Contractual provisions between farmers and seed companies may be used in addition to or in lieu of the forms of protection already discussed. These contractual provisions are commonly enforced in local and state courts, as opposed to the federal courts for other forms of plant variety protection. A farmer agrees to be bound by the terms of the contract by removing a label placed on the bag of seed such that it must be removed to open the bag (much like computer software) or by signing a purchase agreement for the seed.[32]

International Protection

No discussion would be complete without addressing international protection of plant varieties, especially since it interacts so closely with the PVPA. In fact, part of the motivation for Congress enacting the PVPA was the establishment of the International Convention for the Protection of New Varieties of Plants (UPOV) by eight European nations in 1961.[33] The objective of the Convention was to "develop and refine a system to recognize and protect the legal rights of plant breeders."[34]

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[32]*See* Appendix B for an example of the provisions contained in such an agreement. Hamilton, *supra* note 30, at 93.

[33]J.H. Reichman, *Legal Hybrids*, 94 Colum. L. Rev. 2432, 2467 (1994), *citing* H.R. Rep. No. 1605. Congress was concerned about the competitiveness of the American agricultural industry.

[34]Neil D. Hamilton, *Who Owns Dinner: Evolving Legal Mechanisms for Ownership of Plant Genetic Resources*, 28 Tulsa L.J. 587, 605 (1993).

In 1978, the UPOV was amended to allow non-European membership.[35] In 1981, the United States joined UPOV,[36] resulting in amendments to the PVPA as a condition of becoming a signatory.[37] Additional amendments to UPOV in 1991[38] forced the United States to further amend the PVPA or remove itself as a member of UPOV. The 1991 Amendments focused on increasing intellectual property right protection for biotechnological products. In hearings before Congress, Kenneth Clayton, the deputy assistant secretary for the Department of Agriculture's Marketing and Inspection Services, stated that "[c]ompliance with the 1991 UPOV guidelines is essential to ensure that new American plant varieties get effective protection outside the United States, and that foreign breeders will bring their seeds to the United States."[39] The bill passed Congress on October 6, 1994.[40]

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[35]*Id.*

[36]*Accession of Austria to the International Convention for the Protection of New Varieties of Plants*, 76 J. Pat. & Trademark Off. Soc'y 686 (Sept. 1994). As of July 14, 1994, there were 25 members, as follows: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Slovakia, South Africa, Spain, Sweden, Switzerland, United Kingdom, and the United States of America.

[37]Reichman, *supra* note 33.

[38]These additional amendments "increase the term of protection to twenty years, extend the scope of protection to harvested plant parts, cut back on the farmers' exemption, and required states to protect the whole plant kingdom and not merely selected species." Reichman, *supra* note 33, at 2468-69.

[39]Stacey Berg, Julie Lane, *et al.*, *Bill to Amend Plant Variety Protection Act*, 6 No. 7 J. Proprietary Rts. 29 (July 1994).

[40]*See* S. 1406, Pub. L. No. 103-349.

Members of UPOV must extend to foreign applicants of member countries the same rights afforded to nationals, i.e. national treatment; recognize filing dates of applicants in member countries, i.e. foreign priority rights; and grant rights in a member country only when the applicant files with the given country's own examiner's office, i.e. independent jurisdiction.[41]

THE PLANT VARIETY PROTECTION ACT

Breeders of sexually-reproducing varieties of plants became frustrated at the unavailability of protection for the plants they developed, often through years of pain-staking effort. They and the American seed industry argued that there were no economic incentives to develop new varieties of plants that reproduced by seed, as a farmer or gardener would merely produce his own seeds after his initial purchase of a new plant variety from a plant breeder. A proposal to broaden the PPA to extend protection to these seed-bearing plants was attempted, but ultimately failed when it was opposed by the U.S. Patent & Trademark Office.[42]

Later, the U.S. seed industry proposed a bill based on provisions found in the PPA and European breeder's rights laws. Also aiding in the efforts of the seed industry were advances in the science of plant breeding and genetics that showed that many sexually-reproducing varieties were identifiable, uniform, and stable. Sexually propagated plants

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[41]David G. Scalise and Daniel Nugent, *International Intellectual Property Protections for Living Matter: Biotechnology, Multinational Conventions and the Exception for Agriculture*, 27 Case W. Res. J. Int'l L. 83, 108 (1995).

[42]Evans and Taylor, *supra* note 17.

finally became eligible for protection under the Plant Variety Protection Act (PVPA), which was passed on December 24, 1970.[43]

Under the PVPA, all plants that produce seeds are eligible for protection.[44] In many respects the PVPA is modeled after U.S. patent laws. This observation is most evident in the standard of novelty, which a plant must exhibit in order to be eligible for a plant variety protection certificate. The standard of novelty is set forth in 7 U.S.C. § 2402, which indicates that any of the following will defeat novelty:[45]

> 1. The cultivar was a public cultivar before the date the applicant determined that he/she had a unique variety of plant.
>
> 2. The cultivar was a public cultivar more than 1 year before application for the plant variety protection certificate was made.
>
> 3. The cultivar was available to other individuals and described in a printed publication in this country before the applicant had determined that he/she had a unique variety of plant.
>
> 4. The cultivar was available to individuals and described in a printed publication in this country more than 1 year before the application for plant cultivar protection.
>
> 5. The applicant filed for protection in a foreign country more than 1 year before filing in the United States.
>
> 6. Another individual has determined that he/she had a unique variety of plant earlier than the applicant and has continually engaged in the development of the variety for commercialization, or has published a description of the cultivar within 24 weeks of the date an individual determined that he/she had a unique variety of plant.

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[43]*Id.*

[44]Williams and Weber, *supra* note 15, at 94.

[45]Williams and Weber, *supra* note 15, at 94-95.

Practitioners will note that these provisions bear striking resemblance to the general patent statute, 35 U.S.C. § 102. For instance, the date the "applicant determined that he/she had a unique variety" is the equivalent of an actual "reduction to practice" under the patent statutes. However, in addition to the novelty requirement described above, the PVPA also requires that the variety be distinct, uniform, and stable, as defined in 7 U.S.C. § 2401(a).[46]

The PVPA is administered by the Plant Variety Protection Office in the Department of Agriculture, which is in stark contrast to the PPA administered by the Patent and Trademark Office in the Department of Commerce. Additionally, the PVPA provides for a board composed of members of the seed industry, the public sector, and the farm industry, which advise the Secretary of Agriculture on the administration of the PVPA.[47]

The Department of Agriculture issues a Plant Variety Protection Certificate to certify protection of a given variety, giving the plant breeder protection for a period of 18 years.[48] In order to differentiate a cultivar in an application from those already having a certificate or in the public domain, the plant variety protection office maintains computerized descriptions of over 32,000 cultivars of 100 different crops.[49] Thus, examiners can efficiently determine if the cultivar in the application differs by one or more

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[46]*See* Appendix C.

[47]Evans and Taylor, *supra* note 17, at 158.

[48]*Id.*

[49]*Id.*

characteristics from all those presently known. However, the system is not without its drawbacks, as relevant literature must be reviewed and added to the computerized database. Additionally, subjective determinations by the examiner must be made in determining the appropriate descriptive term to be used in the search.[50] The examiners are aided by the fact that the plant variety protection office is located in the National Agricultural Library containing about 2 million volumes and associated electronic retrieval services.[51] Likewise, the Office is near the USDA's Beltsville Agricultural Research Center where examiners may consult with renowned plant scientists.

Since its enactment, the Act has resulted in the issuance of over 2100 plant variety protection certificates.[52] The ability of the examiners in issuing these certificates is evidenced by the fact that none of these certificates have ever been successfully challenged and defeated.[53]

Unlike the plant patent, the plant variety protection certificate protects the seeds of the variety. To receive a plant variety protection certificate, a plant breeder needs only file an application listing specified traits of the variety and a seed deposit of 2,500 seeds.[54] Protection is limited under the Act for several reasons. First, the Act contains a research exemption provision that allows anyone to use the protected variety in plant breeding

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[50] *Id.*

[51] *Id.*

[52] *Id.* at 159.

[53] *Id.*

[54] Jondle, *supra* note 14, at 13.

programs. Second, it also contains a farmer's exemption/crop exemption that may allow large-scale farmers to sell large amounts of the seed of the protected variety.[55] Finally, a lack of distinctiveness criteria in the Act allows another variety with only a minor change in any one trait of the protected variety to also receive a plant variety protection certificate.[56]

In terms of infringement, the patent statutes and the provisions in the PVPA are quite similar. Both prevent recovery for acts of infringement "committed more than 6 yr prior to filing for relief or for acts known to the owner for more than 1 yr before filing for relief."[57] Likewise, both contain provisions for attorney fees and actual notice is required for obtaining damages.

ASGROW SEED COMPANY V. WINTERBOER

The Plant Variety Protection Office (PVPO) readily admits that the "crop exemption, or farmer's exemption, granted in the PVPA generates more complaints to the PVPO, and more requests for information and assistance than any other portion of the law."[58] The Plant Variety Protection Board has recommended to the Secretary of Agriculture that the farmer's exemption/crop exemption be more clearly defined.

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[55]The farmer's exemption/crop exemption applies only to plant variety protection certificates pending or issued before April 4, 1995. *See infra* note 89.

[56]Jondle, *supra* note 14, at 13.

[57]Williams and Weber, *supra* note 15, at 96-97.

[58]Evans and Taylor, *supra* note 17, at 159.

However, the USDA effectively has it's hands tied because "the PVPA's authority to write regulations is limited to the conduct of proceedings in the PVPO."[59] Furthermore, "[r]ights granted under the PVPA and the farmer's exemption are not enforced by the PVPO, therefore the USDA does not have authority to further define the exemption by regulation."[60]

It is for the aforementioned reasons that the burden has fallen on the courts to further interpret and define the farmer's exemption/crop exemption of the PVPA. The interpretation of this exemption was so problematic that it ultimately advanced to the United States Supreme Court in the case of *Asgrow Seed Company v. Winterboer.*[61] This paper will trace the case from its start in the U.S. District Court for the Northern District of Iowa to the U.S. Supreme Court.

The United States District Court for the Northern District of Iowa

Dennis and Becky Winterboer are family farmers raising corn and soybeans in Iowa where they operate as a corporation under the name D-Double-U and doing business as DeeBee's Feed and Seed. Like most Midwestern farmers, the Winterboers sell their crops to local grain elevators and/or feed mills. Unique to the Winterboer farming operation is the cleaning and sale of some of the soybean seed that they grow for use by other farmers in planting the following year's crop.

In an interview with a newspaper reporter, Becky Winterboer said that she and her

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[59] *Id.*

[60] *Id.*

[61] 795 F. Supp. 915 (N.D. Iowa 1991).

husband got into the business of cleaning and selling seed by accident.[62] She had spilled a large bag of hybrid seed corn in their gravel driveway causing the seed to become mixed with stones and other debris. Denny Winterboer purchased a hand held filter to separate the seed from the other components.[63] Later he began filtering oats for his horses and, ultimately, purchased a machine to filter his own seed for planting and those of his neighbors. Finally, he began filtering his own seed for sale to his neighbors for planting purposes.

This practice of saving seed from one's present crop for use in planting the subsequent year is not new. Prior to the establishment of government-funded agricultural research experiment stations and private plant breeding companies, farmers traditionally collected seed from the most prolific and robust plants in their fields for use in planting the following year.[64] By doing so, they continually improved the yields and disease resistance of their crops. This process of artificial selection is the same used by commercial plant breeders, except on a much larger scale and with the aid of the modern understanding of plant genetics.

In December of 1990 the Asgrow Seed Company sent an agent, a Mr. Ness, to the Winterboer's farm to purchase some soybean seed. Mr. Ness bought 20 bags of variety

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[62]Timothy J. McNulty, *Seed Sales Sow Controversy; Farmer, Ag Firm are Locked in David and Goliath Battle*, Chicago Tribune, June 20, 1994, at C1.

[63]Hybrid seed corn sells for $80 per 50 lb bag and, therefore, is quite valuable.

[64]Herman Schuett, a grain farmer, recalls he and his father selecting the largest ears of corn as they were placed in storage bins. Those ears were used as next year's seed. Interview with Herman Schuett, Proprietor of Schuett Farms, in Chapman, Nebraska (January 6, 1996).

number 1938 and 20 bags of variety number 2235 that Mr. Winterboer described as being "just like Asgrow varieties A1937 and A2234."[65] The seed was taken to a company laboratory where a plant biologist determined that the seed sold as variety numbers 1938 and 2235 by the Winterboers was actually Asgrow varieties A1937 and A2234, respectively.

The Asgrow Seed Company initiated suit in the U.S. District Court for the Northern District of Iowa alleging that the Winterboers had been "brown-bagging." This term means that (1) a farmer purchases seed from a seed company, (2) plants the seed, (3) harvests the seed, (4) cleans the seed, (5) places the seed in non-descriptive brown bags, and (6) sells the seed to others.[66] The Winterboers did not dispute that they did any of these actions. They asserted that they were exempt from the provisions of the PVPA under the farmer's exemption/crop exemption.[67]

The farmer's exemption/crop exemption provides that no infringement occurs if:

> [a] person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes . . . [sells] such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable.[68]

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[65]795 F. Supp. at 916.

[66]*Id.*.

[67]7 U.S.C. § 2543.

[68]795 F. Supp. at 917.

The District Court began its analysis by stating that "the duty of this court is to determine and give effect to the intent of Congress," quoting *Ozawa v. U.S.*[69] Noting that legislative history on the PVPA is very limited, the Court looked to *Delta and Pine Land Company v. People Gin Company.*[70] This case notes that the farmer exemption seems to be contrary to the primary purpose of the act:

> The broader the construction given the exemption, the smaller the incentive for breeders to invest the substantial time and effort necessary to develop new strains. The less time and effort that is invested, the smaller the chance of discovering superior agricultural products. If less time and effort is invested, long-term benefits to the farmer in the form of superior crops and higher yields will be lost. Although it may appear that the broadest reading of the exemption would benefit farmers today, it could be detrimental to their interest tomorrow. Thus, the narrower reading of the exemption is more in keeping with Congress' primary objective. Such a reading creates the greatest amount of internal harmony in the overall statutory scheme. We therefore conclude that Congress did not intend for the crop exemption to cover every sale from one farmer to another.[71]

The District Court found this argument convincing and rejected the Winterboer's argument that they could "'sell all the novel variety that we have grown so long as we sell it to other farmers and follow state law.'"[72] As a result, the Court concluded that farmers should only be allowed to save enough seed of the protected variety as he/she may need to plant in the next crop year. Thus, under no circumstances, may a farmer save more seed

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[69]260 U.S. 178, 43 S.Ct. 65, 67 L.Ed. 199 (1922).

[70]694 F.2d 1012 (5th Cir. 1983).

[71]795 F. Supp. at 918, *quoting Delta Pine* at 1016.

[72]795 F. Supp. at 919.

in a given year than he/she may reasonably be expected to plant in the next crop year. The Court found that the Winterboers had exceeded this amount of saved seed and, therefore, were in violation of the PVPA. A permanent injunction was issued by the Court preventing the Winterboers from "selling seed, except for saved seed, to other farmers and/or engaging in any form of 'brown bagging.'"[73]

The United States Court of Appeals for the Federal Circuit

The Winterboers appealed[74] to the United States Court of Appeals for the Federal Circuit (CAFC), which has exclusive jurisdiction over appeals involving the PVPA.[75] As one may expect, the appeal attracted the attention of most of the major U.S. seed companies,[76] in this case of first impression.[77] However, according to at least one

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[73]795 F. Supp. at 920.

[74]With the aid of hindsight, the Winterboers state that they would probably have settled the case like other farmers whom Asgrow had brought suit against. One reason they decided to appeal was the fact that Becky Winterboer's brother-in-law, William Bode, was a patent lawyer and he did not require an up-front payment of fees. McNulty, *supra* note 62.

[75]28 U.S.C. §§ 1295(a)(1), 1338 (1988).

[76]Twelve commercial seed companies, besides Asgrow Seed Co., filed *amicus curiae* briefs. The American Seed Trade Association also filed an *amicus curiae* brief. Not surprisingly, 11 companies supported Asgrow's position, while the remaining company took a neutral position on *Asgrow*, but urged the CAFC to reject the district court's reasoning.

[77]Shane S. Pierce, *Patent Law: The Crop Exemption of the Plant Varieties Protection Act-The Battle Between Farmers and the Seed Industry: How Much Protected Seed May a Farmer Save and Sell Without Committing Infringement?* [Asgrow Seed Co. V. Winterboer, *982 F.2d 486 (Fed Cir. 1992)*, rev'd, *115 S. Ct. 788 (1995)]*, 34 Washburn L.J. 391, 399 n.42 (1995), *citing* Appellant's Reply Brief at 32, 41-43, *Asgrow* (No. 92-1048).

practitioner who represented the Asgrow Seed Company in another PVPA matter, this case is not technically a case of first impression.[78] The filing of *amicus curiae* briefs by the seed industry is not surprising considering that it has made concerted efforts to convince Congress to amend the PVPA to eliminate a farmer's right to sell saved seed for planting purposes.[79] It has even went so far as to "influence the Department of Agriculture to create a regulation to nullify the rights granted farmers under the crop exemption."[80]

The Court began by looking at the various provisions within the PVPA that address infringement and the farmer's exemption/crop exemption. Of particular importance was the CAFC's interpretation of 7 U.S.C. § 2543, which it found "does not limit the amount of seed a farmer can save."[81] However, the Court noted that the farmer's exemption provision "places further conditions on brown bag sales of saved seed from a crop grown from PVPA seed."[82] First, both the buyer and seller of brown bag seed must be farmers. Second, their primary motivation in planting the protected variety must be to harvest the progeny seed for sale as grain or livestock feed, not for sale as seed to others for planting.

The Court stated that the district court committed an error "in determining that the

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[78]Cantor, *supra* note 29, at 754 n.6, *referring to Asgrow Seed Co. v. Kunkle Seed Co., Inc.* (No. 87-1402).

[79]Pierce, *supra* note 77, at 399 n.42, *citing* Appellant's Brief at 7-8, *Asgrow* (No. 92-1048).

[80]Pierce, *supra* note 77, at 399 n.42, *citing* Appellant's Brief at 7, *Asgrow* (No. 92-1048).

[81]982 F.2d at 489.

[82]*Id.*

crop exemption of section 2543 contains an ensuing crop limitation on the amount of seed a farmer can save. The trial court incorrectly read the crop exemption to limit brown bag sales of novel varieties to the maximum amount of seed the selling farmer would save to plant another crop of like size."[83] The Court went on to note that the Act contained no such restriction and it would not read such a restriction into the Act. The Court conceded that "[w]ithout meaningful limitations, the crop exemption could undercut much of the PVPA's incentives."[84] The Court tempered it's ruling by noting that "[s]ection 2543 does not give farmers a blanket right to sell saved seed. Rather the crop exemption has several limitations. A farmer must meet each of these requirements to qualify for the exemption."[85] The Court outlined the limitations as follows:[86]

> 1. a farmer remains subject to infringement under subsections 2341(3) and (4);
>
> 2. a farmer may only save, use, or sell seed produced from or descended from seed obtained by authority of the PVPA certificate owner for seeding purposes;
>
> 3. a farmer selling a novel variety must primarily grow crops from that seed for consumption;
>
> 4. a farmer acquiring a novel variety must primarily grow crops from that seed for consumption;
>
> 5. a farmer who acquires a novel variety in a brown bag sale can neither

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[83] *Id.* at 491.

[84] *Id.*

[85] *Id.* at 491-92.

[86] *Id.* at 490.

save nor sell seed harvested from that seed;

6. the sale must comply with state laws; and

7. a farmer cannot divert seed originally sold for consumption to planting purposes.

This was not the last time the CAFC was to address this case, as the Asgrow Seed Company filed a petition to have the case reheard *en banc*. The petition was denied, however, the vote was close among the judges with 5 judges voting to rehear the appeal *en banc* and 6 judges voting not to rehear the appeal *en banc*.[87]

The United States Supreme Court

The U.S. Supreme Court granted *certiorari*[88] and the case was argued on November 7, 1994. In an 8 to 1 decision, the Court reversed the CAFC and upheld the decision of the U.S. District Court. It should be noted at the outset that Congress amended the PVPA while the present case was waiting to be decided by the U.S. Supreme Court. The "[a]mendment has the effect of eliminating the exemption from infringement liability for farmers who sell PVPA-protected seed to other farmers for reproductive purposes. That action, however, has no bearing on the resolution of the present case, since the amendments affect only those certificates issued after April 4, 1995, that were not pending on or before that date."[89] Thus, the issue before the Court was not moot, as

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[87]130 L.Ed.2d 690

[88]511 U.S. -----, 126 L.Ed.2d 20, 114 S.Ct. 50 (1994).

[89]130 L.Ed.2d at 690 n.2. *See also* Plant Variety Protection Act Amendments of 1994, Pub L 103-349, 108 Stat 3136, 3142.

the ruling applies to all plant variety protection certificates that were issued or pending *before* April 4, 1995.

Asgrow Seed expressed concern that if the Supreme Court were to allow farmers to sell less than half of their total crop, a few farmers could still effectively eliminate the Company's seed sales in a given state.[90] As an example, Asgrow points out that the Winterboer's sold enough seed in 1990 to plant 10,000 acres (assuming a conventional seeding rate of 1 bushel of soybean seed/acre). Meanwhile, Asgrow sold enough seed in the State of Iowa to plant 500,000 acres in 1990. Thus, 50 farmers operating at the same capacity of the Winterboers could effectively eliminate Asgrow's entire sales in Iowa. However, a former attorney with Pioneer Hi-bred International, states that the majority of brown baggers consists of a large number of small infringers, not a small number of large infringers.[91]

Asgrow further notes that the Winterboers were profitably selling their seed at $8.70/bushel, while Asgrow was selling their seed for almost twice as much, $16.20-$16.80/bushel.[92] [93] Thus, farmers would have an incentive to purchase the seed from other

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[90]Pierce, *supra* note 77, at 404 n.89, *citing* Appellee's Brief at 6-7, *Asgrow* (No. 92-1048).

[91]Pierce, *supra* note 77, at 404 n.89, *citing* Appellee's Brief at 33-34, *Asgrow* (No. 92-1048).

[92]Pierce, *supra* note 77, at 404 n.89, *citing* Appellee's Brief, at 6 n.10, *Asgrow* (No. 92-1048).

[93]In 1990, soybeans could be sold at a grain elevator in Central Nebraska for approximately $5.80/bushel. Thus, even at $8.70/bushel, the Winterboers were achieving a much greater profit on their soybeans than if they had sold the seed to a local grain elevator, even considering the additional expense of cleaning and bagging

farmers, as seed tends to be second only to fertilizer in total input costs for farmers.[94] Ultimately, mass purchasing of seed by farmers from other farmers would create a disincentive for seed companies to invest financial resources in the development of new varieties.[95] A New Mexico State University Agronomist, Dr. Charles Glover, found that "[m]ore than a million dollars and up to 10 years of research is required to develop and release a new variety."[96]

In response, the Winterboers argue that there is no evidence that "brown bag selling is occurring on a large scale basis in Iowa."[97] John Falk, an Agricultural Commodities Assurance Program Administrator for the Kansas Department of Agriculture, argues that the reason brown bagging does not appear prevalent is because "it is difficult to monitor and catch brown baggers."[98] The reasons behind this difficulty in catching brown baggers are two-fold. First, the actual transactions between farmers occur in non-public settings, such as the local coffee shop. Second, virtually all the state

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the seed. Interview with the Aurora Co-operative Grain Elevator Company, Aurora, Nebraska (Jan. 10, 1996).

[94]Interview with Herman Schuett, *supra* note 64.

[95]Pierce, *supra* note 77, at 404 n.89, *citing* Appellee's Brief at 25, *Asgrow* (No. 92-1048).

[96]Pierce, *supra* note 77, at 404 n.89, *citing* "The Plant Variety Protection Act isn't a Conspiracy," Countryside & Small Stock J., July 1993, at 60.

[97]Pierce, *supra* note 77, at 404 n.89, *citing* Appellant's Reply Brief at 25, *Asgrow* (No. 92-1048).

[98]Pierce, *supra* note 77, at 404 n.89, *citing* a telephone interview with John Falk (Sept. 9, 1994).

departments of agriculture lack the financial resources to hire agents as the Asgrow Seed Company did in the present case. As a result of these two hindrances, Falk says that the Kansas Department of Agriculture relies upon "concerned local farmers and businessmen to report brown baggers."[99]

Harold Rudolf, a farmer of 42 years in Palmer, Nebraska, states that he never recalls a farmer ever turning-in another farmer for brown bagging seed in his community. He further states that farmers are "a very tight-knit group" and that you "just don't turn someone in for what farmers view as a minor violation because you never know when you may need your neighbor's help in the future."[100]

In response to Asgrow's argument that seed companies cannot be profitable under the current regulatory environment of the PVPA, the Winterboers point to the ever-increasing profits of these companies. Pioneer Hi-bred International, the world's largest seed company, recorded a "profit of $104.2 million in fiscal 1991 and topped $1 billion in sales for the first time."[101] Moreover, the Winterboers note that even Upjohn's agricultural division, of which Asgrow seeds is a wholly-owned subsidiary, posted "sales of $615 million and operating profits of $74 million in 1990, both higher than the previous

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[99]*Id.*

[100]Interview with Harold Rudolf, a grain and livestock farmer, in Palmer, Nebraska (Jan. 11, 1996).

[101]Pierce, *supra* note 77, at 404 n.89, *citing* Appellant's Reply Brief at 34, *Asgrow* (No. 92-1048).

year."[102]

What the Winterboers fail to point out is that both of these companies, particularly Pioneer Hi-bred International, derive the majority of their seed sales from hybrid seed sales, which farmers cannot produce themselves as discussed *supra*. Therefore, any dent in the sales of non-hybrid seeds, i.e. open-pollinated seeds, has little impact upon the profitability or sales of either of these companies. Asgrow seeds even quotes Dale Porter, a former Pioneer Hi-bred International attorney, as stating he "observed difficulties for his company from brown bagging 'in all the *open pollinated* crops, principally wheat and soybeans.'"[103] (Emphasis added).

Asgrow argues that brown bagging is a "lose-lose" situation for both the seed companies and the American farmer. If seed companies cannot recover their research and development expenses, seed companies will forego the continued development of crops having higher yields and improved disease resistance. America's toughest competition in the world, agricultural market-place is Europe, which has "much more effective patent-like laws."[104] Mr. Falk states that Pioneer Hi-bred International is profitable in Europe "[d]ue primarily to the European laws that protect Pioneer's proprietary rights in the seed

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[102]Pierce, *supra* note 77, at 404 n.89, *citing* UpJohn's 1990 Annual Report to Shareholders.

[103]Pierce, *supra* note 77, at 404 n.89, *citing* Appellee's Brief at 33-34, *Asgrow* (No. 92-1048).

[104]Pierce, *supra* note 77, at 404 n.89, *citing* Appellee's Brief at 34, *Asgrow* (No. 92-1048).

market."[105]

The Supreme Court found the farmer's exemption confusing. Justice Scalia, writing for the majority, notes at the beginning of his opinion that "[i]t is quite impossible to make complete sense of the provision at issue here."[106] He goes on to note, humorously, that "not all mysteries will be solved, (as) we enter the verbal maze of § 2543. The entrance, we discover, is actually an exit, since the provision begins by excepting certain activities from its operation . . ."[107] In particular, the Court notes that a farmer does not qualify for the exemption if (1) he has "sexually multipl[ied] the novel variety as a step in marketing (for growing purposes) the variety" or (2) he has "use[d] the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom."[108]

Following the U.S. Supreme Court's ruling in this case, Judge Rader was asked whether he found the legislative history to be helpful in the construction of the Plant Variety Protection Act. He responded that the CAFC "labored very hard to ascertain the meaning of the statutory terms and make them internally consistent, and found it very difficult to do so" and that "the legislative history in that particular instance was not very

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[105]Pierce, *supra* note 77, at 404 n.89, *citing* a telephone interview with John Falk (Sept. 9, 1994)

[106]130 L.Ed.2d at 690-91.

[107]130 L.Ed.2d at 691.

[108]130 L.Ed.2d at 691, *citing* 7 U.S.C. §§ 2541(3)-(4).

revelatory. . . ."[109] He went on to state that there are "gigantic forces" pulling in opposite directions involved in the creation of this legislation.

The problem is compounded by the legislative members themselves who "wish to nod in both directions and protect their political flanks."[110] Congressmen from the farm states opposed the American Seed Trade Association (ASTA) in Congressional hearings on the Plant Variety Protection Act.[111] These Congressmen were concerned that the proposal by the ASTA would undermine a farmer's right to save and sell seed to neighboring farmers.[112] The compromise resulted in combining the original § 112 ("Right to Save Seed") and § 114 ("Crop Exemption") into a new § 113,[113] which Congress ultimately passed and codified as 7 U.S.C. § 2543.[114] Thus, one can appreciate why statements often contradict one another in this Act, creating a muddled legislative history.

The Court states that the record indicates that the Winterboers not only readily admit that they "sexually multiplied" the novel varieties, but also sold almost all of their

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[109]*An Interview with Circuit Judge Randall R. Rader*, 7 No. 8 J. Proprietary Rts. 2 (Aug. 1995).

[110]*Id.*

[111]Pierce, *supra* note 77, at 399 n.42, *citing* Appellant's Brief at 5-6, *Asgrow* (No. 92-1048).

[112]Pierce, *supra* note 77, at 399 n.42, *citing* 177 Cong. Rec. 40, 295-303 (1970).

[113]Pierce, *supra* note 77, at 399 n.42, *citing* Appellant's Brief at 5-6, *Asgrow* (No. 92-1048).

[114]Pierce, *supra* note 77, at 399 n.42, *citing* Appellant's Brief at 7-8, *Asgrow* (No. 92-1048).

harvest of 12,037 bushels of soybeans for use as seed, i.e. "for growing purposes."[115] Thus, the Court found that the central issue in the case was whether or not "the Winterboers' planting and harvesting were conducted 'as a step in marketing' Asgrow's protected seed varieties for growing purposes. If they were, the Winterboers were not eligible for the § 2543 exemption. . . ."[116]

The Court felt that marketing meant "the holding forth of property for sale, together with the activities preparatory thereto (in the present case, cleaning, drying, bagging and pricing the seeds)."[117] The Court even went so far as to state that "[e]ven when the holding forth for sale relies upon no more than word-of-mouth advertising, a marketing of goods is in process."[118] This differed from the CAFC's interpretation of marketing, which it felt must include "extensive or coordinated selling activities."[119] Thus, the Court's definition was very broad, whereas the CAFC's definition was quite narrow. On the basis of the Court's broad definition of "marketing," the Court concluded that the Winterboers did not qualify for the 7 U.S.C. § 2541(3) exemption and had, therefore, infringed Asgrow's plant variety protection certificate.

Interestingly, the court did not stop its analysis here but went on to further interpret the language of the Act under the scenario that a person had **not** violated either 7

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[115]130 L.Ed.2d at 691.

[116]*Id.*

[117]*Id.*

[118]*Id.* at 692.

[119]982 F.2d at 492.

U.S.C. § 2541(3) or 7 U.S.C. § 2541(4).[120] Specifically, the Asgrow Court looked at the following provision of 7 U.S.C. § 2543:[121]

> it shall not infringe any right hereunder for a person to *save seed* produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use *such saved seed* in the production of a crop for use on his farm, or for sale as provided in this section . . . . (Emphasis in the original).

The Court interprets the first sentence of the clause to allow seed that has been saved "for reproductive purposes ('saved seed') to be sold for such purposes."[122] But, this right "does *not* extend to saved seed that was grown *for the very purpose* of sale ('marketing') for replanting-- because in that case, § 2541(3) would be violated, and the above-discussed exception to the exemption would apply. As a practical matter, since § 2541(1) prohibits all unauthorized transfer of title to or possession of the protected variety, this means that the only seed that can be sold under the proviso is seed that has been saved by the farmer to replant his own acreage."[123]

IMPACTS OF COURT DECISION ON FARMERS & PLANT BREEDERS

According to one author, the effect of seed companies owning "plant genetic

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[120]130 L.Ed.2d at 692.

[121]*Id.*

[122]*Id.* at 694.

[123]*Id.*

resources" on American farmers is three-fold:[124]

1. There is an overall increase in farming costs.

2. There is a reduction in the types of crops from which the farmer can choose to plant

3. There is lack of representation by farmers in decisions affecting the future direction of plant research.

Gustad contends that the overall increase in farming costs is a result of a few companies owning the majority of plant patents.[125] As a result, there is little competition within the industry. What the author fails to realize is the plethora of small, privately-owned seed companies offering seed for sale. In any given farm community in Central Nebraska, one can find at least twelve seed companies offering seed for sale to farmers.[126] In fact, almost every farmer acts as a dealer, i.e. an agent, for a seed company in his/her locale for the sole reason of getting discounts on his own seed to plant his own acreage.[127]

Secondly, Gustad argues that if a farmer is not allowed to sell seed from the previous year's crop to other farmers, he will inevitably plant it himself. In turn, this

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[124]Susan E. Gustad, *Legal Ownership of Plant Genetic Resources-- Fewer Options for Farmers*, 18 Hamline L. Rev. 459, 471 (1995).

[125]*Id.* at 471, *citing* Frederick H. Buttel & Jill Belsky, *Biotechnology, Plant Breeding, and Intellectual Property: Social and Ethical Dimensions, in* Owning Scientific and Technical Information, Value and Ethical Issues 117 (Vivian Weil & John W. Snapper eds., 1989).

[126]Interview with Herman Schuett, *supra* note 64.

[127]*Id.*

practice would discourage crop rotation.[128] This argument is also flawed, as it is not the lack of the types of crops from which to chose to plant that determines what the farmer will grow, but rather it is the prices on the open-market that determines what types of crops the farmer will grow. For example, if the price of soybeans is such that they are significantly more profitable than corn, the farmer will plant more acreage to soybeans. Like any business, it is the demands of the market which drives what farmers offer for sale.

The author's third argument is a legitimate concern. She cites chemical companies, who own proprietary herbicides, developing seeds having resistance to the herbicides.[129] Developing such seeds assure the chemical company of the sale of their proprietary herbicide. For instance, Monsanto chemical company sells a discounted "package" in which the farmer purchases a defined amount of RoundUp-resistant soybean seed coupled with enough RoundUp herbicide to apply to the acreage of soybeans.[130] A farmer would likely "prefer to see the development of crops resistant to the weeds and pests themselves instead of the chemicals which deal with the problem."[131]

This discussion would not be complete without addressing the impact on farmers in other nations. Of particular concern is the impact in developing countries which often

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[128]Crop rotation means that a farmer plants a crop on the land one year followed by a different crop the following year. Certain crops complement one another because they differ in soil fertility requirements, thus preventing the depletion of natural fertility.

[129]Gustad, *supra* note 124, at 471.

[130]Interview with Rod Shumacher, an agronomist specializing in pest control, in Aurora, Nebraska (Jan. 10, 1996).

[131]Gustad, *supra* note 124, at 472.

lack the technology to compete in the development of improved plant varieties. Perhaps even more important is the taking of native plant resources by developing countries and then attempting to sell back improved varieties developed from these native plant resources at an increased cost.

Many developing countries view the taking of native flora by multinational companies as an "uncompensated exploitation of their 'plant genetic resources' in the name of intellectual property rights," because these companies protect their discoveries through breeders' rights and then attempt to sell back the plants for an increased price.[132] The value of these plant genetic resources is significant-- in the United States alone it has been estimated that the plant genetic resources from developing countries contributes $500 million per year to the wheat crop.[133]

Recently, developing countries have become more out-spoken on the taking of native plant resources. However, they are often unsuccessful in their efforts to receive compensation for the use of these resources as the result of intellectual property laws. Among the aspects of intellectual property laws that work against developing countries is the concept of "secondary use."

Odek provides an excellent example of "secondary use." In 1990, the University

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[132]James O. Odek, *Bio-Piracy: Creating Proprietary Rights in Plant Genetic Resources*, 2 J. Intell. Prop. L. 141 (1994).

[133]Odek, *supra* note 132, at 144, *citing*Albert Sasson, *Biotechnologies and Development*, UNESCO, Technical Centre for Agricultural and Rural Cooperation 296 (1988) and Pat R. Mooney, The Law of the Seed-- An Introduction, 77-78 (1984).

of Toledo applied for a patent on the use of Endod to control zebra mussels.[134] This plant, native to Africa for centuries, is used by the African people for soap and shampoo. The African people will receive no royalties from the patent because, under European patent law, this case involves a new use of an old product.[135] The University's argument would be that it's use, controlling zebra mussels, is not analagous in any way to the African peoples' use, soap and shampoo. As a result, the patent would be upheld since "a new use of a known substance is supportable if the new use involves practical difficulties which the patentee has been the first to see and overcome by his own ingenuity."[136]

Other factors, besides patent laws, facilitate the uncompensated removal of plant genetic resources from developing countries. The international community classifies plant genetic resources as part of a "common heritage of mankind." Such a classification means that plant materials are "immune to private property claims" and are "in the international public domain."[137] To further complicate matters for developing countries, UPOV assents with the "common heritage of mankind" principle. Under UPOV, "breeder's rights accrue whatever the origin, 'artificial or natural,' of the initial variation from which the variety was derived."[138]

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[134]Odek, *supra* note 132, at 146-47.

[135]Odek, *supra* note 132, at 147.

[136]*Id.*, *citing* Douglas Falconer *et al.*, Terrell on the Law of Patents S 316, at 129 (12th ed. 1971).

[137]Odek, *supra* note 132, at 148.

[138]*Id.* at 147, *citing* International Convention for the Protection of New Varieties of Plants, Dec. 2, 1961, art. 6, 33 U.S.T. 2703, 815 U.N.T.S. 112.

Developing countries have become ever more vocal in their opposition to the free access to their plant genetic resources. These countries insist that if the international community wishes to classify their plant genetic resources as part of a "common heritage of mankind," then "all commercial varieties derived from these resources in developed countries should be similarly classified."[139] The United Nation's Food and Agriculture Organization's (FAO) International Undertaking on Plant Genetic Resources agrees with the developing countries' argument.[140] However, as a result of developed countries' lobbying against the inclusion of commercial varieties for fear of threat to breeders' rights, the FAO's position was reversed in subsequent sessions.[141]

Odek argues that even if developing countries were successful in getting commercial varieties classified under "common heritage of mankind," this would not necessarily benefit developing countries.[142] Typically, developed countries create varieties of plants that thrive only under energy-intensive inputs and management, such as fertilizer and abundant water. These varieties will not fare well in the environment of a developing country where fertilizer and water resources are scarce, at best.

A continuing exchange of ideas and information may ultimately result in a mutually

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[139]Odek, *supra* note 132, at 150, *citing* Jack R. Kloppenburg, Jr. & Daniel L. Kleinman, *Seeds of Controversy: National Property Versus Common Heritage*, *in* Seeds and Sovereignty: The Use and Control of Plant Genetic Resources 172 (1988).

[140]Odek, *supra* note 132, at 150, *citing* Kloppenburg & Kleinman, *supra* note 139, at 174.

[141]Odek, *supra* note 132, at 150, *citing* International Undertaking on Plant Genetic Resources, Report of the Council of FAO, at 71-75, U.N. Doc. C84/REP (1983).

[142]Odek, *supra* note 132, at 151.

beneficial arrangement between developed countries' need for intellectual property protection and developing countries' need for the protection of the native plant genetic resources. Such an arrangement, however, will not be achieved without much work and effort on the part of both groups.

CONCLUSION

The United States has made major progress in the protection of plant varieties. Initially, unlike other innovations, plants were accorded no form of intellectual property protection in the United States. With the passage of the Plant Patent Act in 1930, Congress recognized the benefits that would accrue to society by conferring patent protection on asexually propagated plants. Indeed, this action by Congress sparked the formation of the nursery industry that today generates billions of dollars of revenue each year. Moreover, the Amercan consumer enjoys the fruits, literally, of this Act even today.

As the science of genetics and plant breeding progressed, Congress recognized the need to protect sexually-propagating plants, resulting in the passage of the Plant Variety Protection Act in 1970. This action also spawned a multi-billion dollar industry, that of the seed industry. Finally, the landmark decision of *Ex parte Hibberd et al.* in 1985 gave plant breeders the ability to get utility patent protection on plants themselves. The fruits of this decision remain to be seen, as genetically-engineered crops are just beginning to emerge from agricultural biotechnology companies. In sum, intellectual property protection for plants has gone the full spectrum from non-protection to multiple forms of protection.

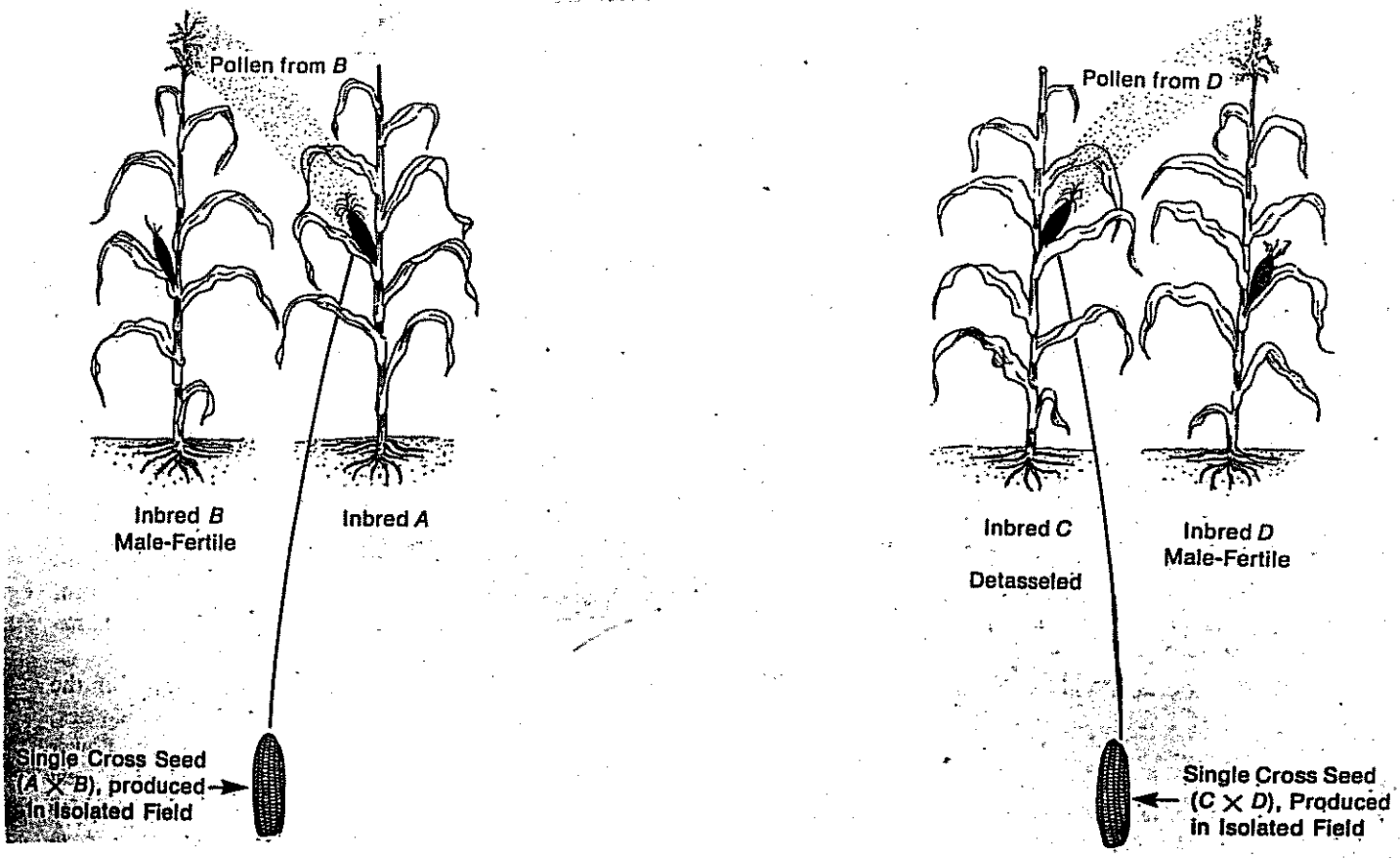
This ever-increasing protection given to plants has not been without hurdles, as evidenced by the problematic farmer's exemption/crop exemption in the PVPA. Ultimately, it took a U.S. Supreme Court decision to make a final interpretation of this legislation. Although the decision has no relevance to plant variety protection certificate applications pending on or after April 4, 1995, the decision still controls all plant variety protection certificate applications issued or pending prior to April 4, 1995.

In the larger context of the PVPA is the continuing struggle between seed companies wishing to protect their research costs in the development of a new plant variety, while giving farmers the decades-old "privilege" to save seed from their crops for planting the following year. As with all major issues, there are no easy answers.

Finally, as we move ever-closer to the 21st century and an inter-linked global economy, it becomes very important to recognize plant variety protection on the international level. Each year additional nations join the International Convention for the Protection of New Varieties of Plants, thereby recognizing intellectual property rights for plant breeders in their respective countries.

Protection on the international level brings a whole new level of complexities not observed domestically. Perhaps most troubling is the issue of extraction of native plant genetic resources from developing countries and the use of these native plants by developed nations to create new commercial varieties. The international community must join together in a spirit of cooperation to see that all nations enjoy the fruits of the harvest.

APPENDIX A


Pollen from B
Inbred B
Male-Fertile
Inbred A
Single Cross Seed
(A × B), produced
in Isolated Field
Pollen from D
Inbred C
Detasseled
Inbred D
Male-Fertile
Single Cross Seed
(C × D), Produced
in Isolated Field

APPENDIX B

Supplier represents and Purchaser hereby acknowledges that Supplier is engaged in the business of developing and supplying for sale various varieties of seeds. Supplier has a substantial investment in the development and production of Stine Brand Seeds and in the use of the subsequent production of the Stine Brand Seeds herein sold. Supplier has expended substantial effort in developing a market for Stine Brand Seeds. Supplier has existing contractual relationships with other purchasers and growers for the sale of Stine Brand Seeds and expectations of additional contracts for the Sale of Stine Brand Seeds in the future. In consideration of the foregoing and in consideration of the Stine Brand Seeds herein sold, *Purchaser hereby acknowledges and agrees that the production from the Stine Brand Seeds herein sold will be used only for feed or processing and will not be used or sold for seed, breeding or any variety improvement purposes.* Purchaser acknowledges Supplier's proprietary interest in the use of subsequent production from the seeds herein sold, and agrees it would be a violation of this agreement to allow the subsequent production of the seed herein sold to be used to create a seed variety or seed product from said production, which may be used for seed purposes by individuals or entities other than Stine Seed Company. Purchaser agrees and acknowledges that any use of Stine Brand Seeds, which is forbidden by this agreement, will constitute a misappropriation of the personal property of Stine Seed Company, and will therefore result in a breach of the agreement. Purchaser agrees that Supplier may bring an action in Dallas County, Iowa, to recover damages as a result of the breach of this agreement, along with reasonable attorney fees and costs associated with any action commenced in regard thereto. Purchaser agrees and acknowledges that any use of Stine Brand Seeds forbidden by this agreement will damage Supplier's legitimate expectation of future sales of seed and any use of Stine Brand Seeds in violation of this agreement will constitute an attempt to intentionally injure or destroy Supplier's prospective business expectations in future sale of Stine Brand Seeds. Purchaser agrees and acknowledges that any use of Stine Brand Seeds in violation of this agreement will cause a substantial damage to Stine Seed Company, and that if subsequent production of the seed herein sold is used to create a seed variety or seed product a substantial damage to Stine Seed Company for all seed varieties or seed products thereby created will be caused. This agreement shall not limit any other rights, legal or equitable, that the Supplier have but shall be accumulative.

APPENDIX C

CHAPTER 57—PLANT VARIETY PROTECTION

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CROSS REFERENCES

False representations as certified seed, see 7 USCA § 1562.
Illegal sales of uncertified seed, see 7 USCA § 1611.
Invention defined as including any novel variety of plant protectable under this chapter, for purposes of determining patent rights in federally-assisted inventions, see 35 USCA § 201.

WESTLAW ELECTRONIC RESEARCH

WESTLAW supplements United States Code Annotated and is useful for additional research. Enter a citation in Insta-Cite for display of parallel citations and case history. Enter a constitution or statute citation in a case law database for cases of interest.

Example query for Insta-Cite: IC 644 F.Supp. 998

Example query for United States Constitution: (fourteenth +2 amendment) (const.amend. +5 14)

Example query for statute: "7 U.S." "7 U.S.C.* * *" /5 2011

Also, see the WESTLAW Electronic Research Guide following the Explanation.

SUBCHAPTER I—PLANT VARIETY PROTECTION OFFICE

PART A—ORGANIZATION AND PUBLICATIONS

§ 2321. Establishment

There is hereby established in the Department of Agriculture an office to be known as the Plant Variety Protection Office, which shall have the functions set forth in this chapter.

(Pub.L. 91-577, Title I, § 1, Dec. 24, 1970, 84 Stat. 1542; Pub.L. 96-574, § 1, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91-1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96-1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Pub.L. 96-574 substituted "an office" for "a bureau".

Effective Dates
1970 Act. Section 141 of Pub.L. 91-577 provided that: "This Act [this chapter] shall take effect upon enactment [Dec. 24, 1970]. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation."

Short Title
1970 Act. Section 145 of Pub.L. 91-577 provided that: "This Act [enacting this chapter, section 1611 of this title, and sections 1545 and 2353 of Title 28, Judiciary and Judicial Procedure, amending section 1562 of this title and sections 1338 and 1498 of Title 28, and enacting provisions set out as notes under this section] may be cited as the 'Plant Variety Protection Act'."

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.
Texts and Treatises
Purpose of provisions for plant variety protection, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3585.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2322. Seal

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

(Pub.L. 91-577, Title I, § 2, Dec. 24, 1970, 84 Stat. 1542.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91-1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91-577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2323. Organization

The organization of the Plant Variety Protection Office shall, except as provided herein, be determined by the Secretary of

Agriculture (hereinafter called the Secretary). The office shall devote itself substantially exclusively to the administration of this chapter.

(Pub.L. 91–577, Title I, § 3, Dec. 24, 1970, 84 Stat. 1542.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide *following the Explanation.*

§ 2324. Restrictions on employees as to interest in plant variety protection

Employees of the Plant Variety Protection Office shall be ineligible during the periods of their employment, to apply for plant variety protection and to acquire directly or indirectly, except by inheritance or bequest, any right or interest in any matters before that office. This section shall not apply to members of the Plant Variety Protection Board who are not otherwise employees of the Plant Variety Protection Office.

(Pub.L. 91–577, Title I, § 4, Dec. 24, 1970, 84 Stat. 1542.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2325. Repealed. Pub.L. 96–574, § 2, Dec. 22, 1980, 94 Stat. 3350

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 91–577, Title I, § 5, Dec. 24, 1970, 84 Stat. 1542, required employees designated by the Secretary to give bond before entering upon their duties.

§ 2326. Regulations

The Secretary may establish regulations, not inconsistent with law, for the conduct of proceedings in the Plant Variety Protection Office after consultations with the Plant Variety Protection Board.

(Pub.L. 91–577, Title I, § 6, Dec. 24, 1970, 84 Stat. 1542.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2327. Plant Variety Protection Board

(a) Appointment

The Secretary shall appoint a Plant Variety Protection Board. The Board shall consist of individuals who are experts in various areas of varietal development covered by this chapter. Membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public. The Secretary or his designee shall act as chairman of the Board without voting rights except in the case of ties.

(b) Functions of Board

The functions of the Plant Variety Protection Board shall include:

(1) Advising the Secretary concerning the adoption of Rules and Regulations to facilitate the proper administration of this chapter;

(2) Making advisory decisions on all appeals from the examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select, as temporary members, experts in the area to which the particular appeal relates; and

(3) Advising the Secretary on all questions under section 2404 of this title.

(c) Compensation of Board

The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses.

(Pub.L. 91–577, Title I, § 7, Dec. 24, 1970, 84 Stat. 1543.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2328. Library

The Secretary shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the examiners in the discharge of their duties.

(Pub.L. 91–577, Title I, § 8, Dec. 24, 1970, 84 Stat. 1543; Pub.L. 96–574, § 3, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.
1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Pub.L. 96–574 substituted "examiners" for "officers".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2329. Register of protected plant varieties

The Secretary shall maintain a register of descriptions of United States protected plant varieties.

(Pub.L. 91–577, Title I, § 9, Dec. 24, 1970, 84 Stat. 1543; Pub.L. 96–574, § 4, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Amendments
1980 Amendment. Pub.L. 96–574 substituted "descriptions" for "published specifications", and struck out provisions requiring maintenance of a file for other information.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2330. Publications

(a) The Secretary may publish, or cause to be published, in such format as he shall determine to be suitable, the following:

(1) The descriptions of plant varieties protected including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office, including annual indices.

(3) Pamphlet copies of the plant variety protection laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of plant breeding.

(c) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of descriptions, drawings, and photographs of United States protected plant varieties for copies of descriptions, drawings, and photographs of applications and protected plant varieties of foreign countries.

(Pub.L. 91–577, Title I, § 10, Dec. 24, 1970, 84 Stat. 1543; Pub.L. 96–574, §§ 5–8, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments

1980 Amendment. Subsec. (a)(1). Pub.L. 96–574, § 5, substituted provisions respecting descriptions, for provisions respecting specifications.

Subsec. (b). Pub.L. 96–574, §§ 6, 7, struck out former subsec. (b) which related to photolithography and lithography. Former subsec. (c) was redesignated as (b) and, as so redesignated, "plant breeding" was substituted for "the useful arts".

Subsec. (c). Pub.L. 96–574, §§ 7, 8, redesignated former subsec. (d) as (c), and as so redesignated, substituted "descriptions" for "specifications" in two places. Former subsec. (c) was redesignated as (b).

Subsec. (d). Pub.L. 96–574, § 8, redesignated former subsec. (d) as (c).

Effective Dates

1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System

Weeds and other noxious plants, see Agriculture ⇐8.

Encyclopedias

Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2331. Copies for public libraries

The Secretary may supply printed copies of descriptions, drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public.

(Pub.L. 91–577, Title I, § 11, Dec. 24, 1970, 84 Stat. 1544; Pub.L. 96–574, § 9, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments

1980 Amendment. Pub.L. 96–574 substituted "descriptions" for "specifications".

Effective Dates

1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System

Weeds and other noxious plants, see Agriculture ⇐8.

Encyclopedias

Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART B—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

§ 2351. Day for taking action falling on Saturday, Sunday, or holiday

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

(Pub.L. 91–577, Title I, § 21, Dec. 24, 1970, 84 Stat. 1544.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2352. Form of papers filed

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

(Pub.L. 91–577, Title I, § 22, Dec. 24, 1970, 84 Stat. 1544.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2353. Testimony in Plant Variety Protection Office cases

The Secretary may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions,

and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, he shall have like power.

(Pub.L. 91–577, Title I, § 23, Dec. 24, 1970, 84 Stat. 1544.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2354. Subpoenas; witnesses

(a) The clerk of any United States court for the district wherein testimony is to be taken in accordance with regulations established by the Secretary for use in any contested case in the Plant Variety Protection Office shall, upon the application of any party thereof, issue a subpoena for any witness residing or being within such district or within one hundred miles of the stated place in such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and the production of documents and things shall apply to contested cases in the Plant Variety Protection Office insofar as consistent with such regulations.

(b) Every witness subpoenaed or testifying shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

(c) A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, one day's attendance at the place of examination, are paid or tendered him at

the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary.

(Pub.L. 91–577, Title I, § 24, Dec. 24, 1970, 84 Stat. 1544.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

CROSS REFERENCES

Subpoena, see rule 45, Fed.Rules Civ.Proc., 28 USCA.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2355. Effect of defective execution

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

(Pub.L. 91–577, Title I, § 25, Dec. 24, 1970, 84 Stat. 1545.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2356. Regulations for practice before the Office

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties before the Plant Variety Protection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

(Pub.L. 91–577, Title I, § 26, Dec. 24, 1970, 84 Stat. 1545.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577 set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2357. Unauthorized practice

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 2356 of this title, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

(Pub.L. 91–577, Title I, § 27, Dec. 24, 1970, 84 Stat. 1545.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART C—PLANT VARIETY PROTECTION FEES

§ 2371. Plant variety protection fees

(a) In general

The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees for services performed under this chapter.

(b) Late payment penalty

On failure to pay such fees, the Secretary shall assess a late payment penalty. Such overdue fees shall accrue interest as required by section 3717 of Title 31.

(c) Disposition of funds

Such fees, late payment penalties, and accrued interest collected shall be credited to the account that incurs the cost and shall remain available without fiscal year limitation to pay the expenses incurred by the Secretary in carrying out this chapter. Such funds collected (including late payment penalties and any interest earned) may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.

(d) Actions for nonpayment

The Attorney General may bring an action for the recovery of charges that have not been paid in accordance with this chapter against any person obligated for payment of such charges under this chapter in any United States district court or other United

States court for any territory or possession in any jurisdiction in which the person is found, resides, or transacts business. The court shall have jurisdiction to hear and decide the action.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(Pub.L. 91–577, Title I, § 31, Dec. 24, 1970, 84 Stat. 1545; Pub.L. 96–574, § 10, Dec. 22, 1980, 94 Stat. 3350; Pub.L. 100–203, Title I, § 1505, Dec. 22, 1987, 101 Stat. 1330–28.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

1987 Act. House Report No. 100–391, House Conference Report No. 100–495, and Statement by President, see 1987 U.S. Code Cong. and Adm. News, p. 2313–1.

Amendments
1987 Amendment. Catchline. Pub.L. 100–203 eliminated "; appropriations"from the heading.

Subsec. (a). Pub.L. 100–203 designated provisions of the first sentence as subsec. (a); substituted therein "the Secretary" for "he" preceding "may prescribe"; and transferred the second sentence to provisions designated subsec. (e) of this section.

Subsecs. (b) to (d). Pub.L. 100–203 added subsecs. (b) to (d).

Subsec. (e). Pub.L. 100–203 designated provisions of the second sentence as subsec. (e); and substituted "are authorized" for "are hereby authorized" and "such sums as are necessary to carry out this chapter" for "such funds as may be necessary to carry out the provisions of this chapter".

1980 Amendment. Pub.L. 96–574 substituted provisions relating to deposit of fees, and authorization of appropriations, for provisions relating to recovering of fees, initial capital of the fund, and charging of fees.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2372. Payment of plant variety protection fees; return of excess amounts

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required.

(Pub.L. 91–577, Title I, § 32, Dec. 24, 1970, 84 Stat. 1545.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

SUBCHAPTER II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

PART D—PROTECTABILITY OF PLANT VARIETIES

§ 2401. Definitions and rules of construction

The definitions and rules of construction set forth in this section apply for the purposes of this chapter.

(a) The term "novel variety" may be represented by, without limitation, seed, transplants, and plants, and is satisfied if there is:

(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics (which may include those evidenced by processing or product characteristics, for example, milling and baking characteristics in the case of wheat) as to which a differenec[1] in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 2402 of this title; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) The terms "United States" and "this country" means the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, or radish.

(d) The term "date of determination" means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term "breeder" shall mean the person who—

(1) directs the final breeding creating the novel variety, or

(2) discovers the novel variety, and

makes the tentative determination described in subsection (d) of this section. Where such actions are conducted by an agent on behalf of his principal, the principal, rather than the agent, shall be considered the breeder. The terms "breed", "develop", "originate", and "discover", and derivatives thereof shall each include the other.

(f) The term "sexually reproduced" shall include any production of a variety by seed.

(g) The term "basic seed" means the seed planted to produce certified or commercial seed.

(h) The term "testing" means testing or experimental use of a variety before any sale thereof. Sale for other than seed purposes of seed or other plant material produced as the result of testing shall not constitute a sale for the purpose of the preceding sentence or for the purpose of the following subsection.

(i) The term "public variety" means a variety sold or used in this country, or existing in and publicly known in this country; but use for the purpose of testing, or sale or use as individual plants not known to be sexually reproducible, shall not make the variety a public variety.

(j) A variety described in a publication as specified in section 2402(a)(1)(B) of this title is "effectively available to workers in this country" if a source from which it can be purchased is indicated in such publication or readily determinable or if such

publication teaches how to produce the variety from source-material effectively available to workers in this country.

(Pub.L. 91–577, Title II, § 41, Dec. 24, 1970, 84 Stat. 1546.)

[1] So in original. Probably should be "difference".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates 1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

CROSS REFERENCES

Date of determination as defined in this section to occur during period of contract performance, for purposes of determining patent rights in federally-assisted inventions, see 35 USCA § 201.

LIBRARY REFERENCES

American Digest System

Weeds and other noxious plants, see Agriculture ⇐8.

Encyclopedias

Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2402. Right to plant variety protection; plant varieties protectable

(a) The breeder of any novel variety of sexually reproduced plant (other than fungi, bacteria, or first generation hybrids) who has so reproduced the variety, or his successor in interest, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this subchapter unless one of the following bars exists:

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) An application for protection of the variety based on the same breeder's acts, was filed in a foreign country by the owner

or his privies more than one year before the effective filing date of the application filed in the United States.

(3) Another is entitled to an earlier date of determination for the same variety and such other (A) has a certificate of plant variety protection hereunder or (B) has been engaged in a continuing program of development and testing to commercialization, or (C) has within six months after such earlier date of determination adequately described the variety by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(b) The Secretary may, by regulation, extend for a reasonable period of time the one year time period provided in subsection (a) of this section for filing applications, and may in that event provide for at least commensurate reduction of the term of protection.

(Pub.L. 91–577, Title II, § 42, Dec. 24, 1970, 84 Stat. 1547.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates 1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

CROSS REFERENCES

Invalidity of plant variety protection on grounds specified in this section as defense to infringement of plant variety protection actions, see 7 USCA § 2562.

LIBRARY REFERENCES

American Digest System

Weeds and other noxious plants, see Agriculture ⇐8.

Encyclopedias

Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2403. Reciprocity limits

Protection under this chapter may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection

here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

(Pub.L. 91–577, Title II, § 43, Dec. 24, 1970, 84 Stat. 1547.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2404. Public interest in wide usage

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when he determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 2461 or 2462 of this title (any finding that the price is not reasonable being reviewable), and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court.

(Pub.L. 91–577, Title II, § 44, Dec. 24, 1970, 84 Stat. 1547.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

CROSS REFERENCES

Plant Variety Protection Board to advise Secretary on all questions under this section, see 7 USCA § 2327.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART E—APPLICATIONS; FORM; WHO MAY FILE; RELATING BACK; CONFIDENTIALITY

§ 2421. Application for recognition of plant variety rights

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulations established by the Secretary.

(Pub.L. 91–577, Title II, § 51, Dec. 24, 1970, 84 Stat. 1548.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2422. Content of application

An application for a certificate recognizing plant variety rights shall contain:

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued.

(2) A description of the variety setting forth its novelty and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submission of records or proof of ownership or of allegations made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect others from any injustice which would result. The Secretary may accept records of the breeder and of any official seed certifying agency in this country as evidence of stability where applicable.

(3) A declaration that a viable sample of basic seed necessary for propagation of the variety will be deposited and replenished periodically in a public repository in accordance with regulations to be established hereunder.

(4) A statement of the basis of applicant's ownership.

(Pub.L. 91–577, Title II, § 52, Dec. 24, 1970, 84 Stat. 1548; Pub.L. 96–574, § 11, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.
1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Par. (3). Pub.L. 96–574 struck out provisions relating to adding of declaration by amendment.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

CROSS REFERENCES

Invalidity of plant variety protection as defense to suit for failure to comply with this section, see 7 USCA § 2562.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2423. Joint breeders

(a) When two or more persons are the breeders, one (or his successor) may apply, naming the others.

(b) The Secretary, after such notice as he may prescribe, may issue a certificate of plant variety protection to the applicant and such of the other breeders (or their successors in interest) as may have subsequently joined in the application.

(Pub.L. 91–577, Title II, § 53, Dec. 24, 1970, 84 Stat. 1548.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2424. Death or incapacity of breeder

Legal representatives of deceased breeders and of those under legal incapacity may make application for plant variety protection upon compliance with the requirements and on the same terms and conditions applicable to the breeder or his successor in interest.

(Pub.L. 91–577, Title II, § 54, Dec. 24, 1970, 84 Stat. 1548.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2425. Benefit of earlier filing date

(a) An application for a certificate of plant variety protection filed in this country based on the same variety, and on rights derived from the same breeder, on which there has previously been filed an application for plant variety protection in a foreign country which affords similar privileges in the case of applications filed in the United States by nationals of the United States, shall have the same effect as the same application would have if filed in the United States on the date on which the application for plant variety protection for the same variety was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed. No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in his application or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(b) An application for a certificate of plant variety protection for the same variety as was the subject of an application previously filed in the United States by or on behalf of the same person, or by his predecessor in title, shall have the same effect as to such variety as though filed on the date of the prior application if filed before the issuance of the certificate or other termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application.

(Pub.L. 91–577, Title II, § 55, Dec. 24, 1970, 84 Stat. 1548.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2426. Confidential status of application

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind to which each applies, the name of the applicant, and whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed.

(Pub.L. 91–577, Title II, § 56, Dec. 24, 1970, 84 Stat. 1549; Pub.L. 96–574, § 12, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.
1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Pub.L. 96–574 added provisions relating to the name of the applicant, and sale of the variety.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2427. Publication

The Secretary may establish regulations for the publication of information regarding any pending application when publication is requested by the owner.

(Pub.L. 91–577, Title II, § 57, Dec. 24, 1970, 84 Stat. 1549; Pub.L. 96–574, § 13, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.
1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Pub.L. 96–574 added "information regarding" following "publication of".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART F—EXAMINATION; RESPONSE TIME; INITIAL APPEALS

§ 2441. Examination of application

The Secretary shall cause an examination to be made of the application and if on such examination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as hereinafter provided.

(Pub.L. 91–577, Title II, § 61, Dec. 24, 1970, 84 Stat. 1549.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2442. Notice of refusal; reconsideration

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to him of an action other than allowance, an applicant shall be allowed six months, or such other time as the Secretary in exceptional circumstances shall set in the refusal, or such time as he may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

(Pub.L. 91–577, Title II, § 62, Dec. 24, 1970, 84 Stat. 1549.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2443. Initial appeal

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to

the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

(Pub.L. 91–577, Title II, § 63, Dec. 24, 1970, 84 Stat. 1550.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART G—APPEALS TO COURTS AND OTHER REVIEW

§ 2461. Appeals

From the decisions made under sections 2404, 2443, 2501, 2502 and 2568 of this title appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal.

(Pub.L. 91–577, Title II, § 71, Dec. 24, 1970, 84 Stat. 1550; Pub.L. 97–164, Title I, § 145, Apr. 2, 1982, 96 Stat. 45.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1982 Act. Senate Report No. 97–275, see 1982 U.S.Code Cong. and Adm.News, p. 11.

Amendments
1982 Amendment. Pub.L. 97–164 substituted "The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal" for "The Court of Customs and Patent Appeals and the United States Courts for Appeals shall have jurisdiction, with venue in the case of the latter as stated in section 2343 of Title 28".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

1982 Act. Amendment by Pub.L. 97–164 effective Oct. 1, 1982, see section 402 of Pub.L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Jurisdiction of United States Court of Appeals for Federal Circuit, see 28 USCA § 1295.
Review and enforcement of orders of administrative agencies, boards, commissions and officers, see rule 15 et seq., Fed.Rules App.Proc., 28 USCA.

LIBRARY REFERENCES

Administrative Law
Jurisdiction of United States Court of Appeals, see West's Federal Practice Manual § 1831.10.
American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2462. Civil action against Secretary

An applicant dissatisfied with a decision under section 2443 or 2501 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for his variety as specified in his application as the facts of the case may appear, on compliance with the requirements of this chapter.

(Pub.L. 91–577, Title II, § 72, Dec. 24, 1970, 84 Stat. 1550.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. *House Report No. 91–1605,* see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of *this title.*

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2463. Appeal or civil action in contested cases

(a) A party to a proceeding under section 2502 of this title, dissatisfied with the decision, may take an appeal under section 2461 of this title or may have remedy by civil action if commenced within sixty days after such decision or within such further time as the Secretary allows. A party contemplating appeal as provided herein shall notify all adverse parties of his intention and any such adverse party, not the Secretary, shall have the right, by notice served within ten days of the notice to him, to elect that any review shall be by civil action. In such suits the record in the Plant Variety Protection Office shall be admitted on motion of any party upon the terms and conditions as to costs, expenses, and the further cross-examination of witnesses, as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Plant Variety Protection Office when admitted shall have the same effect as if originally taken and produced in the suit.

(b) Such suit may be instituted against the party in interest as shown by the record of the Plant Variety Protection Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia, or any United States district court to which it may transfer the case, shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Secretary shall not be made a party but he shall have the right to intervene. Judgment of the court in favor of the right of an applicant to plant variety protection shall authorize the Secretary to issue a certificate of plant variety protection on the filing in the Plant Variety Protection Office of a certified copy of the judgment and on compliance with the requirements of this chapter.

(Pub.L. 91–577, Title II, § 73, Dec. 24, 1970, 84 Stat. 1550.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART H—CERTIFICATES OF PLANT VARIETY PROTECTION

§ 2481. Plant variety protection

(a) If it appears that a certificate of plant variety protection should be issued on an application, a written notice of allowance shall be given or mailed to the owner. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 2422(3) of this title, the certificate of plant variety protection shall issue.

(c) If any payment required by this section is not timely made, but is submitted with an additional fee prescribed by the Secretary within nine months after the due date or within such further time as the Secretary may allow, it shall be accepted.

(Pub.L. 91–577, Title II, § 81, Dec. 24, 1970, 84 Stat. 1551.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2482. How issued

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant

Variety Protection Office, and shall be signed by the Secretary or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

(Pub.L. 91–577, Title II, § 82, Dec. 24, 1970, 84 Stat. 1551.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2483. Contents and term of plant variety protection

(a) Every certificate of plant variety protection shall certify that the breeder (or his successor in interest) his heirs or assignees, has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent provided by this chapter. If the owner so elects, the certificate shall also specify that in the United States, seed of the variety shall be sold by variety name only as a class of certified seed and, if specified, shall also conform to the number of generations designated by the owner. Any rights, or all rights except those elected under the preceding sentence, may be waived; and the certificate shall conform to such waiver. The Secretary may at his discretion permit such election or waiver to be made after certificating and amend the certificate accordingly, without retroactive effect.

(b) The term of plant variety protection shall expire eighteen years from the date of issue of the certificate in the United States. If the certificate is not issued within three years from the effective filing date, the Secretary may shorten the term by the amount of delay in the prosecution of the application attributed by the Secretary to the applicant.

(c) The term of plant variety protection shall also expire if the owner fails to comply with regulations, in force at the time of certificating, relating to replenishing seed in a public repository: *Provided, however,* That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 2531(d) of this title and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

(Pub.L. 91–577, Title II, § 83, Dec. 24, 1970, 84 Stat. 1551; Pub.L. 96–574, § 14, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.
1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Subsec. (b). Pub.L. 96–574 substituted "eighteen" for "seventeen".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2484. Correction of Plant Variety Protection Office mistake

Whenever a mistake in a certificate of plant variety protection incurred through the fault of the Plant Variety Protection Office is clearly disclosed by the records of the Office, the Secretary may issue, without charge, a corrected certificate of plant variety protection, stating the fact and nature of such mistake. Such certificate of plant variety protection shall have the same effect and operation in law as if the same had been originally issued in such corrected form.

(Pub.L. 91–577, Title II, § 84, Dec. 24, 1970, 84 Stat. 1552; Pub.L. 96–574, § 15, Dec. 22, 1980, 94 Stat. 3350.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Pub.L. 96–574 substituted provisions relating to correction of Plant Variety Protection Office mistake, for provisions relating to certificate of correction of Plant Variety Protection Office mistake.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2485. Correction of applicant's mistake

Whenever a mistake of a clerical or typographical nature, or of minor character, or in the description of the variety, which was not the fault of the Plant Variety Protection Office, appears in a certificate of plant variety protection and a showing has been made that such mistake occurred in good faith, the Secretary may, upon payment of the required fee, issue a corrected certificate if the correction could have been made before the certificate issued. Such certificate of plant variety protection shall have the same effect and operation in law as if the same had been originally issued in such corrected form.

(Pub.L. 91–577, Title II, § 85, Dec. 24, 1970, 84 Stat. 1552; Pub.L. 96–574, § 16, Dec. 22, 1980, 94 Stat. 3351.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Pub.L. 96–574 struck out applicability of section 2484 of this title to the manner and form of the certificate, and reference to trials of actions thereafter arising with respect to the effect and operation in law of the certificate.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2486. Correction of named breeder

An error as to the naming of a breeder in the application, without deceptive intent, shall not affect validity of plant variety protection and may be corrected at any time by the Secretary in accordance with regulations established by him or upon order of a federal court before which the matter is called in question. Upon such correction the Secretary shall issue a certificate accordingly. Such correction shall not deprive any person of any rights he otherwise would have had.

(Pub.L. 91–577, Title II, § 86, Dec. 24, 1970, 84 Stat. 1552.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART I—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

§ 2501. Reexamination after issue

(a) Any person may, within five years after the issuance of a certificate of plant variety protection, notify the Secretary in writing of facts which may have a bearing on the protectability of the variety, and the Secretary may cause such plant variety protection to be reexamined in the light thereof.

(b) Reexamination of plant variety protection under this section and appeals shall be pursuant to the same procedures and with the same rights as for original examinations. Abandonment of the procedure while subject to a ruling against the retention of the certificate shall result in cancellation of the plant variety certificate thereon and notice thereof shall be endorsed on copies of the description of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(c) If a person acting under subsection (a) of this section makes a prima facie showing of facts needing proof, the Secretary may direct that the reexamination include such interparty proceedings as he shall establish.

(Pub.L. 91-577, Title II, § 91, Dec. 24, 1970, 84 Stat. 1552; Pub.L. 96-574, § 17, Dec. 22, 1980, 94 Stat. 3351.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91-1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.
1980 Act. House Report No. 96-1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Subsec. (b). Pub.L. 96-574 substituted "description" for "specification".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91-577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2502. Priority contest

(a) If the Secretary determines that two applications of different applicants may be based on the same variety, he may:

(1) Initiate a priority contest on his own motion whether or not one of the applications may have been certificated; or

(2) Issue a certificate on the application having the earliest effective filing date, with notice to all; or

(3) Issue a certificate naming alternative owners, under a single variety name acceptable to both.

(b) On request of any person when a certificate has been issued naming another as an owner or alternative owner, both having applied for protection on the same variety, the Secretary shall institute a priority contest, except that any person shall have forfeited his right to assert priority for the purpose of obtaining plant variety protection when an adverse certificate has issued if he fails to make the request within one year of the mailing of notice specified in part[1] (2) above or if he fails to make the request within the period for taking action after refusal of his application on the basis of the adverse certificate.

(Pub.L. 91-577, Title II, § 92, Dec. 24, 1970, 84 Stat. 1553.)

[1] So in original. Probably should be "paragraph".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91-1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91-577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2503. Effect of adverse final judgment or of nonaction

(a) A final judgment under section 2502 of this title adverse to an application from which no appeal or other review had been or can be taken or had shall constitute cancellation of any certificating on that application, and notice thereof shall be endorsed on copies of the description of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(b) Any person who has not proceeded in accordance with the provision of this part shall not be foreclosed or in any way prejudiced with respect to the defense of an infringement suit or affirmative relief under declaratory judgment proceedings.

(c) No person subject to an adverse decision in a proceeding under this part shall be foreclosed with respect to asserting comparable grounds in defense of an infringement suit or as a basis for affirmative relief under declaratory judgment proceedings.

(Pub.L. 91-577, Title II, § 93, Dec. 24, 1970, 84 Stat. 1553; Pub.L. 96-574, § 18, Dec. 22, 1980, 94 Stat. 3351.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91-1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96-1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Subsec. (a). Pub. L. 96-574 substituted "description" for "specifications".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91-577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2504. Interfering plant variety protection

The owner of a certificate of plant variety protection may have relief against another owner of a certificate of the same variety by civil action, and the court may adjudge the question of validity of the respective certificates, or the ownership of the certificate. The provisions of section 2463(b) of this title shall apply to actions brought under this section.

(Pub.L. 91-577, Title II, § 94, Dec. 24, 1970, 84 Stat. 1553.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91-1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91-577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

SUBCHAPTER III—PLANT VARIETY PROTECTION AND RIGHTS

PART J—OWNERSHIP AND ASSIGNMENT

§ 2531. Ownership and assignment

(a) Subject to the provisions of this subchapter, plant variety protection shall have the attributes of personal property.

(b) Applications for certificates of plant variety protection, or any interest in a variety, shall be assignable by an instrument in writing. The owner may in like manner license or grant and convey an exclusive right to use of the variety in the whole or any specified part of the United States.

(c) A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant, license, or conveyance of plant variety protection or application for plant variety protection.

(d) An assignment, grant, conveyance or license shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it, or an acknowledgment thereof by the person giving such encumbrance that there is such encumbrance, is filed for recording in the Plant Variety Protection Office within one month from its date or at least one month prior to the date of such subsequent purchase or mortgage.

(Pub.L. 91-577, Title III, § 101, Dec. 24, 1970, 84 Stat. 1554.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91-1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91-577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2532. Ownership during testing

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible plant material for testing retains ownership with respect thereto; and any diversion from authorized testing, or any unauthorized retention, of such material by anyone who has knowledge that it is under such notice, or who is chargeable with notice, is prohibited, and violates the property rights of the owner. Anyone receiving the material tagged or labeled with the notice is chargeable with the notice. The owner is entitled to remedy and redress in a civil action hereunder. No remedy available by State or local law is hereby excluded. No such notice shall be used, or if used be effective, when the owner has made identical sexually reproducible plant material available to the public, as by sale thereof.

(Pub.L. 91–577, Title III, § 102, Dec. 24, 1970, 84 Stat. 1554.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART K—INFRINGEMENT OF PLANT VARIETY PROTECTION

§ 2541. Infringement of plant variety protection

Except as otherwise provided in this subchapter, it shall be an infringement of the rights of the owner of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 2567 of this title:

(1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

(2) import the novel variety into, or export it from, the United States;

(3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or

(4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or

(5) used seed which had been marked "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or

(8) instigate or actively induce performance of any of the foregoing acts.

(Pub.L. 91–577, Title III, § 111, Dec. 24, 1970, 84 Stat. 1554; Pub.L. 96–574, § 19(a), Dec. 22, 1980, 94 Stat. 3351.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082..

1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Par. (5). Pub.L. 96–574 substituted " 'Unauthorized Propagation Prohibited' or 'Unauthorized Seed Multiplication Prohibited' " for " 'propagation prohibited' ".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.
Texts and Treatises
Patents, copyrights, etc., see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3582.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2542. Grandfather clause

Nothing in this chapter shall abridge the right of any person, or his successor in interest, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

(Pub.L. 91–577, Title III, § 112, Dec. 24, 1970, 84 Stat. 1555.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2543. Right to save seed; crop exemption

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 2541 of this title, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided,* That without regard to the provisions of section 2541(3) of this title it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed

produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 2567 of this title that his actions constitute an infringement.

(Pub.L. 91–577, Title III, § 113, Dec. 24, 1970, 84 Stat. 1555.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

NOTES OF DECISIONS

1. Agricultural cooperatives, sales by

Nonprofit agricultural cooperative which arranged sales of variety of cottonseed protected under this chapter, and operator of seed delinting and storage plant, which dispensed protected variety without notice that it was protected, were not exempt from provision of this section which prohibits infringement of rights of owner of novel variety to sell or dispense it, under exemption of sales made by a person "whose primary farming occupation is the growing of crops for sale for other than reproductive purposes." Delta and Pine Land Co. v. Peoples Gin Co., C.A.Miss.1983, 694 F.2d 1012.

§ 2544. Research exemption

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this chapter.

(Pub.L. 91–577, Title III, § 114, Dec. 24, 1970, 84 Stat. 1555.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577,

set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2545. Intermediary exemption

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this chapter.

(Pub.L. 91–577, Title III, § 115, Dec. 24, 1970, 84 Stat. 1555.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates 1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART L—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

§ 2561. Remedy for infringement of plant variety protection

An owner shall have remedy by civil action for infringement of his plant variety protection under section 2541 of this title. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety.

(Pub.L. 91–577, Title III, § 121, Dec. 24, 1970, 84 Stat. 1556.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates 1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.
Texts and Treatises
Remedies for infringement of plant variety protection, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3582.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2562. Presumption of validity; defenses

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of liability for infringement, or unenforceability; (2) invalidity of the plant variety protection in suit on any ground specified in section 2402 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 2422 of this title; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to notice of the infringement; and (5) any other fact or act made a defense by this chapter.

(Pub.L. 91–577, Title III, § 122, Dec. 24, 1970, 84 Stat. 1556.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates 1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

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American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.

Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2563. Injunction

The several courts having jurisdiction of cases under this subchapter may grant injunctions in accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable.

(Pub.L. 91–577, Title III, § 123, Dec. 24, 1970, 84 Stat. 1556.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2564. Damages

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding

the infringer to have established innocent intentions, shall have discretion as to awarding damages.

(Pub.L. 91–577, Title III, § 124, Dec. 24, 1970, 84 Stat. 1556.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2565. Attorney fees

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(Pub.L. 91–577, Title III, § 125, Dec. 24, 1970, 84 Stat. 1556.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.
Law Reviews
Recovering attorney fees as damages. John Leubsdorf, 38 Rutgers L.Rev. 439 (1986).

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2566. Time limitation on damages

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

(Pub.L. 91–577, Title III, § 126, Dec. 24, 1970, 84 Stat. 1556.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2567. Limitation of damages; marking and notice

Owners may give notice to the public by physically associating with or affixing to the container of seed of a novel variety or by fixing to the novel variety, a label containing either the words "Unauthorized Propagation Prohibited" or the words "Unauthorized Seed Multiplication Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the novel variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

(Pub.L. 91–577, Title III, § 127, Dec. 24, 1970, 84 Stat. 1557; Pub.L. 96–574, § 19(b), Dec. 22, 1980, 94 Stat. 3351.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.

Amendments
1980 Amendment. Pub.L. 96–574 substituted "either the words 'Unauthorized Propagation Prohibited' or the words 'Unauthorized Seed Multiplication Prohibited' " for "the words 'Propagation Prohibited' ".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2568. False marking; cease and desist orders

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material, is prohibited, and the Secretary may, if he determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 2461 of this title:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of either the phrase "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or similar phrase without reasonable basis. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the purpose of deceiving the public, shall be fined not more than $10,000 and not less than $500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action.

(Pub.L. 91–577, Title III, § 128, Dec. 24, 1970, 84 Stat. 1557; Pub.L. 96–574, § 19(c), Dec. 22, 1980, 94 Stat. 3352.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96–1115, see 1980 U.S.Code Cong. and Adm.News, p. 6954.
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Amendments
1980 Amendment. Subsec. (a)(3). Pub.L. 96–574 substituted provisions respecting prohibitions for use of phrases "Unauthorized Propagation Prohibited" and "Unauthorized Seed Multiplication Prohibited" for provisions respecting prohibitions for use of the phrase "propagation prohibited".

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.
Texts and Treatises
Remedies for infringement of plant variety protection, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3582.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2569. Nonresident proprietors; service and notice

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it

would have if the owner were personally within the jurisdiction of the court.

(Pub.L. 91–577, Title III, § 129, Dec. 24, 1970, 84 Stat. 1557.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

American Digest System
Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

PART M—INTENT AND SEVERABILITY

§ 2581. Intent

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

(Pub.L. 91–577, Title III, § 131, Dec. 24, 1970, 84 Stat. 1558.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

LIBRARY REFERENCES

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Weeds and other noxious plants, see Agriculture ⇐8.
Encyclopedias
Plant Variety Protection Act, see C.J.S. Agriculture § 68.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2582. Severability

If this chapter is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remaining provisions and other circumstances.

(Pub.L. 91–577, Title III, § 132, Dec. 24, 1970, 84 Stat. 1558.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. House Report No. 91–1605, see 1970 U.S.Code Cong. and Adm.News, p. 5082.

Effective Dates
1970 Act. Section effective Dec. 24, 1970, see section 141 of Pub.L. 91–577, set out as a note under section 2321 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW Electronic Research Guide following the Explanation.

§ 2583. Repealed. Pub.L. 96–574, § 20, Dec. 22, 1980, 94 Stat. 3352

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 91–577, Title III, § 144, Dec. 24, 1970, 84 Stat. 1559, exempted certain plants from requirements of this chapter.

CHAPTER 58—POTATO RESEARCH AND PROMOTION

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2611. Congressional findings and declaration of policy.
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2615. Finding and issuance of plan.
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  (a) Administrative proceedings; petition; hearing; finality of ruling.
  (b) Judicial review; jurisdiction; complaint; remand; relief during pendency of proceedings.
2621. Enforcement.
  (a) Jurisdiction of United States district courts; administrative action.
  (b) Civil penalties; cease and desist orders; appeal; failure to comply with order or assessment; further proceedings and penalties.
2622. Investigations.
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UNITED STATES CODE ANNOTATED

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1995
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CHAPTER 57—PLANT VARIETY PROTECTION

SUBCHAPTER III—PLANT VARIETY PROTECTION AND RIGHTS

PART L—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Sec.
2570. Liability of States, instrumentalities of States, and State officials for infringement of plant variety protection.

SUBCHAPTER I—PLANT VARIETY PROTECTION OFFICE

PART A—ORGANIZATION AND PUBLICATIONS

§ 2321. Establishment

HISTORICAL AND STATUTORY NOTES

Short Title

1994 Amendments. Pub.L. 103-349, § 1(a), Oct. 6, 1994, 108 Stat. 3136, provided that: "This Act [amending sections 2327, 2330, 2355, 2354, 2357, 2401, 2402, 2404, 2422, 2423, 2424, 2425, 2442, 2461, 2462, 2463, 2482, 2483, 2486, 2501, 2504, 2532, 2541, 2542, 2543, 2561, 2566, 2567, 2568, and 2570 of this title, repealing sections 2463, 2502 and 2503 of this title, and enacting provisions set out as notes under section 2401 of this title] may be cited as the 'Plant Variety Protection Act Amendments of 1994'."

1992 Amendments. Pub.L. 102-560, § 1, Oct. 28, 1992, 106 Stat. 4230, provided that: "This Act [enacting section 2570 of this title and section 296 of Title 35, Patents, amending section 2541 of this title and section 271 of Title 35, and enacting provisions set out as a note under section 2541 of this title] may be cited as the 'Patent and Plant Variety Protection Remedy Clarification Act'."

Amendment of Subsec. (a)

Pub.L. 103–349, §§ 13(a), 15, Oct. 6, 1994, 108 Stat. 3142, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (a) is amended in the last sentence by striking "his designee shall act as chairman" and inserting in lieu thereof "the designee of the Secretary shall act as chairperson".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2330. Publications

Amendment of Subsec. (a)

Pub.L. 103–349, §§ 13(b), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (a) is amended by striking "he" and inserting in lieu thereof "the Secretary".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

PART B—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

§ 2353. Testimony in Plant Variety Protection Office cases

Amendment of Section

Pub.L. 103–349, §§ 13(c), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended in the second sentence by striking "he" and inserting in lieu thereof "the officer" and in the third sentence by striking "he" and inserting in lieu thereof "the person".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2354. Subpoenas; witnesses

Amendment of Subsec. (a)

Pub.L. 103–349, §§ 13(d)(1), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (a) is amended in the first sentence by striking "him" and inserting in lieu thereof "the witness".

Amendment of Subsec. (c)

Pub.L. 103–349, §§ 13(d)(2), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (c) is amended in the second sentence by striking "this fees and traveling expenses" and inserting in lieu thereof "the fees and traveling expenses of the witness" and by striking "him" and inserting in lieu thereof "the witness".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

Amendment of Section

Pub.L. 103–349, §§ 13(e), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended in the last sentence by striking "he" each place it appears and inserting in lieu thereof "the person".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

SUBCHAPTER II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

PART D—PROTECTABILITY OF PLANT VARIETIES

§ 2401. Definitions and rules of construction

Amendment of Section

Pub.L. 103–349, §§ 2, 15, Oct. 6, 1994, 108 Stat. 3136, 3145, provided that, effective 180 days after Oct. 6, 1994, this section is amended to read as follows:

§ 2401. Definitions and rules of construction

(a) Definitions

As used in this chapter:

(1) Basic seed

The term "basic seed" means the seed planted to produce certified or commercial seed.

(2) Breeder

The term "breeder" means the person who directs the final breeding creating a variety or who discovers and develops a variety. If the actions are conducted by an agent on behalf of a principal, the principal, rather than the agent, shall be considered the breeder. The term does not include a person who redevelops or rediscovers a variety the existence of which is publicly known or a matter of common knowledge.

(3) Essentially derived variety

(A) In general

The term "essentially derived variety" means a variety that—

(i) is predominantly derived from another variety (referred to in this paragraph as the "initial variety") or from a variety that is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(ii) is clearly distinguishable from the initial variety; and

(iii) except for differences that result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(B) Methods

An essentially derived variety may be obtained by the selection of a natural or induced mutant or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, transformation by genetic engineering, or other method.

The term "kind" means one or more related species or subspecies singly or collectively known by one common name, such as soybean, flax, or radish.

(5) Seed

The term "seed", with respect to a tuber propagated variety, means the tuber or the part of the tuber used for propagation.

(6) Sexually reproduced

The term "sexually reproduced" includes any production of a variety by seed, but does not include the production of a variety by tuber propagation.

(7) Tuber propagated

The term "tuber propagated" means propagated by a tuber or a part of a tuber.

(8) United States

The terms "United States" and "this country" mean the United States, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(9) Variety

The term "variety" means a plant grouping within a single botanical taxon of the lowest known rank, that, without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other matter.

(b) Rules of construction

For the purposes of this chapter:

(1) Sale or disposition for nonreproductive purposes

The sale or disposition, for other than reproductive purposes, of harvested material produced as a result of experimentation or testing of a variety to ascertain the characteristics of the variety, or as a by-product of increasing a variety, shall not be considered to be a sale or disposition for purposes of exploitation of the variety.

(2) Sale or disposition for reproductive purposes

The sale or disposition of a variety for reproductive purposes shall not be considered to be a sale or disposition for the purposes of exploitation of the variety if the sale or disposition is done as an integral part of a program of experimentation or testing to ascertain the characteristics of the variety, or to increase the variety on behalf of the breeder or the successor in interest of the breeder.

(3) Sale or disposition of hybrid seed

The sale or disposition of hybrid seed shall be considered to be a sale or disposition of harvested material of the varieties from which the seed was produced.

(4) Application for protection or entering into a register of varieties

The filing of an application for the protection or for the entering of a variety in an official register of varieties, in any country, shall be considered to render the variety a matter of common knowledge from the date of the application, if the application leads to the granting of protection or to the entering of the variety in the official register of varieties, as the case may be.

(5) Distinctness

The distinctness of one variety from another may be based on one or more identifiable morphological, physiological, or other characteristics (including any characteristics evidenced by processing or product characteristics, such as [illegible] characteristics in the case of [illegible] with respect to which a difference in genealogy may contribute evidence.

(6) Publicly known varieties

(A) In general

A variety that is adequately described by a publication reasonably considered to be a part of the public technical knowledge in the United States shall be considered to be publicly known and a matter of common knowledge.

(B) Description

A description that meets the requirements of subparagraph (A) shall include a disclosure of the principal characteristics by which a variety is distinguished.

(C) Other means

A variety may become publicly known and a matter of common knowledge by other means.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-899, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

Effective Dates

1994 Acts. Section 15 of Pub.L. 103-349 provided that: "This Act and the amendments made by this Act [amending this section and sections 2327, 2330, 2353, 2354, 2357, 2402, 2404, 2422, 2423, 2424, 2425, 2442, 2461, 2462, 2463, 2482, 2483, 2486, 2501, 2504, 2532, 2541, 2542, 2543, 2561, 2566, 2567, 2568, and 2570 of this title, repealing sections 2463, 2502, and 2503 of this title, and enacting provisions set out as a note under this section] shall become effective 180 days after the date of enactment of this Act [Oct. 6, 1994]."

Transitional Provisions for 1994 Amendment

Section 14 of Pub.L. 103-349 provided that:

"(a) In general.—Except as provided in this section, any variety for which a certificate of plant variety protection has been issued prior to the effective date of this Act [see section 15 of Pub.L. 103-349, set out as a note under this section], and any variety for which an application is pending on the effective date of this Act, shall continue to be governed by the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) [this chapter], as in effect on the day before the effective date of this Act.

"(b) Applications refiled.—

"(1) In general.—An applicant may refile a pending application on or after the effective date of this Act [see section 15 of Pub.L. 103-349, set out as a note under this section].

"(2) Effect of refiling.—If a pending application is refiled on or after the effective date of this Act—

"(A) eligibility for protection and the terms of protection shall be governed by the Plant Variety Protection Act, as amended by this Act [this chapter]; and

"(B) for purposes of section 42 of the Plant Variety Protection Act, as amended by section 3 of this Act [section 2402 of this title], the date of filing shall be the date of filing of the original application.

"(c) Labeling.—

"(1) In general.—To obtain the protection provided to an owner of a protected variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) (as amended by this Act) [this chapter], a notice given by an owner concerning the variety under section 127 of the Plant Variety Protection Act (7 U.S.C. 2567) shall state that the variety is protected under such Act (as amended by this Act) [this chapter].

"(2) Sanctions.—Any person that makes a false or misleading statement or claim, or uses a false or misleading label, concerning protection described in paragraph (1) shall be subject to the sanctions described in section 128 of the Plant Variety Protection Act (7 U.S.C. 2568)."

§ 2402. Right to plant variety protection; plant varieties protectable

Amendment of Section

Pub.L. 103-349, §§ 3, 15, Oct. 6, 1994, 108 Stat. 3138, 3145, provided that, effective 180 days after Oct. 6, 1994, this section is amended to read as follows:

§ 2402. Right to plant variety protection; plant varieties protectable

(a) In general

The breeder of any sexually reproduced or tuber propagated plant variety (other than fungi or bacteria) who has so reproduced the variety, or the successor in interest of the breeder, shall be entitled to plant variety protection for the variety, subject to the conditions and requirements of this chapter, if the variety is—

(1) new, in the sense that, on the date of filing of the application for plant variety protection, propagating or harvested material of the variety has not been sold or otherwise disposed of to other persons, by or with the consent of the breeder, or the successor in interest of the breeder, for purposes of exploitation of the variety—

(A) in the United States, more than 1 year prior to the date of filing; or

(B) in any area outside of the United States—

(i) more than 4 years prior to the date of filing; or

(ii) in the case of a tree or vine, more than 6 years prior to the date of filing;

(2) distinct, in the sense that the variety is clearly distinguishable from any other variety the existence of which is publicly known or a matter of common knowledge at the time of the filing of the application;

(3) uniform, in the sense that any variations are describable, predictable, and commercially acceptable; and

(4) stable, in the sense that the variety, when reproduced, will remain unchanged with regard to the essential and distinctive characteristics of the variety with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) Multiple applicants

(1) In general

If 2 or more applicants submit applications on the same effective filing date for varieties that cannot be clearly distinguished from one another, but that fulfill all other requirements of subsection (a) of this section, the applicant who first complies with all requirements of this chapter shall be entitled to a certificate of plant variety protection, to the exclusion of any other applicant.

(2) Requirements completed on same date

(A) In general

Except as provided in subparagraph (B), if 2 or more applicants comply with all requirements for protection on the same date, a certificate shall be issued for each variety.

(B) Varieties indistinguishable

If the varieties that are the subject of the applications cannot be distinguished in any manner, a single certificate shall be issued jointly to the applicants.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2404. Public interest in wide usage

Amendment of Section

Pub.L. 103–349, §§ 13(f), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended in the first sentence by striking "he" each place it appears and inserting in lieu thereof "the Secretary".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2422. Content of application

Amendment of Section

Pub.L. 103–349, §§ 4, 15, Oct. 6, 1994, 108 Stat. 3139, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended—

(1) in paragraph (1), by adding at the end the following new sentence: "The variety shall be named in accordance with regulations issued by the Secretary.";

(2) in the first sentence of paragraph (2), by striking "novelty" and inserting "distinctiveness, uniformity, and stability" in lieu thereof;

(3) by redesignating paragraphs (3) and (4) as (4) and (5), respectively;

(4) by inserting after paragraph (2) the following new paragraph (3):

"(3) A statement of the basis of the claim of the applicant that the variety is new."; and

(5) in paragraph (4) (as redesignated by paragraph (3)), by inserting "(including any propagating material)" after "basic seed".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2423. Joint breeders

Amendment of Section

Pub.L. 103–349, §§ 13(g), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (a) is amended by striking "one (or his successor)" and inserting in lieu thereof "one person (or the successor of the person)" and subsec. (b) is amended by striking "he" and inserting in lieu thereof "the Secretary".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2424. Death or incapacity of breeder

Amendment of Section

Pub.L. 103–349, §§ 13(h), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended by striking "his successor in interest" and inserting in lieu thereof "the successor in interest of the breeder".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2425. Benefit of earlier filing date

Amendment of Subsec. (a)

Pub.L. 103–349, §§ 5, 13(i)(1), 15, Oct. 6, 1994, 108 Stat. 3139, 3142, 3145, provided that, effective 180 days after Oct. 6, 1994, subsec. (a) of this section is amended–

(1) by redesignating the first and second sentences as para. (1) and (2), respectively;

(2) in paragraph (1) (as so designated), by inserting before the period at the end the following: ", not including the date on which the application is filed in

application" and inserting in lieu thereof "the application filed in the United States"; and

(3) by adding at the end the following new paragraph (3):

"(3)(A) An applicant entitled to a right of priority under this subsection shall be allowed to furnish any necessary information, document, or material required for the purpose of the examination of the application during—

"(i) the 2-year period beginning on the date of the expiration of the period of priority; or

"(ii) if the first application is rejected or withdrawn, an appropriate period after the rejection or withdrawal, to be determined by the Secretary.

"(B) An event occurring within the period of priority (such as the filing of another application or use of the variety that is the subject of the first application) shall not constitute a ground for rejecting the application or give rise to any third party right."

Amendment of Subsec. (b)

Pub.L. 103–349, §§ 13(i)(2), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (b) is amended by striking "his predecessor in title" and inserting in lieu thereof "the predecessor in title of the person".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

PART F—EXAMINATION; RESPONSE TIME; INITIAL APPEALS

§ 2442. Notice of refusal; reconsideration

Amendment of Subsec. (b)

Pub.L. 103–349, §§ 6, 13(j), 15, Oct. 6, 1994, 108 Stat. 3140, 3143, 3145, provided that, effective 180 days after Oct. 6, 1994, the first sentence of subsec. (b) of this section is amended–

(1) by striking "six months" and inserting "at least 90 days, and not more than 180 days";

(2) by striking "in exceptional circumstances";

(3) by striking "him" and inserting in lieu thereof "an applicant";

(4) by striking "an applicant shall" and inserting in lieu thereof "the applicant shall"; and

(5) by striking "he" and inserting in lieu thereof "the Secretary".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

PART G—APPEALS TO COURTS AND OTHER REVIEW

§ 2461. Appeals

From the decisions made under sections 2404, 2443, 2501, 2502, and 2568 of this title appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal.

(As amended Pub.L. 103–349, § 8(d)(1), Oct. 6, 1994, 108 Stat. 3141.)

Pub.L. 103–349, §§ 8(d)(1), 15, Oct. 6, 1994, 108 Stat. 3141, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended by striking out "2502,".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

LIBRARY REFERENCES

Law Reviews

Federal circuit: A case study in specialized courts. Rochelle Cooper Dreyfuss, 64 N.Y.U.L.Rev. 1 (1989).

§ 2462. Civil action against Secretary

Amendment of Section

Pub.L. 103–349, §§ 13(k), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended in the second sentence by striking "his variety as specified in his application" and inserting in lieu thereof "the variety as specified in the application".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2463. Appeal or civil action in contested cases

Transfer and Repeal of Provisions of This Section

Pub.L. 103–349, §§ 8(c), 15, Oct. 6, 1994, 108 Stat. 3140, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended—

(1) by transferring subsec. (b) thereof to the end of section 2504 of this title, thereby redesignating such provision as section 2504(b) of this title; and

(2) by repealing the remaining provisions of this section, as so amended.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

PART H—CERTIFICATES OF PLANT VARIETY PROTECTION

§ 2482. How issued

Amendment of Section

Pub.L. 103–349, §§ 13(l), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended by striking "his signature" and inserting in lieu thereof "the signature of the Secretary".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

Amendment of Section

Pub.L. 103–349, §§ 7, 13(m), 15, Oct. 6, 1994, 108 Stat. 3140, 3143, 3145, provided that, effective 180 days after Oct. 6, 1994, this section is amended as follows:

(1) in subsec. (a)—

(A) by designating the first through fourth sentences as pars. (1) through (4), respectively; in par. (1), as so designated, by striking "(or his successor in interest) his heirs and assignees" and inserting in lieu thereof "(or the successor in interest of the breeder)"; and in par. (4), as so designated, by striking "his discretion" and inserting in lieu thereof "the discretion of the Secretary";

(B) by striking pars. (2) and (3) (as so designated) and inserting the following new pars. (2) and (3):

"(2) If the owner so elects, the certificate shall—

"(A) specify that seed of the variety shall be sold in the United States only as a class of certified seed; and

"(B) if so specified, conform to the number of generations designated by the owner.

"(3) An owner may waive a right provided under this subsection, other than a right that is elected by the owner under paragraph (2)(A)."

(2) in the first sentence of subsec. (b):

(A) by striking "eighteen" and inserting "20" in lieu thereof; and

(B) by inserting before the period at the end the following: ", except that, in the case of a tree or vine, the term of the plant variety protection shall expire 25 years from the date of issue of the certificate"; and

(3) in subsec. (c), by striking "repository: Provided, however, That", and inserting in lieu thereof "repository, or requiring the submission of a different name for the variety, except that" and by striking "he" and inserting in lieu thereof "the last owner".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2486. Correction of named breeder

Amendment of Section

Pub.L. 103–349, §§ 13(n), 15, Oct. 6, 1994, 108 Stat. 3143, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended in the first sentence by striking "him" and inserting in lieu thereof "the Secretary" and in the third sentence by striking "he" and inserting in lieu thereof "the person".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

PART I—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

§ 2501. Reexamination after issue

Amendment of Subsec. (c)

Pub.L. 103–349, §§ 13(o), 15, Oct. 6, 1994, 108 Stat. 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (c) of this section is amended by striking "he" and inserting in lieu thereof "the Secretary".

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2502. Priority contest

Repeal of Section

Pub.L. 103–349, §§ 8(a), 15, Oct. 6, 1994, 108 Stat. 3140, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is repealed.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2503. Effect of adverse final judgment or of nonaction

Repeal of Section

Pub.L. 103–349, §§ 8(a), 15, Oct. 6, 1994, 108 Stat. 3140, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is repealed.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2504. Interfering plant variety protection

Amendment of Section

Pub.L. 103–349, §§ 8(b), (c)(1), 13(p), 15, Oct. 6, 1994, 108 Stat. 3140, 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended—

(1) by redesignating section 94 of Pub.L. 91–577 (this section) as section 92 of Pub.L. 91–577;

(2) by amending this section, as so redesignated—

(A) by striking "The owner" and inserting " (a) The owner"; and

(B) by striking the second sentence; and

(3) by transferring the text of section 2463(b) of this title to this section, thereby redesignating such provision as subsec. (b) of this section, and in the fourth sentence of subsec. (b) of this section, as so redesignated, by striking "he" and inserting in lieu thereof "the Secretary".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

SUBCHAPTER III—PLANT VARIETY PROTECTION AND RIGHTS

PART J—OWNERSHIP AND ASSIGNMENT

§ 2531. Ownership and assignment

NOTES OF DECISIONS

Persons entitled to maintain action 1

1. Persons entitled to maintain action

Seller that was granted only power to use and convey foundation class seed for novel variety of cotton was exclusive "licensee," rather than "assignee," of breeder and, therefore, could not bring suit in its own name to enforce certificate of plant variety protection, even though agreement permitted seller to take action considered

v. Sun Valley Seed Co., Inc., N.D.Miss.1990, 734 F.Supp. 250.

§ 2532. Ownership during testing

Amendment of Section

Pub.L. 103–349, §§ 8(d)(2), 15, Oct. 6, 1994, 108 Stat. 3141, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended by inserting "or tuber propagable" after "sexually reproducible" wherever appearing.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103–699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

PART K—INFRINGEMENT OF PLANT VARIETY PROTECTION

§ 2541. Infringement of plant variety protection

(a) Except as otherwise provided in this subchapter, it shall be an infringement of the rights of the owner of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 2567 of this title:

[See main volume for text of (1) to (8)]

(b) As used in this section, the term "perform without authority" includes performance without authority by any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(As amended Pub.L. 102–560, § 3(a), Oct. 28, 1992, 106 Stat. 4231; Pub.L. 103–349, §§ 9, 13q, Oct. 6, 1994, 108 Stat. 3141, 3144.)

Amendment of Section

Pub.L. 103–349, §§ 9, 13(q), 15, Oct. 6, 1994, 108 Stat. 3141, 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended—

(1) in subsec. (a)—

(A) by striking "novel" the first two places it appears and inserting "protected";

(B) in paragraph (1), by striking "the novel" and inserting "or market the protected";

(C) by striking "novel" each place it appears in pars. (2) through (7);

(D) in par. (3), by inserting ", or propagate by a tuber or a part of a tuber," after "sexually multiply";

(E) by striking "or" each place it appears at the end of pars. (3) through (6);

(F) by redesignating pars. (7) and (8) as pars. (9) and (10), respectively; and

(G) by inserting after par. (6) the following new pars. (7) and (8):

"(7) condition the variety for the purpose of propagation, except to the extent that the conditioning is related to the activities permitted under section 2543 of this title;

"(8) stock the variety for any of the purposes referred to in paragraphs (1) through (7);";

(2) by redesignating subsec. (b) as subsec. (f) and in subsec. (f), as so redesignated, by striking "his official capacity" and inserting in lieu thereof "the official capacity of the officer or employee"; and

(3) by inserting after subsec. (a) the following new subsecs. (b) through (e):

"(b) Uses authorized by owner

"(1) Subject to paragraph (2), the owner of a protected variety may authorize the use of the variety under this section subject to conditions and limitations specified by the owner.

"(2) In the case of a contract between a seed producer and the owner of a protected variety of lawn, turf, or forage grass seed, or alfalfa or clover seed for the production of seed of the protected variety, the producer shall be deemed to be authorized by the owner to sell such seed and to use the variety if—

"(A) the producer has fulfilled the terms of the contract;

"(B) the owner refuses to take delivery of the seed or refuses to pay any amounts due under the contract within 30 days of the payment date specified in the contract; and

"(C) after the expiration of the period specified in subparagraph (B), the producer notifies the owner of the producer's intent to sell the seed and unless the owner fails to pay the amounts due under the contract and take delivery of the seed within 30 days of such notification. For the purposes of this paragraph, the term 'owner' shall include any licensee of the owner.

"(3) Paragraph (2) shall apply to contracts entered into with respect to plant varieties protected under this chapter as in effect on the day before the effective date of this provision as well as plant varieties protected under this chapter as amended by the Plant Variety Protection Act Amendments of 1994.

"(4) Nothing in this subsection shall affect any other rights or remedies of producers or owners that may exist under other Federal or State laws.

"(c) Applicability to certain plant varieties

"This section shall apply equally to—

"(1) any variety that is essentially derived from a protected variety, unless the protected variety is an essentially derived variety;

"(2) any variety that is not clearly distinguishable from a protected variety;

"(3) any variety whose production requires the repeated use of a protected variety; and

"(4) harvested material (including entire plants and parts of plants) obtained through the unauthorized use of propagating material of a protected variety, unless the owner of the variety has had a reasonable opportunity to exercise the rights provided under this chapter with respect to the propagating material.

"(d) Acts not considered infringing

"It shall not be an infringement of the rights of the owner of a variety to perform any act concerning propagating material of any kind, or harvested material, including entire plants and parts of plants, of a protected variety that is sold or otherwise marketed with the consent of the owner in the United States, unless the act involves further propagation of the variety or involves an export of material of the variety, that enables the propagation of the variety, into a country that does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is for final consumption purposes.

"(e) Private, noncommercial uses

"It shall not be an infringement of the rights of the owner of a variety to perform any act done privately and for noncommercial purposes."

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. Senate Report No. 102-290, see 1992 U.S. Code Cong. and Adm. News, p. 3568.

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

Amendments

1992 Amendments. Subsec. (a). Pub.L. 102-560, § 3(a)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 102-560, § 3(a)(2), added subsec. (b).

Effective Dates

1992 Acts. Section 4 of Pub.L. 102-560 provided that: "The amendments made by this Act [enacting section 2570 of this title and section 296 of Title 35, Patents, amending this section and section 271 of Title 35, and enacting provisions set out as a note set out under section 2321 of this title] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Oct. 28, 1992]."

§ 2542. Grandfather clause

Amendment of Section

Pub.L. 103-349, §§ 13(r), 15, Oct. 6, 1994, 108 Stat. 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended by striking "his successor in interest" and inserting in lieu thereof "the successor in interest of the person".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2543. Right to save seed; crop exemption

Amendment of Section

Pub.L. 103-349, §§ 10, 13(s), 15, Oct. 6, 1994, 108 Stat. 3142, 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended in the first sentence by striking "section: Provided, That" and all that follows through the period and inserting in lieu thereof "section.", by striking "him" and inserting in lieu thereof "the person", and by striking "his farm" and inserting in lieu thereof "the farm of the person"; and in the third sentence by striking "his actions" and inserting in lieu thereof "the actions of the purchaser".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

NOTES OF DECISIONS

Agricultural cooperatives, sales by 1
Crops grown primarily for consumption 3
Maximum seed amount 2
Nonreproductive uses 5
Notice of protected seeds 4

2. Maximum seed amount

Crop exemption from Plant Variety Protection Act's infringement provision contains no ensuing crop limitation on amount of seed savable by farmer who has harvested crop grown from protected seed. Asgrow Seed Co. v. Winterboer, C.A.Fed. (Iowa) 1992, 982 F.2d 486.

"Saved seed" that farmer may use for production of crop without violating Plant Varieties Protection Act (PVPA) is limited, at maximum, to amount of seed necessary for farmer to plant his acreage for subsequent crop year. Asgrow Seed Co. v. Winterboer, N.D.Iowa 1991, 795 F.Supp. 915.

3. Crops grown primarily for consumption

Authorised purchaser of Plant Variety Protection Act protected seed may sell saved seed from crops grown with protected seed without infringing on seed company's rights only if both parties to such "brown bag" sales of saved seeds are farmers primarily growing crops from protected seeds for consumption or other nonreproductive uses. Asgrow Seed Co. v. Winterboer, C.A.Fed. (Iowa) 1992, 982 F.2d 486.

4. Notice of protected seeds

Sale of Plant Variety Protection Act protected seed which comes within crop exemption to Act's infringement provision is exempt from Act's requirement that sale of such seed be accompanied by notice that seed is protected variety. Asgrow Seed Co. v. Winterboer, C.A.Fed. (Iowa) 1992, 982 F.2d 486.

5. Nonreproductive uses

Buyers and sellers of "brown bag" seed "primarily" grow crops from Plant Variety Protection Act protected seeds for consumption or other nonreproductive uses, and thus come within crop exemption from Act's infringement provision, only if they produced larger crop from protected seed for consumption or other nonreproductive services than for sale as seed. Asgrow Seed Co. v. Winterboer, C.A.Fed. (Iowa) 1992, 982 F.2d 486.

PART L—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

§ 2561. Remedy for infringement of plant variety protection

Amendment of Section

Pub.L. 103-349, §§ 13(t), 15, Oct. 6, 1994, 108 Stat. 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended by striking "his".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2566. Time limitation on damages

Amendment of Subsec. (b)

Pub.L. 103-349, §§ 13(u), 15, Oct. 6, 1994, 108 Stat. 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (b) of this section is amended by striking "his" and inserting in lieu thereof "the".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2567. Limitation of damages; marking and notice

Amendment of Section

Pub.L. 103-349, §§ 11, 15, Oct. 6, 1994, 108 Stat. 3142, 3145, provided that, to become effective 180 days after Oct. 6, 1994, this section is amended by striking "novel" each place it appears.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2568. False marking; cease and desist orders

Amendment of Subsec. (a)

Pub.L. 103-349, §§ 12, 13(v), 15, Oct. 6, 1994, 108 Stat. 3142, 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (a) of this section is amended—

(1) by inserting "or tubers or parts of tubers" after "plant material" and by striking "he" and inserting in lieu thereof "the Secretary"; and

(2) by adding at the end thereof the following new par. (4):

"(4) Failure to use the name of a variety for which a certificate of protection has been issued under this chapter, even after the expiration of the certificate, except that lawn, turf, or forage grass seed, or alfalfa or clover seed may be sold without a variety name unless use of the name of a variety for which a certificate of protection has been issued under this chapter is required under State law."

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

§ 2570. Liability of States, instrumentalities of States, and State officials for infringement of plant variety protection

(a) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of plant variety protection under section 2541 of this title, *or for any other violation under this subchapter.*

(b) In a suit described in subsection (a) of this section for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 2564 of this title, and attorney fees under section 2565 of this title.

(Pub.L. 91-577, Title III, § 180, as added Pub.L. 102-560, § 3(b), Oct. 28, 1992, 106 Stat. 4231.)

Amendment of Subsec. (a)

Pub.L. 103-349, §§ 15(w), 15, Oct. 6, 1994, 108 Stat. 3144, 3145, provided that, to become effective 180 days after Oct. 6, 1994, subsec. (a) of this section is amended by striking "his official capacity" and inserting in lieu thereof "the official capacity of the officer or employee".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. Senate Report No. 102-280, see 1992 U.S. Code Cong. and Adm. News, p. 3668.

1994 Acts. House Report No. 103-699, see 1994 U.S. Code Cong. and Adm. News, p. 2423.

Effective Dates

1992 Acts. Section effective with respect to violations that occur on or after Oct. 28, 1992, see section 4 of Pub.L. 102-560, set out as a note under section 2541 of this title.

LIBRARY REFERENCES

American Digest System

Liability and consent of state to be sued in general; particular actions, see States ⇐191.9(1).

State government and officers; liabilities of officers for negligence or misconduct, see States ⇐79.

State torts; nature of act or claim from property damage in general, see States ⇐112.2(3).

Encyclopedias

Immunity of state from suit and consent to be sued; particular actions, see C.J.S. States § 302.

State government and officers; liability to state, see C.J.S. States § 125.

State government and officers; liability to third persons, see C.J.S. States § 126.

State torts, see C.J.S. States §§ 196 to 200, 202.

WESTLAW ELECTRONIC RESEARCH

States cases: 360k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

CHAPTER 58—POTATO RESEARCH AND PROMOTION

Sec.
2617. Required terms and conditions of plans.
(a) to (f) [See main volume for text].
(g) Research, development, advertising or promotion programs or projects; development and submission by board; approval by Secretary.
(h) Contract authority of board; funds for payment of cost.
(i) Incidental and necessary terms and conditions.
2618. Permissive terms and conditions of plans.
(j) Redesignated.
2618. Permissive terms and conditions of plans.
(a) to (f) [See main volume for text].
(g) Assessment; refund.
(h) Assessment authority.
2624. Suspension or termination of plans.
(a) Duty of Secretary.
(b) Referendum.
(c) Limitation.

§ 2611. Congressional findings and declaration of policy

Potatoes are a basic food in the United States and foreign countries. They are produced by many individual potato growers in every State in the United States and imported into the United States from foreign countries. In 1966, there were one million four hundred and ninety-seven thousand acres of cropland in the United States devoted to the production of potatoes.

Potatoes and potato products move, in the channels of interstate or foreign commerce, and potatoes which do not move in such channels directly burden or affect interstate commerce in potatoes and potato products.

The maintenance and expansion of existing potato markets and the development of new or improved markets are vital to the welfare of potato growers and those concerned with marketing, using, and processing potatoes as well as the general economic welfare of the Nation.

Therefore, it is the declared policy of the Congress and the purpose of this chapter that it is essential in the public interest, through the exercise of the powers provided herein, to authorize the establishment of an orderly procedure for the financing, through adequate assessments on all potatoes harvested in the United States for commercial use and imported into the United States from foreign countries, and the carrying out of an effective and continuous coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position, and to maintain and expand domestic and foreign markets for potatoes and potato products.

(As amended Pub.L. 101-624, Title XIX, § 1936, Nov. 28, 1990, 104 Stat. 3865.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1990 Act. Senate Report No. 101-357 and House Conf. Report No. 101-916, see 1990 U.S.Code Cong. and Adm.News, p. 4656.

Amendments

1990 Amendment. First par. Pub.L. 101-624, § 1936(1)(A)-(C), substituted: in the first sentence, "United States and foreign commerce" for "United States", and, in the second sentence, "United States and imported into the United States from foreign countries" for "United States" and struck last sentence "approximately two hundred and seventy-five million hundredweight of potatoes have been produced annually during the past five years with an estimated sales value to the potato producers of $561,000,000."

Second par. Pub.L. 101-624, § 1936(2)(A)(i), (ii), (B), substituted "products move," for "products move, in a large part," and "channels of interstate or foreign commerce" for "channels of interstate commerce" and struck the sentence "All potatoes produced in the United States are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in potatoes and potato products."

Fourth par. Pub.L. 101-624, § 1936(3)(A), (B), substituted "commercial use and imported into the United States from foreign countries" for "commercial use" and "potatoes and potato products" for "potatoes produced in the United States".

Short Title of 1990 Amendment

Section 1935 of Pub.L. 101-624 provided that: "This subtitle [amending sections 2611 to 2614, 2617 to 2619, and 2622 to 2624 of this title and enacting note provision under section 2625 of this title] may be cited as the 'Potato Research and Promotion Act Amendments of 1990'."

Severability of Provisions

If any provision of Pub.L. 101-624 or the application thereof to any person or circumstance is held invalid, such invalidity not to affect other provisions or applications of Pub.L. 101-624 which can be given effect without regard to the invalid provision or application, see section 2519 of Pub.L. 101-624, set out as a note under section 1421 of this title.

LIBRARY REFERENCES

Law Reviews

Fragmenting the unitary executive: Congressional delegations of administrative authority outside the federal government. Harold J. Krent, 85 Nw.U.L.Rev. 62 (1990).

§ 2612. Definitions

As used in this chapter: