

(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) **Asexually reproduced**

The term “asexually reproduced” means produced by a method of plant propagation using vegetative material (other than seed) from a single parent, including cuttings, grafting, tissue culture, and propagation by root division.

(2) **Basic seed**

The term “basic seed” means the seed planted to produce certified or commercial seed.

(3) **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.

(4) **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.

(5) **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.

(6) **Seed**

The term “seed”, with respect to a tuber propagated variety, means the tuber or the part of the tuber used for propagation.

(7) **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.

(8) **Tuber propagated**

The term “tuber propagated” means propagated by a tuber or a part of a tuber.

(9) **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.

(10) **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 harvested material of the varieties from which the seed was produced.

(4) **Application for protection or entering into a register of varieties**

The filing of an application for the protection or for the entering of a variety in an official register of varieties, in any country, shall

be considered to render the variety a matter of common knowledge from the date of the application, if the application leads to the granting of protection or to the entering of the variety in the official register of varieties, as the case may be.

(5) Distinctness

The distinctness of one variety from another may be based on one or more identifiable morphological, physiological, or other characteristics (including any characteristics evidenced by processing or product characteristics, such as milling and baking characteristics in the case of wheat) with respect to which a difference in genealogy may contribute evidence.

(6) Publicly known varieties

(A) In general

A variety that is adequately described by a publication reasonably considered to be a part of the public technical knowledge in the United States shall be considered to be publicly known and a matter of common knowledge.

(B) Description

A description that meets the requirements of subparagraph (A) shall include a disclosure of the principal characteristics by which a variety is distinguished.

(C) Other means

A variety may become publicly known and a matter of common knowledge by other means.

(Pub. L. 91-577, title II, §41, Dec. 24, 1970, 84 Stat. 1546; Pub. L. 103-349, §2, Oct. 6, 1994, 108 Stat. 3136; Pub. L. 115-334, title X, §10108(a), Dec. 20, 2018, 132 Stat. 4906.)

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-334 added par. (1) and redesignated former pars. (1) to (9) as (2) to (10), respectively.

1994—Pub. L. 103-349 amended section generally, substituting provisions consisting of subssecs. (a) and (b) for former provisions consisting of subssecs. (a) to (j).

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-349, §15, Oct. 6, 1994, 108 Stat. 3145, provided that: “This Act [amending this section and sections 2327, 2330, 2353, 2354, 2357, 2402, 2404, 2422, 2423, 2424, 2425, 2442, 2461, 2462, 2463, 2482, 2483, 2486, 2501, 2504, 2532, 2541, 2542, 2543, 2561, 2566, 2567, 2568, and 2570 of this title, repealing sections 2463, 2502 and 2503 of this title, and enacting provisions set out as notes under this section and section 2321 of this title] and the amendments made by this Act shall become effective 180 days after the date of enactment of this Act [Oct. 6, 1994].”

TRANSITIONAL PROVISIONS FOR 1994 AMENDMENT

Pub. L. 103-349, §14, Oct. 6, 1994, 108 Stat. 3144, provided that:

“(a) IN GENERAL.—Except as provided in this section, any variety for which a certificate of plant variety protection has been issued prior to the effective date of this Act [see Effective Date of 1994 Amendment note above], and any variety for which an application is pending on the effective date of this Act, shall continue 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, tuber propagated, or asexually reproduced 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 characteristics 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.