

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)¹ 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.)

Editorial Notes

REFERENCES IN TEXT

Section 2422(3) of this title, referred to in subsec. (b), was redesignated section 2422(4) of this title by Pub. L. 103-349, §4, Oct. 6, 1994, 108 Stat. 3139.

§ 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.

(Pub. L. 91-577, title II, §82, Dec. 24, 1970, 84 Stat. 1551; Pub. L. 103-349, §13(l), Oct. 6, 1994, 108 Stat. 3143.)

Editorial Notes

AMENDMENTS

1994—Pub. L. 103-349 substituted “the signature of the Secretary” for “his signature”.

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.

§ 2483. Contents and term of plant variety protection

(a) Certificate

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

(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) Term

(1) In general

Except as provided in paragraph (2), the term of plant variety protection shall expire 20 years from the date of issue of the certificate in the United States, except that—

(A) in the case of a tuber propagated plant variety subject to a waiver granted under section 2402(a)(1)(B)(i) of this title, the term of the plant variety protection shall expire 20 years after the date of the original grant of the plant breeder's rights to the variety outside the United States; and

(B) 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.

(2) Exceptions

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) Expiration upon failure to comply with regulations; notice

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.

(Pub. L. 91-577, title II, §83, Dec. 24, 1970, 84 Stat. 1551; Pub. L. 96-574, §14, Dec. 22, 1980, 94 Stat. 3350; Pub. L. 103-349, §§7, 13(m), Oct. 6, 1994, 108 Stat. 3140, 3143; Pub. L. 104-127, title IX, §913(b), Apr. 4, 1996, 110 Stat. 1186.)

Editorial Notes

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-127, §913(b)(1), (2), inserted heading, designated first sentence as par. (1), inserted par. heading, substituted “Except as provided in paragraph (2), the term” for “The term”, designated second sentence as par. (2), and inserted par. heading.

¹ See References in Text note below.

¹ So in original. The comma probably should not appear.

Subsec. (b)(1). Pub. L. 104-127, §913(b)(3), which directed the amendment of par. (2) by striking out “except that, in the case” and inserting “except that—”, subpar. (A), and “(B) in the case”, was executed to par. (1) to reflect the probable intent of Congress.

1994—Subsec. (a). Pub. L. 103-349, §7(1)(A), designated first through fourth sentences as pars. (1) to (4), respectively.

Subsec. (a)(1). Pub. L. 103-349, §13(m)(1)(A), which directed the substitution of “(or the successor in interest of the breeder)” for “(or his successor in interest) his heirs and assignees”, was executed by making the substitution for “(or his successor in interest) his heirs or assignees”, to reflect the probable intent of Congress.

Subsec. (a)(2), (3). Pub. L. 103-349, §7(1)(B), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

“(2) 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.

“(3) Any rights, or all rights except those elected under the preceding sentence, may be waived; and the certificate shall conform to such waiver.”

Subsec. (a)(4). Pub. L. 103-349, §13(m)(1)(B), substituted “the discretion of the Secretary” for “his discretion”.

Subsec. (b). Pub. L. 103-349, §7(2), in first sentence substituted “20 years” for “eighteen years” and inserted before period at end “, 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”.

Subsec. (c). Pub. L. 103-349, §§7(3), 13(m)(2), substituted “repository, or requiring the submission of a different name for the variety, except that” for “repository: *Provided, however, That*” and “the last owner” for “he” before “fails”.

1980—Subsec. (b). Pub. L. 96-574 substituted “eighteen” for “seventeen”.

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.

§ 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.)

Editorial Notes

AMENDMENTS

1980—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.

§ 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.)

Editorial Notes

AMENDMENTS

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

§ 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.

(Pub. L. 91-577, title II, §86, Dec. 24, 1970, 84 Stat. 1552; Pub. L. 103-349, §13(n), Oct. 6, 1994, 108 Stat. 3143.)

Editorial Notes

AMENDMENTS

1994—Pub. L. 103-349 substituted “the Secretary” for “him” in first sentence and “the person” for “he” in third 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.

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