

***** SPECIAL NOTICE TO GRAIN WAREHOUSE INDUSTRY *****

REQUIREMENTS OF THE PLANT VARIETY PROTECTION ACT AND THE UNIFORM GRAIN AND RICE STORAGE AGREEMENT/FEDERAL AND STATE WAREHOUSE LICENSING AUTHORITIES UPON THE GRAIN WAREHOUSE INDUSTRY

With the apparent significant freeze/drought damage to this year's Oklahoma wheat crop, the Association office has already received inquiries from members about this issue as related to seed wheat. Below we have updated a publication provided in July, 2005.

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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. Liability implications exist if a facility is selling or selling and spreading wheat for seed for a producer if the quantity contains any percentage of a PVP variety.

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 of which there have been many cases successfully won by the owner of the PVP variety.

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 producer cannot knowingly purchase wheat or wheat/rye "pasture mix" labeled VNS, or mixed wheat, pasture wheat, wheat/rye mixes, or feed wheat **containing a PVP variety** to use for planting purposes. Producers are granted an exemption for which they can collect and save seed produced from any legally purchased PVP protected variety they wish **ONLY** for their OWN future planting needs. They **cannot** sell, trade or transfer a PVP protected variety to others for planting purposes.

Enforcement of the PVP Act can and will have an adverse effect upon any grain elevator or seed company that sells "bin run" or "variety not stated" (vns) wheat to a producer to plant himself, or sells and spreads it for the producer with applicator equipment. 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 may be 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 of which there are eleven requirements

4. The entity providing the label must pay the seed inspection fee.

PVP vs. Warehouse Licensing Requirement on Producer Requested Load Out

There exists the issue of the requirements of the PVP Act and the requirements of the Uniform Grain Storage Agreement/Federal/State warehouse licensing authority when it comes to load out of producer stored grain.

A requirement of the UGRSA/Federal/State warehouse licensing authority is that if a producer has grain **in store**, and if he pays the appropriate warehouse charges (i.e., in, out, storage) then the warehouse **must** load it out if requested.

Initial conversation with USDA officials follows our belief as well as Assn. legal counsel belief in that if the warehousemen is following one federal law (i.e., licensing authority) and loading out in-store grain at the producer's request, then he should **not** be responsible for the subsequent actions of the producer with respect to what happens with the grain. The warehouseman's obligation should be complete.

It is suggested the elevator display a sign stating that it is a violation of federal law to plant a PVP protected variety purchased from another party that is not a class of certified seed and without the permission of the owner.

Examples of Violations

- A. A 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. This is a VIOLATION OF THE PVP ACT by the facility and 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* if the facility is not licensed, and/or doesn't provide purity and germination test and/or an adequate label.
- B. A producer asks elevator or seed company to both provide *and* spread the wheat (i.e., plant) for him via some type of application equipment. A PVP variety is contained in the wheat provided by the facility. This is a VIOLATION OF THE PVP ACT by the facility and 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.
- C. An 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 cleans and delivers 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, it may be a VIOLATION OF THE PVP ACT by **both** the facility and the producer.
- D. Producer delivers 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. This is a VIOLATION OF THE PVP ACT.

- E. If a producer is selling a non-certified PVP protected variety to another producer and the elevator is involved in the weighing and marketing of the transaction, then the elevator may incur liability under the PVP Act.

Suggestions

- A. Elevator or seed company should never sell “seed” wheat to a producer for planting purposes unless:
1. They have a state seed license issued by the Oklahoma Dept of Agriculture, Food, and Forestry;
 2. They provide purity and germination test;
 3. They provide an adequate label;
 4. They can guarantee that the wheat is **not** a PVP protected variety. Otherwise, PVP and State Seed Law violations would or could exist.
- B. 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 A 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.