

The Plant Variety Protection Act:

Information for Texas Small Grain Producers

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Enforcement of the Plant Variety Protection Act (PVPA) for small grains has generated increased attention over the last several years. Numerous individuals (including sellers, seed conditioners and buyers) in Texas, Arkansas, Oklahoma and other states have been prosecuted for not abiding by the PVPA. Clear understanding of the PVPA, of Title V and of utility patents and their applications is essential for everyone involved in purchasing, conditioning or selling seed. Because a considerable amount of confusion exists about the PVPA and its implications for Texas small grain producers, this publication answers the questions most commonly asked about the Act's legal and practical aspects.

What are some laws that small grain producers must understand?

- **Plant Variety Protection Act (PVPA):** Enacted in December, 1970, the PVPA protects the intellectual property rights of developers of new varieties of plants that reproduce sexually (by seed). It gives plant breeders property rights over new variety releases. Farmers may save seed to plant their own holdings (land they own, rent or lease) or, if planting plans changes, sell this amount of saved seed to neighbors. All seed sales must comply with state laws, including Title V.

- **1994 Amended PVPA:** An amendment to the Plant Variety Protection Act of 1970, the 1994 PVPA prohibits the sale of all farmer-saved seed without the variety owner's permission. The 1994 PVPA increased the legal protection period to 20 years for most crops, including wheat and oats, and applied to all varieties protected after April 4, 1995. Under this act, all protected varieties must be sold by variety name.
- **Title V:** An amendment to the Federal Seed Act, Title V allows seed to be sold only by variety name and only as a class of certified seed. Non-certified sales are prohibited. (Seed certification is based on Texas Department of Agriculture requirements.) For practical purposes, most varieties protected by the PVPA also are protected by Title V.
- **Utility Patents:** Such patents protect certain varieties containing specific genes, usually developed through genetic engineering or biotechnology. Farmers may not save, clean/condition, or sell any seed protected under a utility patent. Examples of seeds protected by utility patents include Clearfield® Wheat, Roundup Ready® crops, and Bollgard®.

What is the purpose of the Plant Variety Protection Act?

Access to new varieties with increased yield potentials, higher quality grains, better disease and insect resistance, and tolerance to herbicides plays a vital economic role in Texas wheat production. Improved genetics is estimated to account for well over 60 percent of the yield increases occurring over the past century. The primary purpose of the Plant Variety Protection Act is to encourage further development of new non-hybrid varieties of crops such as wheat, oats and other self-pollinating crops. Prior to the PVPA, breeders and seed companies had little, if any, financial incentive to invest in developing non-hybrid crops. Now, because plant breeders are allowed to determine who can sell seed of new varieties, they can recoup the monies expended in the variety-development process and re-invest them for future development. Additionally, the 1994 amendments to the PVPA allowed the U.S. to participate in the international plant breeders' rights treaty. As a result, proprietary rights to varieties now are respected in many countries worldwide.

What varieties are protected by the Plant Variety Protection Act?

Nearly all varieties released by private companies since 1970 are protected by either the initial PVPA or the 1994 amended PVPA. Most varieties released by universities also are protected by the PVPA. All varieties protected under the PVPA must be clearly marked on the seed tag or bulk label, indicating type of protection (1970 PVPA, 1994 amended PVPA and/or Title V). Sellers are responsible for informing buyers as to whether a variety is protected. From a practical

standpoint, most varieties planted today are protected under the 1994 PVPA; this means the variety owner's permission must be obtained prior to any seed sales. A list of all varieties protected under the PVPA (1970 and 1994) can be found at <http://www.ars-grin.gov/cgi-bin/npgs/html/pvplist.pl>.

What can or can't be done with seed from a PVPA protected variety?

A farmer can save seed protected under both the 1970 PVPA and the 1994 PVPA for planting his/her own holdings (land owned, rented or leased). Under the 1970 PVPA, a farmer could sell only an amount equal to that needed to plant his/her own holdings. However, under the 1994 PVPA, no seed can be sold unless the variety owner grants permission for the sale.

Infringement of the variety owner's rights under the 1994 PVPA includes:

- Selling, offering, delivering, consigning, exchanging or advertising for sale a protected variety
- Dispensing the variety to another person without informing that person the variety is protected
- Inducing a third party to commit any of the above acts
- Selling a PVPA variety as VNS (Variety Not Stated)

What restrictions are associated with conditioning seed?

Any actions (including seed cleaning, conditioning or delivery) taken as steps toward marketing a variety protected under the PVPA potentially can infringe upon a variety owner's rights. A farmer may have a third party clean and condition seed without violating the PVPA, so long as seed will be planted on his/her holdings (land owned, rented or leased). However, conditioning, storing or delivering an unreasonable amount of farmer-saved seed violated the PVPA. It is strongly recommended that anyone conditioning farmer-saved seed obtain written documentation from the farmer stating the seed conditioning does not violate PVP laws or patents.

What does Title V variety protection mean?

Although a variety owner has the option to choose Title V protection or not, most small grain varieties protected under the PVPA also are protected by Title V of the Federal Seed Act. Under Title V, sales of non-certified seed of Title V protected varieties are illegal.

Can a protected variety be legally sold or bought as Variety Not Stated (VNS) wheat seed?

No. The PVPA states that a protected variety must be sold only by variety name; sale of a protected variety as VNS violates the PVPA. For seed to be sold as VNS, the wheat seed must be from a variety not protected by the 1994 PVPA. Sellers must inform buyers as to whether a variety is protected.

Table 1. Summarized guidelines for 1970 PVPA, 1994 PVPA, Title V and Patent varieties.

	1970 PVPA	1994 PVPA	Title V	Patent
FARMER:				
• Allowed to SAVE seed	*YES	*YES	*YES	NO
• Allowed to SELL seed to neighbor if in compliance with state law (no advertising)	*YES	NO	'70 PVPA only	NO

CONDITIONER:				
• Condition varieties for farmers	*YES	*YES	*YES	NO
• Store seed for farmers	*YES	*YES	*YES	NO
• Clean or stock as step in marketing variety	NO	NO	NO	NO
• Deliver seed as a step in marketing variety	NO	NO	NO	NO
• Advertise farmer-saved seed	NO	NO	NO	NO
• Sell or act as broker for farmer-saved seed	NO	NO	NO	NO

* Limited to the amount of seed needed to plant a farmer's own holdings (land owned, leased or rented).

What are the repercussions for violating the PVPA?

A variety's owner may bring a civil action against persons infringing on his or her rights as stated in the 1970 and 1994 PVPA. Damages awarded by a court must at least compensate a variety developer for the infringement, but the court can award up to triple damages when infringement is found to be willful. Additionally, violation of any provision of the Federal Seed Act, including Title V, is a misdemeanor punishable by a fine not to exceed \$2,000.

Additional sources of information on PVPA:

1. The Plant Variety Protection Act. Brick & Stanelle, Colorado State University – Cooperative Extension. Available at <http://www.ext.colostate.edu/pubs/crops/00301.html>
2. Seed Protection: Rights and Responsibilities. Available at http://www.plantboard.org/seed_pdfs/protec.pdf
3. Plant Variety Protection Office. <http://www.amus.usda.gov/science/pvpo/PVPindex.htm>

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