

Stat. 45; Pub. L. 103-349, §8(d)(1), Oct. 6, 1994, 108 Stat. 3141.)

AMENDMENTS

1994—Pub. L. 103-349 struck out “2502,” after “2501.”
1982—Pub. L. 97-164 substituted “The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal” for “The Court of Customs and Patent Appeals and United States Courts of Appeals shall have jurisdiction, with venue in the case of the latter as stated in section 2343 of title 28”.

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.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 2462. Civil action against Secretary

An applicant dissatisfied with a decision under section 2443 or 2501 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for the variety as specified in the application as the facts of the case may appear, on compliance with the requirements of this chapter.

(Pub. L. 91-577, title II, §72, Dec. 24, 1970, 84 Stat. 1550; Pub. L. 103-349, §13(k), Oct. 6, 1994, 108 Stat. 3143.)

AMENDMENTS

1994—Pub. L. 103-349, which directed that the second sentence be amended by substituting “the variety as specified in the application” for “his variety as specified in his application”, was executed by making the substitution in the third sentence, to reflect the probable intent of Congress.

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.

§ 2463. Repealed. Pub. L. 103-349, § 8(c)(2), Oct. 6, 1994, 108 Stat. 3141

Section, Pub. L. 91-577, title II, §73, Dec. 24, 1970, 84 Stat. 1550; Pub. L. 103-349, §8(c)(1), Oct. 6, 1994, 108 Stat. 3140, related to appeal or civil action in contested cases. Prior to repeal, subsec. (b) of this section was transferred to section 2504 of this title by Pub. L. 103-349, §8(c)(1), Oct. 6, 1994, 108 Stat. 3140.

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.

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 applica-

tion, 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.)

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.)

AMENDMENTS

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

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).

¹ See References in Text note below.

² So in original. The comma probably should not appear.

(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.)

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.

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”.

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.)

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.)

AMENDMENTS

1980—Pub. L. 96-574 struck out applicability of section 2484 of this title to manner and form of certificate,