*. Current through October 6, 1994.

The Plant Variety Protection Act

Title 7

Chapter 57. PLANT VARIETY PROTECTION

SUBCHAPTER I. PLANTVARIETY 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.

Legislative History

(As amended Pub.L. 96-574, § 1 , Dec. 22, 1980, 94 Stat. 3350.)

*. Current through October 6, 1994.

§ 2322. Seal

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

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 2327. Plant Variety Protection Board--Appointment

(a)

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 the designee of the Secretary shall act as chairperson of the Board without voting rights except in the case of ties.

*. Current through October 6, 1994.

§ 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.

Legislative History

As amended Pub. L. 96-574, § 3 , Dec. 22, 1980, 94 Stat. 3350.

*. Current through October 6, 1994.

§ 2329. Register of protected plant varieties

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

Legislative History

As amended Pub. L. 96-574, § 4 , Dec. 22, 1980, 94 Stat. 3350.

*. Current through October 6, 1994.

§ 2330. Publications

(a)

The Secretary may publish, or cause to be published, in such format as the Secretary 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.

*. Current through October 6, 1994.

§ 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.

Legislative History

As amended Pub.L. 96-574, § 9 , Dec. 22, 1980, 94 Stat. 3350.

*. Current through October 6, 1994.

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.

*. Current through October 6, 1994.

§ 2352. Form of papers filed

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

*. Current through October 6, 1994.

§ 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 the officer resides, may take such affidavits and depositions, and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, the person shall have like power.

*. Current through October 6, 1994.

§ 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 the witness 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 the fees and traveling expenses of the witness in going to, and returning from, one day's attendance at the place of examination, are paid or tendered the witness 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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 the person acted only on behalf of any employer by whom the person was regularly employed.

*. Current through October 6, 1994.

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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

SUBCHAPTER II. PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

Part D. Protectability of Plant Varieties

§ 2401. Definitions and rules of construction

(a)

Definitions.-- As used in this Act:

(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 fro 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.

(4) Kind.-- The term 'kind'means one or more related species or subspecies singly or collectively known by one common name, such as soybean, flax, orradish.

(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 of tuber propagation.

(7) Tuber propagated.-- The term 'tuber propagated'means propagated by a tuber or 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 form a given genotypes 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 Act:

(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 or 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 of 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 characteristics evidenced by processing or product characteristics, such as milling and baking characteristics in the case of wheat) 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.

*. Current through October 6, 1994.

§ 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 Act, 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), the applicant who first complies with all requirements of this Act 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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 the Secretary determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this county 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; andshall 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.

*. Current through October 6, 1994.

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.

*. Current through October 6, 1994.

§ 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. The variety shall be named in accordance with regulations issued by the Secretary.

(2) A description of the variety setting forth its distinctiveness, uniformity, and stability 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 statement of the basis of the claim of the applicant that the variety is new.

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

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

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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 the successor in interest of the breeder.

*. Current through October 6, 1994.

§ 2425. Benefit of earlier filing date

(a)

(1) 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, not including the date on which the application is filed in the foreign country.

(2) No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in the application filed in the United States or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(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.

(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 the predecessor in title of the person, 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.

*. Current through October 6, 1994.

§ 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.

Legislative History

As amended Pub.L. 96-574, § 12 , Dec. 22, 1980, 94 Stat. 3350.

*. Current through October 6, 1994.

§ 2427. Publication

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

Legislative History

As amended Pub.L. 96-574,§ 13 , Dec. 22, 1980, 94 Stat. 3350.

*. Current through October 6, 1994.

Part F. Examinations; 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 application 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.

*. Current through October 6, 1994.

§ 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 an applicant of an action other than allowance, the applicant shall be allowed at least 30 days, and not more than 180 days, or such other time as the Secretary shall set in the refusal, or such time as the Secretary 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

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.

*. Current through October 6, 1994.

§ 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 the variety as specified in the application as the facts of the case may appear, on compliance with the requirements of this chapter.

*. Current through October 6, 1994.

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.

*. Current through October 6, 1994.

§ 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 the signature of the Secretary placed thereon, and shall be recorded in the Plant Variety Protection Office.

*. Current through October 6, 1994.

§ 2483. Contents and term of plant variety protection

(a)

(1) Every certificate of plant variety protection shall certify that the breeder (or the successor in interest of the breeder) 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.

(2) If the owner 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).

(4) The Secretary may at the discretion of the Secretary 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 20 years from the date of issue of the certificate in the United States, 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. 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, or requiring the submission of a different name for the variety, except 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 the last owner 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.

*. Current through October 6, 1994.

§ 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.

Legislative History

As amended Pub.L. 96-574,§ 15 , Dec. 22, 1980, 94 Stat. 3350.

*. Current through October 6, 1994.

§ 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.

Legislative History

As amended Pub.L. 96-574, § 16 , Dec. 22, 1980, 94 Stat. 3351.

*. Current through October 6, 1994.

§ 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 the Secretary 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 the person otherwise would have had.

*. Current through October 6, 1994.

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 the Secretary shall establish.

*. Current through October 6, 1994.

§ 2502. Interfering plant variety protection

(a)

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.

(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 varietyprotection on the filing in the Plant Variety Protection Office of a certified copy of the judgement and on compliance with the requirements of this chapter.

*. Current through October 6, 1994.

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 acknowledgement under the hand and official seal of a person authorized to adminster 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 adminster oaths whose authority is proved by a cerificate 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 acknowledgement 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.

*. Current through October 6, 1994.

§ 2532. Ownership during testing

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible or tuber propagable 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 or tuber propagable plant material available to the public, as by sale thereof.

*. Current through October 6, 1994.

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 protected plant variety with the notice under section 2567 of this title:

(1) sell or market the protected 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 protected variety into, or export it from, the United States;

(3) sexually multiply, or propagate by a tuber or a part of a tuber, the variety as a step in marketing (for growing purposes) the variety;

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

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

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

(7) condition the variety for the purpose of propagation, except to the extent that the conditioning is related to the activities permitted under section 113;

(8) stock the variety for any of the purposes referred to in paragraphs (1) through (7);

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

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

(b)

(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 Act (7 U.S.C. 2321 et seq.) as in effect on the day before the effective date of this provision as well as plant varieties protected under this Act 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)

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 Act with respect to the propagating material.

(d)

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 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)

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.

(f)

As used in this section, the term "perform without authority" includesperformance without authority by any State, any instrumentality of a State, and any officer or employee of a State or instrumentalilty of a State acting in the official capacity of the officer or employee. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.

Legislative History

(Added October 28, 1992, Public Law 102-560, sec. 3, 106 Stat. 4230.)

*. Current through October 6, 1994.

§ 2542. Grandfather clause

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

*. Current through October 6, 1994.

§ 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 the person 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 the farm of the person, or for sale as provided in this section. 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 the actions of the purchaser constitute an infringement.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

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 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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 fron 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.

*. Current through October 6, 1994.

§ 2565. Attorney fees

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

*. Current through October 6, 1994.

§ 2566. Time limitation on damages

(a)

No recovery shall be had for that part of any infringment 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 the claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

*. Current through October 6, 1994.

§ 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 variety or by fixing to the 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 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.

Legislative History

(As amended Pub.L. 96-574, § 19(b) , Dec. 22, 1980, 94 Stat. 3351.)

*. Current through October 6, 1994.

§ 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 or tubers or parts of tubers, is prohibited, and the Secretary may, if the Secretary 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 cerificate still in force.

(4) Failure to use the name of a variety for which a certificate of protection has been issued under this Act, 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 Act is required under State law.

(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.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.

§ 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 the official capacity of the officer or employee, 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 111 [7 USC § 2541], or for any other violation under this title.

(b)

In a suit described in subsection (a) 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 124, [7 USC § 2564], and attorney fees under section 125, [7 USC § 2565].

Legislative History

(Added October 28, 1992, Public Law 102-560, sec. 3, 106 Stat. 4230.)

*. Current through October 6, 1994.

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 1, section 8 are both relied upon.

*. Current through October 6, 1994.

§ 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.

*. Current through October 6, 1994.