

neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless the fees and traveling expenses of the witness in going to, and returning from, one day's attendance at the place of examination, are paid or tendered the witness at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary.

(Pub. L. 91-577, title I, §24, Dec. 24, 1970, 84 Stat. 1544; Pub. L. 103-349, §13(d), Oct. 6, 1994, 108 Stat. 3143.)

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-349, §13(d)(1), substituted “the witness” for “him” in first sentence.

Subsec. (c). Pub. L. 103-349, §13(d)(2)(B), substituted “the witness” for “him” after “paid or tendered” in second sentence.

Pub. L. 103-349, §13(d)(2)(A), which directed that second sentence be amended by substituting “the fees and traveling expenses of the witness” for “this fees and traveling expenses”, was executed by making the substitution for “his fees and traveling expenses”, 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.

### § 2355. Effect of defective execution

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

(Pub. L. 91-577, title I, §25, Dec. 24, 1970, 84 Stat. 1545.)

### § 2356. Regulations for practice before the Office

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties before the Plant Variety Protection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

(Pub. L. 91-577, title I, §26, Dec. 24, 1970, 84 Stat. 1545.)

### § 2357. Unauthorized practice

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 2356 of this title, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and

without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; or to anyone who establishes that the person acted only on behalf of any employer by whom the person was regularly employed.

(Pub. L. 91-577, title I, §27, Dec. 24, 1970, 84 Stat. 1545; Pub. L. 103-349, §13(e), Oct. 6, 1994, 108 Stat. 3143.)

#### AMENDMENTS

1994—Pub. L. 103-349 substituted “the person” for “he” in two places in last sentence.

#### 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 C—PLANT VARIETY PROTECTION FEES

#### § 2371. Plant variety protection fees

##### (a) In general

The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees for services performed under this chapter.

##### (b) Late payment penalty

On failure to pay such fees, the Secretary shall assess a late payment penalty. Such overdue fees shall accrue interest as required by section 3717 of title 31.

##### (c) Disposition of funds

Such fees, late payment penalties, and accrued interest collected shall be credited to the account that incurs the cost and shall remain available without fiscal year limitation to pay the expenses incurred by the Secretary in carrying out this chapter. Such funds collected (including late payment penalties and any interest earned) may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.

##### (d) Actions for nonpayment

The Attorney General may bring an action for the recovery of charges that have not been paid in accordance with this chapter against any person obligated for payment of such charges under this chapter in any United States district court or other United States court for any territory or possession in any jurisdiction in which the person is found, resides, or transacts business. The court shall have jurisdiction to hear and decide the action.

##### (e) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(Pub. L. 91-577, title I, §31, Dec. 24, 1970, 84 Stat. 1545; Pub. L. 96-574, §10, Dec. 22, 1980, 94 Stat. 3350; Pub. L. 100-203, title I, §1505, Dec. 22, 1987, 101 Stat. 1330-28.)

#### AMENDMENTS

1987—Pub. L. 100-203 amended section generally. Prior to amendment, section read as follows: “The Secretary

shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this chapter. Such fees shall be deposited into the Treasury as miscellaneous receipts. There are hereby authorized to be appropriated such funds as may be necessary to carry out the provisions of this chapter."

1980—Pub. L. 96-574 substituted provisions relating to deposit of fees and authorization of appropriations for provisions relating to recovering of fees, initial capital of the fund, and charging of fees.

**§ 2372. Payment of plant variety protection fees; return of excess amounts**

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required.

(Pub. L. 91-577, title I, § 32, Dec. 24, 1970, 84 Stat. 1545.)

SUBCHAPTER II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

PART D—PROTECTABILITY OF PLANT VARIETIES

**§ 2401. Definitions and rules of construction**

**(a) Definitions**

As used in this chapter:

**(1) Basic seed**

The term "basic seed" means the seed planted to produce certified or commercial seed.

**(2) Breeder**

The term "breeder" means the person who directs the final breeding creating a variety or who discovers and develops a variety. If the actions are conducted by an agent on behalf of a principal, the principal, rather than the agent, shall be considered the breeder. The term does not include a person who redevelops or rediscovers a variety the existence of which is publicly known or a matter of common knowledge.

**(3) Essentially derived variety**

**(A) In general**

The term "essentially derived variety" means a variety that—

(i) is predominantly derived from another variety (referred to in this paragraph as the "initial variety") or from a variety that is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(ii) is clearly distinguishable from the initial variety; and

(iii) except for differences that result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

**(B) Methods**

An essentially derived variety may be obtained by the selection of a natural or induced mutant or of a somaclonal variant, the selection of a variant individual from

plants of the initial variety, backcrossing, transformation by genetic engineering, or other method.

**(4) Kind**

The term "kind" means one or more related species or subspecies singly or collectively known by one common name, such as soybean, flax, or radish.

**(5) Seed**

The term "seed", with respect to a tuber propagated variety, means the tuber or the part of the tuber used for propagation.

**(6) Sexually reproduced**

The term "sexually reproduced" includes any production of a variety by seed, but does not include the production of a variety by tuber propagation.

**(7) Tuber propagated**

The term "tuber propagated" means propagated by a tuber or a part of a tuber.

**(8) United States**

The terms "United States" and "this country" mean the United States, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

**(9) Variety**

The term "variety" means a plant grouping within a single botanical taxon of the lowest known rank, that, without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other matter.

**(b) Rules of construction**

For the purposes of this chapter:

**(1) Sale or disposition for nonreproductive purposes**

The sale or disposition, for other than reproductive purposes, of harvested material produced as a result of experimentation or testing of a variety to ascertain the characteristics of the variety, or as a by-product of increasing a variety, shall not be considered to be a sale or disposition for purposes of exploitation of the variety.

**(2) Sale or disposition for reproductive purposes**

The sale or disposition of a variety for reproductive purposes shall not be considered to be a sale or disposition for the purposes of exploitation of the variety if the sale or disposition is done as an integral part of a program of experimentation or testing to ascertain the characteristics of the variety, or to increase the variety on behalf of the breeder or the successor in interest of the breeder.

**(3) Sale or disposition of hybrid seed**

The sale or disposition of hybrid seed shall be considered to be a sale or disposition of har-