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**NFU response to
Plant Breeders Rights Regulatory Impact Analysis Statement,
Canada Gazette
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The NFU has submitted the following to the public consultation process under the [Canada Gazette, Part I, Volume 159, Number 32: Regulations Amending the Plant Breeders' Rights Regulations](#). This document is structured as responses to sections of the Regulatory Impact Analysis dealing with each aspect of the proposed regulatory change. The proposed regulations would remove the Farmers' Privilege to save seed and other propagating material to produce future crops of the same variety on farmers' own holdings for fruit, vegetable, ornamental and hybrid varieties that are under Plant Breeders Rights protection; extend Plant Breeders Rights protection from 20 to 25 years for new varieties of potato, asparagus and non-tree woody species (e.g. berries), would reduce fees and other administrative requirements for companies applying for PBR protection.

National Farmers Union Response:

GENERAL COMMENTS

The most important stakeholder in this regulatory consultation is the farmer. Saving seed and other propagating material to produce future crops is fundamental to farming. Farmers require seed to produce their crops and feed their livestock - it is key to their livelihoods. Farmers, including Indigenous farmers, are the original plant breeders and it is thanks to them we have today's agricultural biodiversity and the genetics that are the foundation of our modern plant breeding system. None of the new varieties would exist without generations of farmer knowledge of plants, agronomy and seed-saving. Over the past century farmers have been involved in public plant breeding work through various channels, including by funding farmer-directed crop commissions that allocate resources to plant breeding projects that address our farming priorities. We value plant breeding itself for its ability to develop new varieties that respond to changing conditions and new challenges. We object to having farmers' age-old seed-saving practice downgraded from a right to a "Farmers' Privilege" that can be taken away at the stroke of a pen, and the use of this power to create dependence on private, often foreign seed companies.

EXECUTIVE SUMMARY SECTION

Issues:

The proposed regulation is designed to increase the monopolization of new varieties of horticultural crops and hybrid varieties which benefits stakeholders who are Plant Breeders Rights holders. These stakeholders' interests are being served, while the impacts on farmers interests are not considered. The one-sided approach to Plant Breeders Rights regulation is inappropriate for a public regulator.

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The consultation document claims ending Farmers' Privilege on horticultural varieties will incentivize investment and innovation, but this is only an assumption. Their PBR monopoly on selling protected varieties allows breeders to increase revenues by increasing annual sales and royalty collection, but there is no requirement for them to use those dollars for plant breeding in Canada or elsewhere.

Strengthening PBR protection by prohibiting seed-saving and increasing the protection period may actually lead to less investment in new varieties, as companies will not need to bring new products onto the market as quickly to maintain or increase their revenue flow.

We have also seen that strengthened PBR regimes go hand in hand with increasing consolidation in the seed sector, with less competition. The global seed system is now dominated by four multinationals - Bayer, BASF, Corteva and Sinochem as a result of mergers and acquisitions. They may use money gained as a result of the proposed regulatory change to further consolidate their holdings within Canada and internationally, further reducing competition in the seed sector, instead of investing it in plant breeding.

Evidence comparing the efficiency of public plant breeding in wheat (where seed saving is common) versus private breeding in GM canola (where seed saving is prohibited) shows that canola breeders spend a smaller proportion of their returns on further breeding, as they allocate significant amounts for advertising and shareholder dividends. As a result of the canola breeders patent-based monopoly, canola seed prices are exponentially higher (\$1,000/bushel) than the price farmers are paid for canola they produce and sell at the elevator (\$13/bushel).

Making farmers pay more for seed will increase private breeders' profitability but will not necessarily translate into more breeding, nor breeding in Canada for Canadian growing conditions.

Royalties and sales of new varieties occur after the breeding process is finished. This money is not used to fund variety development up front. Past profits may be invested in new breeding, however decisions on what to breed next would be based in part, or entirely, on its anticipated profitability. This would encourage breeding for large markets, popular crops -- and for vertically integrated seed and agro-chemical companies, increased sales of inputs like fertilizers, fungicides and herbicides.

Removing Farmers' Privilege for hybrid crops will incentivize the use of hybridization in breeding non-horticultural crop kinds in order to capture the monopoly benefits of annual seed sales and royalty collection from cereal, pulse and oilseed crops where seed-saving is a widespread practice.

Removing Farmers' Privilege will not induce breeders to develop varieties for the specific challenges of Canadian conditions, but it will provide new pathways for them to significantly increase profits.

Most of Canada's vegetable seed is imported from Europe or the USA, and most of the applications for PBR rights for horticultural crops are from foreign breeders. There is currently no impediment to foreign breeders entering the Canadian market for fruit, vegetable and ornamental varieties.

As stated by the CFIA "Out of the 400 applications received each year, about 85% (342 applications) are from international applicants, while 15% (58 applications) come from Canadian stakeholders. Of these



58 applications, 31% (18 applications) are from Canadian public entities (such as universities), and 69% (40 applications) are from private businesses.”

Clearly, it is very easy and inexpensive for foreign breeders to get PBR protection for their varieties - the annual fee is less than CDN \$125. There is no requirement for their varieties to be agronomically successful or useful in Canada. Canada’s horticulture market is small, with our population of just over 40 million, our short growing season, and the small land area suitable for growing these crops (334,000 acres in [fruit](#), 238,000 acres in [vegetables](#) and 394,000 acres in [potatoes](#) in 2024) – less than 5% of Europe and USA’s vegetable producing area alone. Foreign breeders would need much higher revenues than could be raised by an incremental increase in annual seed sales for horticultural varieties within our market (considering most growers already buy seed annually) so breeders are more likely to treat Canada as a residual market for their existing varieties. Whatever money they can make from selling in Canada is a “bonus”.

The proposed increase in the PBR protected period for potatoes, asparagus and wood non-tree crops (i.e. berries) from 20 to 25 years is unnecessary and against the public interest. International breeders dominate PBR registration of these crop kinds (85% of new potato PBR applications are from other countries), indicating that our existing PBR environment is not a barrier to them. Canada also has a successful public potato breeding program at the Research Station in Fredericton, one of the few remaining AAFC variety development programs. The protection period has not inhibited variety development there.

The CFIA’s rationale for extending the protected period says the biology of these crops is less compatible with plant breeders’ desire to recoup royalty payments to cover the costs of developing new varieties than in annual broadacre field crops. Instead of trying to compensate for their lower multiplication rates and slower maturation by extracting many more years of royalty payments from farmers (and, by removing the Farmers’ Privilege to prevent use of farm-saved propagation material), the CFIA and AAFC should be promoting policies to support long-term, reliable funding for public breeding of these crops.

Extending the period of protection on these crops would only prevent valuable genetics from entering the public domain for a longer period of time (or at all, if the breeder stops marketing the PBR-protected variety before the protected period ends), and in doing so, limit or prevent these varieties from being more widely distributed to growers across the country.

In non-horticultural varieties, Canada has a much stronger public plant breeding system, funded primarily by the Government of Canada, farmer levies collected by Crop Commissions, and the Western Grains Research Foundation funds. The varieties developed through public plant breeding are popular and highly valued by farmers. Public funding and democratic decision-making ensures results have wider public benefits, while a PBR-based monopoly and incentives to restrict seed saving would prioritize private benefits, as we have seen with GMO crops where herbicide tolerance (which results in increased herbicide sales by the same companies) is pursued, while agronomic benefits like drought tolerance and disease resistance are neglected.



This regulatory impact analysis has failed to consider the impact on the most important stakeholder in Canada's agriculture system: the farmer. It has also failed to provide adequate data to support its claims, and it has failed to consider the negative implications of restricting farmers' access to new varieties for propagating on their own holdings, nor the negative implications of providing plant breeders with complete control over farmers' access to purchasing these varieties, and the potential for protected varieties to be withdrawn from the market altogether to prevent them coming into the public domain.

A more restrictive PBR regime cannot overcome the realities of Canada's small population and challenging growing conditions across our vast geography. Depending on an entirely market-driven approach to breeding will leave Canada as a residual market for horticultural crops regardless of how tightly farmers' access to propagating material is controlled, and will lead to higher prices for non-horticultural crops if PBR-protected hybrid varieties with no seed saving are encouraged. Investing in public plant breeding would be more strategic for Canada's agriculture economy and food security.

ISSUES SECTION

Canada's current Plant Breeders' Rights legislation and regulations are compliant with UPOV '91. The proposed amendments would go beyond what is required by UPOV '91, boosting the rights of plant breeders at the expense of farmers, both financially and regarding the scope of their farming practices.

The proposed amendments would make seed and other propagating material less available to farmers, and/or would increase their costs by requiring annual royalty payments, for more years. The proposed amendments would also increase the ability of plant breeding companies to monopolize genetic material by preventing farmers from reproducing it for their own use on their own holdings.

The scope of the farmers' privilege exemption is too broad

NFU response: Removing the Farmers' Privilege for protected fruit, vegetable, ornamental, and hybrid varieties is an unacceptable encroachment on farmers' age-old practice of saving and using farm-saved seed to plant their crops in future growing seasons.

The ability to use farm-saved seed, cuttings, budding, grafting, etc., to continue growing PBR protected fruit, vegetable, ornamental, and hybrid varieties on their own holdings after having paid the required royalty on the initial purchase, enables farmers to adapt varieties to their specific farming conditions and climates. The Farmers' Privilege also allows farmers to reduce production costs by using farm-saved seed and other propagating material.

Farmers generally do not save seed from hybrid crops as they are aware that subsequent generations do not produce consistent results. Farmers do not produce hybrids on-farm using "selfs" that may be inadvertently present in hybrid crops grown from purchased seed. Hybrid seed production is labour intensive and requires special techniques, and both parent lines would need to be acquired by accident for this to even be a possibility.

The proposed elimination of the Farmers' Privilege on hybrids provides a way for seed companies to interfere with the widespread seed saving practices of cereal, oilseed and pulse farmers. It would



encourage breeders to develop hybrid varieties, and to de-register non-hybrid varieties under the Seeds Act, and thereby remove them from the commercial sphere.

Even if seldom used, or used by only a few farmers, closing the door on the use of farm-saved seed and other propagating material restricts farmers' freedom and weakens their autonomy. The practices of saving seed and/or propagating material for future crops is a customary practice in horticultural production in Canada even if a majority of farmers use purchased seed, plants or propagating material.

Seed saving is vital not only so that farmers have secure access to their most important input, but also because the practice enables:

- on-farm climate resilience through variety adaptation to specific environments and farming practice;
- replacing lost woody perennial berry and fruit tree stock (due to wildlife and/or excessive cold, drought, flooding) with the same variety when not available commercially;
- access to propagating material in the event of severe supply chain disruptions, a significant risk for vegetable seed which is mostly imported;
- reduced seeding/propagating costs (though not a zero cost, as seed saving requires time, skill, storage facilities);
- price discipline on seed sellers - price hikes will be limited when farmers are able to switch to farm-saved seed if the purchase price rises too high;
- ability to keep using a variety if the breeder decides to take it off the market before the PBR protected period ends.

Eliminating Farmers' Privilege for fruit, vegetable, ornamental, and hybrid varieties would transfer too much control over Canada's agriculture sector to an increasingly privatized and concentrated global seed sector.

The duration of PBR protection for potatoes, asparagus, and woody plants is too short

NFU response: The CFIA has not provided evidence to show how extending the period of protection on potatoes, asparagus, and woody plants, would encourage greater domestic breeding or greater access to international varieties. Canada is clearly attracting the equivalent number of new varieties as countries with larger populations and more restrictive IPR regimes, and Canadian breeders are able to contribute varieties that we have developed ourselves through public plant breeding efforts. Publicly funded plant breeding in and for Canadian conditions is a strategic public investment, and is resulting in successful variety development.

Foreign PBR applicants will not obtain enough revenue from Canadian sales, even with a 5-year extension of protection duration, to warrant breeding specifically for our market. Thus, the 5-year



extension is simply a way for foreign breeders to increase their returns from selling into Canada's market. The royalties they would gain this way are unlikely to be invested in Canada.

Instead of trying to compensate for their lower multiplication rates and slower maturation by extracting many more years of royalty payments from farmers and, by removing the Farmers' Privilege to prevent use of farm-saved propagation material, the CFIA and AAFC should be promoting policies to support long-term, reliable funding for public breeding of these crops.

Existing filing requirements may discourage PBR applications

NFU response: Existing filing requirements are not onerous. The fee and the administrative tasks required to obtain PBR protection are minimal in comparison to the value breeders gain as PBR holders in Canada.

Applicants should not be allowed to apply for rights without simultaneously providing a representative sample of propagating material, particularly if the definition of "new" is changed to exclude advertising prior to physical sale of the variety. The value of obtaining rights is considerable - applicants should be willing and able to meet this requirement.

BACKGROUND SECTION

Legislative Authority and Regulatory Authorities

Canada's Plant Breeders Rights Act and regulations currently conform with UPOV '91. Countries are free to make their own decisions about Farmers' Privilege. In 2014 when the bill to amend the Act to conform with UPOV '91 was before Parliament, the issue of Farmers' Privilege was vigorously debated. There was strong public support for farmers' right to save seed and demands for the Farmers' Privilege clause to be strengthened. The NFU and other farm organizations presented our position before Parliamentary Committees, and at least 87 [petitions](#) hand-signed by tens of thousands of Canadians from all across the country were filed and/or presented in the House of Commons by their Members of Parliament. The Petition stated:

We, the undersigned citizens of Canada, recognize the inherent rights of farmers—derived from thousands of years of custom and tradition—to save, reuse, select, exchange, and sell seeds. Current and newly-proposed restrictions on farmers' traditional practices—resulting from commercial contracts, identity preservation (IP) systems, and/or legislation—criminalize these ancient practices and harm farmers, citizens, and society in general.

Therefore, your petitioners call upon Parliament to refrain from making any changes to the Seeds Act or to the Plant Breeders' Rights Act through Bill C-18, An Act to amend certain Acts relating to agriculture and agri-food, that would further restrict farmers' rights or add to farmers' costs. Further, we call upon Parliament to enshrine, in legislation, the inalienable rights of farmers and other Canadians to save, reuse, select, exchange, and sell seeds.



This pressure led to the Bill being amended by adding “stocking” (i.e. storing seed) to the Farmers’ Privilege clause. It was the will of Parliament to include a strong Farmers’ Privilege clause, and it should not be diminished by regulation now.

International context

The CFIA does not provide any evidence to support its claim that “international breeders are reluctant, and sometimes even refuse, to introduce their new and improved varieties into jurisdictions that allow an unrestricted farmers’ privilege for horticulture and ornamental crop kinds.” [UPOV statistics show](#) that the number of PBR applications by foreign breeders in Canada is higher than many countries that have more restrictive farmers’ privilege rules. From 2000 - 2022, Canada ranked 7th among UPOV nations for PBR titles received from, and issued to, non-residents. Canada also placed in the top 10 UPOV countries receiving applications from non-residents in 2012 when Canada’s PBR Act was based on UPOV ‘78, which has a shorter period of protection than UPOV 91. This suggests that the scope of Canada’s Farmers’ Privilege is not a barrier for foreign breeders.

OBJECTIVE SECTION

The stated objective “to strengthen protection for plant breeders and facilitate access to the PBR intellectual property framework” favours the interests of plant breeders. International private plant breeders are not in need of protection: they are among the world’s largest and most powerful corporations. Canada’s regulatory framework should counter, not intensify, power imbalances between everyday Canadian residents like individual farmers in relation to powerful multinational corporations.

DESCRIPTION SECTION

Update the filing requirements to encourage PBR applications

NFU response: Applicants should not submit applications until they are in a position to supply a representative sample of propagating material. If this sample does not yet exist, their application is premature. Application and grant of rights before the CFIA has received a sample introduces risk of fraud and/or weakens oversight. Applicants’ costs are very low for receiving 20 to 25 years of monopoly of a seed variety. It is reasonable to expect them to submit a sample with their application.

REGULATORY DEVELOPMENT SECTION

Pre-regulatory consultation

The pre-regulatory consultation was scheduled from May 29 – July 12, 2024, allowing just 45 days during the busy planting season for farmers, horticulturalists, and orchardists. In spite of this obstacle, the NFU along with 9 other farm organizations, prepared and submitted detailed comments. However, the *What We Heard* report published later did not properly reflect our input. The CFIA and PBR Office have a duty to be transparent, unbiased, and accountable to Canadians. We asked that a revision to correct errors and omissions be published at least 100 days before the start of the Gazette process, but this did not happen.

Our submission was a joint response from ten farm organizations across the country representing the interests of both organic and conventional farmers and seed producers growing for domestic and



international markets, and two non-governmental organizations supporting agricultural research and education in organic and climate-resilient agriculture. In the report, our response was misrepresented as “a group of organic growers and one farm organization”.

All of the concerns we raised about how the proposed amendment would limit farmers’ ability to adapt to climate change through losing access to certain varieties, or through being unable to adapt certain varieties to their farms, were omitted from the document. The ability to adapt certain varieties on-farm is a critical climate change adaptation strategy, especially for farmers in marginal climates or in regions heavily impacted by climate change. To require that these farmers pay royalties on varieties that are critical to their farming operation but also require further adaptation, prevents farmers from adapting varieties via farm-saved seed to mitigate the impacts of climate change.

The CFIA repeatedly claims that these regulatory changes will help Canada better align with similar jurisdictions such as the USA and the EU. However, the USA’s PVP system does not prevent farmers from saving seed and other propagating material from protected varieties for on-farm use, and the EU has an exemption for small farmers. These statements give the impression that Canada is not keeping pace with similar jurisdictions, when we are, in fact, aligned with our largest trading partner, the USA.

The CFIA report suggested access to unprotected varieties compensates for restricting access to protected varieties. The report repeatedly claims farmers will have access to unprotected varieties in the marketplace in response to the concerns we raised. These statements dismiss the core argument of our letter: Farmers understand that they have access to unprotected varieties in the marketplace; however, the concern is that they will not be able to save propagating material for on-farm use of certain protected varieties that offer genetics that are not available through unprotected varieties in the marketplace.

The CFIA response that PBR protected varieties can be used for breeding both misses the point and is misleading. Removing Farmers’ Privilege would make it illegal for farmers to plant farm-saved PBR protected hybrid seed to develop a locally adapted cultivar for their own use, undermining the exemptions that are stated to not be impacted. Mentioning the exemptions for non-commercial and research use is a red herring: If a plant breeder was to use PBR protected hybrid seed as source material, any resulting variety would most likely be covered by the source-material owner’s Plant Breeders’ Rights due to the “Essentially Derived” clause of the Act. The new variety would thus be subject to royalty payments and use of farm-saved seed would be prohibited. It is also misleading for the CFIA to omit the Essentially Derived mechanism from its response.

Our submission stated that we oppose expanding the scope of Plant Breeders’ Rights by removing Farmers’ Privilege and/or extending the PBR protection period for certain crop kinds, because whoever controls access to seed has great power over our farms, our food supply, and ultimately our population. This is an actual, not a “perceived” loss of rights, and the report suggests farmers should be satisfied with our loss of seed saving rights because of our continued access to seed that is already in the public domain.



REGULATORY ANALYSIS

Benefits and costs

There is no data on how much additional revenue for breeders would be gained as a result of eliminating Farmers' Privilege on horticultural crops. We are aware that a majority of horticultural farmers buy seed and/or plants every year, and that this is a relatively small sector in Canadian agriculture (25,145 farms [per Census of Ag 2021](#)). For those that do use the Farmers' Privilege, how many would switch from PBR-protected to public domain varieties, and how many would switch to annual purchases? What would the aggregate increase in breeders' revenue amount to as a result? And how does this compare with the total cost of breeding? This data should be provided so that the CFIA's claims can be assessed. If the added revenue is low, and is not enough to fund breeding, is there another rationale that has not been stated?

Small business lens

The Small Business lens calculation is based on 56 small businesses being impacted, and the impact assessed is the reduced cost of fees paid to the CFIA for processing PBR rights applications which is projected to be just \$22 annually. A review of the July 2025 [Plant Varieties Journal](#) which lists Canadian applications for PBRs lists only one Canadian small business - Vineland, which is publicly and privately funded, with a \$12 million budget - all other applicants were from foreign corporations or their Canadian subsidiaries, AAFC or Universities. The Small Business lens section does not say what kinds of businesses are being considered under this lens.

There are about 190,000 farms in Canada, nearly all would be considered Small Businesses. Of these, just over 25,000 grow horticultural crops. The increased costs due to removing Farmers' Privilege from fruit, vegetable, ornamental and hybrid crops has not been projected or provided.

Impacts on food security and cost of food

As stated earlier, stricter PBR regimes are associated with consolidation. As large companies obtain more control over seed they are able to acquire smaller firms and expand their market share. This further concentration increases monopoly power in the food system, leading to higher prices for farmers and consumers. Increasing farmers' costs makes the food system less resilient and contributes to higher grocery prices. Canada is dependent on imports for the majority of our fruit and vegetables. Climate change, currency fluctuations, and political upheaval make our imported food supply precarious. A regulatory change that reduces seed-saving and increases farm operational costs will make it harder for Canadian horticulture farmers to stay in business, increasing our dependence on imported food.

PROPOSED REGULATORY TEXT SECTION

This regulatory proposal should be abandoned.

