

What Energy Companies Should Know About USDA's AFIDA Rulemaking

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July 7, 2026

Executive Summary

On June 25th, the U.S. Department of Agriculture (USDA) published a notice of proposed rulemaking ([Proposed Rule](#)) that would significantly revise its implementation of the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA). The Proposed Rule would repurpose AFIDA for national security enforcement by multiplying penalty amounts, expanding the industries covered, eliminating exemptions, and add significant time and costs to all filers. Comments are due August 10, 2026.

For energy and infrastructure companies—including oil and gas pipeline operators, renewable energy developers, and upstream exploration and production companies—the Proposed Rule represents a fundamental expansion of AFIDA's reach. For the first time, easements and rights of way granted to pipeline operators across agricultural land, as well as short term leases, would be subject to AFIDA reporting. Companies with 10% or greater aggregate foreign ownership should assess their compliance obligations immediately.

Background and National Security Context

AFIDA requires any “foreign person” to file a report with USDA within 90 days of acquiring or transferring an interest in U.S. agricultural land. National security review of farmland transactions remains with the Committee on Foreign Investment in the United States (CFIUS).

USDA's Office of Homeland Security (OHS) now has responsibility for AFIDA enforcement and framed its Proposed Rule as a national security measure. OHS ties the rulemaking to a [January 2024 Government Accountability Office \(GAO\) report](#) that found USDA failed to share AFIDA data with CFIUS, and to the [July 2025 National Farm Security Action Plan](#) that concluded “farm security is national security” and identified reform of the AFIDA process as a top priority. One of the Proposed Rule's aims is to improve the flow of AFIDA data to CFIUS with greater focus on “foreign adversaries”: China, Russia, Iran, North Korea, and other countries the Secretary of State may designate.

Expanded Definition of Agricultural Land

The Proposed Rule redefines “agricultural land” by replacing outdated Standard Industrial Classification (SIC) codes with North American Industry Classification System (NAICS) codes and adding several new categories:

- Pipeline transportation corridors (NAICS code series 486)

- Wind and Solar electric power generation (NAICS codes 221114 and 221115)
- Agricultural supply chain operations (NAICS codes 424520, 31161, 493120, and 493130)
- Agricultural research and support activities (NAICS codes 541714, 541715)

The Proposed Rule declares that land may be “agricultural” regardless of how it is zoned. And, for the first time, AFIDA would cover land that is currently in conservation if it “could be used” for farming, ranching or forestry.

Eliminating Exemptions

The Proposed Rule eliminates or narrows several current exemptions:

- Leaseholds: If adopted, the Proposed Rule would cover leases of 1 year or more, compared to the current threshold of 10 years for most foreign persons, and any term for foreign adversary filers.
- Easements and rights of way: The current exemption for surface and subsurface easements and rights of way used for non-agricultural purposes would be eliminated entirely. This change explicitly brings oil and gas pipeline access agreements involving agricultural land within the scope of AFIDA reporting for the first time.
- Small parcels: The 10-acre/\$1,000 exemption noted above would be removed.

The new “any interest” definition would greatly expand the universe of reportable land agreements, including short-term leases, access easements, and holdings under 10 acres that have long been exempt.

Lowered Ownership Threshold and Beneficial Ownership

The Proposed Rule reduces the “significant interest or substantial control” threshold from 50% to 10% aggregate non-U.S. equity interests, in any direct or indirect combination—including through shell corporations, trusts, or partnerships—or any ownership or control by a foreign adversary nation or entity. OHS has also requested comment on whether the threshold should be 5%, signaling the possibility of an even lower threshold in the final rule.

The Proposed Rule adds a new “beneficial owner” definition, borrowing a concept from the Corporate Transparency Act. This term would capture a person, regardless of ownership, that exercises certain decision-making authority over the filer’s use of the land. How overlapping interest holders’ and beneficial owner filings would be reconciled in USDA records is unclear.

The Proposed Rule defines “shell corporation” to include any company, partnership, trust, or legal entity that has no or nominal operations and is used to hold an interest in agricultural land. This definition captures holding companies, disregarded entities, SPVs, and other structures commonly used by energy companies and other filers.

Enhanced Disclosure Requirements

Beyond expanding who must report, the Proposed Rule significantly increases what filers must disclose:

- Geospatial mapping: Each report must include a digital, open-source geospatial map marking

property boundaries, subdivided by land use (crop, pasture, forest, ag support or research, wind/solar/pipeline, and non-agricultural). Amendments are due within 90 days of any change to land use or other disclosed information. OHS has not indicated when the online portal will provide the necessary functionality, or addressed that surveys of complex energy projects may not be completed within the 90-day filing window.

- Ownership diagrams: Rather than attaching a simple organizational chart, filers must use the portal's graphics tool to draw ownership diagrams. Internal assignments, M&A activity, and other routine corporate events will require amendments within 90 days.
- Future consideration: Filers must report acquisition price and the value of consideration "yet to be given." While future consideration may be knowable for some leases, energy companies that contract for payments that may vary by amount (e.g., by energy generated), index to inflation, or by method (e.g., rent plus royalties) face increased compliance risk.
- Enhanced corporate disclosure: Filers that are not foreign governments or individuals would need to disclose more, including identification of aggregate interests by country and an ownership diagram that shows the relationship between all foreign interest holders, plus each entity's tax ID, passport, or other unique identifiers.

Electronic Filing and New Portal

The Proposed Rule ends filing paper FSA-153 reports, requiring electronic filing through USDA's portal at afida.landmark.usda.gov (login.gov account required). OHS envisions enhanced public disclosure and near real-time access to the new reports and declared that the portal fulfills prior congressional directives to establish a streamlined filing process and data management. What OHS may not realize is that this portal is not ready for large-scale use. USDA created it with a \$1M FY 2024 appropriation, producing a clunky user experience with no functionality to connect original and amended reports. The 2024 GAO report cited above disclosed USDA's estimate of more than \$36 million to meet the FY 2023 congressional requirement for an online portal and database. Congress has appropriated no additional funds since 2024, and that was for the simpler, pre-Proposed Rule format without geospatial mapping or enhanced disclosure requirements.

Increased Penalties

The Proposed Rule would transform AFIDA from a disclosure law to a national security enforcement tool with penalties more than 25 times current FSA practice. It also eliminates USDA's discretion to reduce penalties for voluntary disclosure or unusual circumstances.

- Initial penalty: The Proposed Rule would create a \$250 civil penalty that applies automatically on the 91st day after the filing deadline.
- Accrual rate: Instead of the current algorithm of accruing late penalties of 1/10th of 1% per week, the new penalty will increase dramatically to 1.5% of the fair market value of the interest for non-adversary foreign persons, and 2.5% per week for foreign adversary persons or foreign-adversary-controlled entities.
- Cap: The Proposed Rule would not change the current statutory maximum of 25% of the value of the interest in agricultural land. (This cap is subject to various legislative proposals' enhancements, however). Yet the Proposed Rule states that this cap applies per violation, not per property. That means one filer may be fined more than 25% interest value for multiple

violations such as failing to meet the 90-day requirements to file initially, when the land use or other report contents change later, if its report's contents are materially incorrect, it fails to disclose transferring the property, etc.

- The end of downward adjustments: Consistent with OHS' national security enforcement approach, the Proposed Rule eliminates all downward adjustments. FSA's decades-long practice of exercising discretion via application of the Part 781 downward adjustments resulted in penalties below 1% of the value of interest in agricultural land. Removing this discretion eliminates the incentive for companies that discover their AFIDA obligations late—including those currently exempt—to come into compliance voluntarily.

These enhanced penalties and abolition of downward adjustments multiply risk for all filers but especially energy companies and traditional farming, ranching or timber conglomerates. The Proposed Rule declares that OHS will enforce AFIDA much more aggressively than FSA has. While OHS explains the purpose is to deter violators, the effect will be to deter U.S. companies with foreign investment that learn about AFIDA months or years after crossing this obscure law's "foreign person" threshold from filing because the new regime could cost them 25% of their interest in the agricultural land automatically.

Reduced Appeal Rights

The Proposed Rule completely restructures and shortens the current appeals process:

- Filers wishing to contest penalties must do so within 30 days, instead of the prior rule's 60-day window.
- No longer could they choose to submit written statements or request a hearing. The Proposed Rule provides only one option: review by the OHS Director.
- OHS Director determination would be final, subject to referral to the U.S. Department of Justice.

Retroactive Application

Interests currently exempt under Part 781 rules (e.g., tracts under 10 acres, leases under 10 years, all easements and rights of way) would become fully reportable under the Proposed Rule. Businesses currently exempt from the "foreign person" definition must also disclose their interests for the first time. Such reports will be due within 90 days of the final rule's publication in the Federal Register.

Transfer of AFIDA Implementation Authority

USDA transferred AFIDA oversight from the Farm Service Agency to OHS earlier this year and seeks to codify this move in the Proposed Rule. FSA, for the time being, still receives FSA-153 reports and will assist OHS with farmland valuation and related support functions.

State Law Intersection

Nearly half of U.S. states regulate foreign and/or corporate control of agricultural land, with requirements ranging from minimal disclosure to licensing after demonstrating an exemption. While the Proposed Rule would preempt conflicting state law, such preemption appears limited to overcoming less-restrictive nonfederal regulation.

AFIDA Legislative Action

The Senate's draft 2026 Farm Bill follows passage of the House version (H.R. 7567) in April. Key provisions include:

- Establishing a 5% minimum penalty for false or misleading reports.
- Directing all penalty collections to fund AFIDA enforcement.
- Requiring annual compliance audits, training for USDA state and county personnel to identify non-compliant properties, and new outreach programs.
- Defining the “food and agricultural critical infrastructure sector” to add a national security focus to AFIDA, coordinating with CFIUS, and requiring the USDA and intelligence agencies to cross-detail personnel.

Takeaways

The Proposed Rule has particular significance for the energy sector:

- Oil and gas pipeline operators: The Proposed Rule would, for the first time, cover oil pipeline access agreements (purchases, easements, rights of way, and leases). By specifically including pipeline use as “agricultural” and eliminating currently exempted interests, a vast swath of traditional energy companies will become subject to AFIDA’s requirements and the new penalty regime.
- Other energy companies: Exploration and production companies with 10% or greater aggregate foreign ownership that operate on agricultural land face new filing obligations as well.
- Renewable energy developers: Solar and wind energy developers, which have been the most prolific AFIDA filers in recent years, would need to scour their holdings for interests and land uses previously exempt and file them within 90 days of the final rule publication.
- U.S. entities with upstream foreign ownership: U.S. companies with 10% foreign investment, even if fully passive, would find themselves subject to AFIDA.
- No grandfather protection: The final rule will take effect 90 days after publication in the Federal Register. No exemption for previously-exempt filers or interests is under consideration in this rulemaking and unlikely to be part of the final rule.

Recommended Action Items

Given the significant changes to definitions, reporting requirements, and penalties, we recommend that energy companies and other large-scale users of agricultural land:

1. Assess current AFIDA exposure: Review AFIDA’s statutory terms and how the Proposed Rule expands current Part 781 coverage to new filers and interests in agricultural land.
2. Look upstream to investors and others with influence over operations: Look for investors not both headquartered and organized in the U.S. Query unclear investors for foreign ownership details. Examine persons with contractual rights to direct operations under the “beneficial owner” definition.

3. Submit comments to USDA: While OHS appears committed to transforming AFIDA into a national security enforcement tool, it must consider all comments submitted by August 10, 2026. How it does so—or fails to—may be material in later litigation by affected parties, trade associations, or companies facing existential penalties.
4. Prepare for compliance: The new reporting requirements, particularly the geospatial mapping and “maintenance” amendments, will impose new costs and challenges completing filings within 90 days. Identify geospatial surveying vendors now. Review your organizational chart and identify any beneficial owners ahead of publication.
5. Monitor state law developments: Map your agricultural land interests to state laws restricting foreign or corporate control. “Mini AFIDA” states like Illinois that require copies of as-filed AFIDA reports will require more reports in tandem with the Proposed Rule.

Kelley Drye is available to assist energy and agricultural companies in assessing their AFIDA exposure under current and proposed requirements. We offer full-service support for AFIDA and state foreign agricultural land ownership laws. For more information, please visit our [Foreign Interests in Real Estate practice page](#) or contact the authors of this alert.