

Protection of Plant Varieties and Farmers' Rights Regulations, 2006

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Protection of Plant Varieties and Farmers' Rights Regulations, 2006

G.S.R. 740(E). In exercise of the powers conferred by sub-sec. (1) of Sec. 95 of the Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), the Protection of Plant Varieties and Farmers' Rights Authority hereby makes, with the approval of the Central Government, the following regulations, namely:

CHAPTER 1

MISCELLANEOUS

CHAPTER 2

Duties and Jurisdiction of the Registrar

3. Duties of the Registrar :-

(1) The Registrar shall discharge the functions under the superintendence and directions of the Registrar General.

(2) The Registrar, on receipt of an application under Sec. 14 for the registration of any variety, shall examine the same under Sec. 20 and decide whether the application is to be accepted or to be refused or to be accepted subject to requirement of amendment(s) or limitations.

(3) The Registrar shall give the applicant an opportunity to amend the application and the right to be heard before refusing the application.

(4) The Registrar shall have powers to register a variety, the denomination of which comprises of its geographical name under special circumstances.

(5) The Registrar, in consultation with and with the approval of the Authority, shall facilitate, subject to meeting the pre-requisites for registration, registration of essentially derived variety.

(6) The Registrar shall issue certificate of Registration on registration of a variety under the Act.

(7) The Registrar shall, on being satisfied, allow alterations in denominations, names and address of the applicants assignees, authorised agents, legal representatives and successor and may permit clerical corrections in the Register or certificates of registration or applications on receipt of written request to this effect.

(8) The Registrar shall consider oppositions filed in deciding applications for registration.

(9) The Registrar shall maintain National Registry of Plant Varieties, Register of Agents and licensees along with entitlement and conditions and update the same from time to time.

(10) The Registrar shall cancel or vary, the Certificate of Registration on obtaining proper evidence; terms of registration by giving a reasonable opportunity to the person concerned of being heard and consult the Authority whenever required, before giving a final decision.

(11) The Registrar shall have powers to issue copies of certificates of registration or any part or whole of Register of Plant Varieties, on

receipt of written application to this effect, apart from allowing inspections of the Register of Plant Varieties on written request.

(12) The Registrar may allow a party to a proceeding before it on written request and on satisfactory proof that the interest of the person, who were a party to it and who had expired, should transmit to the person or party impleaded.

(13) The Registrar shall advertise in the Gazette or Journal changes made to the Certificate of Registration.

4. Jurisdiction :-

The Registrar shall have jurisdiction of All India basis with respect to crops and areas, as per the order of the Authority from time to time. He shall be assisted by the Joint Registrar, Deputy Registrar and other technical and administrative staff.

5. The term of office and the conditions of service of the Registrars :-

(1) A person having adequate practical knowledge of Plant Variety Protection System and Post-graduation in Agricultural Science (with specialization in Plant Breeding and Genetics, Biotechnology, Agriculture Botany etc.) or Forestry or allied subject shall be eligible to hold the Office of Registrar in the Authority. The Registrar can be taken on deputation and absorption basis from other Departments or Organization.

(2) The Authority shall follow Fundamental Rules, Central Civil Services (Leave) Rules, 1972 and Central Civil Services (Pension) Rules, 1972 while fixing salary and other allowances including pension, leave, traveling and daily allowances of the Registrar. The Authority shall have the flexibility to make the special policy or rules or regulations or guidelines for career advancement or promotion of Registrar and other staff of the Authority.

(3) A person holding the office of the Registrar may relinquish the office by giving in writing to the Authority notice of not less than three months.

(4) The other conditions of the Registrar shall be regulated by orders made in that behalf by the Authority from time to time.

CHAPTER 3

Registration of Plant Varieties and essentially derived variety

6. Criteria for registration of extant variety :-

The suitability for registration of extant varieties which have been notified under Sec. 5 of the Seeds Act, 1966 (54 of 1966) shall be examined by the Extant Variety Recommendation Committee to be constituted by the Authority. The Extant Variety Recommendation Committee will be comprised of seven persons including one Farmers' Representative and one Seed Industry Representative and other subject matter specialists who shall be nominated by the Authority. The Extant Variety Recommendation Committee shall have three years tenure and Registrar of the Authority shall be the Ex-officio Member Secretary of the Committee. On the basis of the recommendations of the Extant Variety Recommendation Committee, the extant variety of notified variety under the Seeds Act, 1966 shall be registered as per the provisions of Sec. 28 of the Protection of Plant Varieties and Farmers' Rights Act, 2001. The criteria of distinctiveness, uniformity and stability for registration of extant variety differ from species to species and they shall be notified by the Protection of Plant Varieties and Farmers' Rights Authority in the Gazette of India.

7. Assignment of Denomination to a Plant Variety :-

(1) A mark may only be approved as a denomination for a variety if the applicant concerned submits documentary proof that the holder of the mark concerned renounces his or her right to such mark as from the date on which a Plant Breeder's Right to the variety is granted; and

(2) The denomination approved by the Registrar for a variety in respect of which protection has been granted by, or an application for protection has been lodged with the designated authority in a convention country or an agreement country in accordance with the laws in force in that country shall be same as the denomination thus protected or thus applied for in such country, on condition however that the provision of sub-sec. (1) are complied with and that a priority claim on such denomination is not proved by another person.

8. The manner in which a single and distinct denomination shall be assigned by the Applicant :-

(1) The denomination that is proposed for a variety in terms of Sec. 18 of the Act shall

(a) be suitable to identify the variety;

(b) be expressed by means of letters or combination of letters and figures in Hindi or English;

(c) not to be such as to be mislead or to lead to confusion concerning the characteristics, value or identity of the variety in question or the identity of the breeder thereof;

(d) be different from each denomination which designates existing varieties of the same or a closely related species registered under this Act, in a convention country or an agreement country, or not likely to create confusion in the public regarding identity of the variety;

(e) not be identical with or similar to or liable to lead to confusion with a mark which enjoys the protection accorded thereto by the Trade Marks Act, 1999 (47 of 1999) and which applies to propagating material or the use in connection therewith or in connection with a product thereof;

(f) not be inimical to public order or contrary to morality;

(g) be the same in all convention countries or agreement countries;

(h) not generally comprise of solely or partly of geographical name;

(i) be not prohibited for use as a name or emblem for any purpose mentioned in Sec. 3 of the Emblems and Names (Protection of Improper Use) Act, 1950 (52 of 1950).

(2) Notwithstanding anything to the contrary contained in these regulations

(a) when a variety is advertised, offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination after informing the Registrar in writing;

(b) a trademark, trade name or other similar indication referred to in clause (a) of Sec. 4 above shall not be used alone without the registered variety denomination and also without the-prior information to the Registrar.

9. Time within which the Registrar may require an applicant to propose another denomination :-

If the Registrar considers a denomination proposed for a variety as unsuitable, the applicant concerned shall submit some other denomination acceptable to the Registrar within two months from

the date of receipt of such direction.

10. Form of Application :-

Every application for registration under Sec. 14 and Sec. 23 may be made in the Form 1 and Form II.

11. Standards for evaluating seeds or variety during tests :-

The test to be conducted for evaluation of a variety to be referred under the Act shall, conform to the criteria of distinctness, uniformity and stability test guidelines published by Plant Varieties and Farmers' Rights Authority and shall be revised and updated from time to time with the prior information to the Central Government. The Standards for evaluating seeds during tests under sub-sec. (1) of Sec. 19 shall be such as notified under Seeds Act, 1966 or further amendments to that effect.

CHAPTER 4

Deposit of Seeds and Authorization

12. Standards for evaluating seeds or variety during tests :-

Quantity of seeds or propagating materials required to be deposited, by the Breeder, in the National Gene Bank. The quantities of seeds or propagating materials including parental line seeds of registered varieties including the varieties under distinctness, uniformity and stability testing required to be deposited under sub-sec. (1) of Sec. 27 of the Act shall be as per the quantities specified in the distinctness, uniformity and stability test guidelines under Regulation 11 that would be published in the Journal of the Protection of Plant Varieties and Farmers' Rights Authority which will be treated equivalent to the Gazette of the Government of India.

13. Limitations and conditions for authorization :-

(1) Subject to the provision of Sec. 28, any authorization conferred under sub-sec. (3) of Sec. 28 by a registered breeder shall be made in Form 1-A.

(2) The Form mentioned under sub-rule (1) shall be executed on a non judicial stamp paper and shall conform to the requirement of the Indian Stamp Act, 1899 (2 of 1899)

(3) The Form shall be duly attested by the registered breeder or any person authorized on his behalf in the presence of two witnesses.

(4) The Form shall be duly registered in accordance with the rules.

(5) An authorization under sub-sec. (2) of Sec. 28 shall be valid subject to the following conditions, namely:

(i) the rights(s) conferred by the registered breeder shall be clearly identified and checked in the Form mentioned under sub-rule (1);

(ii) the term of the authorization is clearly specified in the Form mentioned under sub-rule (1); and

(iii) the territories are clearly identified specified in the Form and do not violate rights granted to any licensee under the Act.

(6) An authorization by a registered Breeder under sub-sec. (2) of Sec. 28 of the Act shall be subject to the following conditions, namely:

(i) all authorizations under sub-sec. (2) of Sec. 28 shall be in Form 1-A.

(ii) no authorization under sub-sec. (2) of Sec. 28 shall be valid unless the following conditions are fulfilled, namely:

(a) authorization should be executed on a non-judicial stamp paper;

(b) authorization instrument should be duly signed by the registered Breeder or by his duly authorized agent;

(c) authorization instrument should be duly registered; and

(d) authorization Instrument should also be signed by two independent witnesses.

(iii) All authorizations shall identify the specific right(s) conferred thereunder and shall clearly mention the duration and territorial extent of such authorizations.