



DEPARTMENT OF AGRICULTURE

7 CFR Parts 2, 780, 781, and 5100

[Docket No. USDA-2026-0001]

RIN 0560-AI70

Agricultural Foreign Investment Disclosure Act of 1978

AGENCY: Office of Homeland Security, U.S. Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA) is proposing to update its regulations regarding the Agricultural Foreign Investment Disclosure Act of 1978 (the AFIDA).

The revisions would reflect Congressional directives to establish a streamlined process for electronic submission and retention of disclosures made under AFIDA, including the deployment of an internet database. It would also revise reporting requirements and strengthen enforcement measures. Through the implementation of modernization measures and expanded scope and depth of reporting, this proposed rule will help ensure the AFIDA regulations address foreign investment and ownership of American agricultural land, particularly as it might present a national security risk.

DATES: Comments on the proposed rule must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: USDA invites public comments on this proposed rule and encourages stakeholders, including farmers, industry representatives, and state and local governments, to provide input. Comments will be carefully considered in the development of the final rule to ensure the regulations effectively address national security concerns and effects of foreign-owned agricultural land on rural communities while supporting the agricultural economy.

You may submit comments, identified by Docket ID: USDA-2026-0001, in the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting

comments. All comments will be posted without change and will be publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Matt Allen, Director, USDA Office of Homeland Security, 1400 Independence Avenue SW, 1457-S, Washington, DC 20250; (202) 690-2681.

SUPPLEMENTARY INFORMATION:

Background

Statutory Basis

The Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. Ch. 66: AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE; the AFIDA¹) requires any foreign person who acquires, transfers, or holds any interest in United States agricultural land to submit a report no later than 90 days regarding such transactions and holdings to the Secretary of Agriculture.

Under the AFIDA, the Secretary of Agriculture is authorized to promulgate regulations governing the submission of such reports. The regulations implementing the AFIDA are contained in 7 CFR part 781 (referred to below as the AFIDA regulations or simply, the regulations). Historically, these regulations have been administered by the Farm Service Agency (FSA) of the United States Department of Agriculture (USDA), and are located within subchapter D, “Special Programs,” of FSA’s regulations in Chapter VII of Subtitle B of 7 CFR.

Currently, § 781.1 sets forth the purpose of the regulations. Section 781.2 contains definitions used in the regulations. Section 781.3 details reporting requirements to which foreign persons who hold, acquire, or transfer any interest in United States agricultural land are subject, as well as procedures pertaining to such reporting. Section 781.4 contains penalties to which

¹ Within this document, we use “the AFIDA” to refer to the Act itself, and “AFIDA” to refer to all activities within USDA administered under the Act, including not only the regulatory requirements of the AFIDA regulations, but also operational infrastructure, inclusive of capital and human resource expenditures, as well as enforcement actions taken by USDA.

foreign persons who violate their reporting obligations are subject. Section 781.5 contains procedures for providing notices of apparent liability following an apparent violation, as well as procedures for appealing notices of apparent liability. Section 781.6 contains the Paperwork Reduction Act (PRA) number assigned to the information collection for the regulations.

USDA has historically used the data collected under the regulations for various analytical and reporting purposes. Available data can be found online.²

Role of the Committee on Foreign Investment in the United States

The Committee on Foreign Investment in the United States, or CFIUS, is an interagency committee, chaired by the Department of the Treasury, that is authorized to review certain transactions involving foreign investment into U.S. businesses and certain real estate transactions by foreign persons in order to determine the effect of such transactions on the national security of the United States. In addition to the Department of the Treasury, members include Departments of Justice, Homeland Security, Commerce, Defense, State, and Energy, the Office of the U.S. Trade Representative, and the Office of Science & Technology Policy. The following White House offices may also observe and participate in CFIUS activities: the Office of Management and Budget, the Council of Economic Advisors, the National Security Council, the National Economic Council, and the Homeland Security Council. As discussed at greater length below, although USDA is not a permanent member of the CFIUS, it is included as a member of CFIUS with respect to certain CFIUS transactions involving agriculture, and information maintained by USDA through its administration of AFIDA may be directly pertinent to the work of CFIUS.

CFIUS is entrusted with, among other things, authority to review certain transactions by foreign persons within the United States for the purpose of protecting national security. This includes purchase or lease of real estate that is located in the United States, that is specifically

² To view AFIDA reports, go to: <https://www.fsa.usda.gov/resources/economic-policy-analysis/afida/annual-reports>. To view other AFIDA data, go to: <https://www.fsa.usda.gov/resources/economic-policy-analysis/afida>.

covered by CFIUS jurisdiction, and that could present a risk to the national security of the United States. CFIUS may use information from Agencies outside of CFIUS to identify and review transactions that may present national security considerations, including transactions involving foreign ownership/leasing of agricultural land. It is thus important for USDA to have in place mechanisms for seamless transmission of AFIDA data to CFIUS, as well as mechanisms to ensure data integrity of AFIDA information.³

Government Accountability Office (GAO) Audit

On October 1, 2022, 130 members of Congress submitted a letter to the Government Accountability Office (GAO) requesting a review of FSA’s administration of AFIDA. The letter requested that GAO evaluate, among other things, the reliability and accuracy of AFIDA data received, as well as whether improvements or policy options, including those pertaining to national security, could be made to strengthen existing reporting disclosure requirements.⁴ In January 2024, GAO completed the review, and recommended that USDA enhance its collection, tracking, and sharing of data collected under AFIDA. The GAO report recommendations included that USDA share detailed and timely AFIDA data with CFIUS agencies, improve the reliability of AFIDA data, and assess its ability to adopt an online submission system and public database.⁵

Consolidated Appropriations Acts of 2023, 2024, and 2025

While GAO’s review was ongoing, on December 29, 2022, the Consolidated Appropriations Act of 2023 (Pub. L. 117-328) required USDA to establish a streamlined process

³ Congress has become increasingly aware of the interrelated nature of USDA’s administration of the AFIDA and the importance of AFIDA information in preserving national security interests of the United States. A January 2024 report by the Congressional Research Service, titled “Selected Recent Actions Involving Foreign Ownership and Investment in U.S. Food and Agriculture: In Brief,” provides an illustrative list of statutory amendments and legislative directives in various stages of Congressional development at the time regarding this matter. To view the report, go to

https://www.congress.gov/crs_external_products/R/PDF/R47893/R47893.2.pdf.

⁴ To obtain a copy of the letter, go to https://oversight.house.gov/wp-content/uploads/2022/10/20221001_GAO_foreignlandownership.pdf.

⁵ To view the GAO report, go to: <https://www.gao.gov/products/gao-24-106337>.

for electronic submission and retention of disclosures made under the AFIDA, including an internet database that contains disaggregated data, within three years of issuance of that act. The Consolidated Appropriations Acts of 2024 (Pub. L. 118-42) and 2025 (Pub. L. 119-37) further required USDA, to the maximum extent practicable, to notify CFIUS of any agricultural land transactions that are believed to be covered transactions under CFIUS based on AFIDA reporting.

National Farm Security Action Plan

On July 9, 2025, USDA announced the National Farm Security Action Plan.⁶ The National Farm Security Action Plan articulates key principles “to fully integrate agriculture into the broader national security enterprise.” The first principle articulated is the need to secure and protect America’s farmland. Within that principle, the first action item articulated is to “aggressively implement reforms to the AFIDA process” necessary to advance America’s national security interests. The plan indicates that the reforms will include creation of an online reporting system for AFIDA submissions to facilitate timely sharing of report information with the public, revision to the reporting requirements to include geospatial information regarding the agricultural land subject to the report, and increasing the civil penalties imposed for late or misleading reports. The National Farm Security Action Plan directly informed both the Advanced Notice of Proposed Rulemaking (ANPRM) referenced immediately below, as well as the provisions of this proposed rule.

Advanced Notice of Proposed Rulemaking (ANPRM)

On December 29, 2025, USDA published an ANPRM (90 FR 60581, Docket ID USDA-2026-0001) to seek public input during the development of these AFIDA regulatory changes and to ensure the regulations effectively address national security interests and the effects of foreign-owned agricultural land on rural communities. USDA received 21 total comments from

⁶ To view the plan, visit <https://www.usda.gov/sites/default/files/documents/farm-security-nat-sec.pdf>.

organizations representing businesses subject to the AFIDA reporting requirement, non-governmental organizations (NGOs), agricultural stakeholder associations, State departments of agriculture, and private citizens.

Three of the comments expressed general opposition to revisions to the regulations, particularly any that would increase compliance burdens or expand reporting scope. For reasons articulated in this rule, USDA believes that the proposed changes are warranted, but we request comments from the public on the potential compliance impacts. USDA is particularly interested in specific information related to anticipated additional costs to comply with the proposed changes.

We discuss the other comments received in response to the ANPRM later in this document, within the context of our discussion of the proposed provisions of the rule to which they are germane.

Role of the Office of Homeland Security (OHS) Within USDA and Codification of Transfer of AFIDA Authorities to OHS

Within USDA, the Assistant Secretary for Administration (ASA) ensures timely and effective delivery of high quality and cost-effective mission support services across the Agency that are consistent with laws and mandates. Amongst other administrative functions, the ASA also has oversight of matters within the Office of Homeland Security (OHS). OHS leads preparedness and response efforts to help coordinate Departmental action on national security issues, including USDA's responsibilities for CFIUS.

On April 13, 2026, USDA issued a final administrative rule (91 FR 18767-18769) transferring authority to administer AFIDA from FSA to ASA.

The ASA has subsequently determined that OHS is best suited to address the national security equities associated with AFIDA, and has, accordingly, subdelegated general oversight of AFIDA to OHS. All other USDA components and relevant offices remain engaged in their

respective AFIDA functions. As part of this subdelegation, authority to administer the AFIDA regulations has been transferred to OHS.

This rule proposes to codify this subdelegation of AFIDA to OHS by revising USDA's Departmental regulations pertaining to delegations of authority within USDA. FSA would retain oversight of certain functions within AFIDA but would work within the administration of AFIDA provided by OHS. These functions include continuing to be the first point of public contact for foreign persons who need assistance in reporting. Additionally, in the event of assessment of penalties, which are statutorily based off of the "fair market value" of the land in question, OHS may consult FSA in order to inquire if they have records that may assist in the assessment of fair market value.

Provisions of the Proposed Regulatory Text

Subdelegation of Regulatory Authority to OHS

USDA's regulations regarding delegation of authority from the Secretary of Agriculture to various USDA officials and offices are found in 7 CFR part 2. 7 CFR 2.24 contains delegations of authority to perform certain powers and functions to ASA. Additionally, 7 CFR 2.95 contains delegations of authority to perform certain powers and functions to the Director of OHS within USDA, and paragraph (b) contains delegation of powers and functions related to issues of national security.

Currently, paragraph (a)(7) of § 2.24 provides that ASA is delegated to administer AFIDA, except for certain recurring reporting⁷ functions delegated to the Undersecretary for Research, Education, and Economics.

Accordingly, we are proposing to amend paragraph (b) of § 2.95 by adding authority to administer AFIDA to the list of powers and functions exercised by OHS.

⁷ The Federal Reports Elimination Act of 1998 (Public Law 105-362) repealed section 5 of the AFIDA, which required USDA to annually report to the Congress.

In order to reflect the transfer of general AFIDA authority to OHS, we are proposing to remove and reserve 7 CFR part 781, which, as mentioned above, currently contains FSA's AFIDA regulations. This revision is warranted because the current AFIDA regulations are nested within a regulatory chapter of 7 CFR, Chapter VII, specifically assigned to FSA.

Conversely, we would create a new Chapter LI in Subtitle B of 7 CFR for OHS' administration of the AFIDA regulations. Comprised of proposed §§ 5100.1 through 5100.7, the new chapter would generally retain the basic structure and section headings of the existing FSA-administered regulations. However, in several of the proposed sections, we would not only move the existing provisions but also propose to revise them. The following table crosswalks the existing regulations in 7 CFR part 781 with our proposed revisions and annotates possible modifications to the section in question.

Table 1: Crosswalk of Current and Proposed AFIDA Regulations

Existing Section Number (Title)	Proposed Section Number (Title)	Proposed Modifications
§ 781.1 (General)	§ 5100.1 (General)	• Replace references to FSA with references to OHS.
§ 781.2 (Definitions)	§ 5100.2 (Definitions)	• Revision to definitions for <i>Agricultural land, Any interest, County, Foreign person, Significant interest or substantial control, and State.</i> • New definitions for <i>Beneficial owner, Director, Foreign adversary, Foreign Adversary Controlled Entity, Shell corporation, and Transfer.</i>
§ 781.3 (Reporting requirements)	§ 5100.3 (Reporting requirements)	• Revision to submission methods for AFIDA disclosure reports and references regarding such reports. • Revision to mandatory reporting requirements for foreign persons required to submit reports. • Revision to additional reporting requirements for foreign persons other than individuals and governments. • Revision to upon-request reporting requirements for foreign persons named in required reports.
§ 781.4 (Assessment of penalties)	§ 5100.4 (Assessment of penalties)	• Creation of three penalty schemes for late reports, depending on whether the report in question is an acquisition/holding,

		transfer/inheritance, or a newly reportable holding. • Penalty schemes for acquisition and transfer/inheritance would have two tracks: one for persons designated as a Foreign Adversary or a Foreign Adversary Controlled Entity and one for filers without this designation. • Increasing the penalty accrual rate for late reports. • Removing downward adjustments to penalties.
§ 781.5 (Penalty review procedure)	§ 5100.5 (Penalty review procedure)	• Revision to notices of apparent liability. • Revision to reduce the time period for submitting a request to appeal a fine from 60 days to 30 days. • Removing provisions allowing for submission of a written statement denying liability in whole or in part in lieu of an appeal hearing. • Removing provisions allowing for a hearing for an appeal. • Removing options for payment via check or money order.
XXXXXXXXX	§ 5100.6 (Appeal of penalties)	• Creation of a section, modeled off appeals processes in other USDA regulations, that would establish OHS processes for appealing penalties assessed under the AFIDA. There is no analogous section currently contained in 7 CFR part 781.
§ 781.6 (Paperwork Reduction Act assigned number)	§ 5100.7 (Paperwork Reduction Act assigned number)	• No changes proposed.

Within the AFIDA regulations themselves, § 781.1 currently provides that the regulations establish a system of collection of information by FSA pertaining to foreign investment in agricultural land within the United States, and that the information collected is utilized by REE's Economic Research Service concerning the effect of the investments on family farms and rural communities.

In proposed § 5100.1, we are proposing to retain most of the current provisions of § 781.1. We are, however, proposing to replace references to FSA with OHS.

Definitions (§ 5100.2)

As we mentioned previously, § 781.2 contains definitions of terms used in the regulations. In proposed § 5100.2, we would retain many of the current definitions as they are set forth in § 781.2. We are, however, proposing to add several new terms that are currently not set forth in § 781.2, and to modify several existing terms in line with ANPRM public comment that raised existing definitional ambiguity, or in order to remove obsolete terminology.

We have assessed that foreign adversaries, foreign entities owned (in whole or part), controlled, or operated by foreign adversaries, and foreign persons subject to foreign ownership, control, or influence by foreign adversaries, pose a higher security risk than other foreign persons, and should receive increased scrutiny. ANPRM public comment also supported stricter requirements, increased scrutiny, and enhanced data collection for land purchases conducted by foreign adversaries. We are therefore proposing to add a definition for “Foreign adversary” to mean any foreign government or foreign non-government person from, a citizen of, or a controlled entity headquartered in a foreign country of concern as defined by 42 U.S.C. 19237(2). 42 U.S.C. 19237(2) defines “foreign countries of concern” to mean “The People’s Republic of China, the Democratic People’s Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State.” (We note that 14 U.S.C. 19221(a) contains an identical definition.) We request public comment on our proposed definition.

ANPRM public comment recommended USDA consider statutory definitions that addressed the concept of “foreign adversary,” such as “foreign adversary” under 47 U.S.C. 1607(c)(2) or “covered nation” under 10 U.S.C. 4872(d)(2). We note that 47 U.S.C. 1607(c)(2) defines “foreign adversary” to mean “any foreign government or foreign nongovernment person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.” However, this definition does not readily allow AFIDA personnel evaluating a particular submission to determine whether it was submitted by a foreign adversary, since there are no specific countries

designated as foreign adversaries in the definition. This distinction is important insofar as our proposed penalty scheme would differ for foreign adversaries and foreign persons who are not foreign adversaries. We recognize that the Department of Commerce has determined a list of countries designated as foreign adversaries under 15 CFR 791.4(a), which ANPRM public comment suggested we adopt as part of our definition. This list, however, is updated through notice-and-comment rulemaking and references regimes that no longer exist. For this reason, we eschewed this suggestion. We did appreciate that 47 U.S.C. 1607(c)(2) pertains not only to governments, but also to individuals and corporate persons, however. Insofar as AFIDA defines “foreign person” to include individuals and corporate persons, and not just foreign governments, we felt that our definition for “foreign adversary” would need to be similarly expansive. For this same reason, we felt the definition of “covered nation” under 10 U.S.C. 4872(d)(2) was too limiting since this definition only pertains to countries and not individuals or corporate persons.

In this regard, we do acknowledge that ANPRM public comment stated that any attempt to define “foreign adversary” within the AFIDA regulations using statutes that had not been delegated to USDA and/or regulations promulgated under such statutes would constitute an attempt to arrogate to USDA such statutory authority and fail under delegation standard grounds. We disagree with the comment that reference to another Agency’s statutes or regulations in order to establish a regulatory definition within the AFIDA regulations signals an attempt by USDA to arrogate any authority regarding those statutes or regulations to itself. Rather, it signals merely that USDA has identified the need for a regulatory term of art within the AFIDA regulations and identified that another Agency’s definition or terminology is apposite for our purposes. This is a common practice within the Code of Federal Regulations, and the comment provided no basis for considering that precedent to be inapplicable to the AFIDA regulations.

USDA is cognizant that foreign adversaries can sometimes work through instruments, and ANPRM public comment noted the need to ensure comprehensive coverage by identifying every single connection to adversaries, including individuals, shell companies, and governmental

entity ties. Accordingly, we are also proposing to add a definition for “Foreign Adversary Controlled Entity” that was not previously contained in § 781.2. We are proposing to define “Foreign Adversary Controlled Entity” to mean any entity, including any corporation, partnership, trust, or association, that is owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.⁸ While this concept is used across various frameworks, including 15 CFR 791, there is no single, universally accepted definition for Foreign Adversary Controlled Entity. Accordingly, we propose to include a definition for this term to provide clarity and ensure consistency for reporting requirements under AFIDA.

The current definition of “Any interest” in § 781.2 exempts leaseholds of less than 10 years. Consequently, foreign persons are not required to file a report per § 781.3 with respect to leaseholds of less than 10 years. In the proposed definition of this term in § 5100.2, we are proposing to change the word “leasehold” to “lease” to correct an editorial mistake and use the proper legal term. We are also proposing to narrow this exemption by reducing the duration of leases that would generally qualify for an exemption to leases of less than one year, measured as a single period of time or as the aggregate of multiple leases over a continuous or discontinuous period of time, for lessees that are not foreign adversaries or Foreign Adversary Controlled Entities. We are proposing to remove the exemption entirely for leases of any duration for lessees that are foreign adversaries or Foreign Adversary Controlled Entities. Operationally, this change would mean that lessees that are not foreign adversaries would be required to file a report within 90 days post transaction per proposed § 5100.3 (current § 781.3) for leases totaling one year or longer, while foreign adversaries and instruments of foreign adversaries would be required to file such a report for leases of any duration.

Information about agricultural land leased by foreign persons provides USDA with data that can be useful to fulfilling the purposes of AFIDA. We believe that exempting leases of less

⁸This is complementary to the already extant statutory “foreign ownership, control, or influence” determination defined in Sec. 847 of The National Defense Authorization Act for FY 2020 (Pub. L. 116-92).

than ten years excludes useful data points in assessing foreign investment in United States agricultural land and its effects, particularly as these pertain to national security. Reducing the number of leases that are exempt from reporting requirements under proposed § 5100.3 would provide USDA with more data that could be used to identify and review transactions that may pose national security risks. As discussed earlier, we believe that foreign adversaries and Foreign Adversary Controlled Entities pose a higher security risk, and therefore require more scrutiny, leading us to propose removing the exemption on leases entirely for this category of foreign person. This change also aligns with ANPRM public comment stating that the exemption for land leaseholds less than 10 years should be changed and that all leaseholds by foreign adversaries should file an AFIDA report regardless of the term length of the lease. The comment noted that most leaseholds on land are on a year-to-year basis and that eliminating the exemption for foreign adversaries could better capture land leaseholds that may be considered a foreign threat. Another comment noted that even short-term control can impact local farmers.

We request public comment on whether our proposal sufficiently narrows the reporting exemption for leases, or whether we should eliminate the exemption entirely for all foreign persons. Specifically, we are seeking information and insight regarding whether retaining a reporting exemption for non-foreign adversary lessees who hold a lease of less than one year may create an avenue for obfuscation or circumvention with shell companies or complex ownership structures or otherwise pose a national security risk.

“Any interest” in agricultural land includes land that is leased under AFIDA. As noted elsewhere in this rule, USDA is proposing to change what leases are subject to filing under AFIDA, based on the duration of the lease. USDA is aware that agricultural land is often leased to develop or explore the potential development of land for particular purposes, including energy projects. Often, these leases are complex legal arrangements where the rental payment for the first several years is structured in a way that allows for viability studies. USDA is aware that such leases of agricultural land may vary in terms of duration, rental payments and other factors,

depending on stages of development of such land. The calculation of the fair market value of leased agricultural land is relevant for purposes of calculating civil penalties. Accordingly, USDA seeks public comment on how it should calculate the fair market value of leased agricultural land that is subject to filing under AFIDA. For example, a developer has leased agricultural land for 50 years for an energy project. The lease payment for the first 10 years may be \$1 per year while the lessee explores whether it wants to exercise an option under the lease agreement to continue. At year 11, the lease payment may change to \$5000 per acre, per year. However, the assessed value of that land for real estate taxes is \$1 million. Alternatively, a developer has entered into a 100-year lease of agricultural land with an assessed value of \$5 million. While exploring the viability of building a project on that land, the lease payment for the first five years is \$0.00 per year, but the lessee can exercise an option to build on that land at year six, wherein the lease payments become \$10,000 per acre, per year. While the lease rate of these projects may be minimal during the first several years of the lease when the lessee is exploring business development opportunities, such lease rates do not reflect the fair market value of the underlying agricultural land, which is the value that Congress has mandated is subject to penalty under AFIDA. Accordingly, USDA is seeking comment on how to calculate the fair market value of leased agricultural land that is subject to a filing under AFIDA.

The current definition of “Any interest” in § 781.2 also exempts surface and subsurface easements and rights of way used for purposes unrelated to agriculture. However, easements and rights of way still afford the holder a legal right to access the land. 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. Accordingly, we propose to require foreign persons that hold, acquire or transfer easements and rights of way to agricultural land to file an AFIDA report.

In the current regulations, the definition of “Agricultural land” delineates what is and is not considered agricultural land by using codes set forth in the Standard Industrial Classification

(SIC) Manual of 1987. SIC codes were replaced by the North American Industry Classification System (NAICS) codes in 1997. We are proposing to replace the SIC codes in the definition of “Agricultural land” with the most recent (2022) version of NAICS codes. In the current regulations, the SIC codes for covered activities include all of Division A, except for 0711 through 0783 (crop and livestock services), 0851 (forestry services), and 0912 through 0919 (finfish, shellfish, and miscellaneous marine products). The NAICS codes in our proposed definition of “Agricultural land” include all umbrella categories: 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). Many SIC codes for AFIDA purposes (largely, establishments primarily engaged in production agriculture or forestry) translate directly to NAICS codes (see Exhibit 12 in the FSA handbook 1-AFIDA for the old SIC codes)⁹. However, we are proposing that the definition of “Agricultural land” is broadened to incorporate and cover agricultural production “under cover,” as defined in NAICS code 1114, solar electric and wind electric power generation, as defined in NAICS codes 221114 and 221115, respectively, and pipeline transportation in NAICS code series 486. Land once used exclusively for farming is increasingly becoming mixed use, with both wind or solar farms on the property, or parceled and sold or sublet for such usage.¹⁰ Likewise, pipelines can, and do, run through land once used exclusively for farming.¹¹ We discuss our rationale for inclusion of these codes at greater length below.

⁹ Exhibit 12 starts on page 89 of the 1-AFIDA handbook, which can be found at: https://www.fsa.usda.gov/Internet/FSA_File/1-afida_r02_a02.pdf.

¹⁰ <https://www.ers.usda.gov/publications/pub-details?pubid=109208>

¹¹ <https://www.ers.usda.gov/publications/pub-details?pubid=109208>

We further propose to expand the definition of “Agricultural land” to cover support activities that are deemed essential to agriculture and forestry production as noted in NAICS code 115. We also are proposing to include entities included in the supply chain for animal and agricultural products, as these could pose a national security risk if disrupted.

We would also clarify that we consider land used for research in categories such as agriculture, botany, biology, fisheries, forests, veterinary science, and agricultural biotechnology as agricultural land by listing NAICS codes 541715 and 541714 in the definition of “agricultural land.” We are further proposing to revise “agricultural land” to include forestry production as well as any land that is currently in conservation within the United States and could be used for farming, ranching, forestry, or timber production,¹² conservation designation or under the terms of its conservation designation. We also propose to eliminate the current exemption for agricultural land, including forestry land, not exceeding 10 acres in aggregate if the annual gross receipts from the sale of the farm, ranch, or timber products produced on the land do not exceed \$1,000, as we do not believe many individuals meet the criteria for this exemption. These proposed changes follow ANPRM public comment recommending USDA strengthen the definition of “agricultural land” to better reflect today’s farmland market and ensure the definition of “agricultural land” does not create loopholes that allow meaningful foreign control or influence to evade disclosure. Justification for the proposed changes and use of the NAICS codes include the following:

- NAICS codes 1114 (greenhouse, nursery, and floriculture production) and 111998 (miscellaneous agricultural crops) under umbrella NAICS code 111 (crop production)—In accordance with the “Agricultural land” definition, all of NAICS code 111 is reportable under AFIDA requirements. The umbrella code 1114 “greenhouse, nursery, and floriculture production” includes 111411, “mushroom

¹² Conservation land could include land enrolled in USDA conservation programs, including but not limited to the Agricultural Conservation Easement Program or the Conservation Reserve Program, or other non-USDA conservation programs.

production,” 111419, “other food crops grown under cover,” 111421, “nursery and tree production,” and 111422, “floriculture production”; this inclusion satisfies the Congressional recommendations and directive to strengthen oversight and improve the efficiency and effectiveness of AFIDA reporting. While NAICS code 111998 does not directly align with previous SIC codes, it does capture adjacent categories covered under SIC codes 0191, 0119, and 0139. Additionally, NAICS 111998 is included since all other codes that involve businesses primarily associated with using agricultural land for crop production must file a report if the criteria for reporting are met.

- NAICS codes 112512 (shellfish farming) and 112519 (other aquaculture) under umbrella NAICS code 112 (animal production and aquaculture)—In accordance with the “Agricultural land” definition, all of NAICS code 112 is reportable under AFIDA requirements. NAICS codes 112512 and 112519 are included as they meet the AFIDA reporting requirements that were previously captured under SIC code 0273, 0921, and 0279, which were not limited to, but included commercial fishing, animal aquaculture, fish hatcheries, and harvesting preserves.
- NAICS code 113 (forestry and logging)—This umbrella code includes 1131, “timber tract operations,” 1132, “forest nurseries and the gathering of forest products,” and 1133, “logging.” In accordance with the “Agricultural land” definition, all of NAICS code 113 is reportable under AFIDA requirements. Forest and timberland, regardless of whether the trees are to be cut for commercial purposes, are reportable to AFIDA.
- NAICS code 115 (support activities for agriculture and forestry)—This umbrella code includes 1151, “support activities for crop production,” 1152 “support activities for animal production,” and 1153 “support activities for forestry.” This inclusion satisfies the Congressional recommendations and directive to strengthen

oversight and improve the efficiency and effectiveness of AFIDA reporting. In accordance with the “Agricultural land” definition, all of NAICS code 115 is reportable under AFIDA requirements.

- NAICS codes 424520 (livestock merchant wholesalers), 31161 (animal slaughtering and processing), 493130 (farm product warehousing and storage), and 493120 (only farm product warehousing and storage, refrigerated) are included to capture critical points along agricultural and animal supply chains that already fall under other USDA regulatory authorities related to agricultural production.
- NAICS codes 221114 (solar electric power generation) and 221115 (wind electric power generation)—NAICS codes 221114 and 221115 are included to capture solar and wind generation that occurs overtop of land otherwise defined by the proposed list of NAICS codes. This follows ANPRM public comment that raised the possible non-agricultural co-use of agricultural land for wind or solar energy development and generation. Additionally, the U.S. government has recorded instances where utility scale solar and wind developers add agricultural uses to their operations after development, demonstrating energy generation’s compatibility with agricultural production and the value proposition of adding agricultural operations onto existing energy holdings. We request public comment on this inclusion.
- NAICS code series 486 (pipeline transportation)—Pipelines span long distances across rural areas and frequently cross private farmland. Companies usually secure easements from farmers and design pipelines to allow for continued agricultural use around them. For this reason, NAICS code series 486 is included to capture pipeline transportation activities that occur overtop of land otherwise defined by the proposed list of NAICS codes.

- NAICS codes 541715 (research and development in the physical, engineering, and life sciences (except nanotechnology and biotechnology) and 541714 (research and development in biotechnology (except nanobiotechnology))—
Certain activities under NAICS codes 541715 and 541714 are included to capture agricultural research and experimental development that involves activities otherwise included in the proposed list of NAICS codes. We propose specifying that covered activities are research and experimental development in agriculture, botany, biology, fisheries, forests, and veterinary (limited to livestock) included in code 541715, and research and experimental development in agricultural biotechnology included in code 541714.

Insofar as NAICS codes are sometimes updated to consolidate existing codes or create new codes within a sector, we request public comment on whether we should instead cite sector 11 of the codes rather than individual codes within the sector.

For clarity and consistency, land that meets the definition of “Agricultural land” provided herein would be considered as such regardless of how the property is zoned at the local level. USDA notes, in this regard, that local zoning laws can vary greatly from locality to locality, and may contain agricultural allowances in areas not specifically zoned for agricultural production, such as crop production for personal or local usage or possession, use, and sale of livestock.

The current definition of “County” includes reference to Alaska’s State Agricultural Stabilization and Conservation committee. However, this committee was abolished in 1994. We would delete the reference accordingly.

We are proposing to add a new definition of “Director” to mean the Director, Office of Homeland Security, USDA, or any person named by the Director to act in his/her stead. In the regulations in 7 CFR part 781, reference is made to the Administrator. However, the head of FSA is an Administrator, whereas the head of OHS is a Director.

In the current definitions for “Foreign person” and “State,” reference is made to the Trust Territory of the Pacific Islands. This reflects the definitions of those terms in § 3508 of the AFIDA, which exempts the Trust Territory from the definition of “foreign person,” while, conversely, including it in the definition of “State.” However, the Trust Territory of the Pacific Islands has been terminated, and the geopolitical units which comprised the Trust Territory now operate under Compacts of Free Association with the United States (see Public Law 118-42; Public Law 99-239; Public Law 99-658; Public Law 108-188). Accordingly, we are proposing to revise the definitions of “state” and “foreign person” in the regulations by removing references to the obsolete “Trust Territory of the Pacific Islands” and adding references to parties to the Compact of Free Association with the United States. This change in nomenclature does not have an operational impact on reporting requirements: The parties to the Compact of Free Association with the United States have been and would continue to be considered States for purposes of the AFIDA, and we would continue to require, as we currently do, AFIDA disclosure reporting whenever a party acquires agricultural interest within the geopolitical units that are parties to the Compact of Free Association.

Given inconsistent use of both “dispose” and “transfer” in the current regulations, we are proposing to solely use “transfer” and replace the references to “dispose.” The AFIDA uses “transfer,” not “dispose.” Following ANPRM public comment about the need to clarify definitions, we propose to define “transfer” as any action resulting in alienation or change in ownership of agricultural land, including but not limited to sale, gift, retitling, or conveyance of property rights.

Finally, we are proposing to significantly revise the definition of “significant interest or substantial control,” and to add definitions of “beneficial owner” and “shell corporation” to help delineate our proposed revision. We discuss these proposed revisions and additions below, within the context of our discussion of the proposed revisions to the provisions of current paragraph (f) of § 781.3 (proposed new paragraph § 5100.3(f)).

Revisions to Reporting Requirements (§ 5100.3)

As we mentioned previously, § 781.3 of the regulations details reporting requirements to which foreign persons who hold, acquire, or transfer any interest in United States agricultural land are subject, as well as procedures pertaining to such reporting. In § 5100.3, we are proposing to retain many of the current provisions of this section. We are, however, proposing several revisions to this section to further the national security interests of the regulations, in keeping with recent Congressional directives related to such interests.

Portal

Paragraph (a) of § 781.3 currently requires AFIDA disclosure reports to be filed with the FSA County office in the county where the land with respect to which such report must be filed is located or where the FSA County office administering USDA programs carried out on such land is located. The paragraph makes allowance for submissions directly to the FSA office in Washington, D.C., when the D.C. office grants permission to do so because complex reports are involved.

In order to fulfill the requirements of the Consolidated Appropriations Act of 2023, USDA has developed and deployed an online portal for AFIDA submissions. The portal fulfills the Congressional directive to “establish a streamlined process for electronic submission” of disclosure reports. It also fulfills the AFIDA’s requirements related to data retention and disaggregated display of retained information. ANPRM public comment also supported electronic submission to reduce submission paperwork and administrative burdens, improve data consistency and verification, and enable electronic sharing of collected data with States pursuant to Section 3505 of the AFIDA. ANPRM public comment supportive of the portal also highlighted concerns with the current paper-based process, such as submission of illegible reports, that would be obviated by the electronic portal. The electronic submission portal is

located at <https://afida.landmark.usda.gov/>. Please note that submitters must have a login.gov account to access the secure website.¹³

To reflect the deployment of the electronic submission portal, in § 5100.3(a), we are proposing to modify the provisions that are currently found in paragraph (a) of § 781.3. Specifically, we are proposing to require that reports that must be filed pursuant to the regulations be filed through the electronic submission portal. We believe that continuation of paper-based reports would further data inaccuracies, delays, and inefficiencies, and ANPRM public comment supports this position. We are further proposing that foreign persons who need to submit reports but have difficulty accessing the electronic submission portal should contact the local FSA office in the relevant USDA Service Center (find your local Service Center at <https://www.farmers.gov/working-with-us>) for assistance in reporting.

We are also proposing to modify the provisions that are currently found in paragraph (b) of § 781.3 to reflect deployment of the portal. Currently, the regulations in this paragraph require foreign persons who held, hold, acquire, or transfer any interest in United States agricultural land to file a report on the paper-based form FSA-153. In § 5100.3(b), we are proposing that, instead, foreign persons should file reports as provided in revised paragraph (a) of the section.

Paragraph (b) is also currently subdivided into paragraphs (b)(1) and (b)(2) based on whether the agricultural interest for which the report is filed was held on or before February 2, 1979. This distinction is no longer germane, and we are proposing not to carry it forward in proposed § 5100.3(b). However, the distinction between foreign persons that were not required to file a report under the requirements in 7 CFR 781.3 but would be required to file a report

¹³ The information collected on the portal will be maintained, used, and disclosed in accordance with the Privacy Act of 1974 (5 USC 552a), and other applicable Federal and State laws. To view the system of records Federal Register notice associated with the portal, as well as supporting documents related to the system configuration of the portal and the use and disclosure of data maintained on the portal, go to <https://www.federalregister.gov/public-inspection/2026-11227/privacy-act-systems-of-records>.

based on the proposed regulatory changes is now relevant. As such, we clarify in § 5100.3(b) that 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.

Confidential Commercial Information

In accordance with USDA regulations (7 CFR 1.8(c)), a submitter of confidential commercial information must use good-faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552). These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period. When making discretionary releases of records, we follow the FOIA and USDA implementing regulations (7 CFR subpart A) and guidance from the U.S. Department of Justice's Office of Information Policy relating to the handling of confidential business information.

Revisions to Disclosure Requirements

Paragraph (e) of current § 781.3 contains the information foreign persons are required to include when submitting an AFIDA disclosure report. In § 5100.3(e), we are proposing multiple modifications to the provisions of this paragraph to further the aims of AFIDA.

The introductory text of the paragraph currently provides, with limited exceptions, that any foreign person required to submit a report under the regulations must file a paper-based FSA-153 report with the information specified in subparagraphs (e)(1) through (e)(11) of paragraph (e). In § 5100.3(e), we are proposing to revise the introductory text to indicate that reports should be filed as provided in proposed § 5100.3(a) (current § 781.3(a)) and submitted electronically to the portal.

Paragraph (e)(4) of § 781.3 currently requires that foreign persons include in the report the type of interest held by a foreign person who acquired or transferred an interest in agricultural land. This could be construed to suggest that the information is only germane if the

report is provided by a person who acquires or transfers agricultural land, but is not warranted if the person currently holds the land and is otherwise required to file an AFIDA disclosure report, such as when nonagricultural land is converted to agricultural usage. The information is, however, important in helping USDA ascertain the degree to which foreign persons have interest in the agricultural land. In proposed § 5100.3(e)(4), we are therefore adding to this provision that the type of interest must be reported by a foreign person who holds an interest in agricultural land and is required to submit a report pursuant to paragraphs (c) or (d) of § 5100.3, and not just a foreign person who acquires or transfers an interest in agricultural land. We are also clarifying that interest is inclusive of both percent of ownership as well as leasehold interest. This also would more closely align the requirement with the language of the AFIDA.

Currently, paragraph (e)(5) of § 781.3 requires a legal description and acreage of the agricultural land subject to the report. In § 5100.3(e)(5), we are proposing several modifications to the provisions of current paragraph (e)(5) of § 781.3. First, whereas FSA has operationally construed this paragraph to pertain to intended transfer of acreage, we would instead specify that the acreage referred to in this paragraph pertains to the current acreage of the agricultural land at transfer of acreage. Because AFIDA filers must report an intended land transfer, including the acreage, but are not required to denote their current acreage at transfer, USDA must cross-reference previous paper reports to determine the scope of the transfer relative to the foreign person's current agricultural interests. This can sometimes make it difficult for USDA to ascertain the magnitude of an intended transfer relative to current assets. By requiring the submitter to include current acreage, USDA and other partner agencies would be better situated to ascertain such magnitude. This would also align with ANPRM public comment suggesting that reports contain current agricultural usage.

We are also proposing that, in addition to a legal description of the agricultural land at transfer, the report would also have to include a geospatial map in the portal. This ultimately would be a portal-provided digital open-source format that allows the filer to delineate property

boundaries of the land interest subject to the report as recommended by ANPRM public comment. The geospatial map must subdivide the land interest subject to the report based on crop, pasture, forest, research, other agriculture, and non-agricultural land usage, as warranted. As noted in ANPRM public comment, each category in the submitted map could be further subdivided, such as by splitting the forest category into actively managed working forests, conservation-oriented forest holdings, and idle or non-working forested land. Currently, a legal description sometimes may come in the form of a narrative referencing landmarks or natural features of the land that would be considered appropriate to a description arising from a survey of the land, but that are of limited utility to those not physically present on the land. This particularly hinders the ability to accurately determine foreign equities and national security risks. A geospatial map with current property boundaries delineated would address this issue. ANPRM public comment also recommended requiring the location of the agricultural land via open-source geospatial maps to allow for an easier and more intuitive way of identifying and analyzing the land included in the reports and to strengthen oversight of foreign purchases of agricultural lands while also complying with statutory disclosure limitations for such data (7 U.S.C. § 8791).

Paragraph (e)(8) of § 781.3 currently requires reports to include the agricultural purposes for which the foreign person intends, on the date the report was submitted, to use the agricultural land. Operationally, by “intended use,” FSA has requested the intended transfer of acreage, making paragraph (e)(8) of § 781.3, from an operational perspective, essentially a rephrased recapitulation of current paragraph (e)(5). Our proposed revisions to the provisions of current paragraph (e)(5) (which we are proposing to move to § 5100.3(e)(5)) would give force to each of the paragraphs. Specifically, paragraph (e)(8) would require reporting the agricultural or other purposes for which a foreign person intends, on the date on which the report is submitted, to use the agricultural land intended for acquisition, transfer, or conversion to agricultural land. Examples of agricultural purposes may include, among others, crop production, forestry, animal

production, solar generation, wind generation, and agricultural research. Examples of other purposes may include, among others, research for non-agricultural purposes, or converting portions of the land for non-agricultural use. We note that, if the actual use changes from the reported intended use, the foreign person would be required to report the change via the electronic submission portal; failure to maintain a submitted report with accurate information would constitute a violation of reporting obligations per proposed § 5100.4(a)(2).

We would also clarify that proposed paragraph (e)(8) of § 5100.3 is inclusive of the acreage of the intended acquisition, transfer, or conversion. Finally, as we did in proposed § 5100.3(e)(5), we would require a geospatial delineation of the boundaries of the acreage of the intended acquisition, transfer, or conversion, if less than the total current boundaries of the property itself, which could be demarcated on the map we are proposing to require under proposed § 5100.3(e)(5). The proposed revisions in paragraphs (e)(5) and (e)(8) follow ANPRM public comment that recommended all filers indicate current and intended land use (e.g., wind, solar, crop production, livestock, forestry).

In moving current § 781.3(e)(9) to proposed § 5100.3(e)(9), we would substantially retain the provisions of paragraph (e)(9) of § 781.3. This paragraph currently contains requirements regarding how to denote representatives for a foreign person when such representatives are reporting on behalf of a foreign person. However, as we did elsewhere in the section, we would remove references to the FSA-153 form in proposed § 5100.3(e)(9). While the portal does currently operate under the same control number and mirrors the layout of the paper-based FSA-153 form, removing such references would allow for development of a new electronic form or control number without revision to the regulations themselves.

Currently, paragraph (e)(10) of § 781.3 requires reports to include information regarding how the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant, or sharecropper, and the rental agreement. In

§ 5100.3(e)(10), we are proposing to modify the provisions of current § 781.3(e)(10) to instead state that information must be provided regarding how the tract of land was acquired or transferred, information on the current management of the land, and any preexisting relationships between the foreign person now owning the land and previous management of the land, including, but not limited to, involvement in day-to-day operations of the land being reported. The intent of the existing requirement is for the submitter to disclose the full scope of the relationship between the previous management of the land and the current owner, inclusive of any preexisting relationships and the instrument of acquisition or transfer. Our proposed revision clarifies this intent and is in alignment with statutory requirement to analyze and determine the impact of foreign ownership on farms and rural communities.

Finally, we propose to add two additional categories of information to the required information for AFIDA disclosure reports. First, in proposed § 5100.3(e)(12), we would require the foreign person to disclose their tax identification number(s) and foreign passport number(s), and other unique identifier(s), if such exists. This will aid in identification of the foreign person who submitted the report. Second, in proposed § 5100.3(e)(13), we would require any information related to the above categories that is necessary for USDA to determine that the report accurately and fully reveals the ownership interest of the foreign person required to submit the report, if the need for such information is articulated to the foreign person required to submit the report or their representative. For example, paragraph (e)(9) of § 5100.3 requires representatives reporting on behalf of foreign persons to indicate the nature of their relationship to the foreign person subject to the report. If the representative indicates that they are an attorney representing the foreign person, we may request documentation of power of attorney substantiating this claim.

Section 3503 of the AFIDA specifically delegates authority to the Secretary of Agriculture to take such an action, which allows for remediation of incomplete or ambiguously

worded reports, but the regulations themselves have not previously made this statutory authorization clear.

ANPRM public comment recommended requiring amended reports when the land use changes materially, including changes within agricultural categories or the agricultural land diminishing below a minimum farmable threshold, and requiring all filers to annually verify the information provided to USDA under AFIDA to ensure accuracy. ANPRM public comment also recommended several additional categories of information: if the land is within a certain distance of sensitive sites¹¹; if the foreign person holds interest in any other agricultural land in the United States; if the foreign person has any direct ties to an adversarial foreign government; if the acquisition is a passive investment; for non-government and non-individual foreign persons, specific requirements including name, title, and country of residence for leadership, identification of all individuals with legal, operational, or decision-making authority, and identification of each person with 10 percent or more of any class of voting stock in the entity; specific requirements for leaseholders including type of lease, duration of lease, and right to purchase option and its status. USDA has not proposed these changes but requests further public input on whether to include such requirements.

Reporting by Foreign Persons with Significant Interest or Substantial Control

Current paragraph (f) of § 781.3 contains additional information that must be reported when the foreign person is neither an individual nor a foreign government (e.g., a corporate entity). The regulations currently require such persons to report, in addition to the information in paragraph (e), the following information:

- The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;
- If the holder of such interest is an individual, the citizenship of such holder; and
- If the holder of significant interest or substantial control in such foreign person is not an individual or a government, the nature and name of the foreign person holding such

interest, the country in which such holder is created or organized, and the principal place of business of such holder.

In addition to the existing requirements, in § 5100.3(f), we are proposing that the submitter would have to identify all foreign persons holding significant interest or substantial control, as well as provide the nature of the interest they hold. We also propose that the submitter would have to submit the percentage interests held individually by person and country, and identification of aggregate interests held by country, as well as an ownership diagram depicting the relationship between all interest holders. These changes align with ANPRM public comment that recommended submissions detail country of origin and percentage of interest in the land. Finally, we would require the tax identification numbers, foreign passport numbers, or other unique identifiers of all foreign persons, if such exist. This change follows ANPRM public comment recommending more detailed identifying information to support USDA's tracking of complex foreign ownership interests and to make reports verifiable and comparable.

Within the regulations, § 781.2 currently provides that “significant interest or substantial control”¹⁴ refers to an interest of 10 percent or more held by a foreign single individual, corporate person, or government; 10 percent or more held by foreign individuals, persons, or governments acting in consort even though no single individual, person, or government holds an interest of 10 percent or more, or an interest of 50 percent or more held in aggregate by foreign individuals, persons, or governments, even if the parties may not be acting in concert.

In § 5100.2, we are proposing to reduce the threshold at which aggregate interest constitutes significant interest or substantial control to 10 percent. This aligns with ANPRM public comment suggesting that lowering thresholds could improve transparency regarding ownership. ANPRM public comment also suggested further lowering the threshold from 10 percent to 5 percent. We believe 10 percent is appropriate because we are also proposing that the

¹⁴ The term in this section of the regulations is currently provided as “significant interest of financial control.” However, it is contextually clear that this is a typographical error, and we are proposing to fix it.

10 percent threshold pertains not only to individual but also to aggregate interest, which we believe meets the aim stated by the comment of requiring greater reporting and disclosure under the regulations. That said, we find 5 percent interesting as it would indeed further transparency and align with our approaches for leases and penalties and request specific public comment on this alternative.

We are also proposing to clarify that aggregate interest or substantial control may be exercised through a shell corporation, a trust, or a partnership (limited or otherwise). Following ANPRM public comment recommending USDA capture arrangements exercised through layered entities, we are proposing to define “shell corporation” as “any company, partnership, trust, or legal entity that has no or nominal operations and is used to hold an interest in agricultural land.” We conducted a review of existing definitions and found that none met the intent of AFIDA or adequately addressed the specific risks relevant in this context. While existing definitions provide useful guidance, they were developed for distinct and tailored regulatory purposes. Thus, we proposed to define shell corporations more broadly to cover activities related to facilitating transactions, holding assets, and other agricultural purposes. The proposed definition is informed by and incorporates the concept “no or nominal operations” that is used in 17 CFR 230.405 and the Farmland Security Act of 2025. While the Farmland Security Act of 2025 has not been passed into the law, we considered its “shell corporation” definition to account for evolving regulatory interpretations. We request public comment on the proposed definition.

We are also proposing that beneficial owners would be considered to meet 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. Following ANPRM public comment that requested USDA better capture beneficial ownership and trace ownership through intermediaries to identify actual control, we are proposing to add and define “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 definition would further specify that “indirectly” is inclusive of all intermediary tiers of ownership (including, but not limited to, circular ownership, shell corporations, trusts, and partnerships); this aligns with ANPRM public comment that requested expanded reporting on indirect foreign ownership interests, while also focusing on persons with decision-making authority or operational control.

We acknowledge that there are contextual references to beneficial ownership in other Federal regulations, and our definition would differ from those references. For example, in 17 CFR § 240.13d-3, the Securities and Exchange Commission (SEC) specifies that a beneficial owner for a security includes any party with investment power over the security, including the power to dispose, or direct the disposition of, such security. However, because of the manner in which the term “beneficial owner” would be nested within our proposed definitions, we believe that it can be more limited in scope, and focus on instances in which a party is vested with decision-making authority but not necessarily with financial interest in the agricultural land. To provide an example of our intent, a board of directors for a foreign-based non-profit organization that acquired agricultural land would fall within the scope of “beneficial owner” by virtue of their decision-making authority with regard to the policies and practices of the non-profit organization. In sum, as we did for our proposed definition of “shell corporation,” we reviewed existing specific or interlinear definitions and found that none exactly met our intent within the context of the AFIDA regulations; we incorporated elements that we found germane while eschewing those aspects that we did not find appropriate for our distinct and tailored regulatory purposes.

ANPRM public comment also recommended that any foreign adversary with even a de minimis interest should be required to report. Consistent with this comment, due to the risk of foreign adversaries in U.S. agriculture, we are proposing to include any interest held by a foreign

adversary or Foreign Adversary Controlled Entities under the definition of “significant interest or substantial control.”

In proposed § 5100.3(g), we would make parallel changes to the provisions of current § 781.3(g), which discusses optional reporting that we may require of foreign persons listed in an AFIDA report, to mirror the information we are proposing to require in paragraph (f).

Finally, we are proposing not to retain the provisions of paragraph (h) of § 781.3, which currently sets forth exemptions for reporting by shareholders. These exemptions are no longer apposite given the revisions reflected in proposed § 5100.3(f) and our proposed revision to the definition of “significant interest or substantial control.”

We acknowledge that these proposed revisions, collectively, would likely increase the reporting burden for foreign persons who are neither individuals nor foreign governments. However, the global economy has grown extraordinarily more complex and enmeshed than it was when the regulations were first promulgated, and corporate entities can often be incorporated under a variety of complex legal instruments spanning multiple entities and even countries, which ANPRM public comment frequently acknowledged. Accordingly, we consider the increased reporting necessary in light of the aims of the AFIDA and the reasons for issuance of this proposed rule.

Penalties

As stated earlier in this document, current § 781.4 discusses penalties to which foreign persons who violate their reporting obligations are subject. Currently, late-filed reports are subject to penalties of one-tenth of one percent of the fair market value, as determined by USDA, of the foreign person’s interest in the agricultural land, for each week or portion thereof that such violation continues, up to a 25 percent maximum of fair market value. Submission of incomplete, misleading, or false reports or failure to submit a report or to maintain a submitted report with accurate information is subject to a penalty that shall not exceed 25 percent. Finally, the regulations prescribe that penalties may be adjusted downward due to consideration of the

following: Total time the violation existed; method of discovery of the violation; extenuating circumstances concerning the violation; and the nature of the information misstated or not reported.

We believe the penalty itself, the increment at which late-filed report penalties are increased, and the potential downward adjustments of penalties, which is not required by the statute, may not properly deter non-compliance, and thus undermine the aims of the AFIDA. Following ANPRM public comment that recommended USDA apply stricter or increased penalties for violations and that agreed the current penalty approach is not an effective deterrent to non-reporting, we are proposing to modify and strengthen these provisions.

We are proposing to retain § 781.4(a), which specifies the violations of reporting obligations, with revisions. In § 5100.4(a)(1), we are proposing that the new penalty approach for failure to submit a report would not take effect until 91 days after the effective date of any final rule following this proposed rule, given the 90-day requirement under Section 3501(a) of the AFIDA.

In § 5100.4(a)(2), we propose to clarify that failure to maintain any submitted report with accurate information would apply to both reports submitted under the current regulations (7 CFR 781.3) and, on or after the effective date of a final rule, under the proposed regulations (7 CFR 5001.3). In § 5100.4(a)(3)(i), we propose to replace “letter” with “notice” to align with language in proposed § 5100.5 and, similar to paragraph (a)(1), that the new penalty approach would not apply to reports submitted prior to 90 days after the effective date of a final rule.

In § 5100.4(b)(1) and § 5100.4(b)(2), we are proposing separate penalty schemes that impose a recurring penalty accrual rate of 2.5 percent of the fair market value for late-filers with the designation of Foreign Adversary or Foreign Adversary Controlled Entity compared to a recurring penalty accrual rate of 1.5 percent of the fair market value for late-filers without this designation. In instances where reporting violations are determined to meet a high-risk threshold, we propose that the corresponding penalties be assessed at a higher accrual rate. The

determinations of whether a reporting violation satisfies the high-risk threshold will be based on whether the late-filer meets the definition of a Foreign Adversary or a Foreign Adversary Controlled Entity. We intend for the higher penalty accrual rate to prompt a faster rate of compliance. Given the national security implications of continued non-disclosure of lands held by Foreign Adversaries or Foreign Adversary Controlled Entities, including by elements in this group that may have interests counter to those of the United States, we believe that there is a compelling governmental interest in differentiating penalty rates based on national origin to incentivize this group's immediate compliance. We also note that this comports with ANPRM public comment encouraging us to develop stricter penalties for violations implicating foreign adversaries versus those that do not involve foreign adversaries, again citing the national security implications we refer to above. We welcome further public input on additional considerations that satisfy a high-risk threshold.

In § 5100.4(b)(1), we are proposing a new civil penalty scheme for late-filed reports for an acquisition or holding, except as provided in § 5100.4(b)(3), which outlines a reduced penalty scheme for newly reportable holdings for a limited period of one year. We discuss the separate, time-limited penalty scheme in § 5100.4(b)(3) for newly reportable holdings later in this document. Given the 90-day requirement under Section 3501(a) of the AFIDA, penalties will begin on the 91st day after the date of acquisition of the interest in the agricultural land, or the change in holding status requiring reporting. The noncompliant foreign person would be assessed an initial civil penalty of \$250.00. The \$250.00 would account for the administrative time spent by USDA employees (three hours of Washington DC, GS-13, Step 5 salary with 30% fringe benefits) to identify the late-filed report, find contact information for the foreign person, and send notice to the foreign person. Every 7 days thereafter, we are proposing to assess an additional 2.5 percent civil penalty for late-filers with the designation of Foreign Adversary or Foreign Adversary Controlled Entity and an additional 1.5 percent of the fair market value for late-filers without this designation, until the total penalty imposed, in aggregate, is equal to 25

percent of the fair market value, as determined by USDA, of the foreign person's interest in the agricultural land with respect to which such violation occurred. The increased penalty accrual rates proposed follow ANPRM public comment for stricter penalties and aim to better deter non-compliance. Newly reportable holdings would apply to those foreign persons that are exempt under the current regulations but would no longer be exempt if the proposed changes are finalized, such as for leases more than one year but less than ten years. However, for the reasons discussed later in this document, § 5100.4(b)(3) outlines a reduced penalty scheme for foreign persons with newly reportable holdings for a limited period of one year as we believe that is a reasonable transition period that provides sufficient time to understand the scope and application of the updated reporting requirements under the proposed rule. Thereafter, foreign persons who file late reports with regard to holdings would be subject to the penalty scheme outlined in paragraph (b)(1). Since USDA would not have any existing AFIDA reports for such foreign persons, we believe it is appropriate to categorize holding reports similar to acquisition reports

Proposed § 5100.4(b)(2) would set a new civil penalty scheme for late-filed reports for transfers and land acquired by inheritance for the same reasons as noted above in proposed (b)(1). Because state laws may differ in terms of how land may be transferred via inheritance, this rule provides some flexibility for reporting requirements for land acquired via inheritance. With respect to agricultural land acquired via an inheritance, penalties would begin 91 days after a foreign person knew, had reason to know, or should have reasonably become aware of land acquired or transferred via an inheritance. The noncompliant foreign person would be assessed an initial civil penalty of \$250.00. For late-filers with the designation of Foreign Adversary or Foreign Adversary Controlled Entity, we would assess an additional 2.5 percent civil penalty 15 days after initial assessment, and then again 30 days after initial assessment. Thereafter, a 2.5 percent civil penalty will incur each subsequent week, until the total penalty imposed, in aggregate, is equal to 25 percent of the fair market value, as determined by USDA, of the foreign person's interest in the agricultural land with respect to which such violation occurred. For late-

filers without the designation of Foreign Adversary or Foreign Adversary Controlled Entity, we would assess an additional 1.5 percent civil penalty 15 days after initial assessment, then again 30 days after initial assessment. Thereafter, a 1.5 percent civil penalty will incur each subsequent week, until the total penalty imposed, in aggregate, is equal to 25 percent of the fair market value, as determined by USDA, of the foreign person's interest in the agricultural land with respect to which such violation occurred. Annex 1 contains a penalty matrix that breaks down the penalty scheme for each violation type and is available on Regulations.gov.

We believe a different penalty scheme is warranted for transfers because, in many if not most instances, USDA should already be in possession of an AFIDA report related to the acquisition that meets initial requirements of the AFIDA, providing some reference point for the transfer. We also believe a different penalty scheme is warranted for land acquired by inheritance because, in many cases, the inheriting party does not have any involvement in deciding the terms of their inheritance and may not become aware of the inherited land until after the transfer has happened by operation of law. Since the foreign person does not generally exhibit agency in acquiring land through inheritance, we believe that the majority of these instances are lower risk and, accordingly, should be subject to a more lenient penalty accrual rate.

Proposed § 5100.4(b)(3) would set a new civil penalty scheme for late-filed reports for a newly reportable holding for the same reasons as noted above in proposed (b)(1); that is, to better address non-compliance compared to the current regulations. We would consider a newly reportable holding to be any interest presently held on the effective date of any final rule published in the *Federal Register* following this proposed rule that was not subject to the current reporting requirements but is subject to the new reporting requirements we are proposing, such as holdings that meet the expanded definition of agricultural land, easements, or leases of more than one year but less than ten years. Given the 90-day requirement under Section 3501(a) of the AFIDA, penalties would begin 91 days after the aforementioned date. The noncompliant foreign

person would be assessed an initial civil penalty of \$250. For all late-filers, regardless of whether or not they are designated a Foreign Adversary or Foreign Adversary Controlled Entity, we would assess an additional 1.5 percent civil penalty 15 days after initial assessment, then again 30 days after initial assessment. Thereafter, a 1.5 percent civil penalty would incur each subsequent week, until the total penalty imposed, in aggregate, is equal to 25 percent of the fair market value, as determined by USDA, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

As stated above, examples of individuals to whom proposed § 5100.4(b)(3) would apply include foreign persons with interest in land that meets the expanded definition of agricultural land or foreign persons holding leases more than one year but less than ten years. In some of these situations, we recognize that noncompliance may be inadvertent since no new transaction is taking place, and subsequently foreign persons in these situations may not benefit from transactional legal counsel advising them of their responsibilities under AFIDA. Therefore, we have less reason to believe that differentiated penalties based on whether or not the foreign person is a Foreign Adversary or Foreign Adversary Controlled Entity would affect compliance. Accordingly, we find that a different penalty scheme is warranted.

Proposed paragraph (b)(3)(v) would stipulate that the provisions of § 5100.4(b)(3) will cease to apply one year after the effective date of any final rule published in the *Federal Register* following this proposed rule. After this date, late-filed reports for holdings would be penalized according to the penalty scheme outlined in paragraph (b)(1). We believe that reduced penalties for newly reportable holdings are no longer warranted after one year, as we do not believe that such holdings could reasonably be considered to be newly reportable after such time.

We welcome comment on whether our proposed penalty schemes for late-filed reports relative to acquisitions, transfers, and holdings are appropriately differentiated. Specifically, we request comment on whether our determination of risk, and differentiated penalty tracks, should solely be based on whether the foreign person is a Foreign Adversary or Foreign Adversary

Controlled Entity, or whether we should consider other factors in our determination of risk resulting in differentiated penalty tracks.

In proposed (b)(1), (b)(2), and (b)(3) revisions, if there is a request to appeal a penalty in accordance with proposed § 5100.6, penalty accrual would pause until 30 days post resolution of the appeal.

Paragraph § 781.4(b)(2) sets the penalty for submission of an incomplete report, a report containing misleading or false information, failure to submit a report, or failure to maintain a submitted report with accurate information, explicitly at 25 percent. However, this language has historically been interpreted as an error as it does not mirror the statutory language, which authorizes penalties “that shall not exceed 25 percent.” We propose to retain this penalty as § 5100.4(b)(4) and, consistent with current operational policy and the AFIDA, set a civil penalty reflective of § 3502(b) that shall not exceed 25 percent of the fair market value, as determined by USDA, of the foreign person’s interest in the agricultural land with respect to which such violation occurred for submission of an incomplete report that is not remediated within 30 days, submission of a report containing misleading or false information, or failure to maintain a submitted report with accurate information that is not remediated within 30 days. We are proposing to incorporate failure to submit a report into the late-filed report penalty scheme. ANPRM public comment suggested that enforcement actions be proportional with security risks, as well as focusing Agency resources on violations involving foreign adversaries. Given the severity of falsifying or misleading reports from foreign persons to evade government laws and regulations, and the risk that poses to national security, we request further public comment on how the U.S. Department of Agriculture can best evaluate these high-risk situations and assess the appropriate penalty.

As noted above, we believe the downward adjustments of penalties may not properly deter non-compliance, and thus undermine the aims of the AFIDA. We therefore propose to remove § 781.4(b)(3), which describes such downward adjustments.

Finally, in proposed § 5100.4(c), we would remove the words “the County Agricultural Stabilization and Conservation Committee for the County where the land is located” from current § 781.4(c) and add “the U.S. Department of Agriculture” in its place to remove an obsolete reference.

Penalty Review Procedures

Current § 781.5 discusses penalty review procedures. We are proposing several modifications to these procedures.

First, currently, § 781.5 provides that all notices of apparent liability will state the amount of the penalty to be imposed, including a statement of the fair market value of the foreign person's interest in the subject land. However, in instances where USDA has been made aware of a transaction or suspected ownership/holdings of agricultural land and we do not have a report on record, a penalty amount may not be possible for inclusion without further information. In cases such as these, once the late-filer files a report in accordance with proposed § 5100.3, we would then assess fines based on that report.

Second, currently, parties have 60 days to respond to a notice of apparent liability. Responses currently include payment of the proposed penalty, submission of a written statement denying liability for the penalty in whole or in part, or a request for a hearing.

We are proposing to reduce the response period in which an appeal may be filed from 60 days to 30 days. In the current environment in which reports are paper-based, there are multiple possible disputes of material fact that could arise regarding a notice of apparent liability, including whether the report was filed at all. Following deployment of an electronic submission portal, the business logic associated with report submissions within the portal, and the ease of contacting submitters regarding the information submitted, we foresee that disputes over material fact would be more limited in scope and usually focus on disputes regarding the penalty amount assessed. In light of this, we consider a shorter time period for submitting appeals to be appropriate.

Third, we also do not see a rationale to continue to have two venues for appeal: Written statements to contest liability in whole or in part, or a request for a hearing to do the same. We believe that due process can be afforded to foreign persons by allowing them to appeal directly to the Director of OHS and present the material facts and reasons upon which the person relies to show that a notice of apparent liability is in error. This appeals process, which has been successfully used by other USDA Agencies, would be contained in § 5100.6 and is discussed below.

Fourth, current paragraph (b)(1) states that proposed penalties may be paid by check or money order. In § 5100.5(b)(1), we are proposing to require electronic payment using www.pay.gov. We are proposing to remove checks and money orders as payment options because on September 30, 2026, consistent with Executive Order 14247, USDA will transition as a Department from receiving checks and money orders to only accepting electronic payments. Additionally, we would remove a reference to the paper-based form FSA-153.

Because we would only receive electronic payments for penalties through www.pay.gov, we are also proposing not to retain provisions, currently found in paragraph (d) of § 781.5, that allow parties to submit payment while an appeal is still pending and have USDA remit the payment if the appeal is successful. While this could relatively easily be accomplished with checks and money orders, it is impracticable with www.pay.gov. We also cannot foresee many scenarios under the revised regulations in which a party would pay a fine they intend to dispute.

Appeals

Within § 781.5, paragraph (b)(3) currently provides that parties may file a request for a hearing on a proposed penalty in accordance with 7 CFR part 780, which contains FSA's appeal regulations. Within 7 CFR part 780, § 780.4 specifies that penalties assessed under the AFIDA are appealable. Section 780.12 provides that appeals may be made by requesting a hearing, in writing, to the FSA Administrator. This section also provides that decisions of such an appeal

are not subject to reconsideration and are administratively final; § 780.17 reiterates the administratively final nature of such decisions.

Because FSA would no longer administer the AFIDA regulations, the appeals process in 7 CFR part 780 would no longer be operative, and we are proposing to remove references to the AFIDA from that part.

Proposed § 5100.6 would establish an OHS appeals process for penalties assessed under the regulations in 7 CFR part 5100. Under its provisions, penalties assessed under the AFIDA would be appealable by submitting a request for appeal within 30 days of receipt of a notice of apparent liability for penalties. The appeal must include all facts and supporting documentation to assert that a notice of apparent liability is in error. Appeal requests would have to be sent via electronic method as designated in the notice of liability, except in instances when the foreign person lacks internet access, in which the appeal request could be sent via postal mail to the address listed in the regulations. Upon receipt of an appeal, penalty accrual will pause during the review process and the Director or designee could request additional information to support or otherwise clarify the terms of the appeal.

Within 60 calendar days, the Director or designee would then issue a notice of determination on appeal, stating whether a report must be filed or amended in compliance with § 5100.3, the penalty amount owed, if any, and the date by which it must be paid via www.pay.gov. The appellant shall file or amend the report as required by the Director or designee. Finally, 5100.6(b) would state that appeals are administratively final.

If an amount is owed or if OHS has not yet received the requested information following an appeal decision, the foreign person in violation has 30 days to comply with the course of action prescribed by the Director or designee, which includes payment and providing a report without further penalty. If an adequate disclosure report has not been received within those 30 days, and the penalty assessed per the notice of liability has not yet reached 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such

violation(s) occurred, penalties will continue to accrue at day 31 at the scheme in which the violation(s) were first assessed, unless otherwise stated in the appeal decision. Penalties will not exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation(s) occurred. Unpaid penalties will, without further notice, be referred by OHS to the Department of Justice for civil action in the appropriate District Court to recover the amount of the penalty.

These provisions are modeled from FSA's regulations in 7 CFR part 780 regarding appeal hearing requests for penalties under AFIDA. However, as discussed above in our discussion of § 5100.5, we are proposing to simplify the appeals process for AFIDA; this includes consolidating violations under one notice of liability where possible. Although the current process provides that a foreign person may deny liability for a penalty in whole or in part through written statement or request an appeal hearing to the Administrator of FSA, we would direct all appeals contesting a notice of apparent liability to the Director of OHS. To reduce the possibility of lost requests and for ease of service of process, we are proposing to establish an electronic process for such appeal requests.

To expedite timely review of appeal requests, we are also proposing to remove the hearing process currently found in 7 CFR part 780. In its place, we are proposing an appeals process based on the Director's or designee's review of the material facts presented in the appeal request. We are also providing that the Director or designee may request additional information during their review to aid in assessing the appeal. This simplified appeals process has been used successfully within other USDA Agencies, and we believe it will reduce the administrative burden both to appellants and to OHS itself in handling appeals.

We are retaining language found in 7 CFR part 780 indicating that appeals are administratively final. This would particularly be the case when the report discloses direct or indirect control by a foreign government or foreign government-controlled entity.

Enforcement

If this proposed rule is finalized, it is USDA's intent to enforce the AFIDA and the regulations, including assessment of penalties, in a manner that aligns more closely with the full scope of our statutory authority. To that end, pursuant to § 3502 of the AFIDA, we have clarified in our proposed regulatory text that USDA may enforce penalties that shall not exceed 25 percent of the fair market value, as determined by USDA, of the foreign person's interest in the agricultural land with respect to which such violation occurred for each violation that has occurred. Paragraph (b) of § 3502 of the AFIDA provides that the cap for penalties is not in aggregate, but rather specific to the violation in question, and that penalties may be imposed separately. Moreover, USDA has statutory authority to refer non-compliance to the Department of Justice for possible civil action pursuant to Section 3502 of the AFIDA and intends to continue to exercise that authority.

ANPRM public comment articulated the position that AFIDA is a reporting and financial disclosure statute without the intent of stringent enforcement or application of civil penalties for noncompliance. This runs counter to a plain reading of the statute and does not align with Congressional intent, which has repeatedly stressed the national security aims of AFIDA.

However, ANPRM public comment suggested that many foreign persons subject to AFIDA reporting requirements are small landowners and/or closely held entities (such as family businesses) that pose little national security risk. ANPRM public comment also suggested that enforcement actions be proportional with security risks, as well as focusing Agency resources on violations involving foreign adversaries.

We acknowledge that foreign persons subject to AFIDA requirements may be individuals, family businesses, or other closely held entities. We also acknowledge that acquisition or transfer of agricultural land among individuals may be effectuated through non-commercial means, such as inheritance or court order. Additionally, we are aware that in some States, transfer of property through inheritance is executed through operation of State law and thus may legally occur before the beneficiary is notified. For this reason, with respect to

inheritances, penalties would begin 91 days after a foreign person knew, had reason to know, or should have reasonably become aware of such an inheritance.

We do believe that our proposed penalty and appeal provisions have sufficient safeguards to ensure that such parties are not unduly impacted. Our appeals process allows persons to submit all facts and supporting documentation on which the appeal is based, inclusive of the nature of the acquisition or transfer, as well as any other extenuating circumstances.

We do not believe we can bifurcate enforcement actions based on the size of the entity, or the commercial or non-commercial nature of the acquisition or transfer, and prioritize enforcement actions that are related to large, commercial acquisitions or transfers. This would deprioritize enforcement of a non-commercial acquisition or transfer specifically ordered by a beneficial owner, which is counter to the aims of greater transparency regarding such acquisitions and transfers.

On a related matter, we do not consider it necessary to prioritize enforcement actions involving foreign adversaries, as suggested by ANPRM comment. Rather, we are proposing a more aggressive penalty track for violations involving foreign adversaries. We believe this will act as an effective deterrent to noncompliance.

We request specific public comment on how best to ensure that penalties under AFIDA are commensurate.

Sharing Information with Federal and State Agencies

ANPRM public comment objected to the sharing of information obtained by USDA under AFIDA with other Federal Agencies, who may then use the data for investigations or enforcement actions pursuant to their own delegated authorities. We are, however, statutorily obligated to share data obtained under AFIDA with CFIUS and the public.

On a related matter, ANPRM public comment also noted that § 3505 of AFIDA requires USDA to submit to State departments of agriculture a copy of disclosure reports regarding agricultural land in their State. OHS will continue this statutorily mandated practice, and notes

that deployment of the electronic portal should facilitate expeditious reporting. To that end, please note that foreign persons may be subject to requirements or restrictions imposed by State or local law or regulation regarding the acquisition, transferal, or holding of agricultural land. Persons must continue to comply with those laws and regulations, as well as those pursuant to Federal regulation under AFIDA.

PROCEDURAL MATTERS

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been determined to be not significant by OMB under Executive Order 12866. Because this rule has been designated as not significant by OMB, no Regulatory Impact Analysis is required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this rulemaking: (1) unless otherwise specifically provided, all state and local laws that conflict with this rulemaking will be preempted and (2) no retroactive effect will be given to this rulemaking except as specifically prescribed in the rule.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not impose substantial direct compliance costs on State and local governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

USDA has determined that this proposed rule does not, to our knowledge, have Tribal implications that require formal Tribal consultation under Executive Order 13175. If a Tribe requests consultation, we will work with the Office of Tribal Relations to ensure meaningful

consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 14192, Unleashing Prosperity Through Deregulation

This rule pertains to a national security function of the United States and thus is exempt from the provisions of Executive Order 14192.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to our review, the Department certifies that this rule will not have a significant impact on a substantial number of small entities. ANPRM public comment noted the potential for increased burden to small landowners and other entities, and we specifically request public comment, including data, on the impact of these proposed changes to small entities as well as recommended alternatives that could be considered to reduce any specific burden to small entities.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OMB designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4), this rule does not contain Federal mandates for State, local and Tribal governments, or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The information collection activities for AFIDA were last approved by OMB under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) on September 16, 2025, and

assigned OMB Control No. 0560-0097, which was transferred to the Office of Homeland Security on May 8, 2026, and given a new OMB Control No, 0509-0001.

USDA is proposing to update its AFIDA regulations and reflect Congressional directives to establish a streamlined process for electronic submission and retention of disclosures made under AFIDA, including the deployment of an internet database.

Consistent with the Paperwork Reduction Act, USDA will publish a separate 60-day Federal Register notice soliciting public comment on the proposed revisions to the information collection requirements associated with this proposed rule.

Severability

It is USDA's intention that the provisions of this proposed rule operate independently of each other. If this proposed rule or any portion of this rule is ultimately declared invalid or stayed as to a particular provision, it is USDA's intent that this proposed rule nonetheless be severable and remain valid with respect to those provisions not affected by a declaration of invalidity or stay. USDA concludes it would separately adopt all of the provisions contained in this proposed rule.

List of Subjects

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 780

Administrative practice and procedure, Agricultural commodities, Agriculture, Loan programs-agriculture, Price support programs, Soil conservation.

7 CFR Part 781

Administrative practice and procedure, Agriculture, Foreign persons, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 5100

Administrative practice and procedure, Agriculture, Foreign persons, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, National security.

Accordingly, for the reasons set forth in the preamble, the Office of Homeland Security of the United States Department of Agriculture proposes to amend 7 CFR Subtitles A and B as follows:

**PART 2— DELEGATIONS OF AUTHORITY BY THE SECRETARY OF
AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT**

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949-1953 Comp., p. 1024.

2. In § 2.95, add paragraph (b)(11) to read as follows:

§ 2.95 Executive Director, Office of Homeland Security.

* * * * *

(b) * * *

(11) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*), except those functions delegated in § 2.21(a)(8)(xi).

* * * * *

PART 780—APPEAL REGULATIONS

3. The authority citation for part 780 continues to read as follows:

Authority: 5 U.S.C. 301 and 574; 7 U.S.C. 6995; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

§ 780.4 [Amended]

4. Amend § 780.4 by removing and reserving paragraph (a)(1)(iv).

§ 780.12 [Removed and Reserved]

5. Remove and reserve § 780.12.

§ 780.17 [Amended]

6. Amend § 780.17 by removing and reserving paragraph (a).

PART 781— [REMOVED AND RESERVED]

7. For the reasons stated in the preamble, and under the authority the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*), amend 7 CFR chapter VII, subchapter D by removing and reserving part 781.

8. Amend title 7 CFR subtitle B by adding Chapter LI consisting of part 5100 to read as follows:

Chapter LI—Office of Homeland Security, Department of Agriculture

PART 5100-DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.

5100.1	General.
5100.2	Definitions.
5100.3	Reporting Requirements.
5100.4	Assessment of penalties.
5100.5	Penalty review procedure.
5100.6	Appeal of penalties.
5100.7	Paperwork Reduction Act assigned number.

Authority: 7 U.S.C. 3501 *et seq.*

§ 5100.1 General.

The purpose of these regulations is to set forth the requirements designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The regulations require that a foreign person who acquires, transfers, or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the regulations establish a system for the collection of information by the Office of Homeland Security subdelegated from the Assistant Secretary of Administration of the United States Department of Agriculture pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and

the President by the Economic Research Service (ERS) concerning the effect of such holdings upon family farms and rural communities and for other purposes.

§ 5100.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *AFIDA*. AFIDA means the Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural land*. Agricultural land means land in the United States currently used for, or last used within the past 5 years, for farming, ranching, forestry, or timber production; and land currently in conservation in the United States that could be used for farming, ranching, forestry, or timber production despite its conservation designation or under the terms of its conservation designation. Farming, ranching, forestry, or timber production includes, but is not limited to, activities specified in the 2022 version of the North American Industry Classification System 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), 486 (Pipeline Transportation); and in Codes 541714 and 541715 (Research and Development in the Physical, Engineering, Life Sciences, and Biotechnology (except Nanotechnology)). Land meeting this definition is to be considered agricultural land regardless of local government zoning classifications.

(c) *Any interest*. Any interest means all interest acquired, transferred, or held in agricultural lands by a foreign person, except:

(1) Security interests;

(2) Unless the lessee is a foreign adversary or a Foreign Adversary Controlled Entity, leases totaling less than one year, measured as a single period of time or as the aggregate of multiple leases over a continuous or discontinuous period of time;

(3) Contingent future interests;

(4) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate; and

(5) An interest solely in mineral rights.

(d) *Beneficial Owner*. Beneficial owner means 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. For the purposes of this definition, “indirectly” is inclusive of all intermediary tiers of ownership, including, but not limited to, circular ownership, shell corporations, trusts, and partnerships.

(e) *County*. County means a political subdivision of a State identified as a County or parish.

(f) *Director*. Director means the Director, Office of Homeland Security, United States Department of Agriculture, or any person deputed by the Director to act in their stead.

(g) *Foreign adversary*. Foreign adversary means any foreign government or foreign non-government person from, a citizen of, or a controlled entity headquartered in a foreign country of concern as defined by 42 U.S.C. §19237(2).

(h) *Foreign Adversary Controlled Entity*. Foreign Adversary Controlled Entity means any entity, including any corporation, partnership, trust, or association, that is owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.

(i) *Foreign government*. Foreign government means any government other than the United States government, the government of a State, or a political subdivision of a State.

(j) *Foreign individual*. Foreign individual means foreign person as defined in paragraph (k)(1) of this section.

(k) *Foreign person*. Foreign person means:

(1) Any individual:

(i) Who is not a citizen or national of the United States; or

(ii) Who is not a citizen of the Northern Mariana Islands or a party to the Compact of Free Association with the United States; 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;

(2) 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;

(3) Any foreign government;

(4) Any person, other than an individual or a government:

(i) Which is created or organized under the laws of any State; and

(ii) In which a significant interest or substantial control is directly or indirectly held:

(A) By any individual referred to in paragraph (k)(1) of this section; or

(B) By any person referred to in paragraph (k)(2) of this section; or

(C) By any foreign government referred to in paragraph (k)(3) of this section; or

(D) By any numerical combination of such individuals, persons, or governments, which combination need not have a common objective.

(l) *Person*. Person means any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity.

(m) *Secretary*. Secretary means the Secretary of Agriculture.

(n) *Security interest*. Security interest means a mortgage or other debt securing instrument.

(o) *Shell Corporation*. Any company, partnership, trust, or legal entity that has no or nominal operations and is used to hold an interest in agricultural land.

(p) *Significant interest or substantial control*. Significant interest or substantial control means:

(1) An interest of 10 percent or more held by:

(i) A person referred to in paragraph (k)(2) or (k)(4) of this section;

(ii) An individual referred to in paragraph (k)(1) of this section;

(iii) A government referred to in paragraph (k)(3) of this section; or

(iv) Any combination of the foregoing, including shell corporations, trusts, and partnerships, provided that the aggregate interest is at least 10 percent, regardless of whether or not the persons act in concert with regard to such interest;

(2) Any interest held by a foreign person meeting the definition of “beneficial owner” set forth in this section;

(3) Any interest held by a foreign adversary or Foreign Adversary Controlled Entities.

(q) *State*. State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, any party to the Compact of Free Association with the United States, or any other territory or possession of the United States.

(r) *Transfer*. Transfer means any action resulting in alienation or change in ownership of agricultural land, including but not limited to sale, gift, retitling, or conveyance of property rights.

§ 5100.3 Reporting requirements.

(a) All reports required to be filed pursuant to this part shall be submitted electronically to the USDA as provided at <https://afida.landmark.usda.gov/>. If a foreign person is unable to submit electronically or is otherwise experiencing difficulty accessing the portal, they may visit

their local Farm Service Agency in the county where the land is located with respect to the report filed for assistance in reporting.

(b) Any foreign person who holds, acquires, or transfers any interest in United States agricultural land is required to file a report as provided in paragraph (a) of this section within 90 days after the date of acquisition or transfer of the interest in the agricultural land or, if the foreign person holds any interest in United States agricultural land, was not required to file a report under the requirements that were found in 7 CFR 781.3, and is required to file a report under the requirements in this section, within 90 days after [insert effective date of any final rule published in the Federal Register following this proposed rule].

(c) Any person who holds or acquires any interest in United States agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person must submit, not later than 90 days after the date on which such person becomes a foreign person, a report containing the information required to be submitted under paragraph (e) of this section.

(d) Any foreign person who holds or acquires any interest in United States land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report containing the information required to be submitted under paragraph (e) of this section.

(e) Any foreign person required to submit a report under 7 CFR part 5100, except under paragraph (g) of this section, is required to file a report as provided in paragraph (a) of this section. The report must contain the following information:

- (1) The legal name, address, phone number, and email address of such foreign person;
- (2) If such foreign person is an individual, the citizenship(s) of such foreign person;
- (3) If such foreign person is not an individual or a government, the nature and name of the person holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest held by a foreign person who holds, acquired, or transferred an interest in agricultural land, including the foreign person's percent ownership or leasehold interest;

(5) The legal description and current acreage of such agricultural land at holding, acquisition, transfer, and a digital open-source geospatial map with property boundaries delineating the current land interest subject to the report, and with subdivision based on crop, pasture, forest, other agriculture, and non-agricultural land usage, as warranted;

(6) The purchase price paid for, or any other consideration given for, such interest; the amount of the purchase price or the value of the consideration yet to be given; and the current estimated value of the land reported;

(7) If such foreign person transfers such interest, the legal name, address, phone number, and email address of the person to whom such interest is transferred; and

(i) If such transfer is to an individual, the citizenship of the individual; and

(ii) If such transfer is not to an individual or a government, the nature of the person holding the interest, the country in which such person is created or organized, and the principal place of business;

(8) The agricultural or other purposes, including acreage of the land intended for acquisition, transfer, or conversion to agricultural land, for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land, and the geospatial boundaries of the acreage of intended acquisition, transfer, or conversion, if less than the current boundaries of the property itself. Such boundaries may be demarcated on the map required under paragraph (e)(5) of this section;

(9) When applicable, the legal name, address, phone number, email address, and relationship of the representative of the foreign person who is submitting the report for the foreign person;

(10) How the tract of land was acquired or transferred, information on the current management of the land, and any preexisting relationships between the foreign person now owning the land and the previous management of the land, including, but not limited to, involvement in day-to-day operations of the land being reported;

(11) The date the interest in the land was acquired or transferred;

(12) The tax identification number(s), foreign passport number(s), and other unique identifier(s) of the foreign person, if such exists; and

(13) Any information related to the foregoing that is necessary for USDA to determine that the report accurately and fully reveals the ownership interest of the foreign person required to submit the report, if the need for such information is articulated to the foreign person required to submit the report or their representative.

(f)(1) Any foreign person, other than an individual or government, required to submit a report under paragraphs (b), (c), and (d) of this section, must submit, in addition to the report required under paragraph (e) of this section, a report as provided in paragraph (a) of this section containing the following information:

(i) For all persons holding significant interest or substantial control:

(A) Legal name, address, phone number, email address, citizenship(s) (if individual holder); if a corporate entity other than a government, country in which such holder is created or organized, and principal place of business of such holder, and nature of interest held;

(B) Identification of percentage interests held individually by person and country, and identification of aggregate interests held by country;

(C) Description of the connections between all interest holders via ownership diagram; and

(D) Tax identification numbers, foreign passport numbers, and other unique identifiers of all foreign persons, if such exist.

(2) In addition, any such foreign person required to submit a report under paragraph (f)(1) of this section may also be required, upon request, to submit a report containing:

(i) The legal name, address, phone number, and email address, of each individual or government whose legal name, address, phone number, and email address did not appear on the report required to be submitted under paragraph (f)(1) of this section, if such individual or government holds any interest in such foreign person;

(ii) If the holder of such interest is an individual, the citizenship of such holder; and

(iii) If the holder of such interest is not an individual or a government, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose legal name is contained on any report submitted in satisfaction of paragraph (f) of this section may also be required, upon request, to:

(1) Submit a report containing, for all persons holding significant interest or substantial control:

(i) Legal name, address, phone number, email address, citizenship (if individual holder), country in which such holder is created or organized and principal place of business of such holder, and nature of interest held;

(ii) Identification of the beneficial owner(s), the beneficial owner's percent interest held, and the country of the beneficial interest holder;

(iii) Identification of percent interests held individually by person and country, and identification of aggregate interests held by country;

(iv) Description of the connections between all interest holders; and

(v) Tax identification numbers, foreign passport numbers, or other unique identifiers of foreign persons, if such exist.

(2) Submit a report containing:

(i) The legal name, address, phone number, and email address of each individual or government whose legal name, address, phone number, and email address did not appear on the report required to be submitted under paragraph (f)(1) of this section if such individual or government holds any interest in such foreign person and, except in the case of a request which involves a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section, disclosing information relating to nonforeign interest holders;

(ii) If the holder of such interest is an individual, the citizenship of such holder; and

(iii) If the holder of such interest is not an individual or government and, except in a situation where the information is requested from a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section disclosing information relating to nonforeign interest holders, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(h) Any foreign person, who submitted a report under paragraph (b), (c), or (d) of this section at a time when such land was agricultural, and such agricultural land later ceases to be agricultural, must submit, not later than 90 days after the date on which such land ceases being agricultural, a revised report as provided in paragraph (a) of this section. The report form and notification must contain the following information:

(1) The legal name, address, phone number, and email address of such foreign person;

(2) The legal description, which includes the State and county where the land is located, and the acreage of such land;

(3) The date the land ceases to be agricultural;

(4) The use of the land while agricultural.

(i) If any foreign person who submitted a report under paragraph (b), (c), or (d) of this section ceases to be a foreign person, such person must submit, not later than 90 days after the date such person ceases being a foreign person, a notification using the report submission

method specified in paragraph (a) of this section. The notification must contain the following information:

- (1) The legal name of such person;
- (2) The legal description and acreage of such land;
- (3) The date such person ceases to be foreign.

(j) Any foreign person who submitted a report under paragraph (b), (c), or (d) of this section must submit, not later than 90 days after the change of information contained on the report, a notification using the report submission method specified in paragraph (a) of this section. The following information must be kept current on the report:

- (1) The legal address, phone number, and email address of such foreign person;
- (2) The legal name, address, phone number, and email address required to be submitted under (f)(1) of this section;
- (3) The legal name, address, phone number, and email address required to be submitted under (g)(1) of this section.

§ 5100.4 Assessment of Penalties.

(a) Violation of the reporting obligations will consist of:

(1) Failure to submit any report in accordance with § 5100.3, except that, reports submitted within 90 days after [insert effective date of any final rule published in the *Federal Register* following this proposed rule] shall be held to the reporting requirements that were found in 7 CFR 781.3 on [insert day before the effective date of any final rule published in the *Federal Register* following this proposed rule];

(2) Failure to maintain any submitted report with accurate information pursuant to 7 CFR 781.3, if the report was submitted before [insert effective date of any final rule published in the *Federal Register* following this proposed rule], or pursuant to 7 CFR 5001.3, if the report was submitted on or after [insert effective date of any final rule published in the *Federal Register* following this proposed rule];

(3) Submission of a report which the foreign person knows:

(i) Does not contain, initially or within thirty days from the date of notice of such incomplete report, all the information required to be in such report, except that, reports submitted within 90 days after [insert effective date of any final rule published in the *Federal Register* following this proposed rule] shall be held to the reporting requirements that were found in 7 CFR 781.3 on [insert day before the effective date of any final rule published in the *Federal Register* following this proposed rule], or

(ii) Contains misleading or false information.

(b) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to separate penalties for any of the following violations:

(1) Late-filed reports relative to an acquisition or holding report, except as provided in § 5100.4(b)(3):

(i) A civil penalty in the amount of \$250.00 assessed 91 days after the date of acquisition of the interest in the agricultural land, or the change in holding status requiring reporting.

(ii)(A) For foreign persons meeting the definitions of Foreign Adversary or Foreign Adversary Controlled Entity within this part, for every subsequent 7 days following the 91st day after the date of acquisition of the interest in the agricultural land, or the change in holding status requiring reporting, a civil penalty of 2.5 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred, provided that the total penalty imposed will not, in aggregate, exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(B) For foreign persons not meeting the definitions of Foreign Adversary or Foreign Adversary Controlled Entity within this part, for every subsequent 7 days following the 91st day after the date of acquisition of the interest in the agricultural land, or the change in holding status requiring reporting, a civil penalty of 1.5 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred, provided that the

total penalty imposed will not, in aggregate, exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(iii) In the event that a request to appeal a penalty is filed in accordance with § 5100.6, penalties accrual shall be paused until 30 days post appeal decision, pending resolution of the appeal.

(2) Late-filed reports relative to a transfer or land acquired by inheritance:

(i) A civil penalty in the amount of \$250.00 assessed 91 days after the date of transfer of the interest in the agricultural land, or, with respect to inherited interests, 91 days after a foreign person knew, had reason to know, or should have reasonably become aware of such an inheritance.

(ii)(A) For foreign persons meeting the definition of Foreign Adversary or Foreign Adversary Controlled Entity within this part, a civil penalty of 2.5 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred, assessed 15 days post initial fine (2)(i).

(B) For foreign persons not meeting the definition of Foreign Adversary or Foreign Adversary Controlled Entity, a civil penalty of 1.5 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred, assessed 15 days after the initial fine.

(iii) (A) For foreign persons meeting the definition of Foreign Adversary or Foreign Adversary Controlled Entity within this part, a civil penalty of 2.5 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred, assessed 31 days after the initial fine and every 7 days thereafter, provided that the total penalty imposed will not, in aggregate, exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(B) For foreign persons not meeting the definition of Foreign Adversary or Foreign Adversary Controlled Entity within this part, a civil penalty of 1.5 percent of the fair market

value of the foreign person's interest in the agricultural land with respect to which such violation occurred, assessed 31 days after the initial fine and every 7 days thereafter, provided that the total penalty imposed will not, in aggregate, exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(iv) In the event that a request to appeal a penalty is filed in accordance with § 5100.6, penalties accrual shall be paused until 30 days post appeal decision, pending resolution of the appeal.

(3) Late-filed reports involving any interest presently held on [insert the effective date of any final rule published in the *Federal Register* following this proposed rule] that was not subject to the reporting requirements found in 7 CFR 781 on [insert day before the effective date of any final rule published in the Federal Register following this proposed rule] but is subject to the reporting requirements found in 7 CFR 5100:

(i) A civil penalty in the amount of \$250.00 assessed 91 days after [insert the effective date of any final rule published in the *Federal Register* following this proposed rule].

(ii) A civil penalty of 1.5 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred, assessed 15 days after the initial fine (3)(i).

(iii) A civil penalty of 1.5 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred, assessed 31 days after the initial fine and every 7 days thereafter, provided that the total penalty imposed will not, in aggregate, exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(iv) In the event that a request to appeal a penalty is filed in accordance with § 5100.6, penalties accrual shall be paused until 30 days post appeal decision, pending resolution of the appeal.

(v) The provisions of § 5100.4(b)(3) will no longer apply after [insert date one year after the effective date of any final rule published in the *Federal Register* following this proposed rule].

(4) Submission of an incomplete report that is not remediated within 30 days, submission of a report containing misleading or false information, or failure to maintain a submitted report with accurate information that is not remediated within 30 days shall be subject to a penalty that shall not exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(c) The fair market value for the land, with respect to which such violation occurred, shall be such value on the date the penalty is assessed, or if the land is no longer agricultural, on the date it was last used as agricultural land. The price or current estimated value reported by the foreign person, as verified and/or adjusted by the U.S. Department of Agriculture, will be considered to be the fair market value.

§ 5100.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of § 5100.4, a notice of apparent liability will be sent to the foreign person's last known address by the U.S. Department of Agriculture. This notice will set forth the facts which indicate apparent liability; identify the type of violation(s) listed in paragraph (a) of § 5100.4 which is involved; state the amount of the penalty to be imposed, if any has been assessed by the Department thus far, and, if a penalty amount is stated, also include a statement of fair market value of the foreign person's interest in the subject land; and summarize the courses of action available to the foreign person.

(b) The foreign person can appeal a notice of apparent liability within 30 days after the notice is received. If a foreign person fails to file an appeal in accordance with § 5100.6 within 30 days of receipt of the notice of apparent liability, the proposed penalty shall become final, and the person shall forfeit their right to appeal in accordance with § 5100.6.

(c) Penalties will continue to accrue until a disclosure report is received and the penalty is paid, or until the penalties specified total 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation(s) occurred. Either of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph:

(1) Payment of the proposed penalty in the amount specified in a notice of apparent liability and, as warranted, submission of a report that meets the reporting obligation as described in paragraph (a) of § 5100.4. The amount may be paid by electronic payment using www.pay.gov. The U.S. Department of Agriculture is not responsible for the loss of currency sent through the mail.

(2) A request to appeal the proposed penalty may be filed in accordance with § 5100.6 of this part.

(d) If a foreign person fails to respond to a notice of apparent liability as required by paragraph (c) of this section, the unpaid penalty will, without further notice, be referred by OHS to the Department of Justice for civil action in the appropriate District Court to recover the amount of the penalty.

(e) Any amounts approved by the U.S. Department of Agriculture for disbursement to a foreign person under the programs administered by the Department may be setoff against penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR part 3.

§ 5100.6 Appeal of penalties.

(a) Penalties assessed under the AFIDA may be appealed. Any foreign person assessed a penalty may submit an appeal within 30 days of receipt of a notice of apparent liability issued in accordance with § 5100.5. Penalty accrual will pause upon receipt of the appeal and remain paused throughout review until 30 days post decision as described in paragraph (c). The appeal shall state all of the facts and reasons upon which the person relies to show that a notice of

apparent liability is in error; all documents pertaining to such facts and reasons must be received by the end of the 30-day appeal period. Requests to appeal penalties assessed under the AFIDA must be submitted as specified on the notice of apparent liability. In response to receipt of an appeal, the Director or designee may request additional information to support or otherwise clarify the terms of the appeal.

(b) Within 60 calendar days, the Director or designee would then issue a notice of determination on appeal, stating whether a report must be filed or amended in compliance with § 5100.3, the amount of the penalty, if any, and the date by which it must be paid via www.pay.gov. The appellant shall file or amend the report as required by the Director or designee. Decisions under this section are administratively final.

(c) If an amount is owed or OHS has not yet received requested information following an appeal decision, the foreign person in violation has 30 days to comply with the course of action prescribed by the Director or designee, which includes payment and providing a report without further penalty. If an adequate disclosure report has not been received within those 30 days, and the penalty assessed per the notice of liability has not yet reached 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation(s) occurred, penalties will continue to accrue on day 31 at the scheme in which the violation(s) were first assessed, unless otherwise stated in the appeal decision. Pursuant to § 3502(b) penalties will not exceed 25 percent of the fair market value of the foreign person's interest in the agricultural land with respect to which such violation(s) occurred. If the foreign person fails to pay the penalty imposed by the Director or designee, unpaid penalties will, without further notice, be referred by OHS to the Department of Justice for civil action in the appropriate District Court to recover the amount of the penalty.

§ 5100.7 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR part 5100) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0509-0001.

Stephen Vaden,

Deputy Secretary, U.S. Department of Agriculture.

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