



Update

Plant Variety Protection Act

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The following was reprinted from the May, Noble Foundation Newsletter.

What does the plant variety protection (PVP) and seed law mean to you? It means it is not legal to buy, sell or trade a PVP-protected variety or plant it without the proper paperwork. If a seed lot has any of a protected variety in it, it must be labeled and sold with the proper paperwork. These laws have been in existence for several years, but have not been enforced until recently.

A press release on Oct. 9, 2003, by Syngenta Seeds, owner of NK Brand Coker wheat, titled "Syngenta Seeds Awarded \$150,000 Judgment for Illegal Sale of Wheat Seed" and an article in the Oct. 24, 2003, *Delta Farm Press* titled "Industry fighting illegal seed sales" by David Bennett are examples of litigation in favor of PVP.

This means the days of "brown bag," "bin run" or "variety not stated (VNS)" seed are over for many varieties. It means you need to make preparations well in advance of planting to have the seed you need. This information is being passed along to make producers aware of the law and what they can do to comply with the law.

What can small-grain forage producers do?

Grow your own seed. Plant enough acres for grain each year to use for your own seed the following year. This will require being able to harvest and store the grain. This CANNOT be done with *patented varieties* or varieties containing *patented genes*.

Plant a public wheat variety. This will require working with a seed supplier that can and will produce sufficient quantities of public or unprotected seed to meet your needs.

Plant certified seed. This assures that all the paperwork requirements are met. In some instances, like acidic or low pH soil, it is beneficial to get a known variety that will perform well under specific soil conditions.

For more information, contact Oklahoma Foundation Seed Stocks or Texas Foundation Seed Service.

The following Notice to Industry was written by and reprinted with permission from the Oklahoma Ag Retailers Association.

*** NOTICE TO INDUSTRY ***

GRAIN ELEVATOR AND SEED TRADE INDUSTRY AWARENESS OF THE FEDERAL PLANT VARIETY PROTECTION ACT, TITLE V OF THE FEDERAL SEED ACT AND OKLAHOMA SEED LAW WHEN SELLING AND/OR APPLYING WHEAT FOR PLANTING PURPOSES

Grain elevator operators and seed companies that are involved in any way, shape or form in providing seed wheat to a producer for planting purposes need to be aware of the provisions of the federal Plant Variety Protection Act (PVP), Title V of the Federal Seed Act and the Oklahoma Seed Law. Potential liability implications exist if a facility is selling or selling and spreading wheat for seed for a producer.

Background

The PVP is a federal law designed to promote the developments of new varieties by allowing the variety owner to determine who may sell seed of that particular variety. The law prohibits the sale of any PVP seed, including farmer saved, without the permission of the variety owner. Title V of the Federal Seed Act specifies that PVP protected varieties can be sold by variety name only as a class of certified seed. The PVP law also states that the seller must also give notice that the lot is a PVP variety. Enforcement of the PVP law is left up to the owner of the PVP variety through civil court action.

Seed produced from a PVP variety cannot be sold, advertised, offered, delivered, consigned, exchanged or exposed for sale without explicit authorization by the proprietary seed owner. A consumer cannot, legally, knowingly purchase wheat labeled VNS, or mixed wheat, or pasture wheat, etc., containing a PVP variety to use for planting purposes. Growers are granted an exemption for which they can collect and save seed produced from any legally purchased PVP protected variety they wish for their OWN future planting. They cannot sell, trade or transfer a PVP protected variety to others for planting purposes.

In reality, enforcement of the provisions of the PVP Act and Title V of the Federal Seed Act in the hard red winter wheat region has been pretty much non-existent. This is changing. AgriPro wheat is following the lead of other private seed companies with PVP or patent crops that have been successful in enforcement in North Dakota, Arkansas, Mississippi and other southern states. AgriPro has made it clear they will begin enforcement of their PVP rights on their hard red winter wheats. They have already settled civil law suits with farmers in Arkansas, Mississippi, North Dakota, Texas and Oklahoma.
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This effort to begin enforcement of the PVP could have a dramatic effect upon any grain elevator or seed company that sells "bin run" or "variety not stated" (vns) wheat to a producer to plant, or sells and spreads it via applicator equipment. Technically, if a facility provides wheat to a producer that in turn is used for seed, or sells and spreads it for him (i.e., planting) and this variety has a PVP, then the facility is in violation of the PVP Act.

The Oklahoma Seed Law says that ANY KIND OF SEED that is sold has four major requirements.

1. The seller must have a state seed license issued by the Oklahoma Department of Agriculture, Food and Forestry;
2. The seller must provide germination and purity testing
3. The seller must provide a label. Each label must show the following:
 - i. Commonly accepted name as to kind, or kind and variety, for each seed component over 5% of the whole;
 - ii. Net weight;
 - iii. Lot number or other identification;
 - iv. Origin, including state or foreign country where grown; if origin is unknown, that fact must be stated;
 - v. Percentage pure seed;
 - vi. Percentage, by weight, of inert matter;
 - vii. Percentage, by weight, of agricultural seed; other than one required to be named on the label;
 - viii. Percentage, by weight, of all seeds;
 - ix. The name and rate of occurrence of each kind of restricted noxious weed seed per pound when present in any amount;
 - x. For each name agricultural seed;
 1. Percentage of germination,
 2. Percentage of hard seed, if present, and
 3. Calendar month and year test was completed
 - xi. Name and address of person or vendor who labeled the seed or who sells, offers or exposes the seed for sale within the state;
4. The entity providing the label must pay the seed inspection fee.

Examples of Violations

1. Producer asks elevator or seed company if they have a bin of a "good clean wheat for planting purposes." The facility does and sells the quantity desired to the producer to plant. It so happens the wheat provided is a PVP protected variety. VIOLATION OF THE PVP ACT by the facility and possibly by the producer. Also, a possible violation of the Oklahoma Seed Law by the facility.
2. Producer comes to elevator or seed company and purchases wheat to plant. The facility provides it, and it is either a PVP protected variety or has some percentage of a protected variety. VIOLATION OF THE PVP ACT by the facility and possibly the producer. If the facility sells the wheat as "seed" rather than just as "grain," it is a violation of the Oklahoma Seed Law as well as if the facility is not licensed and/or doesn't provide purity and germination test and/or an adequate label.
3. Producer asks elevator or seed company to both provide and spread the wheat (i.e., plant it) for him via some type of application equipment. A PVP variety is contained in the wheat provided by the facility. VIOLATION OF THE PVP ACT by the facility and possibly the producer. If the facility sells the wheat as "seed wheat," it is a violation of the Oklahoma Seed Law if the facility is not licensed, purity and germination testing is not provided and/or adequate labeling is not provided and the inspection fee paid.
4. Elevator or seed company has a wheat cleaning facility. They clean the farmer's excess (i.e., what he has over and above planting for himself) PVP variety or clean and deliver to a third party at the request of the farmer owning the variety. If the facility knows or should have known that, it is a PVP variety. VIOLATION OF THE PVP ACT by both the facility and the producer.
5. Producer delivers a PVP variety wheat at harvest, and elevator segregates it in a bin. At planting time, the elevator sells the wheat back to the producer or sells to another producer. VIOLATION OF THE PVP ACT.

Suggestions

1. Elevator or seed company should never sell "seed" wheat to a producer for planting purposes unless:
 - i. They have a state seed license issued by the Oklahoma Dept of Agriculture, Food and Forestry;
 - ii. They provide purity and germination test;
 - iii. They provide an adequate label;
 - iv. They guarantee that the wheat is not a PVP protected variety. Otherwise, potential PVP and State Seed Law violations would or could exist.
2. Elevators or seed companies spreading wheat for the producer should require the seed to be provided by the producer from wheat he has saved or has purchased with the guarantee that it is NOT a PVP protected variety. The facility should NOT provide the "seed" for the producer. If the facility does provide the wheat for seed purposes, they must still comply with the requirements listed in part 1i – 1iv above. Also, if the facility provides the wheat, and it is a PVP protected variety for which the elevator does not have the authorization to provide, each and every acre spread is in violation of the PVP law.

Below is a list of the more popular wheat varieties grown in Oklahoma that have a PVP:

Big Dawg (6), Jagger (6), Karl (6), Karl 92 (4), Longhorn (4), Ogallala (4), TAM 107 (3), TAM 110 (6), Thunderbolt (6), Tomahawk (4), Trego (6), 2137 (6), 2145 (2), 2163 (4), 2174 (6).

(2) Unauthorized Propagation Prohibited - US Variety Protection applied for specifying that seed of this variety is to be sold by variety name only as a class of certified seed.

(3) Unauthorized Propagation Prohibited - US Protected Variety.

(4) Unauthorized Propagation Prohibited - to be sold by variety name only as a class of certified seed - US Protected Variety.

(6) Unauthorized Propagation Prohibited - to be sold by variety name only as a class of certified seed - US Protected Variety - 1994 PVPA.
