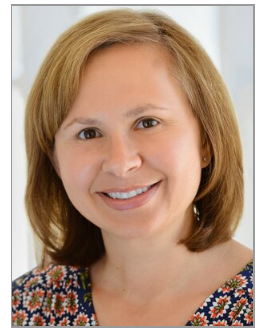
USDA Rule Would Broaden Foreign Co. Reporting Burden

By **Margaret Krawiec and Todd Kelly** (July 21, 2026, 4:48 PM EDT)



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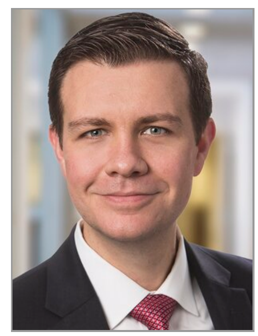

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On June 25, the U.S. Department of Agriculture published a proposed rule that would significantly overhaul its oversight of the Agricultural Foreign Investment Disclosure Act and make significant changes to the reporting requirements and penalty scheme for AFIDA.

AFIDA, Title 7 of the U.S. Code, Section 3501, is a reporting statute that requires "foreign persons" to file a report with the USDA when they acquire, transfer or make changes to the use of agricultural land.

The proposed rule would greatly increase the scope of who must file a report by removing several exemptions and by expanding the definition of "agricultural use of land." In addition to expanding who must report, the new filing requirements are also more onerous.

Filers will now have to use a public online portal and will be required to provide more detailed information on foreign individuals and entities than the prior regulation.

The proposed changes also reshape the enforcement mechanism of AFIDA. Penalties will accrue more quickly than under the old regulation, and the proposed rule would remove the ability to reduce a penalty based on certain discretionary factors.

The proposed changes appear intended to fulfill the priorities set forth in the National Farm Security Action Plan, which the Trump administration released last year. The action plan called for changes "to fully integrate agriculture into the broader national security enterprise."

As part of this reorientation, oversight of AFIDA will be shifted from the Farm Service Agency to the Office of Homeland Security at the USDA. The increased focus on national security indicates that companies should expect a more stringent compliance regime than the more lax approach to AFIDA that the USDA has historically taken.

In light of these changes, companies should consider a proactive review to determine if they would be at risk of noncompliance under the new rule.

Expanded Scope of Reporting

The proposed rule would greatly expand the scope of who must file a report under AFIDA by lowering the ownership thresholds for foreign persons, eliminating certain exemptions and expanding the definition of agricultural land.

Entities that have any level of foreign ownership and own land in the U.S. will need to review the new regulation to determine if filing is now required.

Companies with any non-U.S. ownership will want to review their non-U.S. ownership to determine if they fall within the newly expanded parameters of a foreign person under the proposed rule. A foreign person includes foreign individuals, foreign governments, entities organized outside the U.S., and entities organized in the U.S. where foreign persons hold significant interest or substantial control.

So U.S.-based entities can be required to report if they meet the thresholds for significant interest and substantial control. The proposed rule lowers that threshold so that an entity is a foreign person if it has 10% or more foreign ownership in the aggregate or any interest owned by a foreign adversary, as defined by Title 42 of the U.S. Code, Section 19237(2).

The proposed rule also requires beneficial owners, defined as any foreign person who directly or indirectly exercises decision-making authority over the land or legal entity holding the land, to report.

Companies that engage in activity that is newly defined as agricultural will also need to conduct a review to determine if a filing is necessary. The proposed rule labels a number of industries as "agricultural" that have not traditionally fallen within that definition. In particular, wind and solar energy generation is deemed agricultural, as is pipeline transportation.

Companies that currently have wind or solar farms will therefore now have to submit a filing if they meet the foreign person requirements, regardless of whether there is any traditional agricultural use of the land.

Companies that previously determined that they did not need to file because they fell within one of AFIDA's exceptions may also now need to file. The proposed rule removes a number of key exceptions, including the de minimis exception for plots under 10 acres, the exception for rights of way and the exception for easements for nonagricultural purposes.

The proposed rule also changes the exemptions for leaseholds of less than 10 years to leases of less than one year.

Companies also will not be grandfathered into nonreporting based on past status. The proposed rule would require that any individual or entity that falls within the new reporting requirements but was not required to report under the prior regulation will have to file a report within 90 days of the effective date.

If these changes take effect in the final rule, we expect that a significant number of companies that have never filed will find that they now have AFIDA requirements, so companies should consider a proactive review.

Changes to Reporting Requirements

The proposed rule makes several significant changes to the filing format and the information that must be provided. The changes will make filings more onerous and require that reports be filed on the USDA's public online portal.

Companies filing a report will now be required to submit their reports through the USDA's online portal. The online portal is intended to increase transparency and allow the agency to better track compliance. Practically speaking, this means that filings could be publicly available in an organized database and will make it easier for the USDA to track activity across multiple jurisdictions.

Filers will also be required to submit more information on land use and details on foreign ownership interests than under the prior regulation.

Filers would need to submit a geospatial map that subdivides land based on crop, pasture, forest, research, and other agricultural and nonagricultural usage. The proposed rule suggests that a tool will be provided on the portal to assist with creation of the map, but this requirement could impose an onerous new burden on filers, particularly filers that have multiple projects.

Foreign persons will be required to disclose tax identification numbers and foreign passport numbers to "aid in identification of the foreign person who submitted the report," per the proposed rule. Corporations that need to file will be required to provide an "ownership diagram depicting the relationship between all interest holders."

Such a diagram would be more detailed than the prior requirement, which only required a showing of the three tiers of ownership above an entity.

Strengthening the Enforcement Mechanism

The proposed rule would also increase the risk of noncompliance. AFIDA penalties are assessed based on the fair market value of the reportable land interest. The statute caps penalties at 25% of the fair market value of the interest. The proposal delivers on the Trump administration's recent calls to crack down on foreign ownership of agricultural land and increase penalties for noncompliance with reporting obligations.

The proposed rule would create a tiered penalty system based on the alleged violation. Penalties will be set by a formula based on whether the violations are for an acquisition/holding, transfer/inheritance or a newly reportable holding.

Under each tier, penalties would accrue at a faster rate than the prior regulation. Generally, penalties will accrue at 2.5% of the fair market value of the land at set intervals if the foreign ownership is in a country considered an adversary and at 1.5% at the same interval for interests owned by individuals from other countries.

The proposed rule also increases risk for noncompliance by removing discretion for downward adjustments based on criteria set forth in the prior regulation. Penalties for noncompliance with AFIDA have historically been low, and the proposed rule could require that the USDA impose harsher penalties.

Because of these changes, foreign persons who fail to report can expect larger penalties than we have typically seen under AFIDA. Companies will want to be cognizant of the increased risk when considering whether reporting is required under the proposed changes.

Next Steps

The comment period for the proposed rule closes on Aug. 10. After the comment period closes, the USDA will decide whether to move forward with promulgating a final rule. There is no set timeline for when a final rule would be issued.

However, under the current version of the rule, new filing requirements would generally start 90 days after the effective date of a final rule.

Foreign individual landholders or entities with foreign ownership interests that own land in the U.S. should consider proactive review to determine if the proposed changes would require any new or updated filings.

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