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This document is scheduled to be published in the Federal Register on 12/29/2025 and available online at <https://federalregister.gov/d/2025-23830>, and on <https://govinfo.gov>

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 781

[Docket No. FSA-2024-0005]

RIN 0560-AI70

Agricultural Foreign Investment Disclosure Act: Revisions to Reporting

Requirements

AGENCY: Office of the Secretary, U.S. Department of Agriculture.

ACTION: Advanced notice of proposed rulemaking

SUMMARY: The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) implementing regulations establish requirements under which foreign persons must report interests in U.S. agricultural lands to the U.S. Department of Agriculture (USDA).

AFIDA regulations describe the type of interest in agricultural land a foreign person must have to trigger the reporting requirement, specific information that must be included in the report, and the mechanics of filing the report with USDA. AFIDA also requires some information about foreign persons who hold an interest in the agricultural land even though they may not own it directly, provided those foreign persons have “significant interest or substantial control” in the direct interest holder. USDA uses information from the filings to produce periodic reports to Congress on the effect that foreign ownership of U.S. agricultural land has on family farms and rural communities, and for other purposes. AFIDA regulations were last updated in 2006. Since that time, national security attention to foreign ownership or substantial control of agricultural land has increased. Committee on Foreign Investment in the United States (CFIUS) agencies, including the U.S. Department of Defense, use USDA information from AFIDA filings to identify and review transactions that may pose national security risks, such as the location of

agricultural land near sensitive military bases. Recent analyses, including a report by the Government Accountability Office (GAO), have identified flaws in USDA's processes for collecting, tracking, and sharing AFIDA data. These deficiencies, combined with evolving national security concerns and a Consolidated Appropriations Act, 2023 requirement for USDA to develop a streamlined process for electronic submission and retention of AFIDA disclosures, lead USDA to examine AFIDA regulations and invite public input on changes that would improve information collection activities in a manner responsive to national security and the use of agricultural land.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: USDA invites public comments on this Advance Notice of Proposed Rulemaking (ANPRM) and encourages stakeholders, including farmers, industry representatives, CFIUS and national security agencies and experts, and state and local governments, to provide input. Comments will be considered in the development of any future regulatory changes to ensure the regulations effectively address national security interests and the effects of foreign-owned agricultural land on rural communities.

You may submit comments, identified by Docket ID: FSA-2024-0005, in the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. All comments will be posted without change and will be publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mary Estep; telephone: (202) 720-3217; email: mary.estep@usda.gov. Individuals with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY mode)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Need for this Notice

AFIDA requires foreign persons who acquire, transfer, or hold interests in U.S. agricultural land to report such transactions to the Secretary of Agriculture. The statute was enacted by Congress in 1978 and directed USDA to analyze information contained in the reports and determine the effects of reported transactions and holdings, particularly on family farms and rural communities, and for other purposes. Foreign holdings of U.S. agricultural land increased by an average of 0.6 million acres per year from 2013 to 2017 and by an average of 2.6 million acres per year from 2017 to 2023.¹ In 2023, Congress passed a Consolidated Appropriations Act that included a requirement for USDA to streamline its process for electronic submission and retention of AFIDA disclosures. This requirement accelerated USDA's transition from paper AFIDA filings to the development of an online filing portal with document retention capability. And in 2024, GAO completed a report to Congressional Requesters, "Foreign Investments in U.S. Agricultural Land: Enhancing Efforts to Collect, Track, and Share Key Information Could Better Identify National Security Risks." GAO found that USDA did not timely share data collected under AFIDA, and that at least one CFIUS member agency required AFIDA information more current and specific than USDA's annual report to Congress. GAO provided six recommendations, including that USDA improve its verification and monitoring of collected AFIDA data and that USDA ensure its AFIDA reporting is complete, such as by incorporating country information from additional foreign persons beyond the primary investor when available. The increased interest in national security combined with multiple identified opportunities for improvement in AFIDA processes have led to this notice.

USDA seeks input on regulatory or other changes that may improve the efficiency and effectiveness of its AFIDA reporting and filing requirements. USDA is interested in comments on topics including the interests in agricultural land covered under AFIDA,

identification of required filers, and the information included on the filed report. USDA is receptive to suggested changes that could be made within the current statutory authority as well as changes that may require new or revised statutory authority. USDA believes that public comment can inform the development of any rule that may ultimately be proposed.

References—the Following References May Be Useful To Help Inform Those

Wishing To Provide Comments

(1) 7 U.S.C. 3501-3508

(2) 7 CFR part 781

(3) AFIDA summary information at the USDA Farm Service Agency (FSA) website, including AFIDA annual reports and form FSA-153. Available at: <https://www.fsa.usda.gov/resources/economic-policy-analysis/afida>.

(4) Government Accountability Office Report, “Foreign Investments in U.S. Agricultural Land: Enhancing Efforts to Collect, Track, and Share Key Information Could Better Identify National Security Risks,” GAO-24-106337, Published: January 18, 2024. Available at: <https://www.gao.gov/products/gao-24-106337>.

(5) The Committee on Foreign Investment in the United States (CFIUS) informational page on the U.S. Department of the Treasury website. Available at: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

Overview of Key AFIDA Requirements

Three requirement categories define the content and scope of an AFIDA filing: (1) Identification of foreign persons required to file; (2) The totality of information the filer is required to provide about the agricultural land; and (3) Information the filer is required to provide about other foreign persons with indirect interest in the agricultural land. Current AFIDA requirements and limitations are summarized below.

Identification of Foreign Persons Required to File

According to AFIDA regulations in 7 CFR 781.3(b), “Any foreign person who held, holds, acquires, or transfers any interest in United States agricultural land is subject to the requirement of filing a report on form FSA-153” within 90 days of acquiring the interest or becoming a foreign person. Section 781.2 defines key terms.

Broadly, a foreign person is a foreign government, a person (usually a legal entity) created or organized under the laws of a foreign government or that has its principal place of business outside the United States, or an individual who is not a citizen or national of the United States or its territories. The term also includes a person (usually a legal entity) created or organized under the laws of any state in which one of the previously listed categories of “foreign person” holds a significant interest or substantial control. “Any interest” generally means all interests acquired, transferred, or held in agricultural lands by a foreign person. However, the definition of “any interest” specifically excludes security interests, leases of less than ten years, contingent future interests, noncontingent future interests that do not become possessory upon the termination of the present possessory estate, surface or subsurface easements and rights-of-way used for a purpose unrelated to agricultural production, and an interest solely in mineral rights.

Agricultural land is defined in section 781.2(b) as “land in the United States used for forestry production and land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding ten acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed \$1,000. Farming, ranching, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1987), Division A, exclusive of industry numbers 0711-0783, 0851, and 0912-0919 which cover animal trapping, game

management, hunting carried on as a business enterprise, trapping carried on as a business enterprise, and wildlife management. Land used for forestry production means, land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated.”

Information the Filer is Required to Provide about the Agricultural Land

Section 781.3 describes the required content of an AFIDA report using the form FSA-153. While the current regulations require filings in the FSA county office local to the agricultural land, USDA is in the process of implementing an electronic filing process (“on-line filing portal”) as required by the Consolidated Appropriations Act of 2023. A foreign person required to submit a report must file a FSA-153 form report containing a list of items in section 781.3(e), including but not limited to legal name and address; citizenship, if an individual; type of interest in the land; the nature of the interest, name of the interest holder, country of creation or organization, and principal place of business if the foreign person is not a government or individual; a legal description of the agricultural land; the intended agricultural purpose of the land; the name, address, and relationship of any representative completing the FSA-153 form for the filer; how the tract of land was acquired or transferred and the relationship of the foreign person to the previous owner; and the date the interest in the land was acquired or transferred.

Information the Filer is Required to Provide about Other Foreign Persons with Indirect Interest in the Agricultural Land

Section 781.3(f)(1) requires reporting by the filer on foreign persons who have a “significant interest or substantial control” in the filer. Any required filer, other than an individual or government, must also submit a report containing the legal name and the address of each foreign individual or government holding significant interest or substantial control in the filer. If the person holding significant interest or substantial

control is an individual, the filer must also provide that individual's citizenship. And, if the person holding significant interest or substantial control is a foreign person who is not also an individual or government, the filer must provide that foreign person's name and nature of the interest held, the country in which the holder is created or organized, and the holder's principal place of business.

“Significant interest or substantial control” is defined in section 781.2(k) as (1) an interest of 10 percent or more held by foreign person, by a single foreign individual, by a single foreign business, or by a single foreign government; (2) an interest of 10 percent or more held by a domestic entity in which a foreign person holds significant interest or substantial control, by foreign individuals, foreign entities, or by foreign governments, whenever such persons, individuals, or governments are acting in concert with respect to such interest even though no single individual, person, or government holds an interest of 10 percent or more; or (3) an interest of 50 percent or more, in the aggregate, held by a domestic entity in which a foreign person holds significant interest or substantial control, by foreign individuals, foreign entities, or by foreign governments, even though such individuals, persons, or governments may not be acting in concert.

Any person named in a report filed under section 781.3(f) may then be required, upon request, to submit additional reporting on additional interest holders. In short, the AFIDA regulation requires reporting by the foreign person who is the direct owner or lessee of the land and any foreign person who may be one or two tiers or levels above the direct owner or lessee in a chain of ownership or corporate relationship.

Discussion and Identification of Topics for Comment

USDA is aware of requirement gaps in the current AFIDA regulations and is considering how it may address those gaps in a manner that balances national security interests with other interests in U.S. agricultural land. Specifically, USDA notes multiple exclusions in the definitions of “agricultural land” and “any interest” that may remove

particular interests (for example, leases less than 10 years) from reporting requirements. Filers are only required to identify their land interest through a legal description and identification of acreage. In some instances, legal descriptions may be narratives referencing landmarks or natural features of the land with limited utility to those not actually present on the land. USDA does not receive or have sufficiently detailed information to create a geospatial map with property boundaries.

While AFIDA does require a report on foreign persons who hold “significant interest or substantial interest” over direct interest holders, the definition of “significant interest or substantial interest” is challenging to understand and apply, sets a high threshold (10 and 50 percent), and treats countries with longstanding ties to the United States the same as countries designated as foreign adversaries by the Secretary of Commerce in 15 CFR 791.4(a). Furthermore, existing regulations only require filing by the foreign person who is the direct owner or lessee of the land and any foreign person who may be one or two tiers or levels above the direct owner or lessee in a chain of ownership or corporate relationship. USDA may affirmatively seek additional information from other interest holders named in reports, but it does not have the authority to request any additional detailed corporate structures or ownership information. Specifically, USDA lacks a mechanism to require additional detailed information about foreign interests throughout an ownership chain or in a complex corporate structure with multiple holding companies. USDA’s information deficit extends to the identity, country, and ownership interest of the ultimate foreign owner if that person is more than two or possibly three steps removed from the direct interest holder.

USDA’s policy goal is to obtain valuable, comprehensive, and verifiable information about interests in U.S. agricultural land held by foreign persons. USDA is further interested in streamlining and strengthening AFIDA regulations to improve

process efficiency, address national security interests, and provide timely, accurate, and detailed data for CFIUS agencies' use.

The following topics represent particular areas in which USDA is interested in receiving comments. However, USDA also invites commenters to address additional issues involving AFIDA, particularly as they relate to national security interests.

Commenters are encouraged to be as specific as possible. Please include the rationale underlying any suggested changes.

- Topic 1: Identification of foreign persons who are required to file reports using the FSA-153 form. Questions to consider when responding to this topic include the following:
 - The definitions of “agricultural land,” “any interest,” and “foreign person” determine the universe of required filers. Are the definitions currently sufficient or are changes recommended?
 - Should USDA continue to treat foreign persons from countries designated as foreign adversaries the same as all other foreign persons with respect to the interest in agricultural land that triggers the filing requirement, or should different standards apply to foreign persons from countries designated as foreign adversaries?
- Topic 2: Information the filer is required to provide about the agricultural land. Questions to consider when responding to this topic include the following:
 - Should filers be required to provide any additional information or documentation than the list of items in section 781.3(e)? If so, what additional information should USDA require and why?
 - How can USDA best obtain a correct, verifiable description or geospatial map of the agricultural land that is broadly usable by a range of audiences?

- Topic 3: Information the filer is required to provide about other foreign persons with indirect interest in the agricultural land. Questions to consider when responding to this topic include the following:
 - What information should USDA require about interest holders who are multiple steps removed from the direct interest holder or part of complex organizational structures?
 - How can USDA best ensure that the information it receives is complete and verifiable?

Brooke Rollins,

Secretary of Agriculture

[FR Doc. 2025-23830 Filed: 12/23/2025 8:45 am; Publication Date: 12/29/2025]

¹ *USDA, Farm Service Agency, "Foreign Holdings of U.S. Agricultural Land Through December 31, 2023," (2023), available at <https://www.fsa.usda.gov/resources/economic-policy-analysis/afida/annual-reports/foreign-holdings-us-agricultural-land-december-31-2023>.*