

Agricultural Retailers Association

A DC Update: What Agriculture Can Expect from the
New Administration

69th Annual
West Texas Agricultural
Chemicals Institute Conference

September 14, 2021



Mission Statement

The Agricultural Retailers Association (ARA) advocates, influences, educates and provides services to support its members in their quest to maintain a profitable business environment, adapt to a changing world and preserve their freedom to operate.



Why ARA?



Leverage and magnify your Voice



Up-to-the-minute updates from Capitol Hill and regulatory agencies



Industry visibility



Be recognized for achievements



Cost effective extension of staff



Networking opportunities



Influence policy outcomes



Expand knowledge network



Professional development programs



Leadership opportunities





- Educate, Advocate, Influence
- Networking & Services
- Freedom to Operate
- Over 5,000 outlets and ~85% of crop input sales
- Suppliers, State Associations

“...the recognized voice of the retail/distribution sector by advancing, advocating and representing the interests of those who provide agronomic products or services used to enhance the production of agricultural crops in a competitive global environment.”

– ARA Vision Statement



2021 ARA Policy Priorities

Transportation & Broadband Infrastructure

Climate Change/Sustainable Agriculture

Ag Labor/Workforce Needs

Food Equity

Economic Growth & Trade

Farm Bill

www.aradc.org/advocacy



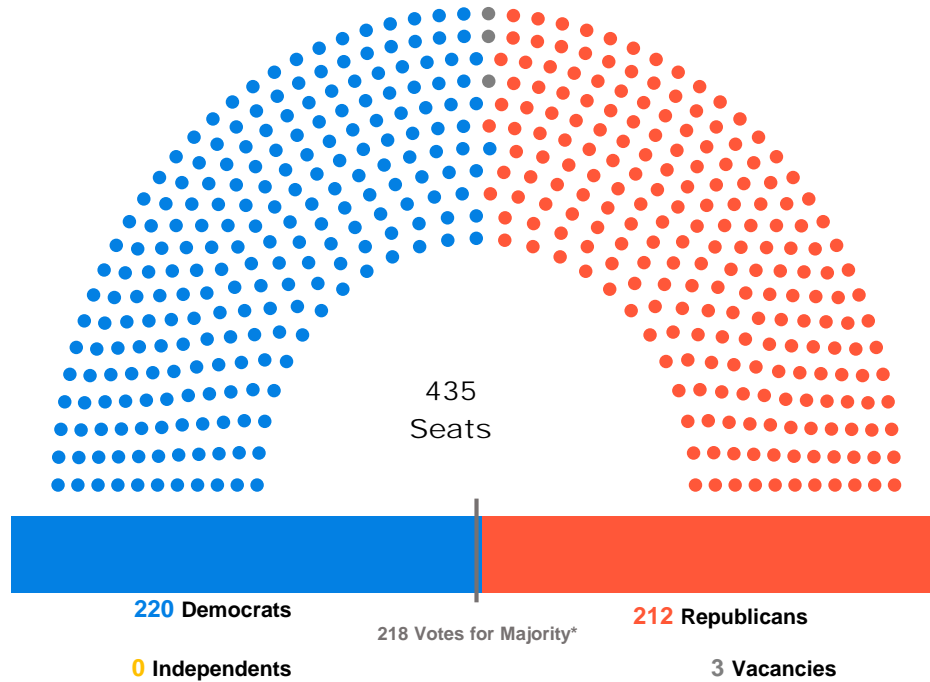
President Biden's Agriculture Plan

- Climate - including climate change (+/-)
- Taxes on the Rise (-)
- Laboring over labor - Higher minimum wage & comprehensive immigration reform (-)
- Ag trade (+)
- WOTUS woes return (- - -)



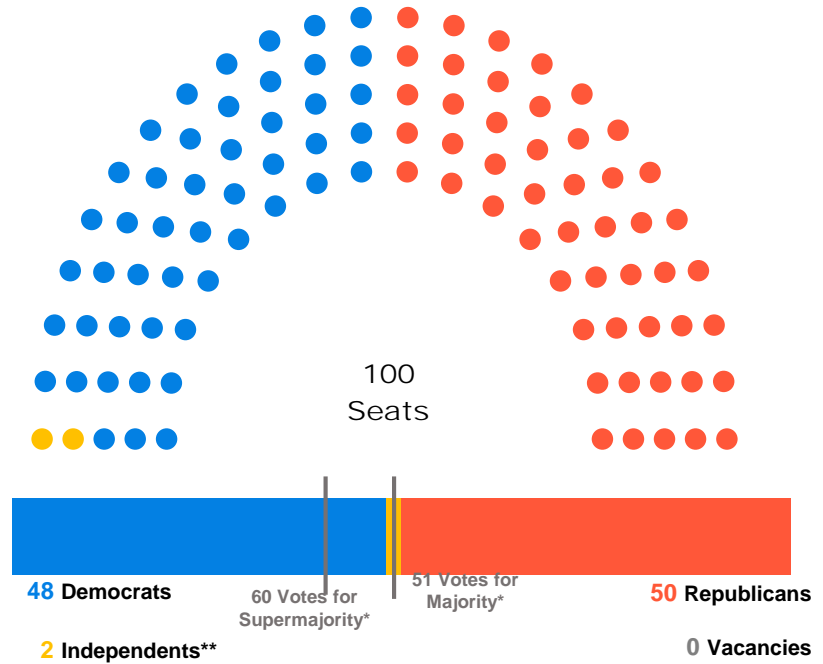
Composition of the 117th Congress

HOUSE



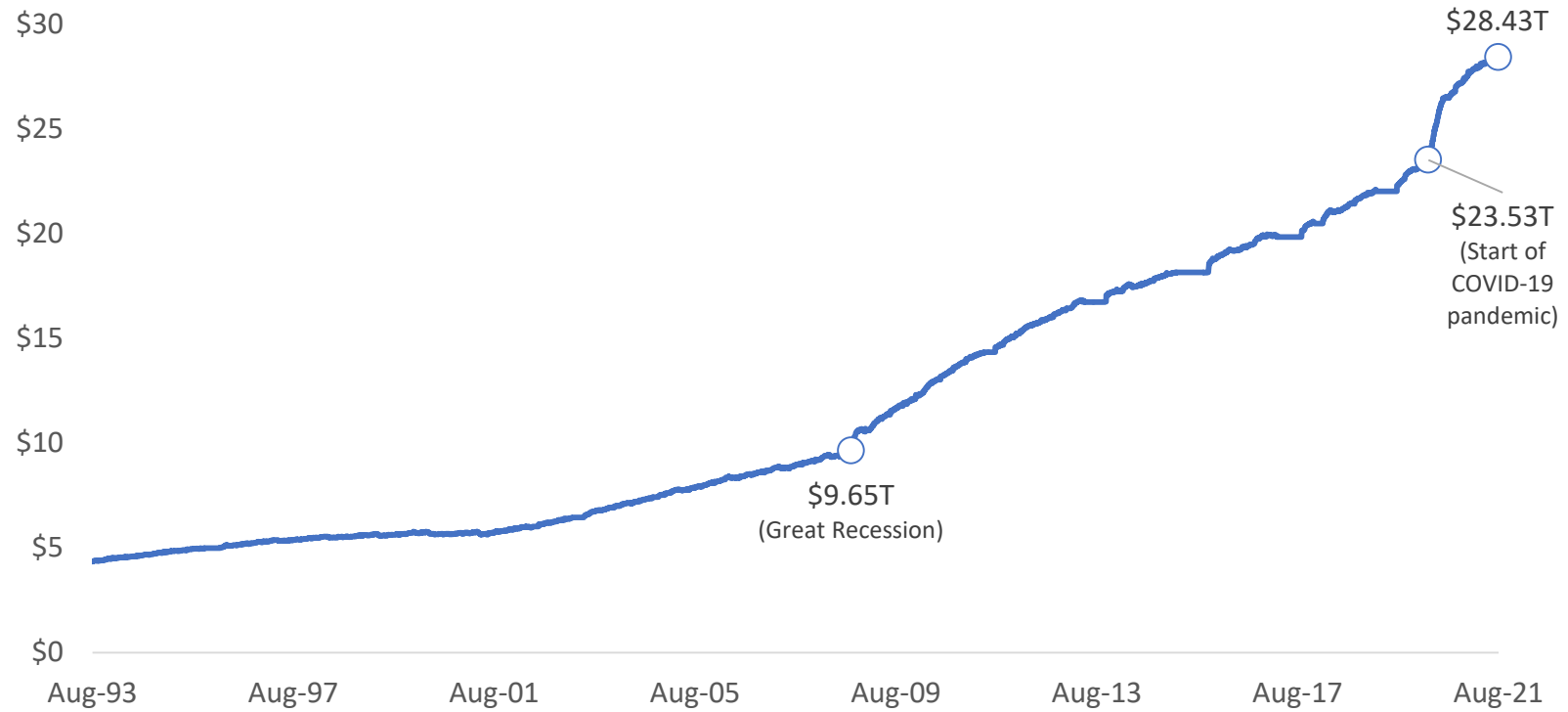
Vacancies: FL-20, OH-11, OH-15

SENATE



US government debt

Total public debt outstanding
IN TRILLIONS
AUGUST 1993 – AUGUST 2021



SOURCE Treasury Department.



Biden tax agenda



In a sentence: Biden plans to increase taxes on businesses, wealthy individuals, and investors. The hikes on businesses will pay for infrastructure and clean energy, while the others will pay for domestic priorities like childcare and pre-kindergarten.

- **Tax Hikes On Businesses**
 - Raise Corporate from 21% - 28% (Trump reduced from 35% - 21%)
- **Tax Hikes On Individuals**
 - Raise Highest Tax Rate 37% - 39.6%
 - Increase Capital Gains from 20% - 40%



\$2.1 trillion*

The amount that Biden's tax plan will raise, the Tax Policy Center estimates



\$60 billion

Of Biden's \$1.9 trillion American Rescue Plan was funded through tax hikes

*This estimate is based on Biden's tax plan during his campaign
SOURCE: Washington Post, Investopedia, Bloomberg, GovTrack, Tax Policy Center, CNBC, CNN, Forbes.



Senate Dems' \$3.5T proposal is expected to contain a carbon border tax

Overview of Democrats' proposal

- To tax imports from countries that aren't significantly reducing their carbon footprint, such as China
- It would charge foreign firms at a rate equal to costs that US firms face under state and federal environmental regulations

Potential consequences

- Some experts believe the tax could create tensions with America's trading partners ahead of the UN climate conference in November; the EU also proposed a carbon border tax, a week prior to this one
- It could raise the price of items that require these imported goods for their own production, like medical devices and automobiles



The American Families Plan will hike capital gains tax to income tax levels for some Americans

1

Raises CGT to income tax levels

- **39.6%** - the new proposed capital gains tax rate, up from 20%, matching the proposed top rate of marginal income tax

2

Removes stepped-up basis

- Under Biden's plan, the base value of an asset will remain at its original purchase value; it won't "step up" after it's passed down

3

Removes carried interest loophole

- Biden is proposing to remove this loophole altogether, forcing this income to be taxed at the income tax rate, rather than the capital gains rate



Tax & Economic Growth

- **Stepped-Up Basis:** Assets in agriculture are typically held by one owner for several decades, so resetting the basis on the value of the land, buildings, and livestock on the date of the owner's death under a step-up in basis is important for surviving family members and business partners to ensure the future financial stability of the operation.
- **Like-Kind Exchanges:** This provision allows businesses to buy and sell like assets without tax consequences, thus helping farmers and ranchers, who are typically “land rich and cash poor,” maintain cash flow and reinvest in their businesses.
- **Sec. 199A Business Income Deduction:** In order to maintain a reasonable level of taxation for pass-through businesses, like farms and ranches, it is critical to preserve Sec. 199A business income deduction. Eliminating or reducing this key business provision will result in a huge tax increase for farmers and ranchers at a time when they can ill afford it.
- **Superfund Tax Issue**



Agricultural Trade Issues

- World Trade Organization (WTO) Reform
- China
- Extend Trade Promotion Authority (TPA)
- Impact of growing pesticide bans
- U.S. ITC countervailing duty orders on fertilizer imports – phosphate (Russia, Morocco), UAN (Russia, Trinidad & Tobago)?
- Ongoing Supply Chain Disruptions



Transportation Infrastructure

- Rural Roads & Bridges
- Railroads
- Ports & Inland Waterways
- Rural Broadband



Transportation & Infrastructure

- August 10, 2021 – passed Senate by a vote of 69-30
 - \$1.2 trillion
 - \$343 billion for Highway bill programs
 - \$65 billion for broadband
 - \$2.5 billion for inland waterways
- Includes provisions previously approved by Senate Commerce Committee:
 - Drive Safe Act: Creates an apprenticeship pilot program for up to 3,000 truck drivers under age 21
 - Hours of Service: Exemption created on the backend 150-miles for livestock hauls
- Various climate change provisions and spending



Transportation

- Need to modernize the Farm-Related Restricted Commercial Driver's License (CDL)
 - Provide more flexibility by expanding the total days allowed to utilize Farm-Related Restricted CDL drivers up to 270 days to accommodate for the longer seasons, which can fluctuate from year to year due to climate change as well as more diversified crop production. The State would maintain the ability to set the seasons these days could be utilized by the industry.
 - Ensure the new 12-month seasons restart each calendar year on January 1 to prevent any overlap of seasons from the previous year.
 - Ensure Farm-Related Restricted CDL drivers can also operate Class A commercial vehicles in recognition of the advances and changes made to light duty pickup trucks, agricultural equipment and trailers over the past 30 years.
 - Eliminate the requirement for in-person seasonal renewal of the Farm-Related Restricted CDL.



Infrastructure: House Highway bill

- July 1, 2021 – passed House by a vote of 221-201
 - \$715 billion over five years for (mostly) Highway programs
 - Also, includes funding for waste and drinking water infrastructure
 - Includes concerning provisions related to hours of service and motor carrier financial responsibility



Infrastructure Outlook

- Highway bill cannot be moved under budget reconciliation
- House Democrats linking \$1.2 trillion brick-and-mortar infrastructure deal to a \$3.5 trillion reconciliation package
- Unclear if House Democrats will advance Senate bipartisan legislation or push for a House-Senate conference committee



Electric Vehicle Biofuels Study

- A new study examines for electric vehicle (“EV”) market penetration through 2050 and potential impacts on U.S. biofuels consumption, the agricultural sector, and the greater economy.
- **The three scenarios include:**
 - **Base Case:** EV market penetration increases to 13 percent of light-duty vehicle sales by 2050, following the Annual Energy Outlook Reference Case projections;
 - **ICE Ban by 2050:** EV market share reaches 100 percent of light-duty and freight vehicle sales by 2050 due to a ban on internal combustion engines (“ICE”); and
 - **ICE Ban by 2035:** EV market share reaches 100 percent of light-duty vehicle sales by 2035 and 100 percent of freight vehicle sales by 2040 due to a ban on internal combustion engines.

- The “ICE Ban by 2050” scenario was constructed to represent a softened version of the “ICE Ban by 2035” scenario
- The ICE Ban by 2035 scenario is based on the recent Majority Staff Report entitled "Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America." Accessed at: <https://climatecrisis.house.gov/report>



Key Findings from EV Biofuels Study

- U.S. light-duty and freight vehicle consumption of ethanol and biodiesel could decline up to 90 percent to 1.1 billion gallons and up to 61 percent to 0.8 billion gallons, respectively .
- Corn and soybean consumption decrease by up to 2.0 billion bushels and up to 470 million bushels, respectively.
- Corn prices fall up to 50 percent to \$1.74 per bushel .
- Soybean prices fall up to 44 percent to \$4.92 per bushel.
- U.S. Net Farm Income decreases by up to \$27 billion .
- U.S. GDP declines by up to \$26.4 billion, resulting in cumulative GDP losses of up to \$321 billion.
- U.S. job losses could reach up to 255,300 in the year 2050.



Climate/Carbon Credits

- Support the development and oversight of private sector markets for greenhouse gas (GHG) credits.
- Promote public and private sector tools to incentivize farmers, ranchers and forest owners to prioritize and scale climate-smart practices through USDA-NRCS conservation programs including the promotion of soil health as well as GHG mitigation and adaptation.
- Offer incentives for farmers to reduce energy consumption, increase use of on-farm renewable energy, and make continued progress toward reducing the lifecycle GHG emissions of agriculture- and forestry-based renewable energy.
- Increase federal investment in agriculture, forestry and food-related research substantially and continuously.
- Support the Growing Climate Solutions Act



H.R. 2820/S. 1251 - Growing Climate Solutions Act of 2021

Bill sponsor

HOUSE

Rep. Abigail Spanberger
D-VA-7

SENATE

Sen. Mike Braun
R-IN

Background

- Farmers have faced a range of technical obstacles in accessing carbon credit markets
- USDA Secretary Tom Vilsack has stated that climate-smart agriculture will be a priority during the Biden administration
- In May 2021, the USDA released a report covering the agency's goals and stakeholder engagement related to climate-smart agriculture

Outlook

- Has received support from a bipartisan group of lawmakers, as well as from certain industry and activist organizations

Key provisions



Provides technical assistance for farmers' participation in carbon markets

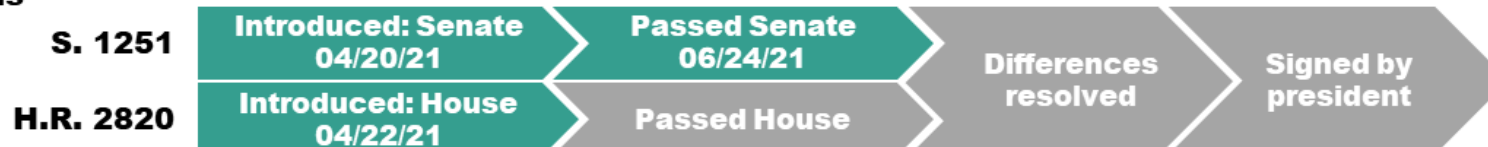


Creates program for USDA approval of third-party carbon credit verifiers



Establishes a council to provide advice related to implementing programs

Status



ARA Carbon Credit Working Group

- Working Group Mission Statement: Define the interests of retailers and our farmer partners in developing climate stewardship programs, tools needed to increase adoption of climate smart practices, and success in the carbon market.
- ARA wants the carbon markets to develop in the private sector and for USDA to provide complimentary programs/role.
- We likely do not know all we need from USDA at this point; however, voluntary, cost share, incentive-based programs work very well.
- Farmers are on the front line of economic risk when planting crops and participating in carbon markets and should be on the front line of economic benefit from the carbon markets.
- It may take a combo of both carbon markets, USDA programs, and even tax incentives make significant changes at the field level.
- Sequestration programs cost money and farmers must be economically sustainable to be environmentally sustainable.
- Farmers need to control/own their data!



Key topics to follow ahead of the expiration of the 2018 Farm Bill in 2023



Conservation

- Expansion of the **Conservation Stewardship Program (CSP)**
- USDA Sec. Tom Vilsack to pilot **climate-smart ag** initiatives ahead of the 2023 Farm Bill



Hemp cultivation

- 2018 Farm Bill's **approval of hemp production**, USDA **finalized regulatory guidance**.
- Policymakers could seek to **alter allowable hemp THC levels** in the 2023 Farm Bill



Racial justice in agriculture

- Advocates have called for the 2023 Farm Bill to address **racial inequities in agriculture**
- **Justice for Black Farmers Act**, policy changes aimed at combating discrimination in ag.



Nutrition assistance

- **Nutrition assistance programs** will likely play a large role in 2023 Farm Bill debates
- Biden- **Increase spending for the Supplemental Nutrition Assistance Program (SNAP)**



Food Equity Solutions



Food Affordability: Ensuring food prices remain low by -

- ✓ Protecting Farmers Essential Tools (seed, pesticide, fertilizer, precision ag technology);
- ✓ Government decisions based on sound science and risk-based, peer reviewed data.
- ✓ Exporting US ag products and technologies

Food Availability: Ensuring food supplies are produced and delivered in a timely and efficient manner by –

- ✓ Supporting U.S. agribusinesses and farmers as essential operations;
- ✓ Minimizing food waste and loss

Food Security: Ensuring the long-term competitiveness and sustainability of U.S. agricultural industry by-

- ✓ Maintaining farm safety-net programs, including crop insurance and disaster assistance.
- ✓ Investing in Research & Development to enhance crop yields and improve plant health



EPA: Active Regulatory Agenda

- Revising the “Waters of the United States” (WOTUS) regulations
- Issued Final Recommended Nutrient Criteria for Lakes and Reservoirs
- Reviewing and Revising the Risk Management Program (RMP) regulations
- Ongoing and Active Pesticide Registration Reviews; Increasing federal and state litigation by NGOs
- Challenges remain in the implementation of the Endangered Species Act (ESA) related to formal consultations with other agencies for pesticide registration reviews.



The EPA and Army Corps finalized the new definition of “waters of the United States” in January 2020

Details of the new definition of “waters of the United States” (WOTUS)

- In January 2020, the administration released its final WOTUS replacement rule, called the Navigable Waters Protection Rule
- The new rule clarifies which kinds of waters are jurisdictional and non-jurisdictional under the Clean Water Act
- In addition, the final rule specifies the definition of terms relevant to Clean Water Act regulations, such as “adjacent wetlands”

Waters that are jurisdictional



“Traditionally navigable waters” and territorial seas



Intermittent and perennial tributaries



Certain lakes and other bodies of water



Wetlands that are adjacent to jurisdictional waterways

Waters that are excluded (i.e., not jurisdictional)



Groundwater and drainage water



Ephemeral waters



Diffuse run-off from storms



Water-filled ditches*



“Prior converted cropland”



Artificial irrigation



Artificial lakes and other bodies*



Depressions filled with water



Features for storm control



Water reuse structures



Waters used in waste treatment



Other waters not specified*

*Asterisk indicates that these waters are non-jurisdictional so long as they do not satisfy the criteria for one of the categories of jurisdictional waters.

SOURCE Environmental Protection Agency, Department of the Army.

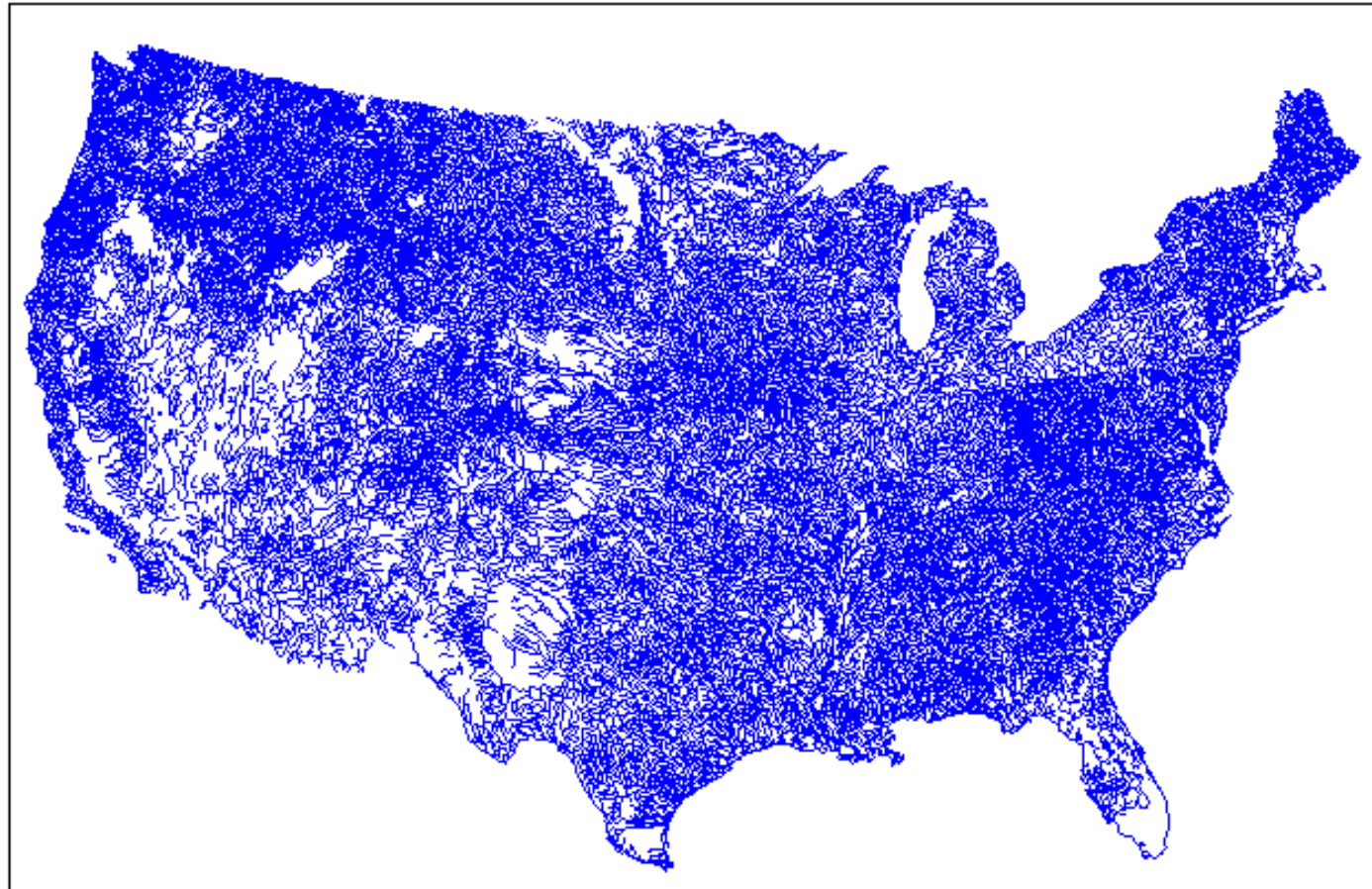


EPA WOTUS – What’s Next?

- Administrator Regan recently recognized the flaws in the 2015 Waters of the U.S. Rule and pledged not to return to those overreaching regulations.
- Biden Administration has taken steps to halt federal defense of the Trump-era rule in court.
- ARA is extremely disappointed in the EPA’s announcement of its intention to reverse the environmentally conscious Navigable Waters Protection Rule, which finally brought clarity and certainty to clean water efforts.
- Ag retailers and their farmer customers should not need a team of lawyers and consultants to farm.
- EPA should not try to eliminate the term “navigable” from the CWA and maintain the current clarity of issues such as prior converted cropland and ephemerals.
- EPA needs to maintain Cooperative Federalism approach between the federal and state governments.



EPA New WOTUS: Will it be a return to the 2015 Federal Power Grab?



EPA Final Recommended Nutrient Criteria for Lakes and Reservoirs

- EPA has published final recommended ambient water quality criteria to address nutrient pollution in lakes and reservoirs under Section 304(a) of the Clean Water Act (CWA).
- States and authorized tribes can adopt these criteria into their water quality standards or can adopt other scientifically defensible nutrient criteria. These criteria are not a regulation or a legally binding requirement.
- Nutrient criteria are numerical values for both causative (phosphorus and nitrogen) and response (chlorophyll and turbidity) variables associated with the prevention and assessment of eutrophic conditions.



EPA Risk Management Program (RMP)

- EPA is reviewing the [Risk Management Program \(RMP\)](#) rule in accordance with [Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis \(EO 13990\)](#).
- EPA held virtual public listening sessions to provide interested persons the opportunity to present information, comments or views pertaining to the review of RMP regulation revisions completed since 2017 (including the [2017 Final Amendments to the RMP Rule](#) and [2019 Final RMP Reconsideration Rule](#)).
- The Occupational Safety and Health Administration (OSHA) will also participate in the listening sessions. OSHA administers the Process Safety Management (PSM) standard, which contains similar requirements to the RMP rule.



EPA Office of Pesticide Programs (OPP)

- **Key Pesticides Under Review –**
 - **Glyphosate** – EPA expected to release final Biological Evaluation (BE) and initial consultation with US Fish & Wildlife Services and National Marine Fisheries Services, if warranted. Ongoing Class Action Lawsuits.
 - **Chlorpyrifos** – Court ordered EPA to revoke tolerances or modify them. EPA announced the revocation of all tolerances on August 18, 2021.
 - **Neonicotinoids** – EPA likely to issue Interim Decisions later this year with new restrictions due to impact on pollinators
 - **PFAS and Pesticide Containers** – Reports of mosquito products contaminated with PFAS. Data shows contamination extremely small. Industry testing and reviewing containers (HDPE and Stainless Steel)
 - **Dicamba** – In 2020, EPA approved a 5-year registration. State (GA, NC, TN) requests to expand allowed use under FIFRA Section 24(c) were denied.
- **Endangered Species Act (ESA)** – Continued challenges due to completing BEs and formal consultations on a nationwide scale resulting in legal challenges by NGOs.
- **WPS AEZ Rule** – Until further notice from EPA, the 2015 WPS remains in place with no changes to the AEZ provisions as there is ongoing litigation related to Final Rule published Oct. 30, 2020.
- **Respiratory Protection** – Effective Aug. 19, 2021, EPA terminated the June 2020 guidance and its May 2021 amendment that offered flexibility during Covid-19 public health emergency to agricultural employers and pesticide handlers related to pesticide uses covered by WPS



Recent Texas Court of Appeals - Drift

- Decision dramatically limits the investigation claimants must perform before they can file a lawsuit alleging damage from application of pesticides via land-based or aerial-based applications.
- If Eastland Court of Appeals' decision is left to stand:
 - Will relieve claimants of the burden to connect the alleged source of the drift to the impacted crops or fields
 - Ignores the recognized methods for investigating and establishing the existence and extent of drift from an application of pesticides.
 - This decision will become the law in twenty-eight counties in West and East Texas unless the Texas Supreme Court decides to review this case.
- Support petition for review of this decision in an effort to have the Texas Supreme Court issue standards that will apply statewide to claims of crop damage from drift of pesticides.



Cyber Security

- Executive Order on “Improving the Nation’s Cybersecurity” (May 18)
- National Security Memorandum on “Improving Cybersecurity for Critical Infrastructure Control Systems” (July 28)



Events/Networking

ARA FALL BOARD & COMMITTEE MEETINGS – (Sept. 27 - 29, 2021) Philadelphia

- Join Board, Committee Members as well as leaders from throughout the U.S. agricultural industry for networking, Committee Meetings and the Board Meeting.

ARA CONFERENCE & EXPO – (Nov. 30 - Dec. 2, 2021) – San Antonio

- The 2021 ARA Conference & Expo will be held in person in San Antonio, Texas. Registration is open now. Get ready to saddle up for success!

ARA LEGISLATIVE FLY-IN (Feb. 14 - 16, 2022) – Washington, D.C.

- Join ARA as we visit legislators in our nation's capital and ensure that policymakers hear from ag retailers directly.



Federal Government Mantra



If you build it, they will come



Connect with the Agricultural Retailers Association (ARA)

- Contact us at info@aradc.org.
- Go to www.aradc.org to learn more.
- Follow us on social media.

