

(Pub. L. 91-577, title II, §61, Dec. 24, 1970, 84 Stat. 1549.)

#### § 2442. Notice of refusal; reconsideration

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to an applicant of an action other than allowance, the applicant shall be allowed at least 30 days, and not more than 180 days, or such other time as the Secretary shall set in the refusal, or such time as the Secretary may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

(Pub. L. 91-577, title II, §62, Dec. 24, 1970, 84 Stat. 1549; Pub. L. 103-349, §§6, 13(j), Oct. 6, 1994, 108 Stat. 3140, 3143.)

##### AMENDMENTS

1994—Subsec. (b). Pub. L. 103-349 in first sentence substituted “mailing to an applicant” for “mailing to him”, “the applicant shall” for “an applicant shall”, “at least 30 days, and not more than 180 days” for “six months”, “the Secretary shall” for “the Secretary in exceptional circumstances shall”, and “as the Secretary may” for “as he 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.

#### § 2443. Initial appeal

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

(Pub. L. 91-577, title II, §63, Dec. 24, 1970, 84 Stat. 1550.)

##### PART G—APPEALS TO COURTS AND OTHER REVIEW

#### § 2461. Appeals

From the decisions made under sections 2404, 2443, 2501, and 2568 of this title appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal.

(Pub. L. 91-577, title II, §71, Dec. 24, 1970, 84 Stat. 1550; Pub. L. 97-164, title I, §145, Apr. 2, 1982, 96 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 application, 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)<sup>1</sup> 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(7), 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),<sup>1</sup> 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).

(4) The Secretary may at the discretion of the Secretary permit such election or waiver to be

<sup>1</sup> See References in Text note below.

<sup>1</sup> So in original. The comma probably should not appear.

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