

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

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) 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.

(Pub. L. 91-577, title II, §91, Dec. 24, 1970, 84 Stat. 1552; Pub. L. 96-574, §17, Dec. 22, 1980, 94 Stat. 3351; Pub. L. 103-349, §13(o), Oct. 6, 1994, 108 Stat. 3144.)

Editorial Notes

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-349 substituted “the Secretary” for “he”.

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

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.

§§ 2502, 2503. Repealed. Pub. L. 103-349, § 8(a), Oct. 6, 1994, 108 Stat. 3140

Section 2502, Pub. L. 91-577, title II, §92, Dec. 24, 1970, 84 Stat. 1553, related to priority contest.

Section 2503, Pub. L. 91-577, title II, §93, Dec. 24, 1970, 84 Stat. 1553; Pub. L. 96-574, §18, Dec. 22, 1980, 94 Stat. 3351, related to effect of adverse final judgment or of nonaction.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

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

§ 2504. 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 the Sec-

retary 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 variety protection on the filing in the Plant Variety Protection Office of a certified copy of the judgment and on compliance with the requirements of this chapter.

(Pub. L. 91-577, title II, §92, formerly §94, Dec. 24, 1970, 84 Stat. 1553; renumbered §92 and amended Pub. L. 103-349, §§8(b), (c)(1), 13(p), Oct. 6, 1994, 108 Stat. 3140, 3144.)

Editorial Notes

CODIFICATION

The text of subsec. (b) of section 2463 of this title, which was transferred to subsec. (b) of this section by Pub. L. 103-349, §8(c)(1), was based on section 73(b) of Pub. L. 91-577, title II, Dec. 24, 1970, 84 Stat. 1550.

PRIOR PROVISIONS

A prior section 92 of Pub. L. 91-577 was classified to section 2502 of this title prior to repeal by Pub. L. 103-349.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-349, §8(b)(2), designated existing provisions as subsec. (a) and struck out at end “The provisions of section 2463(b) of this title shall apply to actions brought under this section.”

Subsec. (b). Pub. L. 103-349, §§8(c)(1), 13(p), transferred subsec. (b) of section 2463 of this title to subsec. (b) of this section, and substituted “the Secretary” for “he” before “shall have” in fourth sentence. See Codification note above.

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.

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 acknowledgment under the hand and official seal of a person authorized to administer 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 administer oaths whose authority is proved by a certificate 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