

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.)

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.

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.)

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”.

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 appli-

cation 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.)

AMENDMENTS

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

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.)

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”.

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.)

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.)

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 exam-

ination 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, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to an applicant of an action other than allowance, the applicant shall be allowed at least 30 days, and not more than 180 days, or such other time as the Secretary shall set in the refusal, or such time as the Secretary may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

(Pub. L. 91-577, title II, §62, Dec. 24, 1970, 84 Stat. 1549; Pub. L. 103-349, §§6, 13(j), Oct. 6, 1994, 108 Stat. 3140, 3143.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-349 in first sentence substituted “mailing to an applicant” for “mailing to him”, “the applicant shall” for “an applicant shall”, “at least 30 days, and not more than 180 days” for “six months”, “the Secretary shall” for “the Secretary in exceptional circumstances shall”, and “as the Secretary may” for “as he may”.

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.

§ 2443. Initial appeal

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

(Pub. L. 91-577, title II, §63, Dec. 24, 1970, 84 Stat. 1550.)

PART G—APPEALS TO COURTS AND OTHER REVIEW

§ 2461. Appeals

From the decisions made under sections 2404, 2443, 2501, and 2568 of this title appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal.

(Pub. L. 91-577, title II, §71, Dec. 24, 1970, 84 Stat. 1550; Pub. L. 97-164, title I, §145, Apr. 2, 1982, 96