August 10, 2026

Submitted electronically via Regulations.gov
Mr. Matt Allen, Director
Office of Homeland Security
U.S. Department of Agriculture
1400 Independence Avenue SW, Room 1457-S
Washington, DC 20250

Re:	Agricultural Foreign Investment Disclosure Act of 1978—Proposed Rule
Docket:	USDA-2026-0001
RIN:	0560-AI70
Federal Register:	91 Fed. Reg. 38,315 (June 25, 2026)

Dear Director Allen:

The Utah Petroleum Association ("UPA") and the Western Energy Alliance ("the Alliance") (collectively, "the Associations") respectfully submit these comments on the U.S. Department of Agriculture's ("USDA" or "Department") proposed revisions to the regulations implementing the Agricultural Foreign Investment Disclosure Act of 1978 ("AFIDA"). UPA represents companies engaged in oil and natural gas production, transportation, processing, refining, and related services in Utah. These companies develop and operate infrastructure that is essential to Utah's economy, the reliability of western energy markets, and the national objective of American energy dominance.

Western Energy Alliance is the leader and champion for independent oil and natural gas companies in the western United States. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Alliance members engage in all aspects of environmentally responsible exploration and development of oil and natural gas. Our expert staff, active member committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all.

The Associations support USDA's objective of obtaining accurate, timely, and useful information concerning foreign interests in American agricultural land. Reliable reporting can help USDA, the Committee on Foreign Investment in the United States ("CFIUS"), and other national-security agencies identify transactions that warrant scrutiny. That objective, however, does not justify defining ordinary U.S. companies as "foreign persons" merely because unrelated foreign investors collectively own 10 percent of their publicly traded shares. Nor does it justify transforming pipeline corridors, production sites, processing facilities, water-management facilities, and other non-agricultural oil and gas surface uses into "agricultural land," or requiring submission of detailed geospatial information concerning critical energy infrastructure.

As drafted, the proposed rule would sweep domestic public companies into a foreign-investment reporting regime without any showing of foreign control, coordination, or influence. It would impose substantial and potentially recurring compliance burdens on American energy companies, discourage investment in domestic oil and gas development, generate large volumes of low-value data that could obscure genuinely concerning transactions, and create avoidable security risks associated with sensitive infrastructure information. USDA should withdraw the proposed rule and issue a substantially revised proposal after meaningful consultation with affected energy, infrastructure, securities, and national-security stakeholders.

SUMMARY OF THE ASSOCIATIONS' RECOMMENDATIONS

- Withdraw and repropose the rule rather than finalize the current text.
- Do not treat a U.S.-organized company as a "foreign person" based solely on the aggregate holdings of unrelated foreign investors who do not act in concert.
- Retain the current 50 percent threshold for aggregate, non-concerted foreign ownership, or adopt a control-based standard tied to actual voting, governance, or decision-making authority.
- Preserve a clear exemption for SEC-registered public companies and passive shareholders, while allowing targeted reporting where a particular foreign person or coordinated group has meaningful control.
- Remove NAICS 486 Pipeline Transportation from the definition of "agricultural land"; retain and clarify the exemption for non-agricultural easements, rights-of-way, leases, and surface-use interests; and ensure that land used for upstream and midstream oil and gas facilities—including well pads, wells, tanks, separators, compressors, pump and booster stations, gas plants, gathering facilities, and produced-water treatment and recycling facilities—is not treated as agricultural land.
- Do not require public disclosure of precise geospatial maps or other information that could expose critical energy infrastructure, operational practices, or cybersecurity vulnerabilities.
- Prepare a defensible assessment of compliance costs, small-entity effects, capital-market impacts, and data-security risks before issuing a new proposal.

The Associations support and incorporate by reference the comments submitted by the American Petroleum Institute and the Interstate Natural Gas Association of America. In particular, the Associations agree that USDA should remove NAICS 486 Pipeline Transportation from the definition of "agricultural land," preserve the existing exemption for non-agricultural easements and rights-of-way, and prohibit the public disclosure of detailed pipeline geospatial information. These comments supplement those industry comments by addressing the proposal's separate treatment of domestic companies as "foreign persons" based on the aggregated holdings of unrelated foreign investors and by explaining why the interrelated defects in the proposal warrant withdrawal and re-proposal.

I. The Associations Support Focused Foreign-Investment Transparency That Produces Useful National-Security Information.

AFIDA is a disclosure statute directed at foreign persons that acquire, transfer, or hold interests in United States agricultural land. USDA's proposal appropriately recognizes that AFIDA information may assist CFIUS and other agencies in evaluating national-security risks. UPA supports modernizing reporting systems, improving data quality, and ensuring that transactions involving foreign adversaries or entities subject to actual foreign control receive appropriate scrutiny.

The value of that information depends on precision. A reporting system that captures ordinary U.S. issuers simply because their global shareholder base includes unrelated foreign investors will not improve the government's understanding of foreign control over farmland. Instead, it will produce a large body of filings concerning domestic companies whose foreign shareholders neither coordinate their activities nor direct the companies' land or infrastructure decisions. That result would divert agency resources away from the transactions most likely to present genuine risks.

II. The Proposed Definitions Would Convert Domestic Companies Into "Foreign Persons" Without Foreign Control.

Proposed § 5100.2(k)(4) would define a domestic entity as a "foreign person" if a "significant interest or substantial control" is directly or indirectly held by foreign individuals, foreign entities, foreign governments, or "any numerical combination" of them, expressly providing that the combination "need not have a common objective." Proposed § 5100.2(p)(1)(iv), in turn, would deem an aggregate interest of 10 percent or more to constitute "significant interest or substantial control" regardless of whether the holders act in concert. 91 Fed. Reg. at 38,330–31.

Read together, these provisions collapse the distinction between foreign ownership and foreign control. A corporation organized under Utah or Delaware law, headquartered in the United States, managed by U.S. officers and directors, and subject to U.S. securities and corporate law could nevertheless become a "foreign person" because multiple unrelated investors located outside the United States collectively hold 10 percent of its stock. No individual foreign investor would need to own a material stake. No investors would need to coordinate. No foreign party would need board representation, veto rights, operational authority, or knowledge of the company's land holdings.

This is not a remote hypothetical. Large U.S. public companies commonly have globally distributed ownership through pension funds, sovereign investment vehicles, mutual funds, index funds, exchange-traded funds, custodial accounts, and retail brokerage platforms. Ownership changes continuously through ordinary trading. A company may have no practical ability to identify the citizenship or status of all ultimate investors represented through omnibus or intermediary accounts, much less determine on a continuous basis whether unrelated foreign holdings have crossed a 10 percent aggregate threshold.

The proposed rule compounds this problem through § 5100.3(c), which requires a person that was not foreign when it acquired or held land, but later "becomes" foreign, to report within 90 days. A domestic public company could therefore move into or out of "foreign person" status based on routine securities-market activity over which the company has no control. The proposal does not explain how often an issuer must test its shareholder base, what records are sufficient, how custodial and beneficial ownership should be traced, or whether temporary threshold crossings trigger reporting. The resulting uncertainty is especially problematic because AFIDA violations can carry substantial penalties tied to land value.

III. Aggregating Unrelated Foreign Shareholders at 10 Percent Is Overbroad, Arbitrary, and Poorly Matched to AFIDA's Purpose.

The current regulations distinguish between coordinated foreign ownership and uncoordinated aggregate ownership. They generally use a 10 percent threshold for a single foreign holder or persons acting in concert, but a 50 percent threshold for foreign interests aggregated without concerted action. USDA proposes to reduce the latter threshold from 50 percent to 10 percent. 91 Fed. Reg. at 38,323–24. Yet the proposal does not demonstrate that an uncoordinated 10 percent aggregate interest confers meaningful control or creates the same risk as a single 10 percent holder or coordinated group.

The phrase "significant interest or substantial control" should reflect economic or governance reality. Ten unrelated investors each holding one percent do not possess a collective decision-making mechanism merely because the government adds their holdings together. Treating passive, independent investors as a single bloc—while acknowledging that they need not share a common objective—creates a legal fiction rather than identifying foreign influence.

That fiction is particularly ill-suited to public companies. Securities law already contains established concepts for beneficial ownership, groups, control persons, voting power, and disclosure thresholds. USDA should not create a conflicting regime in which numerically aggregated foreign ownership automatically equals "substantial control" even when no holder has control and no group exists. A revised rule should use objective indicia such as voting agreements, board designation rights, veto or consent rights, authority over land use or disposition, contractual management rights, or coordinated action.

At minimum, USDA should retain the existing 50 percent threshold for aggregate foreign interests where the holders do not act in concert. A better approach would exempt domestic issuers registered under the Securities Exchange Act of 1934 unless a particular foreign person or coordinated group meets a defined control standard. Passive investments held through diversified funds should not be aggregated unless the relevant investors share voting or dispositive authority with respect to the issuer or the land at issue.

IV. The Proposal Would Impede Domestic Energy Investment and Conflict With the Administration's Energy-Dominance Objectives.

Oil and natural gas development is capital intensive. Producers and infrastructure companies routinely compare projects across multiple basins and states, allocating capital based on expected returns, permitting timelines, regulatory certainty, access to transportation, and compliance risk. The proposed rule would add a new layer of uncertainty to companies that own, lease, or cross land that USDA would classify as agricultural. It would also require companies to monitor complex ownership structures and potentially file reports because of shareholder activity unrelated to any land transaction.

Those burdens are not limited to land purchases. The proposal would narrow the lease exemption from leases of less than ten years to leases totaling less than one year, remove the exemption for non-agricultural easements and rights-of-way, and include pipeline transportation within the definition of agricultural land. 91 Fed. Reg. at 38,319–20, 38,330. Energy companies commonly obtain long-term leases, easements, surface-use agreements, access rights, gathering-line corridors, and pipeline rights-of-way across ranching, farming, conservation, and mixed-use lands. Under the proposal, ordinary domestic infrastructure arrangements could trigger AFIDA obligations whenever a company is deemed "foreign" under the new shareholder-aggregation rule.

The predictable consequence is increased diligence expense, legal uncertainty, delayed transactions, and additional risk for domestic projects. These costs reduce project returns and make capital deployment in American oil and gas less competitive relative to other opportunities. A rule intended to protect national security should not inadvertently deter the domestic energy production and infrastructure investment that are themselves central to national security and energy dominance.

USDA's Regulatory Flexibility Act certification states that the rule will not significantly affect a substantial number of small entities, while simultaneously requesting information concerning burdens on small entities. 91 Fed. Reg. at 38,328. The proposal likewise does not quantify the costs to public issuers of continuously evaluating foreign ownership, tracing indirect interests, preparing ownership diagrams, gathering identifiers, mapping land interests, and reporting numerous leases, easements, and rights-of-way. USDA should not finalize the rule without a complete economic analysis addressing these foreseeable costs and the effects on domestic energy investment.

V. The Proposal Would Improperly Treat Pipeline Transportation and Other Upstream and Midstream Oil and Gas Uses as "Agricultural Land."

Proposed § 5100.2(b) would define "agricultural land" to include land used for NAICS 486, Pipeline Transportation. The preamble reasons that pipelines frequently cross land used, or formerly used, for farming and therefore should be included. That reasoning conflates the character of the underlying parcel with the industrial use of a limited corridor, easement, leasehold, or surface-use area. A pipeline is energy infrastructure—not farming, ranching, forestry, or timber production—and its presence does not convert the pipeline activity or the associated property interest into agricultural land.

The proposal's reach is not limited to interstate transmission pipelines or even to pipeline easements. Proposed § 5100.3(e)(8) would require a filer to identify the "agricultural or other purposes" for which land will be used and expressly contemplates "converting portions of the land for non-agricultural use." When that language is combined with the proposal's broad definition of agricultural land, the elimination of the exemption for non-agricultural easements and rights-of-way, and the narrowing of the lease exemption, the rule could sweep in virtually every category of upstream and midstream oil and gas surface use located on land that is currently used—or was used within the relevant lookback period—for agriculture.

For AFIDA reporting purposes, land occupied by a production pad, well or wellhead, tank battery, separator, heater-treater, compressor, gathering line, pump station, booster station, meter or regulator station, gas-processing plant, field office, access road, utility corridor, produced-water storage or disposal site, water-treatment facility, or water-recycling facility could be treated as "agricultural land" or as a reportable interest in agricultural land merely because the industrial facility occupies or converts a portion of a larger agricultural or formerly agricultural parcel. The same concern applies to temporary construction areas, staging areas, maintenance sites, and other ancillary surface-use agreements necessary to develop and operate oil and gas resources.

This result would be both legally and practically untenable. These facilities do not confer control over agricultural production, generally occupy only a limited portion of the underlying parcel, and often coexist with continued farming or ranching on the surrounding land. Treating them as agricultural land would not provide meaningful information about foreign ownership or control of the Nation's food-producing acreage. Instead, it would transform AFIDA into a comprehensive registry of domestic energy operations without clear congressional authorization.

The compliance implications would be substantial. An operator could be required to identify and evaluate thousands of separate leases, surface-use agreements, rights-of-way, access agreements, and legacy interests; determine the current and historical use of each underlying parcel; prepare geospatial maps and ownership diagrams; and continuously update reports as facilities are constructed, modified, reclaimed, transferred, or placed out of service. Many of these agreements predate modern digital mapping and recordkeeping systems, and many involve small or rural operators that lack dedicated AFIDA compliance staff. The resulting cost and penalty exposure would bear no reasonable relationship to any agricultural-security benefit.

The proposal would also create significant physical- and cybersecurity concerns. A centralized dataset identifying production pads, wells, tanks, compressors, processing plants, booster stations, water facilities, access routes, and connecting pipeline and gathering systems would reveal not merely isolated pipeline corridors, but the location and functional interrelationship of entire upstream and midstream systems. Such information could facilitate trespass, theft, vandalism, sabotage, or coordinated disruption of critical energy and water-management infrastructure.

The proposal is also internally inconsistent because it retains an exemption for interests solely in mineral rights while potentially making the surface facilities and infrastructure necessary to develop, produce, process, transport, and manage those minerals independently reportable. USDA should not treat the mineral estate as outside AFIDA while characterizing every associated well pad, production facility, gathering asset, processing site, and water-management facility as agricultural land.

USDA should remove NAICS 486 from the definition of agricultural land and preserve—and clarify—the existing exemption for surface and subsurface easements, rights-of-way, leases, and other property interests used for non-agricultural purposes. The exemption should expressly encompass upstream and midstream oil and gas development, production, gathering, compression, processing, transportation, water treatment, water recycling, and related ancillary facilities that do not confer control over agricultural activities. Where a foreign adversary acquires an interest in land near a sensitive facility, CFIUS and other national-security authorities provide more tailored mechanisms for review. AFIDA should not be converted into a duplicative critical-infrastructure reporting system without clear congressional direction.

VI. The Geospatial and Ownership-Disclosure Requirements Could Create New Critical-Infrastructure Security Risks.

The proposed rule would require a digital, open-source geospatial map delineating property boundaries and land uses. It would also require extensive ownership information, identifiers, management information, and descriptions of relationships. USDA explains that AFIDA modernization includes an internet database and that information will be shared with the public and CFIUS, subject to applicable law. 91 Fed. Reg. at 38,315–16, 38,321–24.

For agricultural parcels, mapping may assist analysis. For pipeline corridors and the full range of associated upstream and midstream facilities, however, the same requirement may reveal the location, extent, ownership, access arrangements, operational context, and functional connections of critical infrastructure. A centralized dataset could identify production pads, wells, tank batteries, compressors, pump and booster stations, gas plants, water-treatment and recycling facilities, gathering systems, and access routes. Compiling such data increases the consequences of unauthorized access, misuse, inadvertent disclosure, or aggregation with other public information. Bad actors seeking to trespass, vandalize, sabotage, steal equipment, or disrupt energy supplies could benefit from information that makes sensitive assets and system vulnerabilities easier to identify.

USDA should conduct a specific security assessment before collecting geospatial information about pipelines or any other upstream and midstream oil and gas asset. At a minimum, a revised proposal should expressly exclude such information from any public-facing database, limit collection to what CFIUS or another authorized agency actually needs, apply robust access controls, and provide clear procedures for designating and protecting confidential commercial and security-sensitive information. The Department should also consult the Department of Energy, Department of Homeland Security, Transportation Security Administration, Pipeline and Hazardous Materials Safety Administration, state oil and gas regulators, and affected infrastructure operators before adopting any mapping requirement applicable to energy facilities.

VII. The Current Proposal Would Produce Excessive Low-Value Reporting and Undermine Effective Enforcement.

USDA's stated purpose is to improve the accuracy and usefulness of AFIDA information. Capturing domestic companies based on uncoordinated foreign portfolio investment will work against that purpose. The agency will receive reports from entities that are American in organization, management, operations, and control. Those filings will consume government resources, complicate data interpretation, and make it harder to distinguish transactions involving foreign adversaries or actual foreign control.

The proposal also removes existing shareholder-reporting exemptions and requires extensive information concerning all persons holding significant interest or substantial control. For a large public company, the ownership chain may include investment advisers, funds, custodians, nominees, and investors across multiple jurisdictions. Some information may be unavailable to the issuer, may change daily, or may be subject to foreign privacy restrictions. A rule that demands information companies cannot reliably obtain will produce incomplete, inconsistent, and rapidly stale data rather than the accurate intelligence USDA seeks.

A risk-based system would be more effective. USDA should focus reporting on direct foreign ownership of agricultural land, entities actually controlled by a foreign person, coordinated groups, foreign-government interests, foreign adversaries, and transactions involving sensitive locations. Domestic public companies with diffuse, passive, and non-coordinated foreign shareholders should not be treated as foreign persons.

VIII. USDA Should Withdraw and Repropose the Rule With Clear, Targeted Standards.

The defects identified above are not minor drafting issues that can be corrected through isolated edits in a final rule. The proposed definitions of "foreign person," "significant interest or substantial control," "agricultural land," and "any interest" interact to create a fundamentally different regulatory program. A domestic company can become foreign through ordinary stock-market activity; pipeline corridors become agricultural land; non-agricultural rights-of-way become reportable interests; and detailed geospatial and ownership information becomes subject to a new electronic reporting system.

Affected parties should have an opportunity to evaluate and comment on a coherent replacement proposal. USDA should therefore withdraw the present proposal and repropose a revised rule that:

- defines foreign control using actual governance, voting, contractual, or operational authority;
- does not aggregate unrelated foreign investors at a 10 percent threshold;
- preserves appropriate exemptions for domestic public companies and passive shareholders;
- excludes pipeline transportation and all non-agricultural upstream and midstream oil and gas surface uses—including wells, production facilities, gathering and compression assets, processing plants, and water-management facilities—from agricultural land reporting;
- protects critical-infrastructure and confidential commercial information from public disclosure;
- provides workable rules for determining ownership, testing thresholds, and addressing temporary changes;
- includes safe harbors for reasonable reliance on SEC filings and other reliable ownership records;
- coordinates AFIDA reporting with existing CFIUS and securities-law frameworks to avoid inconsistent standards; and
- is supported by a complete cost-benefit, Regulatory Flexibility Act, Paperwork Reduction Act, and data-security analysis.

IX. Conclusion

The Associations support USDA's efforts to protect American agricultural land and provide national-security agencies with accurate information about genuine foreign ownership and control. The current proposal, however, would misclassify domestic companies, burden American energy investment, sweep pipeline infrastructure and virtually every category of upstream and midstream oil and gas surface facility into an agricultural-land statute, and create unnecessary risks associated with sensitive geospatial information. These consequences are inconsistent with sound administration of AFIDA and with the national interest in expanding secure domestic energy production and infrastructure.

For these reasons, UPA and the Alliance respectfully request that USDA withdraw the proposed rule and issue a substantially revised proposal consistent with the recommendations above.

Respectfully submitted,

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Cc: Mr. Jarrod Agen
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