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2014 Changes to the *Farm Implement and Dealership Act* Information for Dealers and Distributors

Background

The *Farm Implement Act* establishes minimum requirements for sale agreements, warranties, and the availability of spare parts. It has been in force since 1967 and is currently administered by the Farmers' Advocate Office (FAO).

The *Farm Implement Dealerships Act* was established in 2001 to help ensure fair relationships between dealers and distributors. Currently there are 500 licensed dealers in Alberta. The standards established in the *Farm Implement Dealerships Act* guide the creation of thousands of dealership agreements annually.

2014 Amendments to the Acts

Bill 6, the *Statutes Amendment Act*, received Royal Assent on December 17, 2014. It will come into force once the regulations have been amended to align with the amended Act. This is anticipated by fall 2015. Once in force, the bill will consolidate the *Farm Implement Dealerships Act* with the *Farm Implement Act*, and make numerous changes to the *Farm Implement Act*, including renaming the combined statute as the *Farm Implement and Dealership Act*.

Purpose of the 2014 Amendments

The changes to the *Farm Implement Act* and *Farm Implement Dealerships Act* were undertaken for three purposes:

1. To consolidate the *Farm Implement Act* and the *Farm Implement Dealerships Act* into the *Farm Implement and Dealership Act* to provide greater clarity and ease of reference;
2. To better align Alberta's *Farm Implement and Dealership Act* with the equivalent legislation from Saskatchewan, Manitoba, and Ontario; and
3. To address gaps in the current legislation to help ensure that responsibilities under the Act are clear and that the intent of the legislation is met.

Implications for Dealers and Distributors

The FAO has received numerous questions from dealers and distributors about the implications of the amendments. Please note that the changes to the Act do not have any implications for dealer or distributor licensing. The following outlines what dealers and distributors need to know about the amendments:

- New Name
The *Farm Implement Act* and *Farm Implement Dealerships Act* will be consolidated into a single piece of legislation: the *Farm Implement and Dealership Act*.

- **New Definitions**

- ✓ A definition for “dealership agreement” was added to help provide clarity, as the Act refers to numerous different types of agreements.
- ✓ A definition for “person” was added to recognize that farm implements may be purchased by individuals, corporations, partnerships, associations, or other organizations.
- ✓ A definition for “terminate” was added with respect to dealership agreements. “Terminate” means to terminate, cancel, fail to renew or extend, or substantially change the competitive circumstances of the dealership agreement.

- **Farm Implements Sold at a Public Auction**

As in the past, farm implements sold at a public auction will not be covered by the consumer protection provided under the *Farm Implement and Dealership Act*. This section has been expanded to explain that farm implements sold by dealers and distributors at public auction are not covered by the Act.

- **Publication of Information from Notice of Failure to Perform**

To help ensure consumer protection, the Minister will publish the date, Vehicle Identification Number, make, and model of any farm implement for which a Notice of Failure to Perform is received. This listing will be available on the FAO website at www.farmersadvocate.gov.ab.ca. Hard copy listings will be available upon request.

- **Sale Agreement**

A “sale agreement” refers to the agreement to purchase made by a farmer and a dealer. This agreement must now include a provision stating who (the dealer or distributor) is responsible for the provision of (and costs related to the provision of) a substitute farm implement when a person’s farm implement is being repaired.

In addition, if repair parts cannot be delivered within 72 hours of when the request is made during normal season of use of the farm implement or 10 working days at any other time of year, the dealer or distributor must arrange for the provision of a substitute farm implement. The dealer and distributor are each responsible for 50% of the cost of renting the substitute farm implement.

- **Demonstrator Implements**

The Act will provide a definition for a “distributor-approved demonstrator implement.” This refers to an implement that:

- was sold to the dealer as a demonstrator;
- was invoiced and used by the dealer as a demonstrator; and
- was approved by the distributor to be used by the dealer as a demonstrator. This approval must be in writing and must be obtained prior to using the implement as a demonstrator.

A distributor-approved demonstrator implement is considered an “unused farm implement”, which means it is covered by the consumer protection provided by the Act.

- **Repurchase by Distributor**

As in the past, a dealer may request that a distributor repurchase unused farm implements and unused parts within 90 days of the termination or expiry of a dealership agreement. The distributor must pay 100% of the list price for unused farm implements (less any discounts provided).

To increase consistency with the equivalent legislation in other provinces, the language around “unused farm implements and unused parts” has been expanded to include the following items that may have been required by or obtained from the distributor:

- ✓ Signs purchased by the dealer within 5 years of expiration or termination of the agreement,
- ✓ Computer hardware or software purchased by the dealer within 2 years of the expiration or termination of the agreement,
- ✓ Service manuals purchased by the distributor within 2 years before the expiration or termination of the agreement.

There are new requirements for the repurchase of the “unused parts” as listed above. The distributor will be required to pay 50% of the list price for signs, computer hardware or software, special tools, or service manuals. If any special tools or service manuals were not used by the dealer, the distributor must repurchase them for 100% of the invoice price (less any discounts provided by the distributor for new tools and service manuals).

In the past, the distributor did not have to repurchase any unused part that was not listed in their current price list. This has been amended to state that the distributor does not need to repurchase any unused part that is not listed in any distributor's price list or any distributor's authorized third-part supplier's current parts price list.

- **Fine for Contravention**

In the past, the maximum fine for contravening the Act was \$50,000. The maximum fine will be increased to \$100,000.

Please call the FAO at 310-FARM (3276) or email farmers.advocate@gov.ab.ca if you have any questions.