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U.S. Department of Agriculture Proposes Major Overhaul of Agricultural Foreign Investment Disclosure Act of 1978 Rules

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In this article, the authors explain how a proposed rule published recently by the U.S. Department of Agriculture could affect a wide range of real estate market participants, including institutional investors in farmland and timberland; commercial and rural-land developers; renewable energy and infrastructure developers; foreign persons and U.S.-organized entities with upstream foreign ownership; and even wholly domestic owners who lease to foreign tenants.

The U.S. Department of Agriculture (USDA) recently published a proposed rule, Docket No. USDA-2026-0001; RIN 0560-AI70, that would significantly reshape the regulatory framework under the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA). The proposed rule would broaden what counts as "agricultural land," narrow long-standing reporting exemptions, expand beneficial ownership disclosure, increase penalties, and move administration of the program to USDA's Office of Homeland Security. A wide range of market participants could be affected, including institutional investors in farmland and timberland; commercial and rural-land developers; renewable energy and infrastructure developers; foreign persons and U.S.-organized entities with upstream foreign ownership; and even wholly domestic owners who lease to foreign tenants.

The public comment period closed on August 10, 2026, during which the USDA received an exceptionally high volume of comments from affected industries, more so than in response to any previous USDA proposed rules.

WHO COUNTS AS A "FOREIGN PERSON"?

Before turning to the proposed changes, it is worth pausing on a threshold point that is easy to overlook: AFIDA's reporting obligations turn on whether a filer is a "foreign person," and that term is defined far more broadly than many U.S. owners assume. A "foreign person" includes not only foreign individuals, foreign governments, and entities organized outside the United States, but also U.S.-organized entities in which foreign persons hold a "significant interest or substantial

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control." A domestic entity can therefore be treated as a foreign person, and be drawn into AFIDA reporting, based solely on its upstream ownership. The proposed rule makes this more likely by lowering the aggregate-ownership threshold from 50% to 10%, and by counting beneficial owners and any interest held by a foreign adversary. A U.S. fund, partnership, or holding company should not assume AFIDA is inapplicable simply because it is organized domestically; the question turns on who holds direct and indirect interests in the entity. Separately, a wholly domestic landlord whose tenant is a foreign person may find that the tenant carries its own independent reporting obligation.

A NATIONAL SECURITY INITIATIVE

The proposed rule is expressly framed as a national security measure rather than the data-collection exercise AFIDA has historically been. USDA ties the rulemaking to a January 2024 Government Accountability Office report finding that USDA had not shared timely or reliable AFIDA data with the Committee on Foreign Investment in the United States (CFIUS), and to the July 2025 National Farm Security Action Plan, which declares that "farm security is national security" and makes reform of the AFIDA process a top action item. A recurring theme throughout the proposed rule is improving the flow of AFIDA data to CFIUS and applying heightened scrutiny to foreign adversaries. It bears emphasis, however, that AFIDA remains a disclosure statute: it does not authorize USDA to block, condition, or unwind a transaction. National security review of farmland transactions continues to rest with CFIUS, which generally reaches agricultural land only where the land qualifies as "covered real estate" (for example, by proximity to a military installation) or forms part of a covered transaction.

KEY PROPOSED CHANGES

Expanded Definition of "Agricultural Land"

The proposed rule significantly broadens the definition of "agricultural land," replacing the decades-old Standard Industrial Classification codes with current North American Industry Classification System (NAICS) codes and adding: solar and wind energy generation on agricultural land; pipeline transportation corridors; farm product warehousing and processing; conservation land that could be used for farming, ranching, forestry, or timber production; and agricultural research and development activities. The proposed rule would also eliminate the current exemption for tracts of 10 acres or less generating under $1,000 in annual receipts and, for the first time, make easements and rights-of-way for non-agricultural use reportable. Importantly, land meeting the definition would be treated as agricultural land regardless of local zoning classification. Owners of farmland, timberland, conservation land, renewable energy and pipeline interests, and path-of-growth real estate holdings may wish to reassess their portfolios for potential filing obligations.

Lease Exemption Dramatically Narrowed

Currently, leaseholds of less than 10 years are exempt from AFIDA reporting. Under the proposed rule, that exemption would be reduced to leases of less than one year for most foreign persons, and eliminated entirely for entities from or controlled by foreign adversary countries (China, Russia, Iran, North Korea,

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and others designated by the Secretary of State). Short-term agricultural leases, crop production arrangements, and energy site leases that are currently exempt may become reportable.

Enhanced Beneficial Ownership and Structural Disclosure

Foreign persons that are neither individuals nor governments, including funds, partnerships, and corporate entities, would face substantially expanded disclosure requirements. The proposed rule would lower the threshold at which aggregated foreign interests constitute "significant interest or substantial control" from 50% to 10% (USDA has asked for comment on a 5% threshold) and would eliminate the current reporting exemptions for certain shareholders. The proposed rule would require: identification of all persons holding 10% or more of any interest (individually or in aggregate); identification of all "beneficial owners," defined broadly to include anyone exercising decision-making authority over the land regardless of percentage held; ownership diagrams depicting the relationship between all interest holders; tax identification numbers and passport numbers for all foreign persons; and disclosure of shell corporation structures at all intermediary tiers. Filers would also have to submit a digital, open-source geospatial map delineating the land and its uses, together with current acreage. The proposed definition of "shell corporation" is broadly drawn and may capture holding vehicles common in institutional real estate structures.

Stricter Penalties: Restructured and Increased

The proposed rule significantly increases civil penalties and removes the existing provisions allowing downward adjustment of penalties. It would create three separate late-filing penalty schemes (for acquisitions and holdings, for transfers and inheritances, and for newly reportable holdings), each beginning with an initial $250 penalty assessed on the 91st day. Thereafter, penalties accrue on two tracks: entities designated as foreign adversaries or foreign-adversary-controlled entities would accrue 2.5% of fair market value per week, and all other foreign persons 1.5% per week. For portfolios holding multiple parcels, exposure could compound substantially.

Electronic Filing and New Portal

All AFIDA filings would have to be submitted through USDA's new online portal - afida.landmark.usda.gov - which requires a Login.gov account. The paper FSA-153 form would be phased out, and the proposed rule removes form-specific references so that USDA can deploy a new electronic form. Filers who cannot access the portal could seek assistance from their local Farm Service Agency (FSA) office.

Administration Transferred to Office of Homeland Security

Administration of AFIDA is moving out of FSA. A separate final rule issued April 13, 2026 already transferred AFIDA authority from FSA to USDA's Assistant Secretary for Administration, and this proposed rule would codify the sub-delegation of day-to-day administration to USDA's Office of Homeland Security (OHS), a change that reflects the program's more explicit national security orientation. FSA would remain the initial point of contact for filers and would assist with fair market value

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determinations. The proposed rule also overhauls penalty appeals: the response window would shrink from 60 to 30 days; the options to submit a written statement contesting liability or to request a hearing would be eliminated in favor of a single review by the OHS Director; payment would be required electronically through pay.gov; and decisions would be administratively final, with unpaid penalties referred to the U.S. Department of Justice.

INTERACTION WITH STATE LAW

AFIDA operates alongside a growing patchwork of state laws. Roughly two dozen states now restrict foreign ownership of agricultural land or impose their own reporting requirements, and these vary widely in scope, triggers, and penalties. Compliance with AFIDA does not satisfy these separate state obligations. The proposed rule states that conflicting state and local laws would be preempted, while also reminding filers that they must continue to comply with applicable state and local restrictions and that USDA will keep sharing filings with state departments of agriculture. That tension, together with pending constitutional challenges to certain state foreign-ownership statutes, leaves the federal-state landscape unsettled.

WHAT THIS MEANS FOR INVESTORS AND LANDOWNERS

If finalized, the rule would likely require many parties that are currently exempt, or that have never considered themselves subject to AFIDA, to evaluate new disclosure obligations. The proposed rule includes a limited safe harbor period to allow parties time to make compliant filings if deemed necessary. Different categories of market participants could be affected in different ways:

- *Institutional investors in farmland and timberland*: Assess whether holdings fall within the expanded definition of agricultural land and whether fund, joint venture, or trust structures cross the lowered 10% aggregate threshold or trigger the new beneficial-ownership and ownership-diagram disclosures. Also, whether the reduced acreage area and changes to leasehold reporting requirements have expanded prior reporting obligations.

- *Commercial and rural-land developers*: Pre-development or path-of-growth parcels that were farmed or grazed within the prior five years may qualify as agricultural land even if rezoned for another use; this proposed rule clarifies that the filing obligation would apply regardless of local zoning.

- *Renewable energy and infrastructure developers*: Solar, wind, and pipeline interests, as well as easements and rights-of-way, may be reportable, including under site-control leases that were previously exempt.

- *U.S. entities with upstream foreign ownership*: These parties face the most extensive new disclosure, including ownership diagrams, identifiers, and geospatial maps. Where a foreign adversary is involved, they also face the higher penalty track and the loss of lease exemptions.

The proposed rule provides a 90-day window after the final rule's effective date for newly reportable holdings to come into compliance, along with a one-year reduced-penalty transition period. The proposed changes could

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have important implications for foreign investors, agribusinesses, lenders, renewable energy companies, and other organizations with interests in U.S. real estate.

THE COMMENT RECORD AND EMERGING THEMES

USDA received 39 substantive comment letters during the comment period, which closed August 10, 2026. The commenters represented a broad cross-section of affected stakeholders, including energy-sector trade associations representing solar, wind, oil and gas, and pipeline interests; institutional investors and fund-industry organizations; agricultural organizations and farm bureaus; national-security-focused policy institutes; law firms and industry coalitions representing high-volume filers and renewable energy developers; and individual researchers. While no commenter opposed AFIDA modernization itself, the record reflects sharp divisions on the scope and implementation of the proposed changes.

The comments organized around several recurring themes. The most heavily commented issue was the expanded definition of "agricultural land," with energy-sector and pipeline-industry commenters uniformly opposing the inclusion of NAICS codes for solar generation, wind generation, and pipeline transportation, while farm organizations and national-security advocates generally supported the broadening of the definition. The reduction of the aggregate foreign-ownership threshold from 50% to 10% drew near-universal opposition from industry commenters, who argued it is impractical for publicly traded companies and would sweep in passive pension-fund investors from allied nations. The penalty overhaul, which would increase accrual rates from 0.1% to 1.5% of fair market value per week (2.5% for foreign adversaries), eliminate downward adjustments, and reduce the appeal period from 60 to 30 days, was the second-most-commented issue, with virtually every industry commenter urging retention of penalty mitigation for good-faith, non-adversary filers. Additional themes included the narrowing of the lease exemption from 10 years to one year and elimination of the easement and right-of-way exemption; implementation concerns regarding geospatial mapping requirements and the readiness of USDA's electronic filing portal; widespread criticism of the proposed 90-day transition period for newly reportable holdings as operationally infeasible; and calls to distinguish between allied-nation investors and foreign adversaries across all provisions of the rule, not merely in the penalty and lease-exemption contexts.

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