

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.)

**§ 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.

(Pub. L. 91-577, title II, §52, Dec. 24, 1970, 84 Stat. 1548; Pub. L. 96-574, §11, Dec. 22, 1980, 94 Stat. 3350; Pub. L. 103-349, §4, Oct. 6, 1994, 108 Stat. 3139.)

**Editorial Notes**

AMENDMENTS

1994—Par. (1). Pub. L. 103-349, §4(1), inserted at end “The variety shall be named in accordance with regulations issued by the Secretary.”

Par. (2). Pub. L. 103-349, §4(2), in first sentence substituted “distinctiveness, uniformity, and stability” for “novelty”.

Par. (3). Pub. L. 103-349, §4(4), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 103-349, §4(3), (5), redesignated par. (3) as (4) and inserted “(including any propagating material)” after “basic seed”. Former par. (4) redesignated (5).

Par. (5). Pub. L. 103-349, §4(3), redesignated par. (4) as (5).

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

**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.

**§ 2423. Joint breeders**

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

(b) The Secretary, after such notice as the Secretary 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; Pub. L. 103-349, §13(g), Oct. 6, 1994, 108 Stat. 3143.)

**Editorial Notes**

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-349, §13(g)(1), substituted “one person (or the successor of the person)” for “one (or his successor)”.

Subsec. (b). Pub. L. 103-349, §13(g)(2), substituted “the Secretary” for “he” before “may”.

**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.

**§ 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.

(Pub. L. 91-577, title II, §54, Dec. 24, 1970, 84 Stat. 1548; Pub. L. 103-349, §13(h), Oct. 6, 1994, 108 Stat. 3143.)

**Editorial Notes**

AMENDMENTS

1994—Pub. L. 103-349 substituted “the successor in interest of the breeder” for “his successor in interest”.

**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.

**§ 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.

(Pub. L. 91-577, title II, §55, Dec. 24, 1970, 84 Stat. 1548; Pub. L. 103-349, §§5, 13(i), Oct. 6, 1994, 108 Stat. 3139, 3143.)

#### Editorial Notes

##### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-349, §5(1), designated first sentence as par. (1) and second sentence as par. (2).

Subsec. (a)(1). Pub. L. 103-349, §5(2), inserted before period at end “, not including the date on which the application is filed in the foreign country”.

Subsec. (a)(2). Pub. L. 103-349, §13(i)(1), substituted “in the application filed in the United States” for “in his application”.

Subsec. (a)(3). Pub. L. 103-349, §5(3), added par. (3).

Subsec. (b). Pub. L. 103-349, §13(i)(2), substituted “the predecessor in title of the person” for “his predecessor in title”.

#### 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.

#### § 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.)

#### Editorial Notes

##### AMENDMENTS

1980—Pub. L. 96-574 inserted provisions relating to name of applicant and sale of the variety.

#### § 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.)

#### Editorial Notes

##### AMENDMENTS

1980—Pub. L. 96-574 inserted “information regarding” after “publication of”.

#### 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 applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as herein-after provided.

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

#### § 2442. Notice of refusal; reconsideration

(a) Whenever an application is refused, or any objection or requirement made by the examiner,