

The Plant Variety Protection Act: Information for the Texas Small Grains Producers
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Enforcement of the Plant Variety Protection Act (PVPA) in small grains has gained a lot of attention the last couple of years. Numerous individuals in Texas, Arkansas, Oklahoma, and other states have been prosecuted for not abiding by the PVPA, including sellers, seed conditioners, and buyers. A clear understanding of the PVPA, Title V, and utility patents and their implications is essential for everyone involved in the purchasing, conditioning, or selling seed. There is a considerable amount of confusion about the PVPA and its implications on Small Grain producers in Texas. In this publication, an explanation of the legal and practical aspects of the PVPA will be discussed.

Laws:

Plant Variety Protection Act (PVPA) - enacted December 1970, and provides legal intellectual property rights protection, to developers of new varieties of plants that are sexually reproduced (by seed). The 1970 PVPA provides the Plant Breeders with property rights over new variety releases. Farmers may save seed to plant their own holdings (land owned, rented, or leased) or sell that amount of seed to a neighbor, if plans for that seed change. 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 permission of the variety owner. The length of protection under the PVPA act increased to 20 years for most crops, including wheat and oats. It applies to all varieties protected **after** to April 4, 1995.

Major amendments to the PVPA in 1994:

- prohibits the sale of all seed of a protected variety without the permission of the variety owner
- requires protected varieties to be sold by variety name
- increased the protection length from 18 to 20 years

Title V – an amendment to the Federal Seed Act. Title V allows seed to be sold by variety name only and as a class of certified seed. Non-certified sales are prohibited. Seed certification is based on the requirements of the Texas Department of Agriculture. For practical purposes, most varieties protect by the PVPA are also protected by Title V.

Utility Patents – a means of protection for 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 include Clearfield® Wheat, Roundup Ready® crops, Bollgard®, and others.

What is the purpose of the Plant Variety Protection Act?

Access to new varieties with increased yield potential, higher quality grain, better disease and insect resistance, and tolerance to herbicides play a vital economic role in Texas wheat production. Improved genetics are estimated to account for well over 60% the yield increase that has occurred over the past century. The primary purpose of the Plant Variety Protection Act was to encourage further development of new non-hybrid varieties in crops such as wheat, oats, and other self-pollinating crops. Allowing Plant Breeders to determine who can sell seed of new varieties provides them with the ability to recoup the monies expended in the variety development process and re-invest in future development. Prior to PVPA, little, if any, financial incentive existed for breeders and seed companies to invest in the developing non-hybrid crops. Additionally, the passage of the 1994 amended PVPA has allowed the U.S. to participate in the international plant breeder's rights' treaty. As a result, the proprietary rights on varieties are now respected in many countries worldwide.

What varieties are protected by Plant Variety Protection Act?

Nearly all varieties released by private companies, since 1970, are protected by the initial PVPA or the 1994 amended PVPA. Most public release varieties (varieties released by universities) are also protected by the PVPA. Variety protection under the PVPA expires 20 years after protection has been granted. All varieties protected under the PVPA (1970 and 1994) can be found at the following web-page (<http://www.ars-grin.gov/cgi-bin/npgs/html/pvplist.pl>). From a practical standpoint, most varieties that are planted today are protected under the 1994 PVPA, meaning the variety owner's permission is required prior to any seed sales.

All varieties protected under the PVPA must be clearly marked on the seed tag or bulk label indicating the type of protection (1970 PVPA, 1994 amended PVPA, and/or Title V). The seller is responsible for informing the buyer if a variety is protected.

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

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

Infringement of the owner's rights under the 1994 PVPA include:

- **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 taken as a step in marketing farmer-saved seed are infringements of the rights of the variety owner. A third party can clean and/or condition seed for any farmer, as long as the volume of seed cleaned does **not exceed** the planned planting acreage of the farmer. However, conditioning, storing, or delivering an unreasonable amount of farmer-saved seed for sale is in

violation of the PVPA. It is strongly recommended that anyone conditioning farmer-saved seed obtain written documentation from the farmer stating the seed conditioning is not in violation of the PVP laws or patents. A farmer having seed cleaned and conditioned by a third party is not in violation of the PVPA, as long as the seed volume does not exceed a planned planting acreage.

What does Title V variety protection mean?

The owner of the variety has the option to choose Title V protection or not. Title V protection means that sales of non-certified seed of Title V protected varieties is illegal. Most small grains varieties that are protected under the PVPA are also protected by Title V of the Federal Seed Act.

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

No. The PVPA states that a protected variety must be sold by the variety name only. Sale of a protected variety as VNS is an infringement of the PVPA. For seed to be sold as VNS, the wheat seed must be from a variety not protected by the 1994 PVPA. As mentioned previously, it is the seller's responsibility to inform the buyer if a variety is protected.

What are the repercussions for violating the PVPA?

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

Table 1. Summarized Guidelines for the 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 (no advertising) TO NEIGHBOR if in compliance with state law	*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 of Load Seed to a Third Party	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).**

Additional sources of information on PVPA:

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

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