

SAVING SEEDS - WHAT IS YOUR LEGAL LIABILITY?

To determine if harvested seed can be saved for planting the following season, producers should:

Review all agreements signed when the seed was purchased.

1. The seed purchase contract may contain language such as, “seed produced from this crop may be saved for any purposes other than reproductive purposes.” This language in the seed purchase contract would prohibit the producer from using the saved seed to plant next year’s crop.
2. The seed purchase contract might contain a “damage clause” that specifies the amount of compensation a party could receive if the contract is breached. This is the potential amount a seed company could claim if a producer violates a seed saving contract clause.

Review the seed label for any language stating that the seed is protected by the Plant Variety Protection Act (PVPA), patent law, or is unprotected.

1. Language such as “Unauthorized Propagation Prohibited – to be Sold by Variety Name Only As A Class of Certified Seed – U.S. Protected Variety – (1994PVPA and Title V)” is an example of seed protected by PVPA.
2. The PVPA has a “saved seed” exception that allows a producer to save enough seed to plant the next crop. This option is limited to the amount of seed needed to replant an area no bigger than that planted during the year the seed was saved. (7 U.S.C. § 2543).
3. The PVPA limits potential markets for saved seed. PVPA § 2543 allows saved seed to be sold through all channels, except if the seller knows that the seed will be used for planting a crop. Previous court cases provide examples of selling seed illegally:
 - a. Sale of a standing crop for the buyer to save the seed
 - b. Selling seed in unmarked brown bags (Brown Bag sales)

- c. Seller knows the seed will be used for planting a crop (Bin-run sales)
 - d. Sale of seed as “feed” when knowing the buyer will use to plant a crop
 - e. Trading seed
 - f. Gifting seed
4. Most soybean seed and an increasing share of small grain seed (including, but not limited to, wheat, barley, rye, oat and triticale) that is sold in Delaware is protected under U.S. Patent Law. Patent law does not allow producers to save seed for planting purposes. There are no exceptions, including cover crop seeds. The seed tag or container will have a patent number or the statement, “Patent Pending.”

Check with the seed company.

Seed companies selling patent-protected seeds actively enforce their patent rights against producers using saved seeds. Seed companies monitor or may be made aware of classified ads in local, state, or multi-state agricultural newspapers or online news services. When a producer violates a patent by saving seeds, federal law allows damages equal to a reasonable royalty for the use of the patent.

As the demand for “cover crop seed” has grown, grain dealers have been selling wheat out of the bin for planting purposes. Most wheat varieties (or brands) are either “Patent Protected” or “PVPA”. Thus selling wheat for planting purposes violates plant protection laws. The reasoning that “it’s only a cover crop, and will be killed in the spring” is not a defense to avoid the law. It is also illegal to label Patent or PVPA protected seed as “VARIETY NOT STATED”, regardless of its use.

Delaware Department of Agriculture in collaboration with Paul Goeringer, University of Maryland Extension



HOW TO IDENTIFY PROTECTED SEED TAGS

All seed sold in Delaware must be labeled according to the Delaware Seed Law, Delaware Code Title 3, Chapter 15. Section 1506 of Title 3 provides an exemption for grain sold by farmers for cover crop purposes and not advertised or delivered through a common carrier. This exemption applies only to Delaware Seed Law requirements. All Federal patent and Plant Variety Protection Act laws still apply.

C E R T I F I E D S E E D

USG 3555 Wheat	Lot# 1A	Cert.# W20USG3555
Pure Seed 99.00%	Inert Matter 0.88%	Seeds/lb 12,640
Weed Seed 0.02%	Other Crop Seed 0.10%	Tested 7/17
Germination 90%	Net Wt 1920 lbs. (870.89kg)	Origin De

UNAUTHORIZED PROPOGATION PROHIBITED-
U.S. PROTECTED VARIETY

ABC Seed Co
123 Delaware Ave
Dover, De 19901

DELAWARE DEPARTMENT
OF AGRICULTURE
DOVER, DELAWARE

MEMBER OF ASSOCIATION OF OFFICIAL SEED CERTIFYING AGENCIES

PVPA Protected Seed Tag

KIND: WHEAT	VARIETY: USG 3404
Pure Seed 99.00%	LOT # 1
Other Crop Seed 0.02%	Germination 90%
Inert Matter 0.97%	Tested July 2017
Weed Seed 0.01%	Origin Delaware
Noxious Weeds NONE	Patent 9,049,833
Variety: 112345W	PVP CODE 2.7

Net Weight **2500 lbs.** (1133.79 kg)

Vibrance Extreme and Storcide 11 Seed Treatment
FEED & FOODSTUFFS. DO NOT USE BAG OR CONTAINER FOR REFILLING

DANGER
TREATED SEED. DO NOT USE FOR FEED, FOOD OR OIL PURPOSES. STORE AWAY FROM WITH FOODSTUFF. KEEP OUT OF REACH OF CHILDREN.

This seed has been treated with seedborne, difenoconazole, and metconazole fungicides. User is responsible for ensuring that the seed bag meets all requirements under the Feder Seed Act. Storage: Store away from food and feedstuffs. Do not allow children, pets or livestock to have access to treated seed. Personal Protective Equipment: Wear long sleeved shirt, long pants and waterproof gloves when seeding treated seed. General Information: Avoid breathing dust from treated seeds. Work wearing while loading planters. Workers may choose to wear a dust mask. Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse. Disposal: Dispose of all excess treated seed. Leftover treated seed may be stockpiled around the fieldstead or buried away from water sources in accordance with local requirements. Do not contaminate water bodies when cleaning or repairing equipment used with treated seed. Dispose of seed packaging in accordance with local requirements. Excess treated seed may be used for animal production only if (1) by-products are not used for livestock feed and (2) no measurable residues of pesticide remain in animal by-product that are used for agricultural purposes. Environmental: Treated seeds exposed on soil surface may be hazardous to wildlife. Cover or collect treated seeds before using for seeding. Planting Restrictions: In the event of a crop failure or harvest of a crop grown from Vibrance Extreme treated seed, the field may be replanted immediately to corn, soybean, and cereal grains (barley, oat, rice, sorghum, and wheat). All other crops may not be planted until 30 days after planting treated seeds. The maximum number of applications per season is 2. Bag tag information is provided AS-IS, WITHOUT WARRANTY, AND WITHOUT LIABILITY OF ANY KIND, either express or implied, including but not limited to, the implied warranty of merchantability and fitness for a particular purpose. Syngenta shall not be liable for any damages, including but not limited to incidental or consequential damages or loss of profit. For Emergencies or questions related to difenoconazole, metconazole, and seedborne applied to this seed, please call 1-800-868-8372. Life Sciences and Limited License: Seed contained within this packaging (the seed) and one or both of the parental lines used in producing the seed are proprietary to the Syngenta Group company listed below together with its affiliates (Syngenta) or its licensors. Except as set forth in any written agreement between user and Syngenta, the only permissible use of the seed and the parental lines used in producing the Seed is for the production of a single commercial crop of grain or for seed processing. Such permissible production includes the production of seed for planting. The Seed and the parental lines used in producing the Seed shall not be used for research (including but not limited to agronomic comparisons and yield testing), breeding, or molecular or genetic characterizations. Export, resale, or transfer of the Seed or the parental lines used in producing the Seed or the progeny of the Seed is strictly prohibited, except that grain may be exported solely for use in feeding or processing. ©2013 Syngenta. Vibrance and the Syngenta logo are trademarks of a Syngenta Group Company.

Patent Protected Seed Tag

FOR MORE INFORMATION

Delaware Department of Agriculture
Seed Lab
302-698-4590
<http://dda.delaware.gov/plantind>

