



Testimony of

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Submitted to the

**U.S. House of Representatives**  
**Committee on Agriculture**

**“Examining the Consequences of EPA’s  
Actions on American Agriculture”**

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Good afternoon, Chairman Thompson, Ranking Member Scott, and members of the House Committee on Agriculture. Thank you for the invitation to testify and to be part of this hearing to shed light on how the Environmental Protection Agency (EPA) affects family farmers and ranchers. My name is Jeff Kippley and I am a farmer from Aberdeen, South Dakota, where my wife, Rachel, and father, John, and I raise cattle, corn, and soybeans. Rachel and I have four children, Noah, Titus, Aaron, and Moriah, and they all participate in the farming operation as well. We also operate a tax preparation service, The Kippley Group, which serves family farmers in our local community.

I serve as Vice President of National Farmers Union (NFU). Founded in 1902, NFU is a grassroots organization with more than 230,000 members nationwide advocating on behalf of family farmers, ranchers, and our communities. In my role as NFU Vice President, I work closely with Farmers Union leaders and members across the country to bolster our organization's efforts to ensure a sustainable and equitable future for family farmers and ranchers through education, cooperation, and legislation.

### **Achieving greater regulatory certainty, clarity, and fairness**

As a farmer, to build a successful business over the long-term, I need my operation to be profitable. Sometimes I worry that the wrong rules could put me out of business, but I also know that having reasonable regulations – practical rules of the road that everyone must abide by – is very important. Properly designed and enforced regulations help protect family farmers like me from bad actors who use harmful and exploitative practices.

For me, sustainability is not only about profitability on our farm but also being a good steward of our land, air, and water. Many farmers are excellent stewards of our nation's natural resources. Reasonable environmental regulations can leave everyone better off if they are science-based, size- and risk-appropriate, clear, and reasonably easy to follow. Unfortunately, sometimes regulators make compliance too challenging. I know this all too well because I am an accountant, so it my job to help my customers comply with our complicated tax code.

As EPA works to protect the environment, it should also seek to limit the impact of its regulations on family farmers and ranchers by making sure those regulations are not overly burdensome. EPA should be commended for its efforts to improve engagement with agricultural communities, but there is much more EPA could do to improve that partnership. I know Farmers Union looks forward to working with EPA and this Committee to ensure the voices of family farmers and ranchers are heard clearly by the Agency.

### **WOTUS**

Clean, safe water is an essential resource that family farmers, ranchers, and their communities depend on. Farmers and ranchers strive to be good stewards of our nation's natural resources, including by protecting water quality through sound land management practices. Unfortunately, ambiguous or confusing regulations regarding the definition of

Waters of the United States (WOTUS) under the Clean Water Act (CWA) have made compliance difficult and costly.

The regulatory uncertainty created by frequently changing definitions of WOTUS has troubled farmers for many years. NFU repeatedly provided input to the EPA and the Army Corps of Engineers on its rulemakings, and we asked the agencies to promulgate rules that will provide a clear definition of WOTUS.<sup>1</sup> NFU also urged the agencies to consult farmers and ranchers regularly, extensively, and equitably and consider the legitimate concerns of family farmers and ranchers and others who are regulated by the CWA.<sup>2</sup>

NFU appreciates the agencies' stated efforts to establish durable rules that define the scope of waters protected under the CWA. But the regulatory game of ping pong continues. Last year EPA finalized a new WOTUS rule, only to have the Supreme Court strike down important aspects of the rule, which further contributes to ongoing uncertainty with the WOTUS statutory and regulatory regime.<sup>3,4</sup> Ultimately, Farmers Union members wish for the courts and agencies to balance the important goal of protecting water quality with rules that are clear, simple, and not burdensome for farmers and ranchers.

## **FIFRA and PRIA**

For decades, farmers have relied on EPA to make informed crop protection decisions regarding pesticide use. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as enforced by EPA, has long been a trusted federal resource, having originally been administered by USDA and then transferred over to EPA during its formation in 1970. Rules surrounding FIFRA are intended to protect farmers by requiring accurate labeling of pesticide contents. As the federal statute that governs registration, distribution, sale, and use of pesticides, FIFRA provides farmers and consumers certainty and stability.

The primary objective of FIFRA is to ensure that, when applied as instructed, pesticides will not cause unreasonable risk to human health or the environment. Backed by science, the use of registered products gives farmers the assurance that they are doing their part to ensure the safety of their farm, their neighbors, and the environment. Any additional requirements outside of FIFRA, whether it be permitting, training, education or any other new requirements not posted by FIFRA makes it difficult and confusing for farmers to keep track of and potentially raises human safety and environmental concerns.

The *Agricultural Labeling Uniformity Act* (H.R. 4288), introduced in the House by Representative Dusty Johnson (R-SD), reinforces EPA's existing federal authority to

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<sup>1</sup> National Farmers Union, "NFU WOTUS Comments Urge Inclusive Rulemaking Process," Feb. 8, 2022. <https://nfu.org/2022/02/08/nfu-wotus-comments-urge-inclusive-rulemaking-process/>

<sup>2</sup> Ibid.

<sup>3</sup> Revised Definition of "Waters of the United States," 33 C.F.R. § 328, 40 C.F.R. § 120 (2023).

<https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>

<sup>4</sup> Sackett v. EPA, 598 U. S. \_\_\_\_ (2023). [https://www.supremecourt.gov/opinions/22pdf/21-454\\_4g15.pdf](https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf)

regulate pesticides through FIFRA.<sup>5</sup> This would also ensure uniformity of labeling standards for various crop protection products, which helps farmers stay informed and compliant.

Funding for EPA's Office of Pesticide Programs and the continued authorization of the Pesticide Registration Improvement Act (PRIA) is also important for the future of pesticide use, pest management, and overall crop protection. First passed in 2004, PRIA is a fee-for-service program that funds part of the EPA's pesticide registration program. Fees collected from pesticide manufacturers provide EPA with the necessary resources to register new pesticide products. In turn, the rules support business predictability within the pesticide registration process, giving companies established timelines for bringing new products and uses to the marketplace. PRIA was last reauthorized by Congress in 2022 and is set to expire on September 30, 2027.<sup>6</sup>

## Dicamba

Farmers need to know what rules will be in place when planning for future seasons, but judicial decisions and regulatory actions can sometimes present challenges. Recent activity on dicamba is a prime example of this. On February 14, 2024, EPA issued an Existing Stocks Order to allow for the sale and distribution of dicamba products that were previously registered for over-the-top (OTT) use on dicamba-tolerant cotton and soybeans.<sup>7</sup> The order allowed for limited sale and distribution of these products for the 2024 growing season but did not offer any clarity for 2025 or beyond. This decision was based on a District of Arizona court order that determined dicamba products were no longer registered or lawful under FIFRA.<sup>8</sup>

NFU joined a group letter asking EPA Administrator Michael Regan to intervene with the recent court ruling to vacate the registrations for over-the-top dicamba.<sup>9</sup> These products are vital to current production systems, and the court decision threatens to create chaos in distribution chains, especially during harvest season. As EPA continues to work with USDA, Congress also needs to prioritize EPA's Office of Pesticide Programs' budget. In an annual report to Congress on the agency's user-fee system, EPA reported that the \$132 million appropriated for pesticide programs is about \$34 million short of an annual target

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<sup>5</sup> Agricultural Labeling Uniformity Act, H.R.4288, 118th Cong. (2023). <https://www.congress.gov/bill/118th-congress/house-bill/4288>

<sup>6</sup> "The Pesticide Registration Improvement Act of 2022 (PRIA 5; Division HH, Title VI of P.L. 117-328): Authority to Collect Fees," Congressional Research Service. 2024. <https://crsreports.congress.gov/product/pdf/IF/IF10424>

<sup>7</sup> U.S. Environmental Protection Agency (EPA), *Revision to February 14, 2024 Existing Stocks Order for Dicamba Products Previously Registered for Over-the-Top Use on Dicamba-Tolerant Cotton and Soybean*, Mar. 12, 2024. <https://www.epa.gov/system/files/documents/2024-03/revised-dicamba-notice-existing-stocks-order.pdf>.

<sup>8</sup> U.S. Environmental Protection Agency (2024, February 6). *Center for Biological Diversity, et al., Plaintiffs, v. United States Environmental Protection Agency, et al., Defendants, and Bayer Cropscience LP, et al.* Nationalaglawcenter.org. [https://nationalaglawcenter.org/wp-content/uploads/2024/02/FILE\\_3676.pdf](https://nationalaglawcenter.org/wp-content/uploads/2024/02/FILE_3676.pdf).

<sup>9</sup> National Farmers Union, *Vacatur of registrations for Over the Top (OTT) applications of dicamba herbicide Center for Biological Diversity v. EPA, No. CV-20-00555-TUC-DCB*, Feb. 14, 2024. <https://nfu.org/wp-content/uploads/2024/02/02-14-24-Ag-Organizations-Dicamba-Letter-FINAL.pdf>.

set out in FIFRA, and is \$6 million below what was appropriated in fiscal year 2023.<sup>10</sup> Prioritizing EPA’s budget will allow the agency to continue to move forward with dicamba-related decisions.

## **The Clean Air Act and Right to Repair**

EPA’s role in enforcing laws also means that it ought to clarify how regulations apply – or do not apply – to major issues within the agency’s purview. One example is EPA’s recent actions ensuring there is greater Fairness for Farmers in the farm equipment marketplace through Clean Air Act (CAA) regulations that support farmers’ Right to Repair.

Farmers Union believes that farmers should have the Right to Repair their own equipment or to bring that equipment to the mechanic of their choosing. However, it seems some farm equipment manufacturers believe that farmers cannot be trusted to repair their own equipment. Equipment manufacturers and dealers use software locks to keep farmers and independent mechanics from completing repairs. This can cost farmers their crop when dealer-authorized repair is difficult to access or unavailable, and the monopolization of repair costs farmers billions of dollars each year.

Some farm equipment manufacturers and dealers have invoked CAA regulations – specifically, the need to lock down emissions control systems – as a reason they must restrict farmers’ repair access. When NFU researched this claim, it seemed to be false and misleading, so we wrote EPA Administrator Regan last year asking him to clarify the CAA with respect to the Right to Repair.<sup>11</sup> In August 2023, Administrator Regan responded to NFU’s letter, clarifying that EPA supports farmers’ Right to Repair and disagrees with the assertions being made by some equipment manufacturers and dealers, writing:

*“Your letter... discusses the important anti-tampering provisions of the Act, and your concern that certain manufacturers may be mischaracterizing the implications of those provisions for independent repair... The Act, implementing regulations, and EPA’s policy and practice are aligned in preventing tampering not by limiting access to independent repair, but rather by enforcing the prohibition against tampering against any party that does so... Like NFU and its members, EPA believes barriers to the proper repair and maintenance of nonroad equipment is harmful to the environment... We support efforts by anyone to enact legislation clarifying that independent repair is allowable, provided such efforts continue to clearly prohibit illegal tampering of emissions control systems.”<sup>12</sup>*

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<sup>10</sup> EPA, *FY 2023 Pesticide Registration Improvement Act (PRIA) Annual Report*. EPA.gov. <https://www.epa.gov/system/files/documents/2024-05/fy23-pria-annual-report.pdf>

<sup>11</sup> National Farmers Union, Request for clarification from the EPA that agricultural equipment manufacturer-imposed restrictions on independent repair are not required by the Clean Air Act, June 13, 2023. <https://files.constantcontact.com/63400020701/e2cf116e-c8dc-427b-a9bb-474b7f4206af.pdf?rdr=true>

<sup>12</sup> National Farmers Union, “EPA Affirms Farmers’ Right to Repair,” Aug. 8, 2023. <https://nfu.org/2023/08/08/epa-affirms-farmers-right-to-repair/>

The message is clear: independent repair does not facilitate emissions tampering. We have greatly appreciated EPA's engagement and responsiveness on this important issue and will continue to work with EPA to ensure all farmers have the Right to Repair.

### **The Renewable Fuel Standard and Biofuels**

Reasonable legislative and regulatory actions can create economic development opportunities for rural communities and family farmers and ranchers. A prime example of this is the Renewable Fuel Standard (RFS) program, authorized in 2005 and expanded in 2007, which is intended to reduce greenhouse gas emissions and expand the biofuels sector. It has been the most successful clean fuels policy in the U.S. and makes renewable fuel more affordable for millions of Americans, helps to generate jobs, revives rural economies and communities, reduces oil imports, and protects the environment by reducing air pollution. Future regulatory actions by the EPA related to the RFS should be in support of the program's continued growth and success. The EPA can continue diversifying low carbon fuels through the upcoming RFS SET 2 rulemaking. NFU looks forward to working with EPA and the Committee to support growth of the RFS and increased usage of renewable fuels in America.

NFU is supportive of the EPA's efforts to move to year-round sales of E15 as a step in the right direction toward usage of higher-level blends of ethanol. We do feel there is room for continued growth of higher blends of ethanol, such as E30. The use of higher levels of ethanol blends could replace a larger share of petroleum gasoline with high-octane, low-carbon, cleaner and lower-cost fuel today. And it is domestically produced, providing an immediate solution that delivers simultaneous economic, environmental, and national and energy security benefits.

Furthermore, NFU is supportive of the administration's Sustainable Aviation Fuel (SAF) grand challenge. Using farm-based crops for SAF presents tremendous opportunities to diversify the jet fuel industry. We urge the Committee to support the adoption of agricultural feedstocks for SAF production.

### **Voluntary Climate Solutions**

Climate change is one of the greatest challenges facing family farmers, ranchers, our communities, and global food security. Farmers and ranchers have been feeling the effects of climate change for many years through shifting precipitation patterns, historic droughts, and extreme weather events. Farmers Union members have long recognized that the climate is changing and that those changes are affecting all aspects of their operations. If we are given the right tools and adequate resources, we can continue to be a key part of the solution by sequestering carbon in the soil, reducing greenhouse gas emissions, and building a more resilient and sustainable agricultural system.

EPA plays an important role in supporting farmers with voluntary climate solutions. In addition to the biofuels opportunities supported by EPA, the Agency also provides

opportunities through its Greenhouse Gas Reduction Fund (GGRF) National Clean Investment Fund (NCIF)<sup>13 14</sup> and the Climate Pollution Reduction Grants (CPRG) program.<sup>15</sup>

For example, earlier this year through the GGRF NCIF, EPA awarded funding to an alliance of agriculture, environmental, and financial organizations to help finance agricultural climate solutions such as renewable energy technologies and farm energy efficiency upgrades, and to support farming practices that reduce emissions and use fertilizer more efficiently.<sup>16</sup> We are also aware of farm organizations and their partners applying to secure funding under the CPRG program.

Now more than ever, leadership on climate change and agriculture is essential, which is why NFU is a proud founding member and co-chair – along with the American Farm Bureau Federation, the National Council of Farmer Cooperatives, and the Environmental Defense Fund – of the Food and Agriculture Climate Alliance (FACA). FACA members represent farmers, ranchers, forest owners, manufacturers, the food industry, state governments, higher education associations, sportsmen and sportswomen, and environmental organizations. These organizations are dedicated to advancing climate solutions across food and agriculture supply chains – and EPA, along with USDA and other federal agencies, plays an important role in helping farmers take voluntary approaches to climate change that work for their operations.<sup>17</sup>

## **Improving EPA Engagement with Family Farmers and Ranchers**

Earlier this year, EPA established the Office of Agriculture and Rural Affairs, EPA’s first office focused solely on issues impacting farmers, ranchers, and rural communities.<sup>18</sup> This new office, which will expand the work of EPA’s Agriculture Advisor, provides formal recognition that farmers and ranchers are important partners of EPA, and that they have a seat at the table in discussions about how EPA regulations impact their livelihoods.

The office will also facilitate closer coordination with relevant federal and state partners, such as USDA, the U.S. Food and Drug Administration, and state departments of

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<sup>13</sup> EPA, Greenhouse Gas Reduction Fund. <https://www.epa.gov/greenhouse-gas-reduction-fund>

<sup>14</sup> EPA, “Biden-Harris Administration Announces \$20 Billion in Grants to Mobilize Private Capital and Deliver Clean Energy and Climate Solutions to Communities Across America,” Apr. 4, 2024. <https://www.epa.gov/newsreleases/biden-harris-administration-announces-20-billion-grants-mobilize-private-capital-and>

<sup>15</sup> EPA, Climate Pollution Reduction Grants. <https://www.epa.gov/inflation-reduction-act/climate-pollution-reduction-grants>

<sup>16</sup> Environmental Defense Fund, “New Agriculture Finance Sustainability Coalition partners with multi-billion dollar awardee of the EPA’s National Clean Investment Fund,” Apr. 4, 2024. <https://www.edf.org/media/new-agriculture-finance-sustainability-coalition-partners-multi-billion-dollar-awardee-epas>

<sup>17</sup> Who We Are. Food and Agriculture Climate Alliance (FACA). <https://agclimatealliance.com/members/>

<sup>18</sup> EPA, “EPA launches new office to strengthen engagement with agricultural and rural communities,” Mar. 1, 2024. <https://www.epa.gov/newsreleases/epa-launches-new-office-strengthen-engagement-agricultural-and-rural-communities>

agriculture. The office also will house EPA's existing Farm, Ranch, and Rural Communities Federal Advisory Committee (FRRCC), which includes a Farmers Union representative. Taken together, I am hopeful that this new office will improve cooperation between EPA and farmers and Farmers Union looks forward to working with this new office.

### **Overturning the *Chevron* Doctrine**

On June 28, the U.S. Supreme Court overturned the longstanding *Chevron* decision in *Loper Bright Enterprises v. Raimondo*. The decision overturns 40 years of precedent and has major implications for the independence of federal government agencies. While there are certainly situations where regulation is excessive or the interpretation of statute by federal agencies misses the mark, the Court has significantly altered its role in interpreting statute. We are concerned this decision may make it too difficult for agencies like USDA and EPA to protect family farmers, our communities, and the environment. Federal agencies should be accountable to the public and unreasonable regulation should always be a concern. The overturning of *Chevron*, however, may shift the balance of power too far toward the courts and hamper the ability of federal agencies to effectively address problems.

### **PFAS and CERCLA**

NFU's grassroots policy expresses deep concern about the "forever chemicals" known as per- and polyfluoroalkyl substances (PFAS) and perfluorooctanoic acid (PFOA). Our policy supports "requiring companies that historically or currently produce PFAS to contribute to an indemnity fund to compensate farmers and homeowners impacted by PFAS contamination," and we support additional "research into the health and environmental impacts of PFAS." We know EPA is leading the federal regulatory response to PFAS, and earlier this year designated these substances as "hazardous" under the nation's Superfund law, the Comprehensive Environment Response, Compensation, and Liability Act (CERCLA).

Farmers need a strong regulatory response to PFAS and related substances. At the same time, it is important that we hold the correct parties accountable for contamination: manufacturers and other industrial actors involved in the production of PFAS, as well as government agencies that approved the use of products containing these substances. We appreciated that EPA released an enforcement discretion policy earlier this year to clarify that it will focus its enforcement actions on the most serious polluters and does not intend to pursue passive receivers of these substances, such as farms where biosolids were applied to the land.<sup>19</sup> PFAS contamination is a unique problem for family farmers and ranchers, so we appreciate that EPA is working closely with USDA, FDA, and state partners to find science-based solutions to address contamination on farms caused by upstream polluters. We also believe Congress needs to take additional action and provide significant resources to address this immense challenge. That is why NFU supports the bipartisan *Relief for Farmers Hit with PFAS Act* (H.R.1517), which we hope to see in the next farm bill.

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<sup>19</sup> <https://www.epa.gov/enforcement/pfas-enforcement-discretion-and-settlement-policy-under-cercla>



**Conclusion**

I appreciate the committee's diligent oversight of EPA and for the opportunity to testify. Thank you for holding this hearing. I look forward to answering any questions you may have.