

teristics of the variety with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

**(b) Multiple applicants**

**(1) In general**

If 2 or more applicants submit applications on the same effective filing date for varieties that cannot be clearly distinguished from one another, but that fulfill all other requirements of subsection (a) of this section, the applicant who first complies with all requirements of this chapter shall be entitled to a certificate of plant variety protection, to the exclusion of any other applicant.

**(2) Requirements completed on same date**

**(A) In general**

Except as provided in subparagraph (B), if 2 or more applicants comply with all requirements for protection on the same date, a certificate shall be issued for each variety.

**(B) Varieties indistinguishable**

If the varieties that are the subject of the applications cannot be distinguished in any manner, a single certificate shall be issued jointly to the applicants.

(Pub. L. 91-577, title II, §42, Dec. 24, 1970, 84 Stat. 1547; Pub. L. 103-349, §3, Oct. 6, 1994, 108 Stat. 3138; Pub. L. 104-127, title IX, §913(a), Apr. 4, 1996, 110 Stat. 1186.)

AMENDMENTS

1996—Subsec. (a)(1)(B)(i). Pub. L. 104-127 inserted “, except that in the case of a tuber propagated plant variety the Secretary may waive the 4-year limitation for a period ending 1 year after April 4, 1996” after “filing”.

1994—Pub. L. 103-349 amended section generally, substituting present provisions for substantially similar former provisions.

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.

**§ 2403. Reciprocity limits**

Protection under this chapter may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

(Pub. L. 91-577, title II, §43, Dec. 24, 1970, 84 Stat. 1547.)

**§ 2404. Public interest in wide usage**

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when the Secretary determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price

which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 2461 or 2462 of this title (any finding that the price is not reasonable being reviewable), and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court.

(Pub. L. 91-577, title II, §44, Dec. 24, 1970, 84 Stat. 1547; Pub. L. 103-349, §13(f), Oct. 6, 1994, 108 Stat. 3143.)

AMENDMENTS

1994—Pub. L. 103-349 substituted “the Secretary” for “he” before “determines” in first 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 E—APPLICATIONS; FORM; WHO MAY FILE;  
RELATING BACK; CONFIDENTIALITY

**§ 2421. Application for recognition of plant variety rights**

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulations established by the Secretary.

(Pub. L. 91-577, title II, §51, Dec. 24, 1970, 84 Stat. 1548.)

**§ 2422. Content of application**

An application for a certificate recognizing plant variety rights shall contain:

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued. The variety shall be named in accordance with regulations issued by the Secretary.

(2) A description of the variety setting forth its distinctiveness, uniformity, and stability and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submission of records or proof of ownership or of allegations made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect others 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 application 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.