

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.