

to be governed by the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as in effect on the day before the effective date of this Act.

“(b) APPLICATIONS REFILED.—

“(1) IN GENERAL.—An applicant may refile a pending application on or after the effective date of this Act [see Effective Date of 1994 Amendment note above].

“(2) EFFECT OF REFILEING.—If a pending application is refiled on or after the effective date of this Act—

“(A) eligibility for protection and the terms of protection shall be governed by the Plant Variety Protection Act [7 U.S.C. 2321 et seq.], as amended by this Act; and

“(B) for purposes of section 42 of the Plant Variety Protection Act [7 U.S.C. 2402], as amended by section 3 of this Act, the date of filing shall be the date of filing of the original application.

“(c) LABELING.—

“(1) IN GENERAL.—To obtain the protection provided to an owner of a protected variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) (as amended by this Act), a notice given by an owner concerning the variety under section 127 of the Plant Variety Protection Act (7 U.S.C. 2567) shall state that the variety is protected under such Act (as amended by this Act).

“(2) SANCTIONS.—Any person that makes a false or misleading statement or claim, or uses a false or misleading label, concerning protection described in paragraph (1) shall be subject to the sanctions described in section 128 of the Plant Variety Protection Act (7 U.S.C. 2568).”

**§ 2402. Right to plant variety protection; plant varieties protectable**

**(a) In general**

The breeder of any sexually reproduced or tuber propagated plant variety (other than fungi or bacteria) who has so reproduced the variety, or the successor in interest of the breeder, shall be entitled to plant variety protection for the variety, subject to the conditions and requirements of this chapter, if the variety is—

(1) new, in the sense that, on the date of filing of the application for plant variety protection, propagating or harvested material of the variety has not been sold or otherwise disposed of to other persons, by or with the consent of the breeder, or the successor in interest of the breeder, for purposes of exploitation of the variety—

(A) in the United States, more than 1 year prior to the date of filing; or

(B) in any area outside of the United States—

(i) more than 4 years prior to the date of filing, 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; or

(ii) in the case of a tree or vine, more than 6 years prior to the date of filing;

(2) distinct, in the sense that the variety is clearly distinguishable from any other variety the existence of which is publicly known or a matter of common knowledge at the time of the filing of the application;

(3) uniform, in the sense that any variations are describable, predictable, and commercially acceptable; and

(4) stable, in the sense that the variety, when reproduced, will remain unchanged with regard to the essential and distinctive charac-

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), 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