

**(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 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.

(Pub. L. 91-577, title II, § 41, Dec. 24, 1970, 84 Stat. 1546; Pub. L. 103-349, § 2, Oct. 6, 1994, 108 Stat.

3136; Pub. L. 115-334, title X, § 10108(a), Dec. 20, 2018, 132 Stat. 4906.)

**Editorial Notes**

**AMENDMENTS**

2018—Subsec. (a). Pub. L. 115-334 added par. (1) and redesignated former pars. (1) to (9) as (2) to (10), respectively.

1994—Pub. L. 103-349 amended section generally, substituting provisions consisting of subsecs. (a) and (b) for former provisions consisting of subsecs. (a) to (j).

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 1994 AMENDMENT**

Pub. L. 103-349, § 15, Oct. 6, 1994, 108 Stat. 3145, provided that: “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 notes under this section and section 2321 of this title] and the amendments made by this Act shall become effective 180 days after the date of enactment of this Act [Oct. 6, 1994].”

**TRANSITIONAL PROVISIONS FOR 1994 AMENDMENT**

Pub. L. 103-349, § 14, Oct. 6, 1994, 108 Stat. 3144, 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 Effective Date of 1994 Amendment note above], 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.), 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 Effective Date of 1994 Amendment note above].

“(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 [7 U.S.C. 2321 et seq.], as amended by this Act; and

“(B) for purposes of section 42 of the Plant Variety Protection Act [7 U.S.C. 2402], as amended by section 3 of this Act, 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), 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).

“(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**

**(a) In general**

The breeder of any sexually reproduced, tuber propagated, or asexually reproduced plant variety (other than fungi or bacteria) who has so reproduced the variety, or the successor in inter-

est 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, except that in the case of a tuber propagated plant variety the Secretary may waive the 4-year limitation for a period ending 1 year after April 4, 1996; 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 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.

(Pub. L. 91-577, title II, § 42, Dec. 24, 1970, 84 Stat. 1547; Pub. L. 103-349, § 3, Oct. 6, 1994, 108 Stat. 3138; Pub. L. 104-127, title IX, § 913(a), Apr. 4, 1996, 110 Stat. 1186; Pub. L. 115-334, title X, § 10108(b), Dec. 20, 2018, 132 Stat. 4906.)

## **Editorial Notes**

### **AMENDMENTS**

2018—Subsec. (a). Pub. L. 115-334 substituted “, tuber propagated, or asexually reproduced” for “or tuber propagated” in introductory provisions.

1996—Subsec. (a)(1)(B)(i). Pub. L. 104-127 inserted “, except that in the case of a tuber propagated plant variety the Secretary may waive the 4-year limitation for a period ending 1 year after April 4, 1996” after “filing”.

1994—Pub. L. 103-349 amended section generally, substituting present provisions for substantially similar former provisions.

## **Statutory Notes and Related Subsidiaries**

### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

### **§ 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.)

### **§ 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 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; Pub. L. 103-349, § 13(f), Oct. 6, 1994, 108 Stat. 3143.)

## **Editorial Notes**

### **AMENDMENTS**

1994—Pub. L. 103-349 substituted “the Secretary” for “he” before “determines” in first sentence.

## **Statutory Notes and Related Subsidiaries**

### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.