

February 2, 2024

Henry Liu
Director, Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

**RE: Federal Trade Commission “Petition for Rulemaking of PIRG and iFixit”; FTC-2023-0077;
Federal Register Document Number 2023-28874**

Dear Director Liu:

On behalf of the nearly 20,000 family farmer, rancher, and rural members of the South Dakota Farmers Union (SDFU), we write in support of the petition for Section 5 Rulemaking Addressing Consumers’ Right to Repair.

Farmers are heavily reliant on equipment such as tractors, combines, and other tools to do their jobs. The digitization of these technologies has benefited farmers, but it has also resulted in significant repair challenges such as service delays and reduced options for repair due to the restrictions imposed by manufacturers. Paired with shrinking equipment dealership networks driven by corporate consolidation among farm equipment manufacturers, farmers have fewer repair options and report facing higher costs, as well as longer wait times for repair.

Farmers Union’s *Fairness for Farmers* Campaign and “Right to Repair”

SDFU and its national counterpart, the National Farmers Union (NFU) are fighting for “Fairness for Farmers”¹ to address decades of industry consolidation in agriculture that has led to excessive costs for farm inputs, supply chain vulnerabilities, and the economic devastation of our communities. Other symptoms of this consolidation are increased equipment costs and reduced repair options for farm machinery. NFU’s grassroots, member driven policy supports “Fair Repair

¹ Learn more about NFU’s *Fairness for Farmers* campaign at <https://nfu.org/fairness-for-farmers/>

and Right to Repair legislation that would allow farmers and independent mechanics access to diagnostic software, information, and other tools to repair modern equipment.”²

Why “Right to Repair” matters to farmers and rural communities

With the increasing incorporation of advanced technology into production agriculture where repair of that technology is restricted, it has become increasingly difficult for farmers and ranchers to fix their own equipment. This hurts the economic bottom lines of producers and local repair shops alike. Major farm equipment manufacturers restrict repairs by requiring certain software and software tools to make repairs to their tractors and other farm equipment and by refusing to make these tools available to farmers or independent mechanics.³

Without access to the software and information needed to fix modern equipment, farmers rely on dealership technicians for many repairs. That can lead to service delays, putting a farmer’s crop and livelihood at risk by impinging on their ability to operate during tight planting or harvesting windows. Farmers Union members have also told us they have been facing higher repair costs, a major challenge for farmers who often operate on thin margins.⁴

When we surveyed farmers, 92 percent told us they believe they could reduce their costs if they had better access to independent repair or could make all repairs themselves.⁵ Additionally, analysis conducted by PIRG found that if farmers had the right to repair, this could save U.S. farmers as much as \$4.2 billion per year when direct costs and tractor downtime are both accounted for.⁶

² National Farmers Union, *Policy of the National Farmers Union*, (March 2023).

³ Some manufacturers have made limited tools, such as John Deere’s Customer Service ADVISOR, available for public purchase. These tools, however, have limited use—they do not provide information required to diagnose all problems with a tractor, nor do they enable a farmer to digitally approve all repairs once they have been made. Farmers still need to turn to the dealership for many repairs.

⁴ An independent technician told *Reuters* he often gets calls from former customers that complain of being overcharged as much as \$10,000 for repairs. Repair restrictions can prevent independent technicians from providing competitive services. See <https://www.reuters.com/markets/us/fewer-us-tractor-dealerships-raise-costs-farmers-sector-consolidates-2022-09-01/>.

⁵ Kevin O’Reilly, “Why Farmers Need Right to Repair,” *U.S. PIRG Education Fund and National Farmers Union Report*, January 2022, <https://pirg.org/edfund/resources/why-farmers-need-right-to-repair/>.

⁶ Kevin O’Reilly, “Service Obstructor: John Deere software restricts farm repair,” *U.S. PIRG Education Fund*, July 2023, <https://pirg.org/edfund/resources/john-deere-repair-software/>.

Just two corporations manufacture nearly half of all tractors and other essential farm machinery in the United States.⁷ Corporate consolidation among farm equipment manufacturers has contributed to consolidation among farm equipment dealers, which is further exacerbating the problems farmers face accessing repair.⁸ Sixty-five percent of respondents to our survey reported having access to fewer dealerships than they did five years ago.⁹ John Deere, which controls more than 50 percent of the large tractor market, has the most consolidated dealership network. As a result, there is approximately one John Deere dealership chain for every 12,000 farms and every 5 million acres of American farmland.¹⁰

This consolidation not only hurts farmers, it impacts small rural businesses that sell and repair agricultural equipment. Independent repair shops cannot complete all repairs without access to repair software tools and information, meaning they cannot fully compete with manufacturer-branded dealerships and their technicians. These factors make it more difficult for small business owners to provide needed services to their communities and help maintain the vibrancy of small towns.

Finally, farmers and rural residents rely on many of the same consumer devices as people living in urban and suburban areas, but they face unequal and less convenient access to certified repair options. Farms and rural communities are typically located long distances from authorized service centers, leading to diminished and more costly repair opportunities.

Farm equipment manufacturers and dealers have made false and misleading claims about independent farm equipment repair

Underscoring the need for rulemaking to ensure consumers' right to repair, farm equipment manufacturers and dealers that oppose the right to repair have wrongly claimed that independent repair undermines emissions compliance laws under the Clean Air Act (CAA). To address these claims, NFU wrote the U.S. Environmental Protection Agency (EPA) in June 2023

⁷ Claire Kelloway and Sarah Miller, "Food and Power: Addressing monopolization in America's food system," *Open Markets Institute*, September 2021, <https://www.openmarketsinstitute.org/publications/food-power-addressing-monopolization-americas-food-system>.

⁸ Bianca Flowers, "Fewer U.S. tractor dealerships raise costs for farmers as sector consolidates," *Reuters*, September 1, 2022, <https://www.reuters.com/markets/us/fewer-us-tractor-dealerships-raise-costs-farmers-sector-consolidates-2022-09-01/>.

⁹ Kevin O'Reilly, "Deere in the Headlights II," *U.S. PIRG Report*, February 2022, <https://pirg.org/resources/deere-in-the-headlights-ii-2/>.

¹⁰ *Ibid.*

requesting clarification of what the CAA requires. In August 2023, EPA Administrator Regan replied, expressing EPA’s support for independent repair, and refuting the claims made by manufacturers and dealers.¹¹

Agricultural “Right to Repair” and Support for FTC Act Section 5 Rulemaking

SDFU was pleased when the Federal Trade Commission (FTC) released a policy statement in July 2021 that it planned to ramp up law enforcement against illegal repair restrictions.¹² The next year, NFU, along with several state Farmers Union divisions and other organizations, filed a complaint with the FTC asking it to use its enforcement authority under Section 5 of the FTC Act to address John Deere withholding from its customers diagnostic software and other information necessary to repair the Deere equipment they own.¹³

While SDFU continues to believe the FTC should pursue enforcement action as we previously requested and as noted above, and while we will continue to fight to pass legislation to ensure family farmers and ranchers have the right to repair their own equipment, SDFU also supports FTC pursuing a rulemaking under the Commission’s Section 5 authority.

SDFU believes it is essential that FTC promulgates a rule that, at a minimum, addresses the following consumer expectations of product repair:

- Consumable components ought to be replaceable and readily available throughout a product’s lifespan;
- Components that commonly break ought to be replaceable and readily available as repair parts;
- Consumers ought to be able to choose to take damaged products to a repair shop of their choice, or perform a repair themselves;
- When a manufacturer discontinues support for a product, its key functions ought to remain intact, and an independent repair shop ought to be able to continue to perform repairs;

¹¹ National Farmers Union (press release), “EPA Affirms Farmers’ Right to Repair,” August 8, 2023, <https://nfu.org/2023/08/08/epa-affirms-farmers-right-to-repair/>.

¹² “FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions,” July 21, 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions>.

¹³ “Complaint requesting investigation and action to enjoin unfair methods of competition and trade practices by Deere & Company,” March 3, 2022, *Fairmark Partners, LLP*, https://drive.google.com/file/d/1h6HVLfQ491dyAhcdYM-w5v_FpVKmtOB3/view.

- Identical components from two identical devices ought to be interchangeable without manufacturer intervention;
- Independent repair shops ought not be required to report customers' personally identifiable information to the manufacturer.

Conclusion

Thank you for the opportunity to submit comments. If you have any questions or would like to discuss SDFU's position further, please contact Doug Sombke, SDFU President, via e-mail at dsombke@sdfu.org or by phone at 605-350-4211.

Sincerely,

Doug Sombke
President