

tainer of seed of a variety or by fixing to the variety, a label containing either the words "Unauthorized Propagation Prohibited" or the words "Unauthorized Seed Multiplication Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

(Pub. L. 91-577, title III, §127, Dec. 24, 1970, 84 Stat. 1557; Pub. L. 96-574, §19(b), Dec. 22, 1980, 94 Stat. 3351; Pub. L. 103-349, §11, Oct. 6, 1994, 108 Stat. 3142.)

#### AMENDMENTS

1994—Pub. L. 103-349 in first sentence struck out "novel" before "variety or" and before "variety, a", and in second sentence struck out "novel" before "variety is distributed".

1980—Pub. L. 96-574 substituted "either the words 'Unauthorized Propagation Prohibited' or the words 'Unauthorized Seed Multiplication Prohibited'" for "the words 'Propagation Prohibited'".

#### 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.

#### § 2568. False marking; cease and desist orders

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material or tubers or parts of tubers, is prohibited, and the Secretary may, if the Secretary determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 2461 of this title:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of either the phrase "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or similar phrase without reasonable basis. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(4) Failure to use the name of a variety for which a certificate of protection has been issued under this chapter, even after the expiration of the certificate, except that lawn, turf, or forage grass seed, or alfalfa or clover seed may be sold without a variety name unless use

of the name of a variety for which a certificate of protection has been issued under this chapter is required under State law.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the purpose of deceiving the public, shall be fined not more than \$10,000 and not less than \$500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action.

(Pub. L. 91-577, title III, §128, Dec. 24, 1970, 84 Stat. 1557; Pub. L. 96-574, §19(c), Dec. 22, 1980, 94 Stat. 3352; Pub. L. 103-349, §§12, 13(v), Oct. 6, 1994, 108 Stat. 3142, 3144.)

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-349 inserted "or tubers or parts of tubers" after "plant material" and substituted "if the Secretary determines" for "if he determines" in introductory provisions, and added par. (4).

1980—Subsec. (a)(3). Pub. L. 96-574 substituted provisions respecting prohibitions for use of phrases "Unauthorized Propagation Prohibited" and "Unauthorized Seed Multiplication Prohibited" for provisions respecting prohibitions for use of phrase "propagation prohibited".

#### 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.

#### § 2569. Nonresident proprietors; service and notice

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it would have if the owner were personally within the jurisdiction of the court.

(Pub. L. 91-577, title III, §129, Dec. 24, 1970, 84 Stat. 1557.)

#### § 2570. Liability of States, instrumentalities of States, and State officials for infringement of plant variety protection

(a) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any

governmental or nongovernmental entity, for infringement of plant variety protection under section 2541 of this title, or for any other violation under this subchapter.

(b) In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 2564 of this title, and attorney fees under section 2565 of this title.

(Pub. L. 91-577, title III, §130, as added Pub. L. 102-560, §3(b), Oct. 28, 1992, 106 Stat. 4231; amended Pub. L. 103-349, §13(w), Oct. 6, 1994, 108 Stat. 3144.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-349 substituted “the official capacity of the officer or employee” for “his official capacity”.

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

Section effective with respect to violations that occur on or after Oct. 28, 1992, see section 4 of Pub. L. 102-560, set out as an Effective Date of 1992 Amendment note under section 2541 of this title.

PART M—INTENT AND SEVERABILITY

§ 2581. Intent

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

(Pub. L. 91-577, title III, §131, Dec. 24, 1970, 84 Stat. 1558.)

§ 2582. Severability

If this chapter is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remaining provisions and other circumstances.

(Pub. L. 91-577, title III, §132, Dec. 24, 1970, 84 Stat. 1558.)

§ 2583. Repealed. Pub. L. 96-574, § 20, Dec. 22, 1980, 94 Stat. 3352

Section, Pub. L. 91-577, title III, §144, Dec. 24, 1970, 84 Stat. 1559, exempted certain plants from provisions of this chapter.

CHAPTER 58—POTATO RESEARCH AND PROMOTION

Sec.	
2611.	Congressional findings and declaration of policy.
2612.	Definitions.
2613.	Authority for issuance and amendment of plan.

Sec.	
2614.	Notice and hearings.
2615.	Finding and issuance of plan.
2616.	Regulations.
2617.	Required terms and conditions of plans.
2618.	Permissive terms and conditions of plans.
2619.	Assessments.
2620.	Procedural rights of persons subject to plan.
2621.	Enforcement.
2622.	Investigations.
2623.	Referendum.
2624.	Suspension or termination of plans.
2625.	Amendment procedure.
2626.	Separability.
2627.	Authorization.

§ 2611. Congressional findings and declaration of policy

Potatoes are a basic food in the United States and foreign countries. They are produced by many individual potato growers in every State in the United States and imported into the United States from foreign countries. In 1966, there were one million four hundred and ninety-seven thousand acres of cropland in the United States devoted to the production of potatoes.

Potatoes and potato products move in the channels of interstate or foreign commerce, and potatoes which do not move in such channels directly burden or affect interstate commerce in potatoes and potato products.

The maintenance and expansion of existing potato markets and the development of new or improved markets are vital to the welfare of potato growers and those concerned with marketing, using, and processing potatoes as well as the general economic welfare of the Nation.

Therefore, it is the declared policy of the Congress and the purpose of this chapter that it is essential in the public interest, through the exercise of the powers provided herein, to authorize the establishment of an orderly procedure for the financing, through adequate assessments on all potatoes harvested in the United States for commercial use and imported into the United States from foreign countries, and the carrying out of an effective and continuous coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position, and to maintain and expand domestic and foreign markets for potatoes and potato products.

(Pub. L. 91-670, title III, §302, Jan. 11, 1971, 84 Stat. 2041; Pub. L. 101-624, title XIX, §1936, Nov. 28, 1990, 104 Stat. 3865.)

AMENDMENTS

1990—Pub. L. 101-624, in first par., inserted “and foreign countries” and “and imported into the United States from foreign countries” and struck out at end “Approximately two hundred and seventy-five million hundredweight of potatoes have been produced annually during the past five years with an estimated sales value to the potato producers of \$561,000,000.”; in second par., struck out “, in a large part,” after “products move”, inserted “or foreign”, and struck out at end “All potatoes produced in the United States are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in potatoes and potato products.” and, in third par., inserted “and imported into the United States from foreign countries” and substituted “and potato products” for “produced in the United States”.