

118TH CONGRESS
1ST SESSION

S. 1023

To establish an advisory committee to inform Congress of the impact of Waters of the United States regulations on United States agriculture, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2023

Mr. BRAUN (for himself, Mr. TUBERVILLE, Mr. KENNEDY, Mr. ROUNDS, Mr. RICKETTS, and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To establish an advisory committee to inform Congress of the impact of Waters of the United States regulations on United States agriculture, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Farmer-Informed
5 WOTUS Act of 2023”.

6 **SEC. 2. ADVISORY COMMITTEE FOR WATERS OF THE** 7 **UNITED STATES REGULATIONS.**

8 (a) DEFINITIONS.—In this section:

1 (1) ADVISORY COMMITTEE.—The term “advisory committee” means the advisory committee established under subsection (b).

4 (2) COVERED COMMODITY.—The term “covered commodity” has the meaning given the term in section 1111 of the Agricultural Act of 2014 (7 U.S.C. 9011).

8 (3) LIVESTOCK.—The term “livestock” has the meaning given the term in section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(a)).

11 (4) POULTRY.—The term “poultry” has the meaning given the term in section 2(a)(6) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(a)).

15 (5) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

17 (6) SPECIALTY CROP.—The term “specialty crop” has the meaning given the term in section 3 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note; Public Law 108–465).

21 (7) WOTUS REGULATIONS.—The term “WOTUS regulations” means any Federal regulations that define the term “waters of the United States” for purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

1 (b) ESTABLISHMENT.—The Secretary, in coordina-
 2 tion with the Administrator of the Environmental Protec-
 3 tion Agency and the Assistant Secretary of the Army for
 4 Civil Works, shall establish an advisory committee broadly
 5 representative of the United States farming and ranching
 6 sectors to study and develop recommendations to address
 7 the impact of WOTUS regulations on United States agri-
 8 culture and environmental protection.

9 (c) MEMBERSHIP.—

10 (1) COMPOSITION.—The advisory committee
 11 shall be composed of 32 members, all of whom are
 12 farmers or ranchers, to be appointed as follows:

13 (A) FARMER ASSOCIATION-NOMINATED AP-
 14 POINTEES.—

15 (i) IN GENERAL.—16 members shall
 16 be appointed by the Secretary from a list
 17 of candidates nominated under clause (ii).

18 (ii) NOMINATIONS.—

19 (I) IN GENERAL.—The Secretary
 20 shall select 16 entities described in
 21 subclause (II), each of which shall
 22 nominate 1 candidate for membership
 23 in the advisory committee.

1 (II) NOMINATING ENTITIES.—

2 The entities referred to in subclause
3 (I) are the following:

4 (aa) 2 national farmer trade
5 associations representing farmers
6 and ranchers from all 50 States
7 and the internal policy of which
8 is developed using a member-
9 driven process.

10 (bb) 4 national covered com-
11 modity trade associations.

12 (cc) 3 national specialty crop
13 trade associations.

14 (dd) 3 national livestock
15 trade associations.

16 (ee) 3 national poultry trade
17 associations.

18 (ff) 1 national trade associa-
19 tion representing State depart-
20 ments of agriculture.

21 (B) SENATE-NOMINATED APPOINTEES.—

22 (i) IN GENERAL.—8 members shall be
23 appointed by the Secretary from a list of
24 candidates nominated under clause (ii).

(ii) NOMINATIONS.—The Senate shall nominate 8 regionally diverse candidates for membership in the advisory committee, of whom—

(I) 4 shall be nominated by the majority leader of the Senate, in consultation with the chairperson of the Committee on Agriculture, Nutrition, and Forestry of the Senate; and

(II) 4 shall be nominated by the minority leader of the Senate, in consultation with the ranking member of the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(C) HOUSE OF REPRESENTATIVES-NOMINATED APPOINTEES.—

(i) IN GENERAL.—8 members shall be appointed by the Secretary from a list of candidates nominated under clause (ii).

(ii) NOMINATIONS.—The House of Representatives shall nominate 8 regionally diverse candidates for membership in the advisory committee, of whom—

(I) 4 shall be nominated by the majority leader of the House of Rep-

1 representatives, in consultation with the
 2 chairperson of the Committee on Agri-
 3 culture of the House of Representa-
 4 tives; and

5 (II) 4 shall be nominated by the
 6 minority leader of the House of Rep-
 7 resentatives, in consultation with the
 8 ranking member of the Committee on
 9 Agriculture of the House of Rep-
 10 representatives.

11 (2) DATE.—Initial appointments to the advi-
 12 sory committee under paragraph (1) shall be made
 13 not later than 1 year after the date of enactment of
 14 this Act.

15 (3) PERIOD OF APPOINTMENT; VACANCIES.—

16 (A) IN GENERAL.—A member of the advi-
 17 sory committee shall be appointed for the life of
 18 the advisory committee.

19 (B) VACANCIES.—Any vacancy in the advi-
 20 sory committee—

21 (i) shall not affect the powers or du-
 22 ties of the advisory committee; and

23 (ii) shall be filled in the same manner
 24 as the original appointment.

1 (4) CHAIRPERSON AND VICE CHAIRPERSON.—

2 The advisory committee shall select a chairperson
3 and vice chairperson from among the members of
4 the advisory committee.

5 (d) MEETINGS.—

6 (1) INITIAL MEETING.—Not later than 30 days
7 after the date on which all members of the advisory
8 committee have been appointed, the advisory com-
9 mittee shall hold the first meeting of the advisory
10 committee.

11 (2) FREQUENCY.—The advisory committee
12 shall meet not less than 4 times per year.

13 (3) QUORUM.—A majority of the members of
14 the advisory committee shall constitute a quorum,
15 but a lesser number of members may hold hearings.

16 (e) DUTIES.—

17 (1) STUDY AND RECOMMENDATIONS RE-
18 QUIRED.—

19 (A) IN GENERAL.—The advisory committee
20 shall conduct a thorough study and develop rec-
21 ommendations to address the impact of
22 WOTUS regulations on United States agri-
23 culture.

1 (B) MATTERS STUDIED.—The advisory
2 committee shall study and develop recommenda-
3 tions to address—

4 (i) the impact of the prior-converted
5 farmland exemption on agricultural oper-
6 ations;

7 (ii) common agricultural practices
8 that are not exempted from WOTUS regu-
9 lations under the activity-based permitting
10 exemptions of the Environmental Protec-
11 tion Agency;

12 (iii) instances in which the Corps of
13 Engineers came to conflicting rulings for
14 the same or similarly situated tracts of
15 land;

16 (iv) the impact of WOTUS regula-
17 tions on secure food supply chains and
18 rural infrastructure;

19 (v) how WOTUS regulations can be
20 structured to provide a clear, objective
21 “eyesight” test for jurisdictional waters of
22 the United States; and

23 (vi) how safe harbor conditions can be
24 developed for farmers who observe com-

1 mon, voluntary conservation practices on
2 their farms.

3 (2) REPORT.—Not later than 1 year after the
4 date on which all members of the advisory com-
5 mittee have been appointed, the advisory committee
6 shall—

7 (A) submit a report with detailed findings
8 and recommendations addressing the matters
9 described in paragraph (1)(B) to—

10 (i) the Secretary;

11 (ii) the Committee of Agriculture, Nu-
12 trition, and Forestry of the Senate;

13 (iii) the Committee on Environment
14 and Public Works of the Senate;

15 (iv) the Committee on Agriculture of
16 the House of Representatives;

17 (v) the Committee on Transportation
18 and Infrastructure of the House of Rep-
19 resentatives;

20 (vi) the Chair of the Council on Envi-
21 ronmental Quality;

22 (vii) the Director of the Office of
23 Management and Budget;

24 (viii) the Director of the White House
25 Domestic Policy Council;

1 (ix) the White House Chief of Staff;

2 (x) the Administrator of the Environ-
3 mental Protection Agency; and

4 (xi) the Assistant Secretary of the
5 Army for Civil Works;

6 (B) publish in the Federal Register the re-
7 port under subparagraph (A); and

8 (C) present the findings and recommenda-
9 tions of the advisory committee in a meeting
10 to—

11 (i) the Administrator of the Environ-
12 mental Protection Agency;

13 (ii) the Assistant Secretary of the
14 Army for Civil Works; and

15 (iii) the Science Advisory Board of the
16 Environmental Protection Agency.

17 (f) POWERS.—

18 (1) HEARINGS.—The advisory committee may
19 hold such hearings, sit and act at such times and
20 places, take such testimony, and receive such evi-
21 dence as the advisory committee considers advisable
22 to carry out this section.

23 (2) INFORMATION FROM FEDERAL AGENCIES.—

24 (A) IN GENERAL.—The advisory committee
25 may secure directly from any Federal depart-

1 ment or agency such information as the advi-
2 sory committee considers necessary to carry out
3 this section.

4 (B) FURNISHING INFORMATION.—On re-
5 quest of the chairperson of the advisory com-
6 mittee, the head of a department or agency
7 shall furnish any requested information to the
8 advisory committee.

9 (3) POSTAL SERVICES.—The advisory com-
10 mittee may use the United States mails in the same
11 manner and under the same conditions as other de-
12 partments and agencies of the Federal Government.

13 (4) GIFTS.—The advisory committee may ac-
14 cept, use, and dispose of gifts or donations of serv-
15 ices or property.

16 (5) PROCUREMENT OF TEMPORARY AND INTER-
17 MITTENT SERVICES.—The chairperson of the advi-
18 sory committee may procure temporary and inter-
19 mittent services under section 3109(b) of title 5,
20 United States Code, at rates for individuals which
21 do not exceed the daily equivalent of the annual rate
22 of basic pay prescribed for level V of the Executive
23 Schedule under section 5316 of that title.

24 (g) COMPENSATION.—

1 (1) FEDERAL MEMBERS.—A member of the ad-
2 visory committee who is an officer or employee of
3 the United States shall serve without compensation
4 in addition to that received for service as an officer
5 or employee of the United States, and such detail
6 shall be without interruption or loss of civil service
7 status or privilege.

8 (2) TRAVEL EXPENSES.—A member of the ad-
9 visory committee shall be allowed travel expenses, in-
10 cluding per diem in lieu of subsistence, at rates au-
11 thorized for employees of agencies under subchapter
12 I of chapter 57 of title 5, United States Code, while
13 away from their home or regular places of business
14 in the performance of services for the advisory com-
15 mittee.

16 (h) SUNSET.—The advisory committee shall termi-
17 nate 90 days after the date on which the advisory com-
18 mittee completes the reporting requirements under sub-
19 section (e)(2).

20 (i) FUNDING.—

21 (1) UNOBLIGATED FUNDING AVAILABLE.—Of
22 the unobligated amounts appropriated by the Amer-
23 ican Rescue Plan Act of 2021 (Public Law 117–2;
24 135 Stat. 4), such sums as are necessary shall be
25 made available to carry out this section.

1 (2) AUTHORIZATION OF APPROPRIATIONS.—In
2 the event that the funds described in paragraph (1)
3 may not be made available to carry out this section,
4 there are authorized to be appropriated such sums
5 as are necessary to carry out this section.

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