

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-