What New USDA 'Beneficial Owner' Definition Means For Cos.

By **Marisa Bocci, Kari Larson and Jeffrey Thomson** (July 28, 2026)

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The Agricultural Foreign Investment Disclosure Act of 1978, or AFIDA, requires foreign persons who acquire, transfer or hold an interest in U.S. agricultural land to report those transactions to the secretary of agriculture.

For most of its 48-year history, AFIDA has operated as a low-profile, paper-based disclosure regime administered by the Farm Service Agency, with regulations last substantively updated in the mid-1990s. On June 25, the U.S. Department of Agriculture published a proposed rule that would fundamentally reshape the AFIDA framework.

The proposal is expressly framed as a national security measure, tied to a January 2024 U.S. Government Accountability Office report that found the USDA had not shared timely or reliable AFIDA data with the Committee on Foreign Investment in the United States, and to the USDA's July 2025 National Farm Security Action Plan, which declared that "farm security is national security" and made reform of the AFIDA process a top action item.

Among other things, the proposed rule would significantly expand the definition of "agricultural land" (adding solar, wind, pipeline and conservation land, and eliminating the current de minimis exemption), narrow the lease exemption from 10 years to one year (and eliminate it entirely for foreign adversaries), require mandatory electronic filing through a new portal, restructure and increase civil penalties, and lower the aggregate foreign-ownership threshold from 50% to 10%.

This article focuses on one change that may prove the most consequential for institutional investors, fund managers and joint venture participants: the addition of a new "beneficial owner" definition to the restructured "significant interest or substantial control" test.

Together, these changes move AFIDA away from a purely equity-based inquiry and toward a broader examination of governance and operational control, with potentially far-reaching consequences for entities that have never considered themselves to be foreign or had to consider the requirements of AFIDA at all. Comments on the proposed rule are due Aug. 10.

The Existing AFIDA Framework

Before getting into what the proposed rule would add, it is worth noting the current state of the law.

Under AFIDA, foreign persons who acquire or transfer any interest in agricultural land, other than a security interest, are required to file a report to the secretary of agriculture no later than 90 days following such acquisition or transfer, per Title 7 of the U.S. Code, Section 3501(a).

Per Title 7 of the U.S. Code, Section 3508(3), a foreign person is defined to include

> (A) any individual (i) who is not a citizen or national of the United States; (ii) who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or (iii) who is not lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act;
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> (B) any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;
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> (C) any person, other than an individual or a government- (I) by any individual referred to in subparagraph (A); (II) by any person referred to in subparagraph (B); (III) by any foreign government; or (IV) by any combination of such individuals, persons, or governments; and
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> (D) any foreign government.

The existing regulations define "significant interest or substantial control" through three equity-based tests: a single foreign person or government holding 10% or more of an entity; multiple foreign persons acting in concert who together reach 10% or more, even if no one of them individually crosses that line; or foreign persons or governments not acting in concert but that nonetheless hold 50% or more of the entity in the aggregate, per Title 7 of Code of Federal Regulations, Section 781.2(k).

Notably, none of these prongs speak to control of the agricultural land. Accordingly, control without equity has, until now, simply not been something AFIDA reaches.

The proposed "beneficial owner" definition, discussed below, is the USDA's mechanism for closing that gap by making control, on its own, an independent trigger for AFIDA reporting.

The Proposed "Beneficial Owner" Definition

Section 5100.2(d) of the proposed rule adds a new prong to the "significant interest or substantial control" test for persons defined as beneficial owners.

The proposed definition of a beneficial owner is any "foreign person who, directly or indirectly, through any contract, understanding, relationship, or other arrangement, exercises decision-making authority over the agricultural land or the legal entity holding the land, including but not limited to the power to direct the sale, lease, or use of the property."

Three features of this new definition stand out: (1) It is control-based, not equity-based; (2) the scope of "decision-making authority" is undefined; and (3) "indirectly" is written to broadly capture complex ownership structures.

First, by contrast to the existing law, the additional test turns on decision-making authority only — regardless of whether such foreign person holds any equity interest in the underlying property.

Accordingly, a foreign person with zero equity will still qualify as a beneficial owner if that person exercises the requisite authority over the land or the entity holding it.

The preamble to the proposed rule illustrates the point with the board of a foreign-based nonprofit that acquires agricultural land: The board members would qualify as beneficial owners by virtue of their governance authority over the nonprofit's policies and practices, even though none of them holds any financial interest in the land.

Note that in this example it is a foreign-based board that is directing the company and not persons that are lawfully admitted to the U.S. for permanent residency or otherwise excluded as described above in our discussion of the existing law. This distinction is worth keeping in mind, as the new regulations appear intended to capture entities that are controlled by persons residing outside the U.S.

Secondly, the phrase at the heart of the new definition, "exercises decision-making authority through any contract, understanding, relationship, or other arrangement," is left undefined in the proposed rule, and that gap leaves several interpretive questions open during the comment period.

It is not clear whether customary passive-investor protective rights held by foreign limited partners or joint venture partners, such as budget approvals, major-decision consents, removal-for-cause provisions and transfer restrictions, would count as decision-making authority over the land.

It is likewise unclear whether the concept is limited to operational control over the actual use and disposition of the property, or whether it extends further to governance-level approval rights that constrain property decisions without affirmatively directing them.

Further, would the inclusion of one or more foreign persons on the board of directors of a U.S. company constitute foreign persons having decision-making authority given that they have input, even if they do not have the ability to act on their own accord?

These are all questions that remain unanswered based on the current language set forth in the proposed rule.

Because the proposed rule includes no safe harbor for customary protective rights or de minimis input, investors and practitioners structuring any transaction involving agricultural land with foreign participation are left with real uncertainty about where the line falls.

Finally, the definition is written to reach through every layer of intermediary ownership, and it calls out circular ownership, shell corporations, trusts and partnerships by name so that structuring around the rule through layered entities does not work.

Other Changes to the Significant Interest or Substantial Control Definition

Section 5100.2(p) of the proposed rule rebuilds "significant interest or substantial control" into three separate channels, and satisfying any one of them is enough to make a domestic entity a foreign person under AFIDA.

First, the equity-based test currently in place (the 10% alone, 10% acting in concert or 50% in the aggregate described above) is replaced with a flat 10% or greater interest in the aggregate, whether or not acting in concert.

The second is the beneficial owners prong discussed in detail herein.

The third is an adversary-based prong, which includes any interest held by a foreign adversary or a foreign adversary controlled entity, with no percentage floor.

Roles and Structures That May Be Captured Under the Definition

Every category discussed below is subject to one threshold qualifier: The person holding the role has to be a foreign person.

With that qualifier in mind, several familiar roles could end up captured.

A foreign director sitting on the board of directors of a U.S.-based organization who has governance authority over the entity that holds the land, including the power to approve or direct dispositions, leases or changes in use, could fall within the definition.

A foreign senior officer, such as a chief operating officer or chief financial officer with operational authority over how the property is used or disposed of, may likewise qualify if that person can direct the sale, lease or use of the property.

A foreign asset or investment manager holding contractual authority under a management or advisory agreement to direct acquisitions, dispositions, leasing or use of the land could also be captured. The same logic applies to a foreign general partner who controls a fund or partnership holding agricultural land, even with zero or nominal equity.

And, lastly, a foreign joint venture partner or managing member with major decision rights, approval or veto rights over sales, leases, or use of the land, or the ability to remove and replace a manager, could qualify based on control alone, even at an equity stake well below 10%.

Key Takeaways

Taken together, the proposed rule marks a fundamental shift in how AFIDA identifies a foreign person. Where the existing framework asks only who holds equity, the new beneficial owner prong asks who holds control.

Accordingly, decision-making authority over agricultural land or the entity that holds it is now an independent, stand-alone trigger for filing, wholly apart from any ownership stake.

Companies and investors with foreign participation anywhere in their governance or management structure — even those that have never before considered themselves foreign for AFIDA purposes — should evaluate the impacts of the proposed rule.

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[1] A "person" includes any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity. 7 U.S. Code § 3508(4)