

**Patents, PVPA and Public Varieties:  
Understanding the rights and responsibilities when producing seed**

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A variety is a clearly distinguishable group of cultivated plants that retain specific characteristics when grown under controlled conditions. Variety improvements generate higher yields, improved pest and disease resistance, biotechnology traits, and other desirable characteristics for growers. Variety protection is intended to protect the breeder, developer or discoverer of unique germplasm from unauthorized use of the variety to ensure continued development and distribution of improved or superior varieties.

Plant patents prohibit reproduction to protect the developer's exclusive rights to the variety or technology. Examples include varieties with Clearfield® and Roundup Ready® technology. The Plant Variety Protection Act (PVPA) also protects the variety owner's rights in regard to selling, marketing, offering, delivering, consigning, exchanging, or exposing for sale the protected variety. Examples of PVPA protected varieties include '2552' wheat, 'Renegade' red clover and 'Glenn' soybean. Title V of the Federal Seed Act provides additional variety protection by requiring seed of this status to be sold only as a certified class of seed. Examples are 'Branson' wheat, 'Pamunkey' barley and 'Calhoun' soybean.

Under the PVPA and Title V, there is what is commonly known as the "Farmer Exemption." This allows a grower to save enough of a protected variety to plant their own acreage, including land that is owned, rented or leased. For varieties approved before 1994, if the grower's planting intentions change, then the amount that would have been planted can be sold, as long as it has not been advertised. Varieties approved after 1994 can only be used by the grower on their own land. There is no exemption for patented varieties.

In contrast, public varieties are those that are not protected. These varieties may be in the public domain because they are University or governmental agency releases or because the PVPA protection has expired. Examples of public varieties include 'Pennyryle' soybean (PVP expired in 2006), 'Kenstar' red clover (PVP expired in 1996) and 'Pembroke' (released by UK Ag. Experiment Station and KSGGA in 2007). Unprotected status means that once growers have purchased seed of the variety, they can produce and save seed for their own use. Also, the producer can sell or distribute seed of these unprotected varieties to others as long as they adhere to all provisions of the respective state seed laws or Federal Seed Act if distributing across state lines.

Unfortunately, some individuals ignore variety protection and sell "Brown Bag" seed when more seed is produced than can be used by the grower. Patent and PVP owners can bring legal action against those involved in the sale and delivery of protected varieties. Individuals or operations violating Title V of the Federal Seed Act and/or state seed law protection can be subject to "Stop Sale" orders and fines. Any person selling seed in Kentucky must be aware of and comply with the provisions of the Kentucky Seed Law and Regulations. These requirements include dealer and/or labeler status with reporting

requirements, guaranteeing seed lot quality (purity and germination), and displaying all labeling requirements on seed tags.

Producers, processors and dealers who willingly or unknowingly violate variety protection may be subject to legal action, fines or penalties for unauthorized use or sale of protected plant varieties. Therefore, it is extremely important for growers to be knowledgeable of the varieties they buy, use and sell. It is also important that conditioners monitor the seed lots they are cleaning and distributing. Conditioners who clean protected varieties of seed can be held accountable for patent or PVP violations. The rights and responsibilities of growers and conditioners regarding protected varieties are summarized in the following table.

Conditioners and dealers may want to consider signage at their operation informing patrons that it is a violation of Federal law to plant or sell seed harvested from a patented variety, to sell or purchase a PVP protected variety from an unauthorized source, and to sell non-Certified Title V protected varieties. Prudent conditioners will have growers complete a disclaimer, waiver or other indemnification form to include with the conditioner records kept for seed lots that have been handled in the operation.

Important considerations of variety protection laws and regulations:

1. Seed delivered for conditioning can only be picked up by the person (or agent) who originally delivered the seed for conditioning.
2. For U.S. patented varieties, a grower is prohibited from saving seed for planting purposes.
3. For U.S. protected varieties, a seed conditioner is prohibited from cleaning or otherwise handling more than the amount allowed under the “farmer’s right to save seed.”
4. Sale of non-certified seed of a U.S. protected Federal Seed Act Title V variety is prohibited.
5. Sale of seed of a U.S. protected variety for which a Certificate of protection dated April 4, 1995 or later is prohibited.
6. The sale of seed of a U.S. protected variety for which a Certificate of protection dated prior to April 4, 1995 is limited to the amount of seed as defined by a “farmer’s right to save seed.” Sale of this amount of seed is permitted only if there is no advertisement or use of a third party to sell the seed.
7. The amount of seed as defined under the “farmer’s right to save seed” is limited to the amount of seed which would plant his own acreage.