

February 13, 2024

Honorable Tom Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Honorable Robert Bonnie
Under Secretary for Farm Production and
Conservation
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Re: Public Input on Reporting for Foreign Agriculture Land Holdings; FSA-2023-0017.

Dear Secretary Vilsack and Under Secretary Bonnie,

I write today to comment on the Farm Service Agency's (FSA) request for public input on updating the *Agricultural Foreign Investment Disclosure Act* (AFIDA) disclosure form. As you are aware, foreign land ownership and underdeveloped reporting mechanisms have had widespread consequences for the United States and the state of Oklahoma.

On June 26, 2018, Oklahoma voters legalized medical marijuana in the state, opening the door for foreign investors to buy land under the guise of legal marijuana farming. Since that time, foreign agricultural land ownership in the state of Oklahoma has increased by 59.3 percent, from 666,491 acres to 1,790,128 acres at the end of 2022, placing Oklahoma in sixth place for total foreign land ownership by state.¹

International criminal organizations and foreign adversaries have capitalized on Oklahoma's abundant agricultural land and affordable power to traffic and distribute illicit controlled substances and undermine US national security. Since 2021, Oklahoma authorities have seized more than 650,000 pounds of black-market marijuana, much of which is being trafficked by members of Mexican drug cartels and Chinese nationals.² In the same year, the Oklahoma Bureau of Narcotics announced that approximately 80 percent of the farms that they closed had ties to the People's Republic of China.³

¹ Barnes, T., Estep, M., Gray, V., Feather, C., & Sronce, P. (2017, December). Foreign Holdings of U.S. Agricultural Land. <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/afida2019report.pdf>; Estep, M., Barnes, T., Gray, V., Goings-Colwell, C., Butschky, D., Bailey, C., Feather, C., Riley, P., Gajnak, T., Harwood, J., & Winters-Michaud, C. (2023, December 14). Foreign Holdings of U.S. Agricultural Land. Foreign Holdings of U.S. Agricultural Land. https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2020_afida_annual_report.pdf.

² Oklahoma Attorney General. (2023, September). AG Column: Generally Speaking – September 2023. Oklahoma Attorney General. <https://www.oag.ok.gov/articles/ag-column-generally-speaking-september-2023>.

³ <https://www.wsj.com/us-news/law/how-chinese-marijuana-operations-cropped-up-in-small-town-america-45b7b598>

In its request for information, FSA identifies leasing as one of the primary issues in foreign land use reporting. In recent years, I have seen foreign entities subvert existing federal reporting requirements by utilizing leasing as an alternative to land purchases. Under existing AFIDA regulations, foreign entities are required to disclose real estate holdings that are acquired or transferred, but not those that are leased. This leasing loophole has made it possible for de facto temporary acquisitions to go unreported and, therefore, unnoticed by the United States and her ancillary governments. For states like Oklahoma, Maine, Colorado, and others, the problem becomes one of public safety. In the proposed reporting change, FSA correctly identifies the needs of Congress and others for leasing data from these transactions. As a result, I believe FSA is correct in wanting to include a lease disclosure item on the FSA-153 form.⁴

Additionally, I believe that FSA should require reporting disclosures regardless of acreage. According to the AFIDA regulation, there is a minimum acreage requirement where disclosure begins.⁵ The number of acres owned or leased by foreign entities should not impact who does or does not file the appropriate disclosures. Due to the current acreage threshold, much reporting goes unnoticed in Oklahoma because most marijuana grows fall under the ten-acre threshold.

Starting in June 2023, the Oklahoma Medical Marijuana Authority (OMMA) implemented a new business license application requirement that puts grower and producer applications in tiers. The grower tiers are based on the square footage for indoor growers and the number of acres for outdoor growers. OMMA has issued over 8,000 total commercial licenses to grow, process, dispense, and transport marijuana.⁶ In the coming months, 100 percent of the commercial licenses will have come up for renewal, and there will be more information about the size of these operations. Even though the usage of this tiered system is new, there is preliminary data that shows a majority of both indoor and outdoor grower applications fall under 20,000 square feet and five acres, respectively. Currently, there are over 1,800 applications for indoor grows that are up to 10,000 square feet, and nearly 300 applications that are five acres or less for outdoor grows.⁷

Currently, annual AFIDA reports only build out columns for some of the largest foreign investors, most of whom are allies of the US. While that is helpful information, it would also be helpful to see the breakout of data from countries the US considers adversaries. Many of those countries can be identified through the Annual Threat Assessment report from the Director of National Intelligence⁸ and the nonmarket economies list.⁹

⁴ Farm Service Agency. (2023, December 18). Request for Information: Agricultural Foreign Investment Disclosure Act Form Modernization and Information Collection Request. Regulations.gov.

<https://www.regulations.gov/document/FSA-2023-0017-0001>.

⁵ 49 FR 35074.

⁶ OMMA Live Industry Snapshot Dashboard,

https://reports.ncsanalytics.com/ibi_apps/WFServlet.ibfs?IBIMR_savedParamFile=IBIMR_savedParamFile&IBFS1_action=RUNFEX&IBFS_path=%2FWFC%2FRepository%2FPublic%2FTransparencyReports%2FPortals%2FTransparency_Report_State_Responsive_OK.htm&storageKey=&NCS_TRANSPARENCY_STATE=OK&NCS_TRANSPARENCY_REGION=_FOC_NULL&NCS_TRANSPARENCY_AGGREGATION_LEVEL=State, received January 30, 2024.

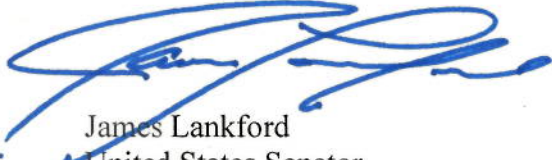
⁷ Data from OMMA, received on January 29, 2024.

⁸ 50 USC 3043b; <https://www.intelligence.gov/annual-threat-assessment>.

⁹ 19 USC 1677(18); <https://www.trade.gov/nme-countries-list>.

It is the responsibility of the federal government to provide accurate, complete information on these foreign land transactions to agencies, states, and localities so that they may effectively handle this ongoing crisis. It is paramount that FSA close the leasing loophole and ensure complete, accurate reporting of foreign land use in the United States for the safety of its citizens.

In God We Trust,

A handwritten signature in blue ink, appearing to read 'James Lankford', is written over the printed name and title.

James Lankford
United States Senator