

Comparing The MOUs Between AFBF, John Deere, and Case New Holland with H.81

Purpose of the MOUs

The purpose of the MOUs is to satisfy right to repair demands through a “voluntary or private sector commitment” instead of legislative methods. Specifically, both MOUs seek to “enhance” farmers capabilities to maintain the operation and upkeep of agricultural equipment; ensure access to the proper tools, software, and information; ensure that safety protocols and controls are maintained and not changed; protect the intellectual properties of manufacturers (specifically embedded software); and ensure that no state or federal emission control regulations are violated by equipment repairs or modifications. Additionally, the MOUs include a commitment from the AFBF to encourage state Farm Bureaus to not support Right to Repair legislation that goes beyond the obligations and terms outlined in the MOUs. If legislation passes which addresses issues addressed by the MOU, then both the AFBF and manufacturers have the right to withdraw from the MOU within 15 days.

Comparison of Definitions

The definitions in H.81 and the MOUs do have some contrasting language as well as some similarities. The definition of agricultural equipment in H.81 is essentially any equipment designed for agricultural purposes and includes examples of qualifying equipment. The MOUs definition differs in that it specifies that the equipment originated from the specified manufacturer (i.e., John Deere, and Case New Holland) and that the functioning ability of the equipment is in some way dependent on embedded or attached digital electronics. This definition also lists some examples of qualifying equipment and includes off-road vehicles used for agricultural purposes. The definitions of “authorized repair provider” are essentially the same apart from subsection (B) of the H.81 definition, however this specificity is absent from the MOU definitions because they are relating to specific manufacturers both of whom have arrangements with unaffiliated providers. The definitions for “independent repair provider” and “tools” are consistent between the MOUs and H.81.

The MOUs provide definitions for “code” and “data”, both of which are absent from H.81. These definitions specifically relate to transmitted and compiled information related to the operation and repair of equipment. Importantly, the definition specifies that transmitted code is subject to priorly defined limitations in which code cannot be used in any way to disclose confidential information, override safety measures, or violate any regulations. The definitions for “documentation” are the same between H.81 and the MOUs however the MOUs definition includes the same limitations discussed in the definition of “code”. The MOUs do provide a definition for “embedded software” as this is a major concern for manufacturers. H.81 lacks language specifically discussing “embedded software” and instead more broadly refers to “software” but does not provide a definition for it. As H.81 lacks this definition, it also lacks language discussing the modification of embedded software which contrasts with the MOUs requirements.

For the definition of terms, a gap in specificity between H.81 and the MOUs creates some confusion. The MOUs provide a general definition for “fair and reasonable terms” as equitable access for tools, documentation, and software related to agricultural equipment as well as equitable terms for pricing and distribution models. This definition notes that “fair and reasonable terms” are subject to limitations from a previous section which discusses the obligations of the manufacturer. This section goes into more depth about how manufacturers

must provide necessary tools, information, and electronic access to farmers and independent technicians, however it lacks the specific language that prevents manufacturers from imposing obligations or restrictions on the use of a part, tool, or information. Additionally, the MOUs lack specific language on prohibiting manufacturers from imposing additional costs or burdens. While H.81 as introduced provided a definition that was in line with and added more specificity to the definition provided in the MOUs, the current draft as recommended by the House Committee on Agriculture, Food Resiliency, and Forestry lacks a definition for “fair and reasonable terms” and does not use this term in its language. Instead, it specifies the language, and discusses “terms” and “costs” in section 2. While there is no direct contradiction between the terms laid out, the general lack of specificity in the MOUs discussion of terms and no definition for “fair and reasonable terms” in H.81 creates some ambiguity.

Comparison Requirements and Obligations

Both the MOUs and H.81 have the same primary requirement which is to ensure the availability of necessary repair components (parts, diagnostic tools, documentation, software, etc.) for independent repair providers and owners of agricultural equipment. Most of the language concerning this requirement is very similar between the MOUs and H.81. The main difference in these requirements is in relation to the difference in definition of terms discussed above as the MOUs state that all obligations be carried out in “fair and reasonable terms”.

Importantly, both the MOUs and H.81 provide specific language that electronic security locks must be unlocked to enable diagnosis and maintenance. There are two requirements in the MOUs that are not present in H.81. The MOUs state that if a part or tool is no longer available to the manufacturer or authorized repair facilities then the manufacturer is not required to sell it. The MOUs also state that manufacturers will not prevent farmers or independent repair services from obtaining parts or tools from third-party sources as long as the purpose is not for resale, however this does not prevent them from enforcing claims of intellectual property through trademarks or copyright.

Enforcement

The MOUs lack the specific enforcement language provided in H.81 as it is an agreement rather than legislation. However, they do include language on the process of handling disagreements over the interpretation of the application of the MOU through consultation. While this is by no means an enforcement mechanism, it is a way to maintain a standard for the interpretation of the included provisions.