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

Review all agreements signed when the seed was purchased.

- 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.
- 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.

- 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.
- 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).
- 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.

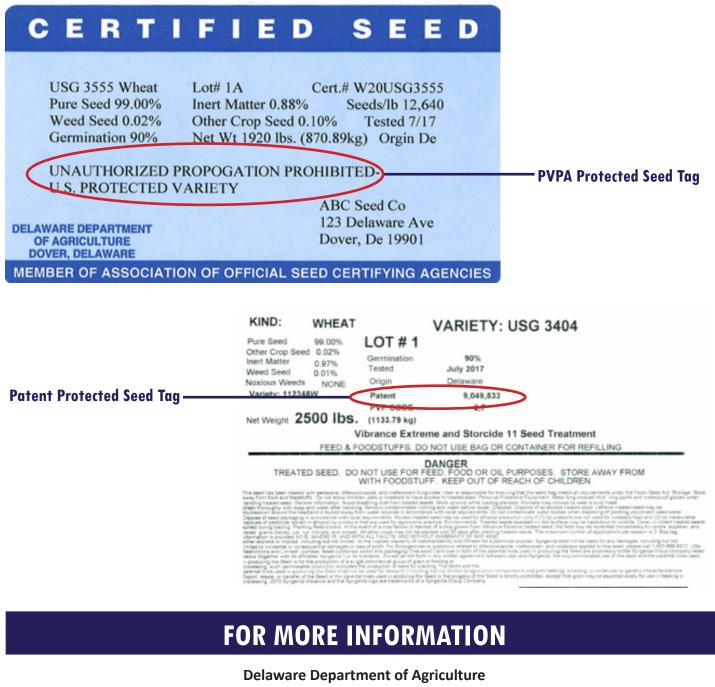
As the demand for "cover crop seed" has grown, grain dealers have been selling wheat out of the bin for planting purposes. Most wheat varieties (or brands) are either "Patent Protected" or "PVPA". Thus selling wheat for planting purposes violates plant protection laws. The reasoning that "it's only a 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.



Seed Lab

302-698-4590

http://dda.delaware.gov/plantind

