

# Beware ignorance is no excuse

In accordance with the provisions of the Plant Breeders' Rights Act, 1976 (Act 15 of 1976) the selling of all seed potatoes of varieties to which plant breeders rights (PBR) have been granted, is prohibited by any person or party other than the sublicense holder or agent. The relevant Act also stipulates that royalties are payable on seed of all such varieties. The fact that it applies to all such seed potatoes indicates that the prohibition covers certified as well as uncertified seed potatoes.



Dr Pierre Nortjé, Acting Manager: Technical Services, Potatoes South Africa

As plant breeders' rights are granted for a period of thirty years it is only after the conclusion of such period that anyone may produce and sell seed of these varieties without contravening the Act.

Unfortunately, the current shortage of seed potatoes has led to potato farmers, table as well as some seed potato growers, to indulge in the unlawful practice of selling uncertified seed potato varieties protected by law.

It is very important to realise that should certified and/or uncertified seed of the PBR varieties be traded, both the seller and the buyer are liable to prosecution. There have been several cases where both seller and buyer were heavily fined for contravening the Plant Breeders' Rights Act.

The following information is

provided to give more clarity:

## Variety listing

It is important to understand that before any seed potatoes of a variety may be sold, the variety must be listed on the official variety list published periodically by the National Department of Agriculture. Listing requires that the specific variety be subjected to tests by the Department to confirm that the characteristics of the variety is unique and that the variety entered for listing conforms to the breeders' description. Any variety imported or released locally have to undergo these tests before it may be listed.

Varieties are listed either as open varieties or PBR varieties. In the case of PBR varieties they can be registered as PBR vari-

eties without exclusive rights or PBR varieties with exclusive rights.

## Open varieties

Open varieties imply varieties on the variety list which were bred either in South Africa or outside South Africa, but which were not granted PBR. The varieties BP1, Vanderplank, Buffelspoort (BP13), Up-to-Date, Hertha and Shepody are all open varieties and may be grown, registered for seed production and sold as seed by any potato producer.

## PBR varieties

PBR varieties are varieties which were developed locally or overseas and for which PBR were applied and granted to the breeder or licenceholder. The licenceholder may also apply for exclusive multipli-

cation rights from the breeder (owner) of such varieties.

## PBR varieties without exclusive rights

PBR varieties without exclusive rights are varieties for which PBR have been granted, but do not belong to any agent or licenceholder. Royalties are payable on these varieties but these varieties may be registered for seed production and certified and sold by any seed grower. However, seed of these varieties may not be sold uncertified. Seed may be kept back (farm saved seed) for own plantings. Selling seed of these varieties uncertified is punishable by law. Examples of such varieties are Mnandi and Hoëvelder.

Continued on p 36

# BEWARE

## PBR varieties with exclusive rights

PBR varieties with exclusive rights belong to the sublicense holder in the case of South African varieties and to a South African agent in the case of foreign PBR varieties. The multiplication rights belong solely to the sublicense holder or agent and any seed grower who wishes to register these varieties for seed production has to obtain written permission from the former to do so. Only certified seed of these varieties may be sold. Table growers may keep back seed (farm saved seed) for own planting purposes of these varieties under the Farmers Privilege Section of the Act. Selling uncertified seed of these varieties is also punishable by law. Examples of such varieties are Mondial, Liseta, Lady Rosetta, Darius, Aviva, Caren, Ropedi, Columbus and Imola.

Sublicence holders for South African PBR varieties or South African agents for foreign varieties with exclusive multiplication rights, are:

(As published in the latest, April 2002, Variety List)

- **Western Free State Seed Potato Growers (Pty) Ltd**  
Varieties: Mondial, Liseta, Ballade, Draga, Fabula, Felsina, Innovator, Novita, Platina, Victoria, Xantia
- **Griqualand West Coop**  
Varieties: Darius, Eryn,
- **RSA Saadbeurs**  
Varieties: Caren
- **JH Laubscher Bros. [Wes-Kaap Aartappelsaad (Edms.) Bpk]**  
Varieties: Imola, Columbus, Farmer, Esco, Avalanche, Perfecto
- **Ivanhoe Farming**  
Varieties: Ronn
- **SIS Farming/SPZ Boerdery**  
Varieties: Ropedi
- **Zylem C.C.**  
Varieties: Inova, Saxon
- **First Potato Dynamics**  
Varieties: Fianna, Florissant, Lady Christle, Lady Rosetta, Yarden
- **Simba/Frito Lay**  
Varieties: FL 1939, FI 1953
- **Potato Producers International**  
Varieties: Aviva
- **PJS Olivier**  
Varieties: Calibra
- **Aartappels Suid-Afrika**  
Varieties: Argos, Harmony, Merlin, Redgem, Tristar, Verity, Valor
- **McCain Foods**  
Varieties: Dorado, Santana
- **Landzicht Boerdery**  
Varieties: Agra

The national variety list which includes all relevant information is available from Potatoes South Africa, Potato Certification Service and the Department of Agriculture.