



Starting a Cover Crop Seed Business

Seed Law & Intellectual Property

2019 Practical Farmers of Iowa Annual Conf.
Mac Ehrhardt, Albert Lea Seed



Starting a Cover Crop Seed Business

Topics

- Seed Law
 - State, Federal
 - Practical Considerations (permits, testing, & labelling)
- Intellectual Property
 - PVP, Patents & Licenses
 - “Common, VNS,
 - Practical Considerations (choosing varieties)
- Seed Certification
 - Iowa Crop Improvement
 - Cost of Certification
- Resources & Handouts

Starting a Cover Crop Seed Business

Saving Seed vs. Selling Seed

In Iowa a farmer can plant seed saved from a crop they produce on their own farm with no permitting or testing required. (Even for P.V.P. varieties)

Unless: The seed is of a patented or licensed variety which specifically prohibits planting saved seed:

- RR, LL Soybeans
- Some conventional soybeans (ISU)
- Some Wheat varieties
- Hybrid Rye



Starting a Cover Crop Seed Business: Seed Law

Seed Permit? Do I need one?



IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

Bill Northey, Secretary of Agriculture

Selling Agricultural Seed in Iowa

Including Selling Direct From the Farm
Permit & Labeling Requirements

Q. Does the seller need to obtain a seed permit?

A. A person must first obtain a seed permit from IDALS to engage in business before selling, distributing, advertising, soliciting for orders, offering or exposing for sale, agricultural or vegetable seed.

EXCEPTIONS –

- (a) A seed permit is not required of persons selling seeds which have been packed and distributed by a person holding and having in force a permit.
- (b) A seed permit is not required of persons selling or advertising seed of their own production, provided that the seed is stored or delivered to a purchaser only on or from the farm or premises where grown.

Starting a Cover Crop Seed Business: Seed Law



Entomology & Plant Science Bureau

2230 South Ankeny Blvd. – Ankeny, IA 50023-9093

(515) 725-1470

APPLICATION FOR AGRICULTURAL/VEGETABLE SEED PERMIT

July 1, 20__ through June 30, 20__

(Seed permits are issued on a fiscal year basis, not a calendar year)

Business Name:

Contact Person:

Address:

City, State Zip:

Telephone:

Email:

Type of Business:

☐ Corporation ☐ Cooperative ☐ Partnership ☐ Individual ☐ Other (Specify) _____

Starting a Cover Crop Seed Business: Seed Law

Q. What does the Iowa Seed Law require for seed to be sold from the farm or by a permitted entity?

A. The seed must be labeled on the basis of tests performed by the Iowa State University Seed Laboratory or a commercial seed laboratory personally supervised by a registered seed technologist. The required tests are purity analysis, noxious weed examination, and germination.



Examples of Approved Seed Labs

Iowa State University Seed Laboratory

109 Seed Science Center, 2115 Osborn Drive,
Iowa State University, Ames, IA 50011-1050
Ph. (515) 294-6826, Fax (515) 294-8303.

Email: seedlab@iastate.edu

www.seedlab.iastate.edu

Minnesota Crop Improvement Association (MCIA) Seed Laboratory

1900 Hendon Ave
Saint Paul, MN 55108
Toll Free: (800) 510-6242
Phone: (612) 625-7766, Fax: (612) 625-3748

Email: mncia@mncia.org

www.mncia.org

Eurofins Biodiagnostics

507 Highland Drive
River Falls, WI 54022
Phone: (715) 426-0246

Email: info@eurofinsus.com

www.eurofinsus.com/biodiagnostics

SGS North America, Inc.

1405 32nd Ave.
Brookings, SD 57006

Phone: (605) 692-7611

Email: www.sgs.com/en/contact-modal
www.sgs.com/en/agriculture-food/seed-and-crop/seed-services/seed-testing

Illinois Seed Laboratory and Trait Testing Services

3105 Research Road
Champaign, IL 61822
Toll Free: (888) 455-3105
Phone: (217) 359-4053

Email: www.ilcrop.com/corporate-overview/directory
<https://www.ilcrop.com/labservices/seed-services>

Starting a Cover Crop Seed Business: Seed Law

Testing. What does it cost?

Purity & Noxious Weed (Oats and/or Rye): \$28/lot

Germination (Oats and/or Rye): \$25/lot

Palmer Amaranth seed test: \$25/seed

How big is a lot?

“The Tag has to accurately represent what is in the bag.”

How much seed does it take to do a test?

Q. What needs to be on the seed label?

A. All agricultural and vegetable seed sold, offered for sale or transported within Iowa shall be labeled with the following -

- (1) The name of the kind, or kind and variety, of each agricultural seed present in excess of five percent, and the percentage by weight. If "variety not stated" is used on the label, the kind of seed must still be listed. Seed shall not be labeled or advertised under a trademark or brand name in a manner that may create the impression that the trademark or brand name is a variety name.
- (2) Lot number or other lot identification
- (3) State of origin of alfalfa and red clover.
- (4) Percentage by weight of all weed seed.
- (5) The name and weight of occurrence per unit weight of each kind of secondary noxious weed seed present.
- (6) Percentage by weight of agricultural seed which may be designated as "other crop seed" other than those required to be named on the label.
- (7) Percentage by weight of inert matter.
- (8) For each named agricultural seed, the label must state -
 - a. Percentage of germination, exclusive of hard seed.
 - b. Percentage of hard seed, if present.
 - c. The calendar month and year the test was completed.
- (9) Name and address of the person/company who labeled the seed.
- (10) If the seed is treated, inoculated, or coated, contact IDALS for more labeling details.

The test to determine the germination must have been completed within nine months, excluding the month of the tests, prior to sale, transporting, or advertising for sale.

Required Information on Minnesota Seed Tags

Seed Species & Variety or Brand:

Tag must state the species, a specific variety or brand, or state "Variety Not Stated". See below for details.

Full Purity Analysis:

Tag must include Seed Purity, Other Crop, Inert, and Weed. Percentages must total 100%. Any coatings may be listed separately or included as part of inert. All Noxious Weeds must be listed by species and seeds/lb.

Viking 372HD Brand Alfalfa		Lot: 12345	Lot Number
Variety Not Stated			
Purity:	65.50%	Total Germ.: 94%	Total Germination: Must list separate germ, hard seed, and dormant seed percentages when applicable.
Coating Material:	34.00%	Germ.: 88%	
Other Crop:	0.15%	Hard Seed: 6%	
Inert:	0.20%	Test Date: 02/18	Current Test Date: Expirations vary by state. MN is 12 months.
Weed:	0.15%		
Noxious Weed:	None	Grown: MT	Origin of Seed: State or Country
		Net Wt.: 50 lbs	Net Weight
Coated with Apex Green Hydroloc (OMRI Listed) Exp: 1/31/2020			Seed Treatments (if any)
Albert Lea Seed, 1414 W. Main St., Albert Lea, MN 56007			Guarantor's Name and Address

Labeling of Varieties:

The variety name **MUST** be listed on the seed tag unless:

- > The variety name is not known or does not exist for a nonhybrid seed.
- > The variety name is known for nonhybrid biennial or perennial seed but the owner of the variety has granted written permission to omit it from the label.
- > The seed being offered is a blend.
- > The components are not sold by brand names for lawn and turf seed sold in mixtures.
- > A variety being marketed as a brand AND the brand has been registered with the MDA. The brand name must be clearly identified as a brand so that it cannot be confused as a variety name.

If one of these conditions is applicable, then the words "**VARIETY NOT STATED**" are used in place of the variety name.

Labeling of Brands:

- > If a brand is registered with the state, the tag **MUST** list a variety or state "Variety Not Stated".
- > If a brand is **NOT** registered with the state, the tag **MUST** list the variety.

IOWA

Primary

Bindweed, field or Morningglory, European	<i>Convolvulus arvensis</i>
Cress, hoary or Peppergrass, perennial	<i>Cardaria draba</i>
Horsenettle	<i>Solanum carolinense</i>
Knapweed, Russian	<i>Acroptilon repens</i>
Peppergrass, perennial or Cress, hoary	<i>Cardaria draba</i>
Quackgrass	<i>Agropyron repens</i>
Sowthistle, perennial	<i>Sonchus arvensis</i>
Spurge, leafy	<i>Euphorbia esula</i>
Thistle, Canada	<i>Cirsium arvense</i>

Iowa law prohibits the sale of agricultural seed if it contains any primary noxious-weed seeds.

Secondary

Buckhorn	<i>Plantago lanceolata</i>
Butterprint or Velvetleaf	<i>Abutilon theophrasti</i>
Carrot, wild	<i>Daucus carota</i>
Cocklebur	<i>Xanthium strumarium</i>
Dock, curly or Dock, sour	<i>Rumex crispus</i>
Dock, smooth	<i>Rumex altissimus</i>
Dodder	<i>Cuscuta</i> spp.
Foxtail, giant	<i>Setaria faberi</i>
Hemlock, poison	<i>Conium maculatum</i>
Mustard, wild	<i>Brassica juncea</i> , or <i>Brassica nigra</i> , or <i>Sinapis arvensis</i>
Puncturevine	<i>Tribulus terrestris</i>
Sorrel, red or Sorrel, sheep	<i>Rumex acetosella</i>
Sunflower, wild	<i>Helianthus annuus</i> , wild strain of
Velvetleaf or Butterprint	<i>Abutilon theophrasti</i>

For agricultural seed the label shall show the name and approximate number of each kind of secondary noxious-weed seed per pound in groups A, B, C, and D, when present singly or collectively in excess of:

Contacts

- For questions about labeling requirements or State Law -
Robin Pruisner, Iowa Seed Control Official
Iowa Department of Agriculture & Land Stewardship – Seed Control Official
(515) 725-1470
Robin.Pruisner@IowaAgriculture.gov
- For questions on seed testing -
Iowa State University Seed Testing Laboratory
(515) 294-6826
seedlab@iastate.edu
- For questions on registered seed, approved conditioners, native seed, or quality assurance -
Iowa Crop Improvement Association (ICIA)
(515) 294-6921
iowacrop@iastate.edu

Starting a Cover Crop Seed Business: Seed Law

Federal Seed Law? Does it matter?

Federal Seed Act (*TITLE II--INTERSTATE COMMERCE, PROHIBITIONS RELATING TO INTERSTATE COMMERCE IN CERTAIN SEEDS, Sec. 201.c*):

Sec. 201. It shall be unlawful for any person to transport or deliver for transportation in interstate 5 commerce—

1. Labeling: Germination within 5 months when seed crosses State lines.
2. Intellectual Property

Starting a Cover Crop Seed Business: Intellectual Property

Types of I.P. on seed germplasm or genetics:

- 1. P.V.P. (Plant Variety Protection)**
- 2. Patents**
- 3. Licensed Varieties**

Plant Variety Protection Act

- Varieties can be protected by Plant Variety Protection (PVP) certificates
 - Applied for by breeder or Univ. I.P. office
 - Twenty year protection on seed
 - Farmers can use seed on own holdings—but cannot sell PVP'd varieties (without Approval & Certification)
- PVP varieties must be sold only as variety names
- PVP Title V varieties must be sold as class of Certified Seed
- Examples:
 - Reins Oats, Deon Oats, Hayden Oats, Shelby 427 Oats
 - ND Dylan Winter Rye
 - Quest Barley, Pinnacle Barley, Rasmussen Barley
 - Shelly Spring Wheat, Expedition Winter Wheat

Required Information on Certified Seed Tags

Seed Species & Variety Name

Purity Analysis may be included but is not required. If included, analysis must meet maximum Other Crop, Inert, and Weed standards set by law. Percentages must total 100%. *Any Noxious Weeds must be listed by species and seeds/lb.* If not included, a separate analysis tag must be attached to seed.

CERTIFIED SEED			
Deon Oats		Lot: 12345	
Purity:	99.50%	Germ.:	94%
Other Crop:	0.15%	Test Date:	02/18
Inert:	0.20%	Grown:	MN
Weed:	0.15%	Net Wt.:	50 lbs
Noxious Weed:	None		
Unauthorized Propagation Prohibited.		18-AP-5	
U.S. Protected Variety (PVP 94)			
Seed of this variety may be sold only as a class of certified seed.			
Albert Lea Seed, 1414 W. Main St., Albert Lea, MN 56007			

Must be printed on official Certified seed tags provided and tracked by approved state agency.

Lot Number

Germination: Must meet minimum germination requirements set by law.

Current Test Date: Expirations vary by state. MN is 12 months.

Origin of Seed: State or Country

Net Weight

Seed Processing Plant Number

Seed Protection Statement (if necessary):
Protection Approved, Applied For, or Contemplated

Guarantor's Name and Address

Patents

- **Plant Patent (Plant Protection Act 1930)**
 - Very similar to a PVP BUT only for asexually propagated non-tuberos species (not usually seed)
- **Utility Patent (Most Seed Patents)**
 - 20 year protection
 - DUS (Distinctness, Uniformity and Stability) + innovative step + disclosure
 - Products, Processes (methods)
 - Maize variety per se first patented 1985
 - Patented herbicide resistant soybeans 1996
 - Requires license from owner for any use
 - No breeder exception in the US
 - Placed in public domain at expiration
- **Examples:**
 - Most Corn inbreds (and the resulting hybrids)
 - Soybean Seed (RR & Conv.)
 - Many Private Wheat Varieties
 - Some Privately-developed Barley, Triticale, & other grains

Licensed Seed

- More and more seed grains are requiring a license to be signed before planting:
 - Traited Corn, Soybeans, Cotton, Sugar Beets
 - Conventional Soybeans (even I.S.U.)
 - Winter Rye (both Hybrid rye & non-hybrid)
 - Wheat
 - Barley
 - Cotton



Schedule 3. Single Season Use Agreement for SUA Varieties



SINGLE SEASON USE AGREEMENT FOR BARLEY

This Single Season Use Agreement ("Agreement") is entered into between you ("Grower") and Limagrain Cereal Seeds LLC ("LCS").

By signing and returning this Agreement, the grower receives a limited license to use the following LCS barley variety(s):

LCS Violetta

and/or

LCS Calypso

The Agreement confirms that the Grower agrees to purchase the LCS barley variety(s) under the following conditions:

GENERAL CONDITIONS:

- 1) The Grower receives the right to purchase Certified seed of the LCS barley variety(s) for one (1) crop year;
- 2) Grower acknowledges that the LCS barley variety(s) and all intellectual property rights thereto are owned by LCS, notwithstanding any license or distributor relationships;
- 3) Grower will cooperate with LCS to protect the intellectual property rights of LCS on the LCS barley variety(s) and agrees to notify LCS of any infringement they are aware of, or become aware of.

GENERAL TERMS:

- 1) Grower acknowledges that growing crops from certified seed enhances marketability and yield and that LCS' intellectual property rights should be protected by requiring use of certified seed;
- 2) Grower agrees that the Certified seed purchased will be used solely for planting one (1) commercial crop of grain;
- 3) Grower acknowledges that this LCS barley variety(s) is sold only as a class of certified seed, and further that grain grown from this seed may only be sold through normal commercial channels as grain and not for seed;
- 4) Grower further agrees not to supply any of this seed to any other person or entity for planting, nor to save any of the grain produced from this seed for replanting and that the grain cannot be sold, reproduced or otherwise exposed for sale as seed;
- 5) Grower acknowledges an intent to plant this LCS barley variety(s) for commercial grain production and will provide, upon LCS request,

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Special points of interest:

- DakotaFest August 21-23, 2018
- Ag Horizons Conference November 26-27, 2018
- SDCIA Board of

Your FYI Dollars at Work

By Neal R. Foster Ex. Dir SDCIA

A little over a year ago SDCIA became involved in a PVP infringement case involving SDSU's oat varieties. This case started in Iowa in conjunction with Iowa Department of Agriculture and Iowa Crop Improvement Association. The variety name on the sample and the actual sample pulled by the Iowa Department of Agriculture did not seem to mesh up. I was called and asked some

investigation. If there is evidence found that warrants further action by SDSU and FYI, SDCIA is asked for input.

This case did go before a judge in the northern district of Iowa. The case was decided in favor of the South Dakota Board of Regents against James Fevold, Fevold Farms and Fevold Seed Farm for **\$2,975,000.00** (South Dakota Board of Regents is the actual owner of

NDSU Extension Service
ND Agricultural Experiment Station

SDSU Agriculture Communication

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Seed Department Fines 2 for Brown-bagging Seed



The seller of the noncertified grain paid \$8,000 in fines, while the receiver paid \$4,500 in penalties.

The North Dakota State Seed Department has fined two Minto farmers a total of \$12,500 for an illegal farmer-to-farmer transfer of a protected wheat variety.

A farmer-to-farmer exchange of Linkert, a Plant Variety Protected (PVP) spring wheat variety released by the University of Minnesota, precipitated the enforcement action by North Dakota's seed regulatory agency.

Linkert, licensed to the Minnesota Crop Improvement Association, is protected under PVP Title V of the Federal Seed

Starting a Cover Crop Seed Business: Intellectual Property



Dr. Kevin Smith, U MN Barley Breeder



Dr. Melanie Caffé, SDSU Oat Breeder

Starting a Cover Crop Seed Business: Intellectual Property

So, what's all this “V.N.S.” or “Common” seed?



Starting a Cover Crop Seed Business: Intellectual Property

When is it legal to sell “Common” or “V.N.S.” Seed?

Q. What needs to be on the seed label?

A. All agricultural and vegetable seed sold, offered for sale or transported within Iowa shall be labeled with the following -

- (1) The name of the kind, or kind and variety, of each agricultural seed present in excess of five percent, and the percentage by weight. If “variety not stated” is used on the label, the kind of seed must still be listed. Seed shall not be labeled or advertised under a trademark or brand name in a manner that may create the impression that the trademark or brand name is a variety name.

... continued on next page

1. When you don’t know what variety it is.

However, ignorance of variety is not a protection from prosecutions under PVP, Patent, or Licensing laws.

Starting a Cover Crop Seed Business: Intellectual Property

So, what steps should you take to grow or source seed?

A. If you are going to grow oats, barley, or winter rye:

- 1. Certify the seed production (for PVP varieties)**
- 2. Plant a variety for which PVP is expired (or which has no I.P.)**

Oats: Jerry, Jim, Ogle, Dane, Hazel

Barley: Robust, Royal

Rye: Rhymin, Spooner, Wheeler, Elbon, Hazlett



Plant Variety Protection Office

Status of Certification Nov. 2 2018

Search by PV Number/Variety Name *

Search by Applicant or Owner Name *

* Searches are wildcarded at both ends so partial strings can be entered, e.g. hi becomes *hi* and will find Chico, Achiever, Chief etc.

or Select a Crop:

OAT Listings between 9600002 and 200800358

PVP No.	Variety/Name	Applicant	Status	Status Date	NPGS availability ¹
9600002	Paul	NDSU Research Foundation, ND Agricultural Experiment Station	Certificate Expired	7/31/2016	Available
9600003	Whitestone	NDSU Research Foundation, ND Agricultural Experiment Station	Certificate Expired	7/31/2016	Available
9600042	Belle	Wisconsin Agricultural Experiment Station	Certificate Expired	3/29/2016	Available
9700120	Chaps	The Board of Trustees of the University of Illinois	Certificate Issued	5/8/2001	Unavailable
9700121	Rodeo	The Board of Trustees of the University of Illinois	Certificate Issued	4/24/2001	Unavailable
9700135	Jim	Minnesota Agricultural Experiment Station	Application Abandoned	5/19/2000	Available
9700183	Triple Crown	Svalof Weibull AB	Application Abandoned	2/5/2001	Unavailable
9700186	Gem	Wisconsin Agricultural Experiment Station	Certificate Issued	9/8/2000	Unavailable
9700233	Magnum 2000	Ledeboer Farms, LLC	Ineligible	7/24/2000	Unavailable
9700244	Dallas	Texas Agricultural Experiment Station	Certificate Issued	9/8/2000	Available
9700380	Chapman	Florida Agricultural Experiment Station (FAES) and University of Georgia Research Foundation, Inc. (UGARF)	Certificate Issued	1/29/1999	Unavailable
9800144	Blaze	The Board of Trustees of the University of Illinois	Certificate Issued	6/14/2001	Unavailable
9800340	TAMO 397	Texas Agricultural Experiment Station	Certificate Issued	5/8/2001	Unavailable
9900143	Ida	Michigan State University	Certificate Issued	5/8/2001	Unavailable
9900207	Riser	South Dakota Agricultural Experiment Station	Application Withdrawn	10/2/2000	Available
9900339	Jay	Agricultural Research Programs Purdue University	Certificate Issued	5/8/2001	Unavailable

Starting a Cover Crop Seed Business: Intellectual Property

1. Certify the seed production (for PVP varieties)

- Become member of Iowa Crop Improvement. \$50
- Purchase Foundation or Registered Seed.
 - Foundation Oats cost \$16/bu.
- Apply for field Certification
 - \$50/field + \$3.50/acre (inspection)
- Have the seed cleaned through an approved processor
 - \$300/Year
- Pay Royalties
 - (\$0.25-\$0.30/bu. for most oats)

