

## The “Not Quite” Top Ten

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### Overview

There were numerous big developments in agricultural law and taxation during 2024. It's always difficult to boil it down to the ten most important developments, so I start the journey of reviewing last year's big developments by discussing a few that didn't quite make the cut.

The “Not Quite” Top Ten ag law and tax developments of 2024 – it's the topic of today's post.

### USDA's Push for “Climate Smart” Agricultural Practices

A big issue in 2024 was the USDA's attempts to manipulate producers' behavior by providing taxpayer funding for what it calls “Climate-Smart Agriculture.” As of the end of 2024, USDA had poured at least \$3 billion tax dollars into getting farmers to enroll in projects such as those designed to reduce methane emissions and sequester carbon. It's termed the USDA's “Partnership for Climate Smart Commodities Projects,” and flows from the SEC's plans that were announced in 2022 to force all publicly traded companies to submit an Environmental, Social, Governance” (ESG) report. Five months later the USDA's project was announced. It's not just farmers that are on the take. As of mid-2024, \$90 million had been paid to agricultural giant Archer Daniels Midland; \$95 million to the Iowa Soybean Association; and \$40 million dollars to Farm Journal. 27 universities have also received various amounts (each in millions of dollars).

But with the funding comes a loss of freedom. Recent examples exist with respect to the reaction of Dutch, Polish, Irish, French, German or Sri Lankan farmers to the imposition of “climate change” policies. The USDA's expressed goal is to get farmers and ranchers to calculate greenhouse gas emissions. In the USDA's words, “implementation and monitoring of climate smart practices” is the end goal. Once monitored, the emissions will be regulated. Indeed, USDA has worked with Colorado State University to develop a “planner tool” to be able to measure conservation practices on farms. Once the emissions from a farm become measurable, they will be regulated. With the increased regulation comes a loss of freedom and a further loss of smaller farming and ranching operations that are least likely to be able to bear the compliance cost.

**Note:** A new study published by the Economic Research Center at the Buckeye Institute finds that, as a result of the USDA's climate agenda, a typical family of four will have to spend an extra \$1,300 annually for food. The study also explains that the USDA's climate agenda will result in much higher costs for diesel, propane, fertilizer and other ag production inputs. The authors of the study note that, “Federal policymakers are pursuing expensive climate-control and emissions policies that have largely failed in



Europe.” The study can be accessed here: <https://www.buckeyeinstitute.org/library/docLib/2024-02-07-Net-Zero-Climate-Control-Policies-Will-Fail-the-Farm-policy-report.pdf>

**January 2025 Update.** On January 15, 2025, the USDA released an interim rule titled “Technical Guidelines for Climate-Smart Agriculture Crops Used as Biofuel Feedstocks.” This rule establishes a framework for quantifying, reporting, and verifying greenhouse gas (GHG) emissions associated with the production of biofuel feedstock crops in the United States. The primary objectives are to facilitate the integration of climate-smart agriculture (CSA) practices into clean transportation fuel programs and to create new market opportunities for biofuel feedstock producers while enhancing environmental benefits. The rule focuses on three major biofuel feedstock crops: corn, soybeans, and sorghum. The interim rule identifies specific CSA practices that can reduce GHG emissions or sequester carbon, including reduced tillage and no-till farming; cover cropping; and nutrient management practices, such as the use of nitrification inhibitors. With the interim rule, USDA has introduced the beta version of the Feedstock Carbon Intensity Calculator (FD-CIC) to assist in calculating farm scale carbon intensity in line with the standards set forth in the interim rule. It's important to note that the interim rule does not impact the I.R.C. §45Z clean fuel production tax credit. The Treasury Department still needs to write regulations concerning how the FD-CIC will be used in the computation of the credit.

**Note:** It will be interesting to see how USDA's policies will change in 2025 under new leadership that is anticipated to be more focused on actual science and spending taxpayer dollars in a more efficient and targeted manner. Several atmospheric gases, including carbon dioxide, methane, and water vapor, absorb light in the infrared region. These are collectively known as the “greenhouse gases” because absorbing infrared energy warms up the air. This is known as the greenhouse effect. Carbon dioxide, on a per-molecule basis, is six times as effective an absorber as water is. However, that's offset by the fact that carbon dioxide is only about 0.04% of the atmosphere. This means that, overall, it's much less important than water vapor in terms of its ability to warm the atmosphere. While methane can trap at least 25 times more heat than carbon dioxide, it is the rarest of the greenhouse gases. But scientists point out that methane will never be a major contributor to “global warming” because of its narrow absorption bands, which perfectly match the absorption bands of water – in other words water completely masks the effects of methane. This makes, for example, the regulation of methane production by cattle pointless in terms of “climate change.” Indeed, scientific studies point out that 76 percent of methane production comes from wetlands. For a recent paper authored by physicists that bolsters the point that regulation of agricultural activities to reduce methane emissions is misguided, see <https://co2coalition.org/wp-content/uploads/2025/01/Methane-and-Climate-Happer-van-Wijngaarden-2025-January-compressed.pdf>

### **Per- and Polyfluoroalkyl Substances (PFAS) and Rural Landowners**

A PFAS is a widely used, long-lasting chemical having components that break down slowly over time that have been used since the 1940s. It is found in water, air and soil all over the globe and are used for many commercial and industrial products. Some studies have shown that exposure to PFAS may be linked to harmful health effects in humans and animals. PFAS are a group of more than 15,000 chemicals that are associated with various cancers and other health problems, and there is no known method for cleaning up PFAS contamination. The biggest potential problem for agriculture involving



PFAS will likely be biosolids – the solid matter remaining at the end of a wastewater treatment process. Biosolids are often land-applied and there are benefits to doing so. It recycles nutrients and fertilizers and creates cost savings on chemicals and fertilizers for farmers. The uptake of PFAS by plants varies depending on PFAS concentration in soil and water, type of soil, amount of precipitation or irrigation, and the type of plant.

**Note:** The EPA treats PFAS as a hazardous substance under the Comprehensive Environmental Response Liability Act – that’s the Superfund law, and it can be a major concern for all rural landowners. Indeed, in 2019, PFAS were discovered on farms in Maine and New Mexico resulting in the disposal of most of the livestock on the farms.

In early 2024, several Texas farmers filed sued a major biosolid provider for manufacturing and distributing contaminated biosolid-based fertilizer that was applied to the plaintiffs’ farm fields resulting in damage to the land and personal health problems. *Farmer, et al. v. Synagro Technologies, Inc., No. C-03-CV-24-000598 (filed, Feb. 27, 2024, Baltimore Co. Maryland)*. The claim is that the defendant either knew or should have known that it was putting a contaminated (defective) product in commerce. The plaintiffs’ claims are couched in strict liability product defect, negligence and private nuisance.

**Note:** Some states have taken preemptive action. For example, Maine has banned land application of biosolids and set up a fund for impacted farmers. Other states are looking into providing compensation for disaffected farmers.

### EID Mandate for the Cattle Industry

In April 2024, the U.S. Department of Agriculture (USDA) introduced a rule mandating the use of electronic identification (EID) ear tags for certain cattle and bison involved in interstate movements. This rule aims to enhance animal disease traceability, allowing for rapid detection and containment of disease outbreaks. The rule applies to:

- Sexually intact cattle and bison aged 18 months or older.
- All dairy cattle, regardless of age.
- Cattle and bison of any age used for rodeo, exhibition, or recreational events.

For interstate movement, these animals must have official identification that is both visually and electronically readable. Acceptable forms of identification include:

- EID ear tags (commonly known as 840 tags).
- Brands registered with a recognized brand inspection authority, accompanied by an official brand inspection certificate (when accepted by state veterinary officials in both the sending and receiving states).



- Tattoos acceptable to breed associations for registration, accompanied by the breed registration certificate (when accepted by state veterinary officials in both the sending and receiving states).
- Group/lot identification numbers if the animals are managed together as one group throughout the pre-harvest production chain.

The rule does not apply to:

- Beef cattle under 18 months of age.
- Cattle moving directly to slaughter.
- Cattle not crossing state lines.

The rule became effective on November 5, 2024. Animals tagged with non-electronic official identification prior to this date are not required to be re-tagged; their existing tags remain valid for their lifetime. The rule is highly controversial in the cattle industry and is being challenged in court. Expect more developments on this issue in 2025.

## Conclusion

These issues were important ones in 2024 that will likely still be important in 2025. Next time, I'll start my trek through what I view as the "Top 10" ag law and tax developments of 2024.

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