

Foreign-Owned Agriculture Land Talking Points

Topline

- The Agriculture Foreign Investment Disclosure Act (AFIDA), passed in 1978, requires foreign investors who acquire, transfer, or hold an interest in agricultural land to self-report this activity to USDA.
- USDA is required by statute to accurately capture and compile the data submitted by filers under AFIDA, and then report that information to Congress and the public annually.
- USDA **does not** have investigatory or legal enforcement powers under AFIDA and is only permitted to assess penalties for late or erroneous filings.
- The Department has been evaluating the penalty structure for late and erroneous filing, increasing outreach to stakeholders who have a role in foreign land transactions to minimize late or erroneous filings, and modernizing the way we collect, compile, and disseminate ownership data.
- Any significant changes to the AFIDA reporting process would require Congressional action.

AFIDA General Background

- The Agriculture Foreign Investment Disclosure Act (AFIDA) of 1978 directs USDA to track foreign investment in U.S. agricultural land.
- Agricultural land includes all crop, ranch, forest, and timberland more than 10 acres in total.
- USDA is responsible for collecting and reporting information filed by foreign individuals and enforcing penalties for any deficiencies in filings.
- A foreign person who acquires, disposes of, or holds an interest in U.S. agricultural land must disclose such transactions and holdings to USDA using the FSA-153 form filed at the time of transaction.
- Foreign individuals submit their filings as follows:
 - About 60 percent of filings (often large companies) come directly to USDA headquarters.
 - About 40 percent file an AFIDA file with the Farm Service Agency (FSA) at the local USDA Service Center nearest to their property.
- Failure to report is subject to civil penalty **up to** 25 percent of the fair market value of the land on the date the penalty is assessed. **Assessed penalties are generally 1 percent of market value and have been low since the beginning of the program.**
- Penalties:
 - No penalties for incorrect filing were assessed between 2015-2018 due to very limited staffing and a decision to prioritize the annual report to Congress.
 - From 2016-2020 poor record keeping resulted in inconsistent reports that could not be used as the basis to assess penalties.

- In the previous six months, six AFIDA staff specialists – including one focused on penalty assessment – have been added to USDA headquarters and a new tracking process has been instituted permitting penalty assessments to resume.

How USDA Tracks AFIDA Filings

- AFIDA filings have become larger and more complex over time, which often necessitates AFIDA HQ staff working with the filer (or often, the filer’s attorney representative) to ensure accuracy in reporting.
- USDA makes an earnest effort to ensure we are capturing all entities that are covered by relying on relationships with county offices, local realtors, and courthouse staff.
- As more global transactions occur, USDA is expanding outreach to national organizations, financial institutions, and law offices that represent international interests to ensure that we are doing the best job possible to notify all potential filers.

Most Recent AFIDA Report

- The most recent AFIDA report, transmitted to Congress in December 2022 and posted on the FSA website shortly thereafter, contains data as of December 31, 2021.
- It shows foreign ownership represents 3.1 percent of all privately held agricultural land and 1.8 percent of all land in the United States.
 - Foreign investors held an interest in approximately 40 million acres of U.S. agricultural land (forest land and farmland) as of December 31, 2021. This is an increase of over 2.4 million acres from the December 31, 2020 report.
 - Forest land accounted for 47 percent of all reported foreign-held acreage, cropland for 29 percent, pasture and other agricultural land for 22 percent, and non-agricultural land (homesteads, etc.) for 2 percent.
- By nationality, foreign owners or investors include:
 - Canadian investors own the largest amount of foreign-held agricultural and non-agricultural land, with 31 percent, or 12.8 million acres.
 - Foreign persons from an additional four countries—the Netherlands (12 percent), Italy (7 percent), the United Kingdom (6 percent), and Germany (6 percent)—collectively held 12.4 million acres or 31 percent of U.S. foreign-held acres.
 - Investors from China, Russia, Iran, and North Korea own about 388,000 U.S. agricultural acres as of December 31, 2021.
 - Chinese primary-investor filers **own slightly less than 1 percent** of foreign-held agricultural acres. Several large Chinese entities dominate holdings including Smithfield and energy holdings by Chinese billionaire Mr. Sun.
 - Investors from the other countries have a very limited or non-existent presence:
 - Russia—73 acres
 - Iran—4,324 acres
 - North Korea—No holdings
- For the first time, USDA included in the report a Historical Penalty Table which details the penalties assessed over time and the amounts imposed on late filers.