

पीपीवी और एफआर एक्ट 2001:
प्रायः पूछे जाने वाले प्रश्न
PPVFR Act 2001:
Frequently Asked Questions



Revised Edition 2020



पौध किस्म और कृषक अधिकार संरक्षण प्राधिकरण
Protection of Plant Varieties and Farmers' Rights Authority
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Department of Agriculture, Cooperation and Farmers Welfare
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Disclaimer

This document is not a legal document and cannot be used for legal interpretation of the PPVFR Act. The contents are only intended to answer queries in terms of explaining the provisions of the PPVFR Act (2001)
NOT MEANT FOR USE IN LEGAL PROCEEDINGS

Preface to First Edition (2019)

The major objectives of the “Protection of Plant Varieties and Farmer’s Rights Act (PPV&FRA), 2001” (53 of 2001) Act which was enacted as part of the India’s obligation towards Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement of the World Trade Organization (WTO), are to provide an effective system for the protection of plant varieties and the rights of farmers and plant breeders; to recognize and protect the rights of farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties; to contribute to accelerate the agricultural development in the country, protect plant breeders’ rights, stimulate investment for research and development in public / private sector for development of plant variety; and to facilitate the growth of seed industry which will ensure the availability of high quality seeds and planting material to the farmers.

Under PPV&FR Act, 2001, New; Essentially Derived Varieties (EDV), Extant varieties notified under the Seeds Act, 1966; Extant varieties about which there is common knowledge (VCK) and Farmer’s varieties can be registered, provided, the variety must fulfill the criteria of Distinctiveness, Uniformity and Stability (DUS) and should also have a single and distinct denomination. The major steps in registration of plant varieties under the Act includes filing of application, examination of application and conduct of suitable DUS test, evaluation of DUS test results, publication of passport data in the Plant Variety Journal of India (PVJI) for calling objections, if any, within a specified time frame and issuance of registration certificate to the applicant / breeder. The certificate of registration shall be valid initially for nine years in the case of tree and vines and six years for other crops and may be renewed for remaining period on payment of prescribed fee. The total period of validity of certificate of registration shall not exceed 18 years in case of trees and vines and 15 years in case of other crops, from the date of registration of the variety.

There are many queries raised by many applicants related to various provisions of the Act, the process of registration, DUS testing, Annual fee, renewal fee, post registration obligations, registration of licensees, testing of parental lines, submission of seed etc. This booklet of FAQs shall definitely help in clarifying many queries and issues of the applicants and make the filing of applications for seeking PVP rights easier. I appreciate the efforts of the team led by Registrar General Dr.R.C.Agrawal for making it possible to develop the compilation in dual language versions to enlarge leadership and enhance knowledge base on this unique Act. If the readers find any further queries to be responded, they must communicate to PPV&FR Authority for its possible inclusion in the future updates.

22 October 2019

K. V. Prabhu
Chairperson

Preface to Revised Edition 2020

In early 2020, some farmer based organizations and NGOs brought up some issues related to farmers' rights as published in the earlier edition as apparently not in conformity with the provisions of the Act and was leading to incorrect interpretation of the Act. Indeed they were right and the version was withdrawn. It was decided that the same be relooked into and given interpretation of the provisions of the Act as implemented practically on ground for direct applicability of the information. Hence the FAQs has been revised and edited by five members taking into account the inputs received. It is earnestly hoped that the answers to questions related to the provisions on farmers, plant breeders and their plant varieties in the PPVFRA 2001 are now clarified for enabling best use of the Act by all stakeholders.

August 5, 2020

K. V. Prabhu
Chairperson

PPV&FR Act, 2001: Introduction

In order to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants it has been considered necessary to recognize and to protect the rights of the farmers in respect their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. The Govt. of India enacted "The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001" adopting *sui generis* system. Indian legislation has sufficient provisions to protect the interests of public sector breeding institutions and the farmers. The legislation recognizes the contributions of both commercial plant breeders and farmers in plant breeding activity and also provides to implement TRIPs in a way that supports the specific socio-economic interests of all the stakeholders including private, public sectors and research institutions, as well as resource-constrained farmers.

Objectives

1. To establish an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.
2. To recognize and protect the rights of farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.
3. To accelerate agricultural development in the country, protect plant breeders' rights; stimulate investment for research and development both in public & private sector for the development new of plant varieties.
4. Facilitate the growth of seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers.

General Functions of the Authority

- Registration of new plant varieties, essentially derived varieties (EDV), extant varieties;
- Developing DUS (Distinctiveness, Uniformity and Stability) test guidelines for new plant species;
- Developing characterization and documentation of varieties registered;
- Compulsory cataloguing facilities for all variety of plants;
- Documentation, indexing and cataloguing of farmers' varieties;
- Recognizing and rewarding farmers, community of farmers, particularly;

Frequently Asked Questions and Their Answers

S.No.	Question and Answer
PPV&FR Act	
1.	<p>Why is protection of plant varieties required in India?</p> <p>India is one of the founder members of World Trade Organization (WTO) which was established through an agreement known as Marrakesh Agreement Establishing the World Trade Organization that was negotiated and signed by the bulk of the world's trading nations at Marrakesh, Morocco in 1995. These documents provide the legal ground-rules for international commerce to which all member nations are committed in their trade practices. The TRIPS Agreement is one of the many agreements among these documents, which is Annex 1C of the Marrakesh Agreement. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the WTO. The <i>TRIPS Agreement</i> is a minimum standards <i>agreement</i>, which allows Members to provide more extensive protection of intellectual property if they so wish. For India, the TRIPs agreement became binding from 2005 onwards as the country has got a ten-year transition period (1995-2005) to make the domestic legislation compatible with TRIPs.</p> <p>TRIPS Agreement required India to make necessary provisions for the protection of plant varieties and the rights of plant breeders. In compliance, the Government of India chose the option to adopt an effective <i>sui generis</i> system to protect the plant breeders' rights on plant varieties along with the rights of farmers' of the country on the plant varieties through an Act of the Parliament of India by passing the bill on "Protection of Plant Varieties and Farmers' Rights Act 2001" or PPV&FR Act (2001). The Rules were framed in 2003, and the Authority was established on November 11, 2005.</p>
2.	<p>What is the meaning of protection of plant varieties?</p> <p>The protection on the variety means no one can sell, export, import or produce the seed or propagating materials of such protected (registered) plant variety without the registered breeder's (owner's) permission.</p> <p>Protection of a plant variety is an intellectual property right that the breeder (who could be an individual, farmer, community of farmers, institution or a government) enjoys over the variety along with its denomination as its owner who is entitled to rights on the variety that shall remain with the breeder till he assigns it to anyone else, for the entire period of protection for the purpose of preventing any other person from making economic benefit from it or from assuming any of the rights to which the breeder is entitled to without the permission of the breeder in whose name the variety is registered.</p> <p>The protection of the plant variety also means that no one including the registered breeder can sell any other variety with the same denomination or sell the protected variety with any other denomination, commitment of which is also a punishable act of infringement.</p>
3.	<p>What are the objectives of the PPV&FR Act (2001)?</p> <p>(i) Establishment of an effective system for protection of plant varieties, rights of farmers and plant breeders and to encourage development of new varieties of plants</p>

	<ul style="list-style-type: none"> (ii) Recognize and protect the rights of the farmers in respect of their contribution made in conserving, improving and making available plant genetic resources for the development of new plant varieties (iii) Protect plant breeders' rights to stimulate investment for research and development for the development of new plant varieties
4.	<p>What is a plant variety according to the PPV&FR Act (2001)?</p> <p>The variety is defined as follows:- A group of plants together belonging to a known botanical species or subspecies which can be</p> <ul style="list-style-type: none"> (i) defined by the expression of the characteristics resulting from a given genotype of the group of plants; (ii) distinguished from any other group of plants on the basis of difference in the expression of at least one of its characteristics; and (iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation. <p>A plant variety includes propagating material of new variety, extant variety, transgenic variety, farmers' variety and essentially derived variety (EDV).</p>
5.	<p>Can a plant variety be protected under the Patent Act in India?</p> <p>No, Plant variety cannot be protected under Patent Act in India</p>
6.	<p>What is difference between Patent Act and PPV&FR Act?</p> <p>Both Acts deal with the IPR of the inventor. The Patent Act of India does not accommodate protection of a plant variety through patenting of a plant or its components or parts. The PPVFRA not only protects a plant variety, it also protects the rights of plant breeders and farmers on plant varieties. The protection of a plant variety is granted in the form of registration.</p>
7.	<p>Are applicants from outside India eligible to apply for registration of their variety under PPV & FR Act, 2001?</p> <p>Yes, the procedure for obtaining plant variety registration is same for Indian citizen and foreigners. However, foreign applicants must furnish their address through their representatives in India for service while applying for plant variety registration.</p>
8.	<p>What is National Gene Fund and how is it utilized?</p> <p>(1) The National Gene Fund is set up by the Central Government that is an aggregation of funds from the following resources:</p> <ul style="list-style-type: none"> (a) the benefit sharing amount received from the breeder of a variety or an essentially derived variety registered under this Act (b) the royalty component of the Annual Fee paid by the registered breeder/his agent (c) the compensation money deposited by defaulter registered breeder/agent/licensee that is awarded to the farmer/community by the Authority (d) the contribution to the National Gene Fund made by any Indian and international organization and other sources such as Corporate Social Responsibility.

	<p>(2) The NGF is usable for,</p> <ul style="list-style-type: none"> (a) Paying the due deposited amount by the registered breeder/agent/licensee as the case may be, to the grantee of the benefit share (b) payment of the compensation to the claimant farmers the granted claim amount deposited by the registered breeder/agent/licensee as the case may be (c) meeting the expenditure on supporting the conservation and sustainable use of genetic resources including <i>in-situ</i> and <i>ex-situ</i> collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use; (d) meeting the expenditure of any scheme/s relating to effective benefit sharing.
9.	<p>What are the benefits for public and/or private sector in India from the Convention Country Agreement?</p> <p>Public and private sector of India will be able to get registration in convention country based on their registration in India and <i>vice versa</i>. This will save time and money and based on a single registration they will be able to obtain another registration in convention country.</p>
10.	<p>Is there any overlap in the benefit sharing provisions between the Biological Diversity Act (2002) and the PVP&FR Act (2001)?</p> <p>No absolutely not. The benefit sharing in PPV&FR Act, 2001 applies only to registered varieties and that too the claim for benefit sharing has to be filed within a period of six months from the date of advertisement in the Plant Varieties Journal on the basis of the use of any conserved or maintained genotype of the crop species in the development of the newly registered variety as published to be valued by the Authority on relative genome contribution from the farmers' variety, whereas the benefit sharing under Biological Diversity Act applies to access of the material and benefit sharing in commercialization of a flora or fauna and it is granted at the time of commercial utilisation of biological resources.</p>
11.	<p>Is there any similarity between provisions of the PPV&FRA Act and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) with respect to material in the public domain?</p> <p>Other than access and benefit sharing facilitation with different terms and conditions, recognition of sovereign rights of the plant genetic material and recognition of farmers' rights each of which are with specific interpretations in each Act/Treaty respectively, the two differ in their functionality and operation. The PPV&FR Act, 2001 grants IPR to plant breeders in India and accordingly material in public domain can be used by anyone without fear of infringement and consequently it differs from ITPGFRA in this regard.</p>
Farmer's Rights and Farmer's Variety	
12.	<p>Who is a farmer according to the PPV & FR Act?</p> <p>A farmer is any person who -</p> <ul style="list-style-type: none"> (i) cultivates crops by cultivating the land himself; or (ii) cultivates crops by directly supervising the cultivation or land through any other person; or (iii) conserves and preserves, severally or jointly, with any person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties

13.	<p>What is a Farmers' Variety?</p> <p>“Farmers’ variety” is a variety which -</p> <ul style="list-style-type: none"> (i) has been traditionally cultivated (in cultivation prior to introduction of varieties from modern plant breeding interventions) and/or evolved by selection(s) made in existing traditional variety population by the farmers in their fields; or (ii) is a wild relative or land race or a variety about which the farmers possess the common (traditional) knowledge.
14.	<p>For registration of varieties under farmers’ variety category, which varieties qualify?</p> <p>Varieties which are traditionally cultivated and evolved by the farmers in their fields by way of selection of variants naturally evolved in the field or varieties which are wild relatives or land race about which the farmers concerned possess common knowledge. In the case of traditional varieties or landraces being maintained by the community or village, the rights will be that of the entire community without restricting it to its being under cultivation for a period of 15 or 18 years in cultivation, as the case may be. However, in the case of selection of evolved variant in such traditional or land races, the period of common knowledge of existence of the variant selection with the individual farmer shall be acknowledged by restricting it to no more than 15 or 18 years, as the case may be for the purposes of registration under extant variety in common knowledge.</p>
15.	<p>In which category is a new variety bred by a farmer is registered?</p> <p>A variety developed or bred as a new variety by following breeding procedures by creating variability using other varieties or genetic stocks to be disclosed as being utilized as parents of the breeding material or for variability through other means for selection, shall be categorised as any other new variety bred by a breeder, under this Act. That means for all purposes and processes, such a variety will be treated in the same manner as any other breeder’s variety and will also be registered eventually as a new variety or extant variety, as the case may be following DUS testing procedures and formalities as required. Here, the farmer will be considered as a breeder without separating him from other breeders.</p>
16.	<p>Does that mean a claim for a New variety by a plant breeder (not farmer) made as a selection in the traditional variety or landrace cannot be registered as a new variety?</p> <p>Yes.</p> <p>Unless the breeder names the farmer or community as a co-developer or beneficiary with consent or there is evidence for having artificially created variability in a population derived from a traditional variety by any tools of plant breeding other than simple selection in a naturally cultivated traditional variety, such as hybridization, mutation breeding, backcross breeding, introgression, population improvement, hybrid, etc., followed by repeated progeny screening with selection, <i>etc.</i>, in the subsequent generations, there is no possibility of registration of such a variety as new variety bred by a breeder, ignoring the role of the farmers’ in having traditionally conserved the variety.</p> <p>Farmers’ interest will always be protected and in such case, with the help of the local Panchayat and State Agricultural University officials, such varieties can be protected in the name of the community of farmers’ group by evidence of heritage.</p>

17.	<p>Can a farmer or farmers' community directly file for registration of farmers' variety with the Authority HQ or its branches?</p> <p>No.</p> <p>A farmer or community of farmers shall have to submit their applications for registration of farmers' varieties endorsed by their respective Panchayats through the State Agricultural Universities/ Crop based ICAR institutes or Krishi Vigyan Kendrain whose jurisdiction the Panchayat is located, for initiating the process of protection of farmers' varieties.</p> <p>Crop specific breeder of SAU's/ICAR Institutions shall certify the seed material for its purity and uniformity by growing it for one season either at farmers' field or at the institute. Further, the application shall be counter signed and forwarded to Authority by Director of Research of SAU/Director or Principal Coordinators of ICAR Institutions before the onset of next season as described in protocol for receiving applications.</p>
18.	<p>Is a variety registered or proposed for registration as a farmer's variety distinguishable from a modern variety bred by plant breeders including farmer as a plant breeder?</p> <p>Yes.</p> <p>(i) A farmer's variety is clearly distinguishable from a plant breeder's variety by being more productive with advanced agronomic features such as dwarf, early maturity, adaptive physiological traits, resistant traits to diseases and pests, responsive to fertigation and irrigation, etc., whereas the typical farmer's variety is either a landrace itself (claimed as community variety by the community) or a natural mutant identified in the landrace or traditional variety cultivated for a long period by farmers in the region, but with a difference in one or two traits from the known traits of the land race or traditional variety.</p> <p>(ii) Historically, a farmer's variety or landrace can never match the productivity performance as well as trait expression variation of an advanced variety bred through plant breeding processes by a breeder (including farmer as plant breeder). But it will retain the traditional value present in the variety for which it is a local niche or is being cultivated for long periods as a tradition by the farmers in the region even though it is lower in productivity than the modern high yielding varieties bred by plant breeders.</p> <p>(iii) The above (ii) is the reason why in the case of typical farmer's variety, DUS testing is not done nor testing is done for two years, but a single year testing is done as Grow Out Test for uniformity and purity of the population, after the same is assured by the technical inputs from the ICAR crop mandate institution in the region or State Agricultural University or other relevant public sector institutions where crop improvement/plant breeding activities are taken up.</p>
19.	<p>Are farmers' varieties exempted from payment of registration fees and DUS test fees?</p> <p>Yes.</p> <p>Applications for varieties of farmers meeting the definition of farmers' varieties are exempted from payment of all fees except annual fee in any of the processes involved in registering a farmer's variety or any other proceeding conducted before the Authority or Registrar or Tribunal or High Court or Supreme Court under the Act.</p>

20. **What are Farmers' rights?**

Farmer's Right (i) A farmer entitled to be considered as any plant breeder just like anyone from private or public sector, if he has bred a plant variety by involving a non-traditional variety (including land race) as one of the source parents or initial population for applying any plant breeding methodology or tool other than the selection of naturally existing variability (natural mutant) in a land race or a traditional variety being cultivated. In such a case, the farmer also shall be entitled for registration and other protection just as any other plant breeder.

Farmer's Right (ii) In the case of farmers' variety, a farmer or farmers' community is entitled to be considered for registration of the farmers' variety under extant category even if such a traditional variety or landrace has been in cultivation for more than one year and has been in the common knowledge of the community since long period. The application for such a claim shall be different from that to be used for registering a new variety. The application for registration of a farmers' variety shall contain a declaration as specified in clause(h) of sub-section (1) of section 18.

Farmer's Right (iii) A farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled to be considered for recognition and reward from the National Gene Fund provided such material has been used as donor of genes in varieties registrable under this Act.

Farmer's Right (iv) A farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act, provided he does not sell branded seed of the protected variety.

In the case of vegetative propagules such as cuttings, buds, suckers, etc., the farmer's rights to produce, save, use, sow, resow, exchange, share or sell the propagules are applicable on such propagules only when these remain parts of normal farm produce where the crop is cultivated for the commercial harvest of the crop without resorting to any seed-material propagation protocols that distinguishes the farmer as seeding material producer farmer.

Farmer's Right(v) A farmer also has a right to claim for compensation from the authorised agent/licensee/registered breeder as the case may be, by writing with *prima facie* evidences to the Authority in Form PV-25, if the registered variety he had purchased from authorised/legitimate agent/licensee of the registered variety, is not performing or did not perform agronomically as claimed on the packaging of the seed. The procedures as described in the Act (Section 39 (2) and Rule 67) shall be followed by the Competent Authority before a decision is made to award the compensation as due.

However, the right for claim of compensation shall not be valid in the case of purchase of seed of a registered variety sold either by unauthorised seller (other than authorised, licensed or agent of the registered breeder) or by another farmer (including shared/exchanged seed/propagating material) as his farm produce under the farmers' right under Sec 39(1)(iv) above.

21.	<p>Will a variety bred by a farmer as a plant breeder which is recognized by the PPV&FR Act, 2001 as one of the farmers’ rights, also to be considered as a “farmer’s variety”?</p> <p>No.</p> <p>A variety bred by a farmer like any other plant breeder will not be considered as a farmer’s variety, because, in a variety bred by him, the farmer will have also created genetic variability by any means available such as creating cross, raising segregating population, <i>etc.</i>, in new plant materials from existing varieties or genetic stock or germplasm he would have obtained from anywhere which he shall disclose.</p> <p>This is in contrast to a variety considered as a farmer’s variety. A farmer’s variety which is among the five farmer’s rights, is developed as a selection by the farmer in the course of his normal tradition of cultivation of a traditional crop variety or landrace, where a differently looking plant is selected from within that landrace or a traditional variety whose progeny he stabilizes over several generations till pure, after which the selected variety looks different for at least one character distinguishable from the original landrace or traditional variety. Though it is a selection, it will remain a traditional variety selection as it is expected to maintain most characters of the traditional source variety or landrace.</p>
22.	<p>What are the circumstances of seed or seeding material sale by farmers can be treated as not within the farmers’ right under Section 39(1)(iv) to sell or share or exchange the seed?</p> <ol style="list-style-type: none"> 1. When the seed or seeding material is sold in a branded manner 2. When the seed or seeding material is sold as a processed product that cannot be categorized as “his farm produce” 3. For both violations if committed by farmers, the registered breeder/farmer whose variety is registered has to meticulously put together evidence to claim the above. <p>Explanation:</p> <ul style="list-style-type: none"> • If the seed or seeding material was produced under contract for a seed producer or a company, it ceases to be the farm produce of the farmer concerned. • The seed or seeding material shall not be considered as a farmer’s farm produce, if the variety is not grown in the field/orchard for normal grain/vegetable/fruit/flower production. But, is sold as seed/seeding material produced following seed/seeding material production protocols such as space planting, isolation, roguing, isolated special harvesting, processing, nursery for exclusive seedling multiplication or propagule production or controlled conditions such as net house/glasshouse/separate media/soil activity limited to propagule production only, etc. <p>The propagules should not have been,</p> <ol style="list-style-type: none"> a. multiplied separately as seeding materials under nursery or protected conditions different from normal farm production practiced for selling the produce as commercial consumer product in the market, or b. treated with growth regulators, hormones or chemicals for facilitating their use as seeding material only, other than normal field protection chemicals, or

	<p>c. produced as seeding propagules under controlled environment conditions involving processing, growing media or,</p> <p>d. packaged as seeding materials for transport as propagules irrespective of brand imprinting on the packaging that indicates commercial packaging for multiplication purpose as seeding material which is different from farm produce for consumption by consumers.</p> <p>If any farmer adopts the above processes or means where special growing conditions or inputs not related to commercial farm produce of the crop, then he has no entitlement of the farmers' rights on such propagules under Section 39(1)(iv), but has to obtain authorisation from the registered breeder or his successor or his agent either as an authorised person or as a licensee.)</p>
23.	<p>Can a farmer who procures seed of a non-hybrid variety or vegetative propagule of a vegetatively propagated tree/vine/plant from a licensee/agent/ authorised seed seller of the registered breeder, continue to enjoy his right to save, use, sow, resow, exchange, share or sell his farm produce from the variety in the form of seed or vegetative propagule as the case may be, during the period of protection?</p> <p>This question has to be answered in two angles, legal and technical.</p> <p>I. Legal aspects</p> <p>During the period of protection of a registered variety, legally, the farmers' rights the seed of such plant variety may be explained as follows:</p> <ol style="list-style-type: none"> i. Farmers' right to sow is the right to plant the seed/propagule of the registered variety obtained from authorized retailer/seller or as unbranded farmers' seed, to raise the crop for normal farm produce only, such as grain in the seeded plant species, or for commercial product such as flower, fruit (tender/mature), leaf, shoot, root, etc. ii. Farmers' right to save the seed refers to saving the seed as grain produced on that crop raised normally from the seed (i). Such farm produce can be saved as seed with the identity of the denomination of the registered variety as procured only in the case of the produce of the crop raised from the seed procured from authorized retailer/seller. In the case of seed obtained from a farmer the seed can be saved only as grain as farm produce without any denomination or branding. iii. Farmers' right to resow refers to planting such saved seed (ii) in the case of seed propagated species. In the case of vegetatively propagated crop species, it refers to planting to raise the second crop using the propagule produced on a crop raised from the propagule procured from authorised retailer/seller as in (i) or using the propagule produced on the unbranded variety as procured from farmer as in (i). iv. Farmers' right to exchange, share or sell the seed/propagule of a registered variety refers to exchanging, sharing or selling of the unprocessed farm produced grain as seed or untreated propagule as seeding material produced from the crop raised from either sown or resown seed/propagule as the case may be, provided the farmer during the process of such farm production, will not have resorted to any protocols/techniques of seed production such as, physical/space/time/reproductive isolation, space-planting, bagging, caging, line-

roguing, chemical/growth regulator use in the case of seed propagated species, or protocols/techniques of vegetative propagule production such as protected cultivation, growth media/chemicals/growth regulators use, rooting/grating/layering/budding nursery for propagation/rooting, etc. or any other such activities which do not represent the standard package of practices for general farm production of the crop species, and any such produce as normal farm produce.

II. Technical aspects

Technically, farmers need to understand the nature of reproduction (pollination) and its consequences on seed setting or vegetative propagule formation in the crop species that is not isolated from cross contamination and/or infection/infestation of pests & diseases before resorting to the above rights, without losing the advantage of goodness of the variety developed due to natural loss of purity of the variety or reduced quality due to diseases carried in vegetative propagules, for taking full advantage of such rights:

- a. Seeds produced on a registered variety belonging to a self-pollinated species which does not undergo any cross pollination in nature are expected to remain genetically pure season after season, provided no natural mutation occurs in these. Such seeds can be opted for the above rights. However, even in these species, the farm operations by a farmer during sowing, harvesting, threshing, storing and cleaning, etc., can cause mixture of old seed, neighbouring field seed, seed mixed by birds or animals during harvesting or threshing operations, mixing of bags in storing, contamination of old seed in old bags etc., are likely to cause loss of purity. Using the produce to sow once and resow at the most once more may be acceptable for best results. Maintenance breeding is a requirement from nucleus seed stage even in such plant species so that any genetic and physical contamination is removed each season. Farmers are not expected to do this nor it is possible to adopt as a normal farm production option without sufficient investment of extra land, labour and maintenance activities
- b. Seeds produced on a registered variety belonging to often self-pollinated species or often cross-pollinated species will be genetically less pure unlike (a) above in their next season's crop raised from the seed produced on previous crop by the farmer. The extent of genetic impurity in these species shall vary between locations depending on the size of the farm, varieties planted, varieties in neighbour's farm, etc. In these cases, it is recommended to sow no more than one season from the farm produce that too only in a situation where fresh seed of the desired variety is not available to the farmer.
- c. Seeds produced on a registered variety belonging to cross-pollinated species depending on the medium of cross pollination (such as wind, insect, etc.,) and type of flower biology (in crops where male and female flowers are borne on the same plant but in different locations on the plant such as in maize, or where both male and female plants are different such as papaya or kiwi or where every flower has both male and female organs but have differences in maturity like bajra (pearl millet) or tara mira) are likely to produce the next generation of genetically mixed crop of different plant types, except in varieties designated as composites which are not being registered currently by the Authority for the group of plants not being able to satisfy the definition of a variety as well as seed. Therefore, in these species, farmers are advised not to exercise the above rights

	<p>as the quality of the produce is unlikely to be retained by the crop produced from the harvest of such species.</p> <p>d. Vegetative propagules in all the vegetatively propagated crops such as flowers, tubers, trees, vines, etc., are extremely likely to be contaminated with viruses or diseases or insects, even though they may not be genetically contaminated by genes from neighbouring plots. As a consequence of this, the crop raised from such vegetative propagules are less likely to be of the same quality in crop stand as well as farm produce in comparison to original crop raised from the propagule procured from authorized seller.</p> <p>In summary, under such circumstances which disable farmers from accessing fresh seed from authorized seed source, (i) in the case of 100% self-pollinated crop species, the farmers are advised to sow and/or resow for maximum of two seasons from the produce of a seed of a registered variety procured from authorized or licensed seller, (ii) and no more than one season, in the case of often self-pollinated or often cross-pollinated crop species, in the interest of farmers only to get reasonably comparable quality and quantity of produce as in the originally procured seed.</p>
24.	<p>What is a “branded seed” for the purpose of describing the farmers’ right to sell?</p> <p>“Branded seed” in the case of varieties propagated through seeds, means any seed sold in a package or any other container and labelled in a manner indicating that it contains seed of a variety protected under this Act. Any action such as selling from a container such as a box or a sack/bag on which obvious marking (temporary or otherwise) that point towards the content being seed/seeding material of a registered variety amounts to branding.</p> <p>In the case of vegetatively propagated plant species, branded seed refers to the product organized as plant generating propagules that may be tied together or isolated into a group or bundled together or units of single or multiple propagules bound together or grouped together in a container or packed/wrapped together, etc., each identifiable with tag/indicator/mark/descriptor representing the registered variety or such variety’s denomination</p>
25.	<p>Can a farmer who has purchased or procured unbranded seed of a protected variety as a farm produce from a farmer seek compensation in case of poor performance of such seed?</p> <p>No. The farmers’ right for compensation is available only on branded seed of a registered variety during the period of protection when the said seed is purchased from an authorised/licensed seller/retailer of the Registered Breeder or his Successor / Assignee / Agent.</p>
26.	<p>Is it possible for the title holder of a protected variety to enforce his right in respect of harvested material by the farmer which may have originated from legally or illegally procured propagating material of a registered variety? (E.g. can a title holder stop the sales of apples by farmer if the apple trees have been planted from material obtained authentically or not?)</p> <p>No. The registered breeder has no rights on the harvested product including the seed irrespective of the source of the seed or seeding material being authentic or not, provided it is part of normal farm produce without any specialized treatment for making the crop obviously targeted for seed or propagule production.</p>

	<p>In the case of the example on apples, the farmer cannot be prevented from selling the apples. However, since the apple of the specific features which typically represent registered variety can be produced only on the trees of the registered variety only, the farmer would have acquired it from an unauthorized seed producer. Under this presumption, the registered breeder can file a complaint with local authorities asking for details on the source of the trees mentioning his ownership and the right he has to file for infringement against the person/company who may have sold the registered propagules of the protected variety, if it was done without permission of the registered breeder or from authorized source.</p> <p>A farmer however, can claim innocence of being unaware of the protection or consequences of buying/selling propagules without authorization. But, it is to be understood that in such cases of high value products, the sale/purchase of propagules will be even more expensive with guaranteed quality as there would be heavy investment made at the time of establishing either an orchard by the farmer who would produce apples or nursery by the farmer who would produce grafted seedlings, the likelihood of the farmer getting the benefit of being innocent is not very high. The Registered Breeder will however need to carefully accumulate evidence on the matter related to source propagule to file for infringement as well as objection to claim of innocence by farmer.</p>
27.	<p>Who is considered a farmer in the area of growing ornamentals and fruits?</p> <p>The definition of farmer as defined in Section 2(k) of PPV&FR Act, 2001 is same for farmers of field crops, ornamental crops, vegetables, fruits <i>etc.</i></p>
28.	<p>Under the provision of liability for non-performance of propagating material under Farmers' Rights, Section 39 (2), what will be the liability of the breeder in case propagating material was sold not by him to a farmer, but by a propagator (authorised or unauthorised), and the variety fails to perform because of low-quality propagating material. Who is liable to compensate the farmer?</p> <ol style="list-style-type: none"> i. First, the burden of proof is on the claimant farmer to prove that because of low quality propagating material the variety failed to provide the performance, while he has followed all inputs as per the package of practices for his location. ii. He has to have clear evidence that the material planted is the registered variety he is claiming and that it was obtained legitimately from authentic source such as authorized seller by the registered breeder or licensee/agent registered with the Authority for selling the seed the variety. iii. Then, the Authority shall promptly consider the application for compensation as per the provisions of the Act. iv. The claimant for compensation for poor performance of a protected variety will not be eligible for any such claim if the seed of the protected variety was obtained from any of the following: <ol style="list-style-type: none"> (a) a neighbor farmer as his farm produce (even if he had obtained the original seed from legitimate seed producer/seller) (b) a seller who is not authorized or registered licensee or registered agent with the Authority for selling the variety on behalf of the registered breeder.

29.	<p>What are the circumstances when a farmer is entitled and not entitled to his right to claim compensation of a variety?</p> <p>Every farmer who purchases (along with proof of purchase) the propagating seed or propagule of the variety from a registered breeder or authorized dealer or agent or license holder of the variety, he is entitled to make any claim for compensation before the Authority if the expected performance under the given conditions is not obtained.</p> <p>However, if the seed or propagule is obtained by way of exchange, sharing or purchase from a fellow farmer without branding as farm produce of the farmer, then there is no right for any claim for compensation as the planting material is obtained without any label claim and as seed/propagule that agrees with the definition of seed in Section 2(x</p>
30.	<p>How will a farmer come to know the expected performance of the variety and how can he claim compensation if the variety does not perform as expected?</p> <p>Whenever the propagating material (seed or vegetative propagule, as the case may be) of a variety registered under this Act is sold, the registered breeder shall disclose the expected performance under given conditions.</p> <p>If such propagating material fails to provide such performance under such given conditions, the farmer or the group of farmers or the organization of farmers, as the case may be, may claim compensation as prescribed in the Rules, before the Authority. The Authority, after giving notice to the registered breeder of the variety or his agent or licensee, as the case may be, and an opportunity to file opposition as per Rules, hear both parties, and may direct the registered breeder or his agent or licensee as the case may be, to pay such compensation to the farmer concerned as it deems fit.</p>
31.	<p>Does the Authority Award, Reward and Recognize farmers who contribute in the area of plant varieties or maintain and conserve genetic diversity in plants?</p> <p>Yes.</p> <p>Any farmer or community engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled for recognition and reward or award, provided there is sufficient evidence that the material so selected or preserved has been used as donors of genes in varieties registrable under this Act.</p> <p>The Authority in consultation with Government of India, has established the following awards;</p> <ol style="list-style-type: none"> a. Plant Genome Savior Community Awards b. Plant Genome Savior Farmer Reward and c. Plant Genome Savior Farmer Recognition. <p><u>Plant Genome Saviour Community Award</u></p> <p>Five Plant Genome Saviour Community Awards of Rs 10 Lakh with citation and memento annually to the farmers engaged in the conservation of the Genetic Resources of the landraces and wild relatives of economics plants and their improvement through selection and preservation provided the material so selected has been used as a donor of genes in respect of varieties registerable under the Act.</p>

	<p><u>Plant Genome Saviour Farmer Reward</u></p> <p>Ten Plant Genome Saviour Farmer Rewards of Rs 1.5 Lakh each with citation & memento annually to the farmers engaged in the conservation of the Genetic Resources of the landraces and wild relatives of economics plants and their improvement through selection and preservation provided the material so selected has been used as a donor of genes in respect of varieties registerable under the Act</p> <p><u>Plant Genome Saviour Farmer Reward</u></p> <p>Twenty Plant Genome Saviour farmer Recognitions of Rs 1 lakh each with citation and memento annually to the farmers engaged in the conservation of the Genetic Resources of the landraces and wild relatives of economics plants and their improvement through selection and preservation provided the material so selected has been used as a donor of genes in respect of varieties registerable under the Act.</p>
32.	<p>How are the nominations made for the Awards/Rewards and Recognitions?</p> <p>Every year, the Authority invites applications as nominations by prominent organizations of State or Central Governments or national or international agencies functioning in the country, individuals and agencies working in association with farmers or in touch with farmers for awards, Rewards and Recognitions by way of advertising in leading newspaper in (Hindi and English) and Application Form is also available on the website of the Authority.</p>
<p>Breeder's Rights and General Issues</p>	
33.	<p>What are pre-requisites for a variety to be eligible for registration?</p> <p>Any plant variety belonging to a species notified by the Authority is entitled to be registered for protection as long as it is not declared to be in public domain, or has been cultivated/used as a breeding stock/commercialized/traded for more than 15 years in case of seed propagated annuals or more than 18 years in trees and vines, or is not protected already in India, provided it is a variety other than a farmer's variety (traditional variety, landrace or wild relative of cultivated species). The various categories in which the variety can be registered are,</p> <ul style="list-style-type: none"> ➤ New Variety ➤ Extant Variety <ul style="list-style-type: none"> • Variety Common Knowledge • Variety Notified under Seed Act (1966) • Farmers' variety ➤ Essentially Derived Variety (EDV)
34.	<p>What are the different types of plant varieties protected or registered by the Authority under PPV&FR Act, 2001?</p> <p>A. New Variety</p> <p>A variety which is developed by any agency or individual including farmer in India or any agency or individual abroad that has not been in trade or in use as a breeding line, for more than one year from the date of submission of application if it is from India, and for more than four years or six years (in case of trees/vines only) from the date of submission of application if it is from any other country</p>

	<p>B. Extant Variety</p> <p>Plant variety already in existence for not more than 15 years at the time of notification of the plant species for registration by the Authority and to be registered within stipulated period as per species/category as specified by the Authority at the time of notification. The extant variety category is introduced to facilitate those varieties to be put under a certain level of protection though these are not novel, and are represented by any one (never both or all) of the following:</p> <ul style="list-style-type: none"> ✓ Variety of Common Knowledge: An existing variety known to be in trade not beyond fifteen years or eighteen years in trees or vines but beyond one year in India or beyond 4 years (or 6 years in the case of trees or vines) in other countries. ✓ Variety notified under Seeds Act, 1966: (Registration valid from the date of notification to a total of 15 years) ✓ Farmer’s Variety: An existing variety developed as a selection by a farmer or a community from the existing traditional variety or a landrace as cultivated by farmers, that does not involve any specific breeding methods of choosing parents, crossing these, growing these for variability or in vegetatively propagated species any activity that involves use of growth regulators or media for layering, budding, grafting, cutting, or use of nursery for commercial production of rooted plants, etc., <p>C. Essentially Derived Variety of a Protected Variety</p> <p>An EDV is always a variety derived for a targeted trait that is missing in an existing registered variety (initial variety) or a crossed product (hybrid) of two such initial registered varieties (parents of an existing registered hybrid), while retaining the expression of the characteristics of its initial variety or initial parents of hybrid in the resulting variety or hybrid such that the resulting EDV.</p> <p>An EDV can be developed through any of the known methods of breeding such as, genetic engineering, mutation breeding, tissue culture derived variation (somaclonal variation), backcross breeding, any other cytological approaches which only change limited characters in the initial variety.</p>
35.	<p>Which plant species can be protected under PPVFRA (2001)?</p> <p>The Act is open to any plant species that grows in the country whose propagules can be produced and commercialized for any purpose of cultivation by farmers or usage by farmers or consumers or industry. However, to make any plant species eligible for protection, the Authority has to notify the species as registrable plant species in the country in Gazette of India, followed by development of the DUS testing guidelines on the plant species.</p> <p>In the case of wild relatives or conserved traditional varieties or landraces by farmers of any species even if not notified, can be protected.</p> <p>As at the time of going to print, there are 161 plant species which are registrable in India.</p>
36.	<p>Who can apply for the registration of a plant variety?</p> <p>Following persons/organizations can apply for registration either individually or jointly or as an organization among the following:</p>

- (a) anyone claiming to be the breeder of the variety; or
- (b) any successor of the breeder of the variety; or
- (c) anyone being the assignee of the breeder of the variety in respect of the rights to make such application; or
- (d) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety; or
- (e) anyone authorized in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf; or(f) any private or public organization having an establishment or representative in India claiming to be the breeder or representative of the breeder of the variety.

37. **Which is the office for making application for the registration of plant varieties?**

In respect of filing applications, the territorial jurisdiction of branch offices of PPV&FR Authority which has been notified in the official gazette is as follows: -

S.No.	Branch Office	Contact details	Territorial Jurisdiction
	Shivamogga, Karnataka	Deputy Registrar, UAHS Shivamogga, Abbalagere post, Shivamogga, Karnataka-577204 ppvfrasmg@gmail.com	Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu, Lakshadweep and Puducherry
1.	Pune, Maharashtra	Deputy Registrar, Centenary Building, College of Agriculture Campus, Mahatma Phule Krishi Vidyapeeth, Pune, Maharashtra-411005 ppfrabrpune@gmail.com	Goa, Gujarat, Maharashtra, Rajasthan, Dadra and Nagar Haveli, and Daman and Diu
2.	Ranchi, Jharkhand	Deputy Registrar, Computer Centre Building, Near Damodar International Guest House, Birsa Agriculture University Campus, Kanke, Ranchi (JH)-834006 Tel:0651-2450055	The States of Jharkhand, Bihar, West Bengal, Chattisgarh, Orissa and Andaman and Nicobar Islands
3.	Guwahati, Assam	Deputy Registrar, Assam Agriculture University, Near Administrative Building, Khanapara, Guwahati-781022 Tel:0361-236675 dr-guwahati-ppvfra@nic.in	The States of Assam, Sikkim, Meghalaya, Manipur, Mizoram, Nagaland, Tripura and Arunachal Pradesh

4.	Palampur, Himachal Pradesh	Deputy Registrar, HP Agriculture University, Palampur, Distt. Kangra, Himachal Pradesh-176061 Tel: +91-1894-230805 ppvfra.palampur@gmail.com	Himachal Pradesh, Punjab, Uttarakhand, Union Territory of Ladakh, Union Territory of Jammu & Kashmir and Union Territory of Chandigarh
<p>In respect of states not covered in the above table, application form may be filed in the Head Office at New Delhi. The address is as follows: - Protection of Plant Varieties & Farmers Rights Authority, Govt. of India, S-2 A Block NASC Complex, DPS Marg, Opposite Todapur, New Delhi – 110012.</p>			
38.	<p>What are the Business hours for receiving application and seed samples?</p> <p>The business hours for receiving completed application along with seed material in the office of Registrar PPV&FR Authority are from Monday to Friday between 10:00 am to 12 noon and 1.30-2.30 pm in the afternoon (Excluding Gazetted Holidays, Saturday and Sunday). In the case of applications submitted before noon, the Acknowledgement PVP No. of the application may be collected on the same day between 2.30pm and 5.30 pm. In the case of applications submitted till 2.30 pm in the afternoon, the Acknowledgement PVP No. is issued on the next working day between 10.00 am to 10.30am. For applications received through post/courier acknowledgement shall be posted latest by next working day.</p>		
39.	<p>Can an application for registration of plant varieties other than farmer's varieties be made through an agent?</p> <p>Yes, a breeder or a farmer as breeder can apply for registration either in person or through his agent.</p>		
40.	<p>Is it necessary to submit the seed / propagating material along with the application for registration? If yes, where is the seed to be submitted?</p> <p>Yes, the breeder shall be required to deposit the seed of a non-hybrid variety and hybrid variety along with its parental lines (male, female and maintainers as the case may be), at the time of filing (submission) of the application for registration in person or by postal or courier services at the HQ or the branch office having territorial jurisdiction of the State or Union Territory to which the applicant belongs. However, in the case of non-seed based vegetative propagules or on-site testing-based applications in the case of perennials, the propagules have to be reached to the designated field gene bank of the species of crop within 10 days. The date of receiving the application shall be the date on which the seeding material is received at the field gene bank.</p> <p>An applicant has to submit a fixed amount of seed sample of breeder seed quality along with a seed testing report from a Government Seed Testing laboratory or accredited laboratory from within India for germination and genetic purity. In the case of farmer's variety, the concerned State Agricultural University or ICAR Institution shall provide purified seed with their authorisation on the quality of the seed.</p>		

41. **Since all the plant species under cultivation whether annual, biennial or perennial have specific time of the year for their planting other than those specifically developed only for controlled environment agriculture or protected agriculture, is a typical time frame fixed for the seed or seeding material to be supplied along with the application in a calendar year?**

Yes.

Season	Applications along with seeds for registration
<i>Kharif</i> (June-Oct)	1 st March to 15 th April
Rabi (Nov-Mar)	1 st August to 15 th September
Summer/Spring (Jan-May)	1 st November to 15 th December

42. **How many types of application forms are available for registration of plant varieties?**

Three types of application forms are provided which can be downloaded from the website www.plantauthority.gov.in:-

- a) Form –I for registration of new and extant varieties
- b) Form-II for registration of EDV
- c) Application form for registration of farmers variety provided in Sixth Schedule of PPV&FR Rules, 2003.

43. **What are the types of fees to be paid for registration of a variety?**

A. Registration fee

<i>Type of variety</i>	<i>Fees for Registration</i>
Essentially Derived Varieties	Individual Rs. 7000/-
	Educational Rs. 10000/-
	Commercial Rs. 50000/-
Extant variety notified under section 5 of Seeds Act, 1966	Rs. 2000/-
New Variety	Individual Rs. 7000/-
	Educational Rs. 10000/-
	Commercial Rs. 50000/-
Extant variety about which there is common knowledge	Individual Rs. 7000/-
	Educational Rs. 10000/-
	Commercial Rs. 50000/-
Farmers' Variety	<i>No fee</i>

B. DUS test fee

Details available on the official website of the PPV&FR Authority (www.plantauthority.gov.in)

C. Annual Fee

<i>Type of variety</i>	<i>Annual Fee</i>
New Variety	Rs. 2000/- plus 0.2 per cent of the sales value of the seeds of the registered variety during the previous year plus 1 percent of royalty, if any, received during the previous year from the sale proceed of seeds of a registered variety.
Farmers' Variety	Rs. 10/- only
Extant variety notified under Section 5 of the Seeds Act, 1966 (54 of 1966)	Rs. 2000/- only.
Extant variety (VCK)	Rs. 2000/- plus 0.1 per cent of the sales value of the seeds of the registered variety during the previous year plus 0.5 percent of royalty, if any, received during the previous year from the sale proceed of seeds of a registered variety.

Annual fee shall be determined on the basis of declaration given by the registered breeder or agent or licensee regarding the sales value of the seeds of the variety registered under the Act during the previous year and royalty, if any, received during the previous year from the sale proceed of seeds of the registered variety and verified by the Authority. For update please check the Authority website (www.plantauthority.gov.in).

D. Renewal Fee

Individuals - Rs. 10,000/-
Educational institutions - Rs 20,000/-
Commercial -Rs 1,00,000/- One lump sum
Farmers-Nil

44. **What are the distinctiveness criteria for registration of a variety?**

A new variety or an extant variety (Variety notified under Seed Act (1966), Variety of Common Knowledge and Farmers' Variety) should be distinct from all other existing varieties at least in one of the essential morphological characteristic listed in the relevant Guidelines on the plant species or any special character claimed for provided a standard protocol is available for its verification.

45. **How to get information about General and Specific Guidelines for DUS Testing?**

"The General and Specific Guidelines for DUS Testing of the entire crop species notified for registration are available in the website of the Authority.

46. **For each species there are two or more DUS testing stations identified. Can the applicant indicate a preference for one (or two) of the DUS testing stations? Will the applicant be informed?**

No. The Registrar decides among the notified centres for testing of the variety. However, if there is any physiological specification related to the sensitivity or expression of the traits of a variety applied for, the same may be mentioned in the application as special trait along with the conditions for expression of the trait for the Registrar to take appropriate decision, made under prior intimation to the breeder. However, prior to taking up the crop, the location/s where the candidate varieties will undergo testing shall be published in the Plant Variety Journal.

47.	<p>Is it true that the DUS test will always be performed at two different DUS testing stations? Is this also true for those species with only one year's testing requirement? If so, what happens if the results of the two stations is different, for instance because of the climatic influence?</p> <p>It is true that DUS test will always be performed at two different DUS testing stations but it is also true for extant varieties of common knowledge (VCK) and farmers' varieties for one-year testing. There are always indicators through national check variety and local long-term check variety included in the DUS trial, that indicate the impact of climate in causing variability between two locations</p>
48.	<p>Is there a public database for choosing reference varieties as checks for data generation?</p> <p>Yes. There is a database on potential reference varieties to be used in DUS Testing.</p>
49.	<p>At what moments will the applicant be informed of the progress in the DUS procedure?</p> <p>The applicant can get information about the location of DUS testing and number of varieties under trial in the Plant variety Journal prior to taking up planting and data of each season will be made available after the review workshop at the end of each year.</p> <p>There is a procedure available for visit to the location with the permission of the Registrar during the testing as notified in the website.</p>
50.	<p>Is there a possibility for breeders to visit the DUS testing of other varieties?</p> <p>Yes. This is possible and for inspection of DUS Testing Trial at any of the notified locations by any Indian citizen. Interested persons needsto make a request in writing in time, before onset of flowering in any of the candidate varieties to visit the location, after payment of fees prescribed from time to time by the Authority, for a restricted time of three hours per visit. Specific identity of a candidate variety shall not be revealed to any visitor including the applicant, unless the Registrar invites the Applicant to clarify any point related to its characterisation as claimed for which there will be no fees charged.</p>
51.	<p>Are all varieties in a DUS-trial coded?</p> <p>Yes. The candidate variety in each DUS trial are double coded, once by a third party non-crop plant breeder (and kept under seal in the presence of witness in the locker) as first code, which in turn is again coded by the Chairperson without being aware of decoding keys of the first code, so that neither the first code expert nor the Chairperson shall be aware of the real name of the entry being tested in DUS trial, unless are the real names of the varieties are required to be decoded in emergency during the trial for the applicant to be summoned for clarification or visual recording, if so decided by the Registrar.</p>
52.	<p>Is there any provision of <i>on-site</i> testing of trees and vines?</p> <p>Yes, the applicant has an option for <i>on-site</i> testing and the fee prescribed will not exceed four times the fee prescribed for normal DUS test. The details of fees are available on PPV&FRA Website(www.plantauthority.gov.in).</p>

53.	<p>When are the special tests conducted?</p> <p>A special test shall be conducted only when the DUS testing fails to establish the requirement of distinctiveness. If the application mentions that the variety being applied for is distinct from an existing variety for the expression of a particular character which can be visible only under a specific environmental parameter, or express during attack by a pathogen or pest, or express a chemical product not visible from outside which does not modify any of the characters, etc., after conduct of the first year's test with the reference variety, if indeed the DUS test fails to distinguish between the two varieties, then the mentioned testing protocol shall be used for measuring the expression of the character which can be providing of an environmental parameter, infecting with a pathogen or extraction of a chemical/biochemical content including DNA/RNA analysis</p>
54.	<p>Is there any relaxation in uniformity levels and requirement of seed for test?</p> <p>Yes. It is provided in the regulations of the Act that the acceptable level of uniformity for a variety defined as farmers' variety shall be up to twice the number of off types is for the respective species as specified in the Plant Variety Journal of India.</p>
55.	<p>Is there any time limit for filing the application for registration of extant varieties?</p> <p>Yes. Whenever, the Authority notifies a crop species eligible for registration, it also notifies the time limit for filing of applications for registration of varieties already existing in the crop species (extant varieties), which information is available on the Authority's website(www.plantauthority.gov.in)</p> <p>Generally, the time limit is fixed for three or more years on a case by case basis, from the date of publication of approval of the Authority of the respective crop species in Plant Variety Journal of India in respect of Extant variety (Other than farmer varieties) and 10 years in case of farmers varieties.</p>
56.	<p>What is the duration of protection of plant varieties in India after registration?</p> <p>The duration of protection of registered varieties are as follows:</p> <ol style="list-style-type: none"> 1. Trees and vines - 18 years from the date of grant of certificate of registration. 2. For other crops - 15 years from the date of grant of certificate of registration. 3. For extant varieties notified under Section 5 of Seeds Act, 1966 - 15 years from the date of notification under Section 5 of the Seeds Act, 1966
57.	<p>What is the protection available to the applicant breeder from the date of filing of application to date of grant of certificate of registration?</p> <p>Under Section 24(5), the Registrar has the power to issue such directions to protect the interests (provisional protection) of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.</p>
58.	<p>Is it possible to obtain certified copies of the application forms of other applicants?</p> <p>Yes. Certified copies of any application form along with its enclosures can be obtained after filling an application for the purpose in format PV-33 along with requisite fees notified.</p>

59.	<p>What is done with the seeds received by the Authority?</p> <p>A part of the seed received as specified in the DUS guidelines of the specific species by the Authority at the time of submission of the application is used for storing as specimen sample of the variety (hybrid along with its parents & male sterility maintainer, if any) in the National Gene Bank of PPVFRA at controlled temperature and moisture during the process of registration, subsequently shifted to medium term cold storage gene bank after the registration. The other part is used for conducting the DUS or Grow-out testing depending on the category applied under, and in the case of hybrids, for verification of the parentage as claimed in the application.</p>
60.	<p>Is vegetatively propagated material also stored in the National gene bank? Does the authority store a DNA-sample?</p> <p>Authority maintains vegetatively propagated material in field gene bank and DNA sample is not stored or sought form the applicant breeder.</p>
61.	<p>Does the propagating material of a vegetatively reproduced species as defined under Section 2 (r) also refers to any plant material from which another plant can be reproduced true-to- type? Include all cut flowers having meristematic cells?</p> <p>Yes. This is true</p>
62.	<p>How are the seeds stored after harvest during the DUS testing?</p> <p>A predetermined quantity of seeds of harvest after first year’s DUS testing is retained to raise the next season’s crop for test of genetic stability and the remaining seed from the first year as well as the entire second year’s seed produced subsequently, is destroyed in an eco-friendly way.</p>
63.	<p>Can a breeder ask for a seed sample of a protected variety from the National Gene bank and if so, when?</p> <p>No. The specimen sample retained by the Authority in its Gene Bank is not available to any other breeder for any purpose other than for the use of the Authority in the event of any claim or verification in any litigation, as per need. One such claim for which the Authority may decide to take out the specimen sample is in the process of “compulsory licensing” where, if a protected variety is either not made available to farmers or seed producers by the registered breeder, or is being marketed at unreasonably high price even after three years after the protection registration of the variety. Compulsory license is granted only after hearing the registered breeder and granting extension of time for him to produce adequate quantities of registered varieties to meet the demands of public.</p>
64.	<p>What happens to seeds of gene bank storage after the term of protection ends?</p> <p>The seeds of registered variety will be handed over to the National Gene Bank of NBPGR under LTS conditions, for which appropriate standards are being developed by a committee at the Authority, soon to be made public.</p>
65.	<p>Can the applicant ask for the stored seed sample(s) in case of an infringement?</p> <p>No. The stored seed sample will be spared only in case of compulsory licensing award and in case of an order by the Courts hearing the infringement suits and not otherwise.</p>

66.	<p>Can a variety which is applied for registration under New Variety category be registered under Extant Notified Variety category if the variety gets notified during the process of DUS testing or <i>vice-versa</i>?</p> <p>No. If a variety applied under New Variety category gets notified under Seed Act (1966) after the date of REG No. given to the application under new variety category, it would be treated as new variety only subject to logical conclusion of the DUS testing for its registration.</p> <p>However, if a variety is already notified under Seed Act (1966), there is no choice for a breeder to get the same registered under New Variety or Extant Variety of Common Knowledge. The variety can be applied for registration only under the category Extant Notified Variety.</p>
67.	<p>When the variety notified under Section 5 of Seeds Act, 1966 will fall under the category of extant varieties notified under Seeds Act, 1966 and when can the same be considered under the category of new variety?</p> <p>If on the date of filing of application, a variety is already notified under the Section 5 of Seeds Act, 1966, it shall be considered only as an extant variety notified under Section 5 of Seeds Act, 1966. However, if after the filing of the application the variety gets notified under Section 5 of Seeds Act, 1966 then it will be considered under the category of New Variety only, and not as Extant (notified).</p>
68.	<p>Is it possible for breeders in a limited period of time to apply for varieties, which do not meet the novelty criteria any more, for species, which are recently included into the list of protectable genera and species (Art. 29 (2))?</p> <p>Yes. The provision of Extant Varieties registration allows a variety already in existence either as a commercialized variety or an exploited parental inbred or donor parent in use of plant breeding for more than one year, but not more than 15 or 18 years from the date of application in the annual or perennial species, respectively. Breeders can apply under extant variety category if their variety does not meet the novelty criteria of not being in trade or use for more than one year from the date of making application. Breeders can apply under extant variety category or new variety category only with regard to species notified under Section 29(2) of PPV&FR Act, 2001, for a specified period as notified from such date of notification. Normally, the period is for three years from the date of such notification, or as notified by the Authority.</p>
69.	<p>Is there a maximum period from date of application to finalisation of the procedure?</p> <p>No. The minimum period for a new variety registration is three years from the time of submission of the application complete in all respects, but within the notified calendar window period for the concerned species. It is optimized case by case, however, on the basis of the details provided including the material, timeliness to catch the season, failure of testing protocols due to unavoidable or unforeseen reasons, <i>etc.</i></p>
70.	<p>How can an applicant check the real time status of the application at the authority?</p> <p>The details and status of the application are loaded in the website of the Authority and with various key words such as REG No, denomination, Breeder, <i>etc.</i>, the status can be verified online.</p>

71.	<p>What are the Researcher's Rights provided under the PPV & FR Act, 2001?</p> <p>Any researcher is free to</p> <p>(a) use of any variety registered under this Act for conducting experiment or research; or</p> <p>(b) use a variety registered under this Act as an initial parent once to make a cross (known as F1 generation) with any other registered or other variety as the other parent to initiate the creation of breeding material from generations F2 to any number of generations by any breeding methodologies to exploit the recombined genes from the two parents. From these, a breeder can pick up (select) any number of varying types freely as his variety.</p> <p>However, he is required to seek authorization of the registered breeder if he has to use the registered variety repeatedly as parental line necessarily for the production of a newly developed variety (e.g. Hybrid involving registered variety/varieties as one or both parents of the hybrid as the case may be, or use of a registered variety as a recurrent parent to develop EDV)</p>
72.	<p>What is compound registration of hybrid plant varieties?</p> <p>Genetically, a hybrid can be protected/multiplied/generated only through the involved specific parents, depending on the hybrid seed production mechanism adopted. Therefore, notionally, all the involved parents and the resultant hybrid are connected through a commonly traceable registration number (REG No.) with distinction among each component by an alphabet suffixed.</p> <p>Hence, a hybrid variety can be applied for registration only along with its parents and a hybrid is registrable only through its parents. Since, the hybrid along with its parents constitute a unit together, a hybrid variety will be registered as a compound registration along with its parents. Each parent and the hybrid shall be issued separate registration certificate describing the relationship with the hybrid such as female/male/maintainer parent of the particular hybrid, to facilitate commercialization of each individually by the registered breeder.</p>
73.	<p>What are the benefits of compound registration of a hybrid?</p> <p>A hybrid variety will be registered as a compound registration with one REG number (acknowledgement number) for hybrid and parental lines with a single registration fee and separate DUS testing fee for hybrid and parental lines. The hybrid shall be tested at Notified DUS test centres at two locations for two seasons while its parents shall be tested for two seasons at centre notified by PPV&FRA maintaining confidentiality. The second-year testing of the hybrid and parents shall comprise two plots of the candidate hybrid and parents at respective location/s of which one will be from the hybrid and parental seed produced by the Authority and other as supplied by the applicant.</p>
74.	<p>Is the compound registration procedure applicable in case of extant hybrid varieties about which there is common knowledge and extant hybrid variety notified under Section 5 of Seeds Act, 1966?</p> <p>Yes. In the case of extant hybrid varieties notified under Section 5 of Seeds Act, 1966, no DUS testing will be conducted, however, the hybrid seed production of the parents submitted by crossing the two shall be taken up to confirm the parent as source of the hybrid submitted as claimed.</p>

75.	<p>Are the three-way crossed or double crossed or multi parent chain crossed hybrids eligible for registration?</p> <p>No, in the case of all seed propagated hybrids. As defined under Section 2(x) for seed and 2(za) for variety of PPVFRA (2001), none of the multi-parent (more than two parents) generated hybrids genetically qualifies the two definitions of seed and variety. Hence, as per the current Act, it is not feasible to register the three-way crossed or double-crossed or multi-parent chain-crossed hybrids.</p>
76.	<p>What would be the consequence if a candidate hybrid variety or any one of its parents fail on Uniformity, and any one parent fails on Stability test?</p> <p>If the candidate hybrid or any of the parents fail in Uniformity test and parents on Stability test then the hybrid as well the parent/s which failed on uniformity or stability test or both, shall be rejected. If any of the parents pass through the Uniformity, Stability and Distinctiveness tests, the inbred variety shall be registered as an inbred variety, without referring to any hybrid.</p>
77.	<p>What would be the consequence if candidate hybrid variety passes uniformity and fails on distinctiveness and both parents pass distinctiveness, uniformity and stability tests?</p> <p>In such case the hybrid + parents qualify for protection. Where genomic resources are available, the hybrid genotypic fingerprint shall be maintained as a special test for confirmation, as a contrast with the other hybrid against which the candidate hybrid failed to distinguish itself morphologically on DUS traits.</p>
78.	<p>What would be the consequence if the candidate hybrid variety is rejected on uniformity but any of the parents pass the DUS test?</p> <p>In such cases, parents can be registered as new inbred varieties with the option to be exercised by the applicant with the deposit of additional registration fee and it shall be designated as “inbred variety” not be referred to the hybrid system. However, since the inbred parents are established as DUS, then the same hybrid can be remade and fresh application made by the breeder for registration of hybrid. However, the period of protection shall be from the period of the protection of the oldest parent variety.</p>
79.	<p>What would be the period of protection of the candidate hybrid and its parents in case of compound registration?</p> <p>The period of protection would be 15 years for new hybrid variety in case of annuals or 18 years in the case of perennials or vines or trees, if none of the parents involved is previously registered. If one or more of the parents is previously registered the validity period of the hybrid will be that of the period of protection of the earliest registered parent among its parents.</p>
80.	<p>If multiple hybrids from the same applicant have one common parent, does the applicant have to submit common parent seed again and again, as it is meant for gene bank storage only?</p> <p>No. But the Authority shall use the seed of the common parent from already submitted seed with the earlier application to verify the parentage claim of the new hybrid</p>

81.	<p>Does the authority use advanced DUS testing procedures like molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability?</p> <p>No. The DUS testing is morphological character based. However, if a breeder makes a special character claim which may not express in all environments but is confirmed through DNA profiling for the particular trait, the same is admissible, and not as a replacement for DUS testing.</p>
82.	<p>What are the characteristic features of an EDV?</p> <ol style="list-style-type: none"> a. is clearly distinguishable from such initial variety, parents of hybrid or hybrid by the targeted trait and b. conforms to such initial variety or initial parents of the hybrid in the expression of the characteristics except for the difference/s due to the targeted trait which results from the act of derivation.
83.	<p>What are the additional provisions for registration transgenic varieties?</p> <p>The transgenes or transgenic events, being carried by the candidate variety need to be approved under Environment Protection Act (1986) by the Ministry of Environment, Forests & Climate Change, after which the application shall be taken up as follows:</p> <ol style="list-style-type: none"> a. If the introgression of the transgenic event is in a new unknown/unreleased genotype the transgenic shall be tested as a new variety with the transgenic event as a special trait, if the applicant wishes for the same. If the event is deregulated without any conditions or restrictions imposed by Ministry of Environment, Forests and Climate Change, the variety will be tested as a typical new variety b. If the transgenic event is in an already protected variety's background, it will be tested as an EDV (The Guidelines for the process of testing EDVs for registration is available at www.plantauthority.nic.in.) c. If the transgenic event is in a variety of common knowledge, but not protected, the latter will be the reference variety for testing the candidate under new variety category. d. If the transgenic event is a stacked event in an already protected transgenic event, the original transgenic variety shall be the reference for testing as an EDV. If the latter is not protected, it would be dealt as in (c) above.
84.	<p>Can a variety be registered as an EDV of an EDV?</p> <p>Not as an EDV of an EDV. There can be no EDV of an EDV. But, such an EDV which is derived out of an existing EDV can be registered also be registered as EDV2 or EDV3 or EDVx, of the original initial variety only which is the source genetic background of the first EDV also.</p>
85.	<p>When an EDV2 using an EDV1 is registered only as EDV2 of the initial variety from which EDV1 was also derived, what advantage will the breeder of EDV1 get, when the breeder of EDV2 has used only EDV1 but not its initial variety?</p> <p>Whenever a subsequent EDV is derived from a pre-existing EDV, the registered breeder or breeders of all preceding EDVs as well as the registered breeder of initial variety (using which the EDV1 was originally developed), will get due benefit under the clause of benefit sharing. The value of benefit shall be decided by the Authority by accounting for the relative value of the genes transferred from each such EDV or initial variety.</p>

	<p>In addition, the breeder of EDV2 shall have to obtain permission from the breeder of initial variety as well as the other preceding last EDV actually used repeatedly by the new breeder to recover the genome of the original initial variety along with the derived trait of the preceding EDV. Therefore, the initial variety breeder as well as the subsequent EDV breeders can keep deriving commercial benefits from the commercialization of EDVs.</p>
86.	<p>Does the exclusive right of the title holder from Section 28 provide to the title holder an exclusive right to produce, sell, market, distribute, import or export the variety including propagating material?</p> <p>Yes. Section 28(1) and (2) of the PPV&FR Act, 2001 dealing with breeders' right is as follows:</p> <p>Registration confers exclusive right on the breeder or his successor, authorised person, agent or licensee to produce, sell, market, distribute, import or export the variety. In the case of an extant variety, unless a breeder or his successor has established his right, in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seed Act, 1966, the Central Government, and where notification is for a State release, the State Government, shall be deemed to be the owner of such right.</p> <p>The Plant Breeders Rights are applicable over all plant types of plant varieties for which registration is obtained.</p>
87.	<p>Can a Registered Breeder assign his exclusive right on the variety to produce, sell, market, distribute, import or export to anyone without imposing any conditions?</p> <p>No. The registered breeder or his successor can appoint an agent or licensee for the above entitlements provided the agent or licensee registers his title with the Registrar in respect of the variety with the particular entitlement and conditions or restrictions, if any imposed by the Registered Breeder.</p> <p>However, a person authorised by the Registered Breeder to produce or sell or market or otherwise deal with the variety has to be authorised for specific right by the registered breeder following conditions under Regulation 13, who shall not have to register with the Registry like in the case of Agent or Licensee</p>
88.	<p>Can a person apply for registration of a variety which is already being marketed by the breeder as seed or is being exploited as a donor or parent material the same breeder or others legitimately?</p> <p>Yes, when the above situations are being practiced within an acceptable period after first such use as follows:</p> <ol style="list-style-type: none"> An applicant can file for a new variety within one year from the date of sale of the variety in the market or been exploited (This period of under one year is considered as validity of the novelty of the new variety) For an extant variety, if the date of sale or exploitation is more than one year as on the date of filing of application but less than a period of 15 years in case of seed propagated crops and 18 years in case of trees and vines. Application for registration of extant variety can be filed within the notified period of validity for filing of varieties belonging to the crop species under extant variety category. The period to accept registration of extant category of varieties is notified species-wise by the Authority at the time of notification of the species.

	<p>c. Extant varieties (other than farmers' varieties) are of two types:</p> <p>(i) Extant notified variety: Variety notified under Seed Act (1966) can be filed for registration within a period of 15 years in case of field crops and 18 years in case of trees and vines from the date of notification under Seed Act (1966). But the period of protection of an extant notified variety is valid for total period of 15 or 18 years as the case may be (in the two categories of annuals and trees or vines), after the date of notification under Seed Act (1966)</p> <p>(ii) Extant Variety of Common Knowledge (VCK): Variety NOT notified under the Seed Act (1966), but is already in commercial market or is being exploited for use since a period of more than one year but less than a period 15 years in case of field crops and 18 years in case of trees and vines, can also be filed for protection as Extant VCK.</p>
89.	<p>What are the different activities in handling a registered variety or use of its denomination that represent infringement of the Breeder's Rights?</p> <p>(a) Any person who, not being the registered breeder or agent or a licensee of that variety, sells or exports, or imports or produces such variety without the permission of its breeder or within the scope of a registered license or registered agency without permission of the registered licensee or registered agent, as the case may be</p> <p>(b) Any person who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a registered variety causing confusion about the variety</p>
90.	<p>Is there any punishment if any person or agency commits infringement of breeders' right?</p> <p>Yes. The action refers to the charge of infringement of breeders' right as explained above (Question 91). Infringement suits can be filed in district courts praying for damages or share of profits</p> <p>The penalties are categorised for the following offences:</p> <ol style="list-style-type: none"> 1. Selling varieties with false denomination: 6 months to 2 years imprisonment and/or Rs 50000-500000 penalty 2. Falsely representing a variety as registered: 6 months to 3 years imprisonment and/or Rs 100000-500000 penalty 3. Repeated offence: 1 year to 3 years imprisonment, Rs 200000-2000000 penalty 4. Offence against rights of breeders or farmers by companies (officials of the companies equally implied and are punishable by designation/identity): Any person/company owners punishable as per the magnitude of the offence committed, to any number of years imprisonment or penalty.
91.	<p>Does the definition of branded seed also refer to seed certification label?</p> <p>Branded seed or seeding material means any seed put in a package or container with a label or mark that refers to the denomination of the registered variety indicating that it contains seed of such a variety. It does not refer to any other seed quality certificate</p>

	<p>label as such. However, if such certificate indicates the package as containing a particular quality of certified/breeder/foundation or truthfully labelled seed of a certain denomination that is registered, it will be considered as branded seed only. Further, use of the registered denomination marked/mentioned on the package by any person other than registered breeder or his agent or his licensee is also equal to branding of the seed and is not allowed.</p>
92.	<p>In the case of invoking of compulsory licensing option on a registered variety, does it mean that the possibility for a breeder to set the royalty level for his variety is eliminated?</p> <p>Power of Authority to make order for compulsory licence in certain circumstances-</p> <ol style="list-style-type: none"> At any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety. Every application under sub-section (1) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based. The Authority, after consultation with the Central Government, and if satisfied after giving an opportunity to the breeder of such variety to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register the title of such applicant as licensee under sub-section (4) of section 28 on payment of such fees by the applicant as is referred to in that sub-section.
93.	<p>What are the requirements for a foreign company to have registration of their varieties in India?</p> <p>Only one condition is required to be met where the foreign company has to have either an agent appointed or has to establish its own Indian office for service in India, after registration.</p>
94.	<p>Can the Registrar, PPVFRA accept any DUS data from foreign countries where the variety has been already examined for DUS, in case of varieties of foreign origin?</p> <p>No. DUS data as relevant to Indian Guidelines and as measured in India only shall be considered for registration purposes.</p>
95.	<p>Can an applicant claim priority right on a plant variety for an application filed in other country or countries if the first application was filed in India?</p> <p>If it is a convention country (country which is a member of Convention on Biodiversity), then the applicant can claim priority right related to the date of submission of the application in the convention country, otherwise no.</p>

96.	<p>How is the on-site DUS testing carried out in the case of an applicant from abroad?</p> <p>In case of applications for registration of trees/plantation crops and vines from outside India, the planting materials for on-site DUS testing in an Indian location must be provided by the applicants.</p>
97.	<p>Is it possible to register a plant variety again (re-register) in any category after its protection period of registration of 15 or 18 years as the case may be, is over?</p> <p>No. The Indian legislation allows the protection of a plant variety through registration for 15 or 18 years maximum period, as the case may be. After the protected period of a registered variety is exhausted, the plant variety is deemed to pass into public domain allowing free access, use and marketing of the variety without any the requirement of any authorisation or permission of the original registered breeder. On plant varieties in public domain by virtue of exhaustion of the protection period by registration under PPVFRA (2001) or by declared free access by the original breeder to any user, neither farmers nor breeders will hold any of their respective rights.</p>