August 10, 2026

SUBMITTED ELECTRONICALLY

Mr. Matt Allen
Director, USDA Office of Homeland Security
1400 Independence Avenue SW, 1457-S
Washington, DC 20250

Comments in Response to Docket No. USDA-2026-0001

Agricultural Foreign Investment Disclosure Act of 1978

A Proposed Rule

Dear Mr. Allen,

ACORE appreciates the opportunity to submit the following comments in response to the U.S. Department of Agriculture's ("USDA" or "the agency") Docket No. USDA-2026-0001 ("the Proposed Rule"), which proposes to update its regulations regarding the Agricultural Foreign Investment Disclosure Act of 1978 ("AFIDA" or "the statute").

ACORE[1] is a nonpartisan, nonprofit organization that operates at the intersection of affordability, reliability, and clean energy deployment. Our work is focused on stabilizing energy prices, strengthening the electric grid, and driving investment in cost-effective technologies to ensure that clean energy delivers for people, businesses, and the U.S. economy. ACORE's membership includes clean energy investors, developers, energy buyers, power generators, manufacturers, and energy providers.

Introduction and Executive Summary

AFIDA, which serves as the U.S. government's primary authority for tracking foreign investments in U.S. agricultural land, was enacted in 1978. The most recent update to its implementing regulations occurred in 2006. As Congressional appropriations directives and a

[1] "ACORE: Powering Investment in American Clean Energy," accessed August 7, 2026, https://acore.org/.

U.S. Government Accountability Office ("GAO") analysis[2] have found, improvements to the AFIDA information collection process, appropriately resourcing necessary systems, and better coordination within the government, is warranted to support U.S. national security interests, particularly through providing timely, accurate information in support of covered transaction reviews by the Committee on Foreign Investment in the United States ("CFIUS"). The global threat environment has changed substantially in the last 20 years, and ACORE appreciates the Administration's efforts to ensure that U.S. regulations and policies reflect the current national security and economic landscape.

Ensuring that timely and accurate reporting of transactions by foreign persons to advance U.S. national security interests, including CFIUS reviews, are worthy goals. Improvements to how USDA administers AFIDA's reporting requirements, what is subject to reporting, and penalties for noncompliance are all valid areas for review and modification. However, the current proposal represents a substantial expansion of AFIDA's reporting requirements. This may undermine the objective of timely and effective data collection and disclosure by presenting challenges to USDA's current administrative capacity and creating unnecessary and costly burdens for a range of U.S. businesses that are not principally engaged in traditional agricultural activities. For example, as a threshold matter, the expanded scope and penalties under the Proposed Rule would lead to a greater number of overall filings, more complex filings, and information management concerns related to personally identifiable information. It is also highly likely to lead to defensive filings that serve only to "check the box" due to filer uncertainty. Many of these filings would be from foreign persons presenting little to no risk to U.S. national security.

These comments serve to assist USDA in ensuring that the Proposed Rule appropriately addresses U.S. national security interests while ensuring effective compliance for the private sector. They focus on the following provisions within the Proposed Rule:

- **Definitions (§ 5100.2)**
    - Proposed changes to the definition of "Any interest," specifically updates to the definition's exemptions of "Leaseholds of less than 10 years," and "Surface or

[2] U.S. Government Accountability Office, "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, January 2024, https://www.gao.gov/products/gao-24-106337.

subsurface easements and rights of way used for a purpose unrelated to agricultural production;" and
    - Proposed changes to the definition of "Agricultural land."
- **Revisions to Reporting Requirements (§ 5100.3)**
    - Proposed establishment of a 90-day retroactive reporting requirement;
    - Proposed reduced threshold for "significant interest or substantial control;"
    - Proposed incorporation of "beneficial owners" into the definition of "significant interest or substantial control;" and
    - Proposed strengthening of penalties for late-filed reports.

Each section is accompanied by ACORE's recommendations for USDA's proposed provisions, taking into account the national security concerns presented by foreign ownership of American agricultural land while also considering the need for the development of affordable, reliable, and secure energy infrastructure.

Definitions (§ 5100.2)

Proposed Changes to the Definition of "Any interest"

Under the statute and its regulations, any foreign person who acquires, transfers, or holds *any interest* in U.S. agricultural land must submit a report to the Secretary of Agriculture within 90 days.

The original statute does not define the term "any interest." Congress delegated authority to USDA to define it through regulation. The current definition appears in USDA's implementing regulation[3] and defines "Any interest" as all interests "acquired, transferred or held in agricultural lands by a foreign person, except: 1) Security interests; 2) Leaseholds of less than 10 years; 3) Contingent future interests; 4) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate; 5) Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production; and 6) An interest solely in mineral rights."

The Proposed Rule offers two critical alterations to what constitutes "any interest."

[3] 7 C.F.R. § 781.2(c)

"Leaseholds of less than 10 years:" The Proposed Rule seeks to narrow the second exemption under the definition of "any interest" by exempting only leases of less than one year, rather than those less than 10 years, for lessees that are not foreign adversaries or Foreign Adversary Controlled Entities. Regardless of the type of project intended for the agricultural land, leases of less than 10 years are exempt because they generally serve the purpose of allowing developers to evaluate the land for potential projects, all while the land is still available for its existing purpose. Concurrently, the Proposed Rule seeks to eliminate this exemption entirely for lessees that are foreign adversaries or Foreign Adversary Controlled Entities.

> ***Recommendation from ACORE:*** *USDA should <u>maintain the existing provision</u> to exempt lessees of less than 10 years that are not foreign adversaries or Foreign Adversary Controlled Entities, while considering whether additional disclosures are warranted for other foreign entities. This recommended scheme addresses valid national security risks by prioritizing higher risk foreign adversaries or Foreign Adversary Controlled Entities.*

"Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production:" The Proposed Rule seeks to eliminate the fifth exemption under the definition of "any interest" for persons that hold, acquire, or transfer easements and rights of way to agricultural land. USDA argues that "monitoring foreign activity on U.S. agricultural land for national security purposes applies equally to easements and rights of way as it does for leaseholds and ownership interests." The Proposed Rule makes no differentiation between "foreign persons that hold, acquire or transfer easements and rights of way to agricultural land" and foreign adversaries or Foreign Adversary Controlled Entities. However, the Proposed Rule specifically notes that foreign adversaries and Foreign Adversary Controlled Entities "pose a higher security risk than other foreign persons, and should receive increased scrutiny." Refining the parameters for who must file in these cases, rather than fully eliminating the exemption for all foreign persons, will lead to a more responsible approach to engagement with foreign persons, including American allies and partners, and would prioritize those entities posing a substantial risk to agricultural land, rather than burdening staff with filings from those that pose little to no national security risk.

> ***Recommendation from ACORE:*** *The Proposed Rule would "require foreign persons that hold, acquire or transfer easements and rights of way to agricultural land to file an*

AFIDA report." ACORE recommends editing this provision to "require foreign adversaries or Foreign Adversary Controlled Entities that hold, acquire or transfer easements and rights of way to agricultural land to file an AFIDA report." For non-foreign adversaries or non-Foreign Adversary Controlled Entities, ACORE recommends a tiered risk-based approach designed by USDA to capture filings under the elimination of this exemption.

Proposed Changes to the Definition of "Agricultural Land"

Under AFIDA, the term "agricultural land" is defined as "any land located in one or more States and used for agricultural, forestry, or timber production purposes as determined by the Secretary under regulations prescribed by the Secretary."[4]

The Proposed Rule seeks to broaden the definition of "agricultural land" to include the following North American Industry Classification System ("NAICS") codes: 111 (crop production), 112 (animal production and aquaculture), 113 (forestry and logging), 115 (support activities for agriculture and forestry), 424520 (livestock merchant wholesalers), 31161 (animal slaughtering and processing), 493130 (farm product warehousing and storage), 493120 (only farm product warehousing and storage, refrigerated), 221114 (solar electric power generation), 221115 (wind electric power generation) and 486 (pipeline transportation).

The Proposed Rule's broadened definition goes well beyond that which was contemplated by the statute, particularly concerning NAICS codes 221114 (solar electric power generation), 221115 (wind electric power generation) and 486 (pipeline transportation). Power generation and transportation infrastructure, encompassed in these three NAICS codes, are not primarily related to agricultural, forestry, or timber production and lead to fundamentally different end products than the other codes. "Agricultural, forestry, or timber production purposes" serve to feed, clothe, and house the residents of the United States, while power generation and transportation infrastructure keep the lights on and our economy running.

While the definition of "agricultural land" is "determined by the Secretary under regulations prescribed by the Secretary," proposing to expand this definition to activities that create fundamentally different end products would serve as an agency-created definition, rather than the

[4] 7 U.S.C. § 3508

one that Congress intended. The Supreme Court's holding in *Utility Air Regulatory Group v. EPA* (2014) makes this clear: "We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate."[5] Including these three additional NAICS codes has the practical effect of expanding AFIDA's filing requirements to cover lands that are not genuinely used for agricultural, forestry, or timber production purposes. There would be no requirement for these lands to have any current or historical agricultural, forestry, or timber production, and as such, land that has never been farmed, forested, or used for timber production would be included in AFIDA's filing requirements under the Proposed Rule.

> ***Recommendation from ACORE:*** *USDA should revise the Proposed Rule to make clear that activities captured by the three NAICS codes mentioned above (221114 (solar electric power generation), 221115 (wind electric power generation) and 486 (pipeline transportation)) are only included within the definition of agricultural land when the underlying land would independently meet the current definition of agricultural land per AFIDA. In other words, power generation and transportation infrastructure should only be captured within this broadened definition in cases of genuine co-use.*

Revisions to Reporting Requirements (§ 5100.3)

Institution of a 90-Day Retroactive Reporting Requirement for Foreign Persons

The Proposed Rule seeks to require that all "foreign persons, who were previously not required to file a report but are newly required to file a report, must file a report within 90 days of the date when this rule becomes effective." Requiring foreign persons, regardless of whether or not they are foreign adversaries or Foreign Adversary Controlled Entities, to compile documentation and submit filings for newly eligible holdings within the requested time period is highly burdensome and potentially unrealistic.

The Proposed Rule seeks to expand the scope of projects, information required, and other requirements necessary for filing. A 90-day retroactive reporting requirement would be difficult for portfolio-scale review. This very short timeline risks exposing potential filers to significant penalties for missing a deadline they would not have a practical ability to meet based on new

[5] Utility Air Regulatory Group v. EPA, 573 U.S. 302 (2014)

requirements that are not yet final. Such a truncated filing window may also degrade the accuracy of the data that the Proposed Rule intends to collect.

> ***Recommendation from ACORE:*** *ACORE recommends that the rule only apply prospectively, rather than retroactively. However, if USDA chooses to retain this provision, ACORE recommends that filings submitted within the first year after the rule's effective date, but after the initial 90 days, be subject to reduced penalties, even if compliance within the first 90 days was not possible. Furthermore, ACORE recommends a compliance window of two or three years for foreign persons that need to file an AFIDA report retroactively, while foreign persons with new transactions would remain subject to the 90-day requirement.*

Lowering the Threshold for "Significant Interest or Substantial Control"

Currently, AFIDA defines "significant interest or substantial control" as a foreign person, corporation, or government with an interest of 10% or more; foreign persons or governments acting in consort with an interest of 10% or more; or foreign persons or governments with an interest of 50% or more even if they are not acting in concert. The Proposed Rule instead seeks to set the threshold at which aggregate interest constitutes significant interest or substantial control to 10%.

Applying a "one-size-fits-all" approach to determining a significant interest or substantial control fails to recognize the distinctions between various types of corporate structures and their relative risk of bona fide control or influence by foreign adversaries. For example, a large publicly traded company can trigger a 10% significant interest or substantial control threshold without knowing it, as ownership is dispersed among shareholders whose holdings can shift daily and whose individual investment intentions are not disclosed to the companies. Passive investors such as pension funds or others that do not seek ownership or control of a company may also trigger the 10% threshold.

Alternatively, a company whose foreign ownership approaches or exceeds 50% is more likely to be aware that a substantial portion of its shareholder base is foreign. While small changes in trading activity might move ownership from 9.8% to 10.2% and across the threshold, trading activity would rarely move ownership from 49.8% to 50.2%, as such a change would alter who holds majority control over the company. While concerns of risk of significant interest or substantial control within companies with foreign interests below the 50% threshold are valid, a level approaching or exceeding 50% is generally more indicative of the potential for foreign persons to be able to exercise meaningful voting power. As such, the 10%, and even more so the 5%, threshold simply does not represent a level of significant interest or substantial control that presents meaningful national security concern with respect to the prospective use of agricultural land. Setting the threshold to 10% could also potentially overwhelm staff and deter focus from companies with significant foreign control.

> ***Recommendation from ACORE:*** *USDA should retain the current definition of significant interest or substantial control to better direct its focus to those entities with foreign persons guiding the company's development and operations rather than those with foreign persons who exercise no real control over the company. USDA should also consider providing a different deadline for filing ownership status changes, particularly for publicly traded or similar passive entities, such that an AFIDA filing is required only if the ownership threshold change is met and sustained for a certain time (potentially at least one quarter).*

"Beneficial Owners" Would be Considered "Significant Interest or Substantial Control"

The Proposed Rule defines "beneficial owner" as "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." The Proposed Rule also seeks to capture beneficial owners within the definition of "significant interest or substantial control" "simply by virtue of being a beneficial owner and regardless of the amount of interest they may possess." The proposed definition of beneficial owner would expand the scope of entities required to file and create significant uncertainty regarding who must be included in a filing and whether certain changes in governance responsibilities might trigger a filing. This is due to the proposed definition capturing decision-making authority regardless of financial interest, a deliberate departure from Rule 13d-3 of the Securities and Exchange Commission,[6]

[6] 17 C.F.R. § 240.13d-3

which ties beneficial ownership to investment power or economic interest. While USDA acknowledges this divergence, the Proposed Rule does not justify why AFIDA needs a broader standard than the framework designed specifically to police foreign control of U.S. entities.

Relatedly, it is worth noting that following litigation arising from beneficial ownership reporting requirements under the Corporate Transparency Act ("CTA") of 2021, the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued an interim final rule that exempts all domestic reporting companies from beneficial ownership reporting.[7] Broadly, the CTA sought to address money laundering, terrorist finance, fraud, and other economic crime concerns by requiring both foreign and domestic entities to disclose individuals with substantial control or those who own 25% or more of the reporting companies' ownership interest.[8] This is relevant to the Proposed Rule for two reasons: 1) The proposed threshold under AFIDA (10%) is substantially lower than CTA, and is likely to require domestic entities with small foreign ownership to file, increasing the number of filings USDA needs to track and manage; and 2) Domestic entities are not required to conduct to what is proposed under AFIDA in other contexts, which increases the regulatory burden on primarily U.S. entities. An increase in filings for USDA, and an increase in compliance obligations beyond what U.S. companies must consider in other contexts does not appear to increase the likelihood that transactions of concern will be identified appropriately or in a timely manner.

> ***Recommendation from ACORE:*** *USDA should consider an approach and thresholds similar to those imposed by FinCEN for foreign reporting companies. This would provide consistency across reporting obligations and regimes for primarily domestic entities, while also providing a framework to ensure that appropriate information is obtained related to foreign companies, and would allow USDA to better monitor and delineate transactions of concern in a timely manner.*

Stricter Penalties for Late-Filed Reports

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[7] Financial Crimes Enforcement Network, "Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension," Federal Register 90, no. 57 (March 26, 2025): 13688-13710, https://www.federalregister.gov/documents/2025/03/26/2025-05199/beneficial-ownership-information-reporting-requirement-revision-and-deadline-extension.

[8] Financial Crimes Enforcement Network, "Beneficial Ownership Information Reporting Rule Fact Sheet," FinCEN.gov, September 29, 2022, https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet.

Currently, AFIDA requires late-filed reports to be subject to penalties of 0.1% of the fair market value of the foreign person's interest in the agricultural land, for each week that such violation continues, up to a 25% maximum of fair market value. Penalties may be adjusted downward due to total time the violation existed; method of discovery of the violation; extenuating circumstances; or the nature of the information misstated or not reported. USDA is concerned that the current scheme "may not properly deter non-compliance," and is therefore proposing much steeper penalties, as well as applying penalties per violation—not per lease and eliminating downward adjustments. The Proposed Rule would utilize an accrual rate of 1.5% of the fair market value of interests held by foreign persons, as well as an accrual rate of 2.5% of the fair market value of interests held by foreign adversaries or Foreign Adversary Controlled Entities.

This proposed penalty scheme is a 15x increase in fees for foreign persons, and a 25x increase in fees for foreign adversaries or Foreign Adversary Controlled Entities. Foreign persons will reach the penalty cap in 17 weeks, and foreign adversaries or Foreign Adversary Controlled Entities will reach it in just 10 weeks, compared to the 250-week timeline under the current scheme. Such a scheme would negatively impact both industry and government in such a way that industry would face fees that could slow productivity and potentially, economic gains, and that USDA would require additional staff to monitor late-filings and process penalties. This scheme also does not differentiate between a good-faith holder who was unaware of or unfamiliar with AFIDA reporting requirements and a holder who was deliberately concealing their interests.

> ***Recommendation from ACORE:*** *The penalty accrual rate should reflect the actual holding, such that fair market value means the value that the violator actually holds, and not the value of the underlying land owned by the lessor. Additionally, while an accrual rate of 2.5% for foreign adversaries or Foreign Adversary Controlled Entities may be appropriate, ACORE recommends retaining the current accrual rate of 0.1%, up to a maximum of 25%, for foreign persons. This scheme would keep the focus on high-risk threats to national security from foreign adversaries or Foreign Adversary Controlled Entities, without deterring investment from foreign persons, particularly American allies and partners. Finally, ACORE recommends that downward penalty adjustments are eliminated only for foreign adversaries or Foreign Adversary Controlled Entities, and are retained for other foreign persons based on the same existing factors.*

Conclusion

Given the ongoing evolution of the threat environment, review and improvement of regulations that seek to meet changing U.S. national security objectives are warranted. While USDA should focus on imposing heightened requirements for foreign adversaries or Foreign Adversary Controlled Entities and those likely to present the highest risk, USDA should also provide clear guidance that enhances the quality of filings of American allies and partners. Providing industry with clear, administrable, forward-looking modifications to these rules will help to ensure that concerns presented by foreign persons and foreign adversaries or Foreign Adversary Controlled Entities can be appropriately identified and tracked, effectively leverage USDA's administrative capacity, and avoid "defensive" or unnecessary filings from Americans who are not intended to be subject to these requirements, present no or low risk to national security, or are not principally engaged in agricultural activities.

We would also encourage USDA to consider ensuring that it maintains appropriate administrative capacity for managing an increased number of filings that include additional and sensitive information. According to a December 2025 USDA Inspector General report,[9] the agency's overall staffing decreased by 18.4% in the first six months of 2025, and staff from the Office of Homeland Security ("OHS") decreased by 23.1% over the same period of time. In addition, a 2024 analysis by GAO[10] indicates that USDA's internal assessment of the budget resources needed to establish and maintain its Congressionally-directed online database exceeded $25 million. Negative correlation between the increased number of required filings and the reduced amount of USDA staff could cause administrative resources to be diverted towards low-risk filings and away from those with higher risk. USDA should be sure to pair additional reporting requirements with additional financial and human resources to manage these new administrative obligations.

We appreciate USDA's consideration of these comments and look forward to future collaborations regarding this matter.

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[9] "U.S. Department of Agriculture Staffing Levels," U.S. Department of Agriculture Office of Inspector General, December 2025, https://www.oversight.gov/sites/default/files/documents/reports/2025-12/USDA%20Staffing%20Levels%20Final%20Report%20-%20Dec%2017_508-signed.pdf.

[10] U.S. Government Accountability Office, "Foreign Investments in U.S. Agricultural Land," 28.

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