

Farm Saved Seed Royalties: What you need to know

By the National Farmers Union



Seed Synergy, the corporate seed industry lobby wants the federal government to bring in new regulations under Canada's *Plant Breeders Rights Act* to set up a system that would force farmers who plant newer varieties to pay a royalty every year even when planting farm-saved seed.

What are Plant Breeders' Rights?

Plant Breeders' Rights (PBR) is a type of "intellectual property" similar to a patent, where the developers of new plant varieties claim ownership over the variety. Countries can recognize this type of ownership by creating laws that define PBRs and give PBR-holders authority over seed and propagating material (such as tubers and cuttings) that, among other things, requires farmers to ask permission and pay royalties before planting them. When Bill C-18 was passed, Canada's *Plant Breeders Rights Act* was changed to conform with the UPOV '91 model, and any new plant variety registered after February 2015 is subject to its provisions.

When farmers buy varieties that were brought in under Canada's previous PBR legislation (based on the UPOV '78 regime), a royalty must be paid on the initial seed purchase, but farmers have the right to freely save seed from the first year's crop for planting subsequent crops. Varieties that have been on the market for over 18 years are no longer subject to PBRs, so they are in the public domain, meaning there are no restrictions on their use.

Canada's new PBR Act gives plant breeders who register a new variety (PBR holders) the exclusive right to produce and reproduce seed, condition (clean and treat), sell, stock (store), export or import seed and to authorize any of these uses of seed for a period of 25 years for trees and vines, and for 20 years for all other plants. PBR holders are entitled to demand a royalty payment when authorizing a farmer's use of the seed.

What is "Farmers' Privilege"?

The PBR Act provides an exception called the "farmers' privilege", which allows farmers who purchase a new variety (and pay a royalty on the initial seed purchase) to stock, condition, produce and reproduce seed for use on their own holdings in subsequent years. This "farmers' privilege" means farmers can use farm-saved seed to

grow the next crop without asking permission or paying another royalty to the variety's PBR holder.

This exemption is fragile, however, because the farmers' privilege can be taken away in whole or in part, simply by changing the Regulations under the PBR Act.

No more farmers' privilege?

Agriculture and Agri-Food Canada (AAFC) has started consultations, trying to get farmers to accept the elimination of farmers' privilege for cereal crops by claiming additional royalty payments to seed companies are needed to fund private investment in plant breeding. AAFC is asking farmers to choose between two options for farm-saved seed royalty systems: *End Point Royalties* or *Trailing Contracts*. Any farm-saved seed royalty system would start by using the government's regulatory power to remove farmers' privilege, which would force farmers to buy seed every year or pay the seed company additional royalties in return for permission to plant farm-saved seed.

If "farmers' privilege" is eliminated by regulatory change, farmers would need to ask the seed company's permission to use farm-saved seed. Permission would be granted on the condition of paying a royalty – either on the seed planted each year (the Trailing Contract option) or on the crop produced from farm-saved seed (the End Point Royalty option). Or the company could just say "no", forcing farmers who wish to use that variety to buy new seed every year. The corporate seed industry is now calling on the federal government to bring in regulations that would remove the farmers' privilege – starting with wheat, and later adding other cereal crops, pulse crops, and other crop kinds. The CFIA's Plant Breeders Rights Advisory Committee is also discussing complete elimination of farmers' privilege for new varieties of fruit, vegetables and ornamental plants when PBR Act regulations are changed.

According to a study by JRG Consulting Group commissioned by the Seed Synergy lobby group, the seed industry expects to collect over \$100 million of dollars every year through these compulsory payments. The vast majority of royalty money would go to multinational seed companies such as Bayer, Syngenta, BASF, DowDupont and Limagrain.

AAFC helping global agribusiness corporations

The Seed Synergy group is calling for an “industry-led, government-enabled” seed regulatory system. Already, AAFC is enabling the seed companies by framing the seed royalty issue as a necessary to promote greater private sector investment in plant breeding. However, private monopoly control of seed to extract payment from farmers will not guarantee the money will be spent on plant breeding.



Public plant breeding for public good

We have many ways to fund plant breeding in Canada – including public funding and farmer check-offs or levies. There are low-cost breeding methods that are accessible and already being used by farmers, but our PBR Act does not allow unaccredited farmers to register varieties they develop. Public breeding has also proven to be more economical and has delivered better results than private sector breeding. Studies show that from 1981 through 2013 wheat yields increased faster than canola yields, with average public investment in wheat breeding of \$25 million per year, and average private investment in canola breeding of \$80 million per year.

Canadian agriculture will need new varieties as our farms face changing economic and climatic conditions. We need to ensure our plant breeding system will respond to the real problems on our farms, and not be driven by multinational seed and chemical companies’ desire to increase their sales and profitability. Integrated seed and agrochemical corporations are susceptible to conflicts of interest, such as not pursuing an insect or disease-resistant line that could reduce demand for insecticide or fungicides.

The National Farmers Union calls for keeping farmers’ right to freely save and use our own seed, and for public funding and farmer-controlled check-off funding to support plant breeding. We oppose any regulation to take away or restrict the “farmers’ privilege” under the *Plant Breeders Rights Act*.

End Point Royalties would require farmers to pay a royalty on their harvested crop (a per-tonne royalty) if they grow a newer variety. A collection system would be set up to collect the royalty when crops are sold and send the money to the PBR holders.

Trailing Contracts with a standard minimum royalty rate would be mandatory for seed purchases of UPOV '91 varieties. They would dictate whether, and under what conditions, the buyer could use farm-saved seed. Farmers would have to send royalty payments to the company every year if they planted farm-saved seed. To enforce the contract requirements, a comprehensive data collection system owned by the PBR holders would be set up to track farm-saved seed users.

Royalties are payments that owners of intellectual property such as Plant Breeders Rights holders are legally entitled to demand as a condition of access to the property. Currently farmers pay a royalty to the owner when purchasing new seed of PBR-protected varieties and gene-patented genetically modified seed. Patent owners and Plant Breeders Rights holders may set the royalty rate and can spend the money collected as they wish.

Check-offs (levies) are per-tonne payments made to commodity groups when farmers sell commercial crops. Commodity groups are provincially incorporated and have farmer-elected directors who decide how to spend the check-off money on research into new varieties, agronomic practices, to promote international marketing and carry out education in support of the commodity.

Public Plant Breeding is done at public institutions such as Agriculture Canada research stations and universities. Funding is provided by governments and farmer check-off organizations. Public plant breeders can be PBR holders entitled to collect royalties. Most varieties of cereals, pulses and minor crops such as mustard and flax have been developed by public plant breeders.

Infringement occurs when someone uses PBR-protected or gene-patented seed without the company’s permission or paying a royalty. The company can sue the farmer and obtain a court order to enforce payment for damages and compensation to the PBR holder, seize the seed and stop any future use of the seed by the farmer.

Seed Synergy is an umbrella lobby group made up of the Canadian Seed Growers Association, Canadian Seed Trade Association, Canadian Seed Institute, Commercial Seed Analysts Association of Canada, Canadian Plant Technology Agency, and CropLife Canada.

Save Our Seed! Visit the NFU website at <https://www.nfu.ca/campaigns/save-our-seed/>