



January 2024

FOREIGN INVESTMENTS IN U.S. AGRICULTURAL LAND

Enhancing Efforts to Collect, Track, and Share Key Information Could Better Identify National Security Risks

GAO Highlights

Highlights of [GAO-24-106337](#), a report to congressional requesters

Why GAO Did This Study

USDA estimated that foreign investment in U.S. agricultural land grew to approximately 40 million acres in 2021. These investments may have consequences for U.S. national security. For example, there may be foreign ownership of U.S. agricultural land close to sensitive military installations.

CFIUS is an interagency committee that reviews certain foreign transactions to determine potential effects on U.S. national security. These include foreign investments in U.S. agricultural land. In addition, USDA's AFIDA statute, enacted in 1978, requires foreign persons acquiring or transferring agricultural land to file a disclosure form with USDA.

GAO was asked to review foreign investments in U.S. agricultural land. This report examines the extent to which (1) USDA shares information related to foreign investments in U.S. agricultural land with CFIUS for its national security reviews, and (2) USDA's processes enable it to collect, track, and report reliable data on foreign investments in U.S. agricultural land. GAO reviewed laws, regulations, and agency guidance; analyzed USDA data; and interviewed agency officials.

What GAO Recommends

GAO is making six recommendations, including 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. USDA generally agreed with our recommendations.

View [GAO-24-106337](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or GianopoulosK@gao.gov or Steve D. Morris at (202) 512-3841 or MorrisS@gao.gov.

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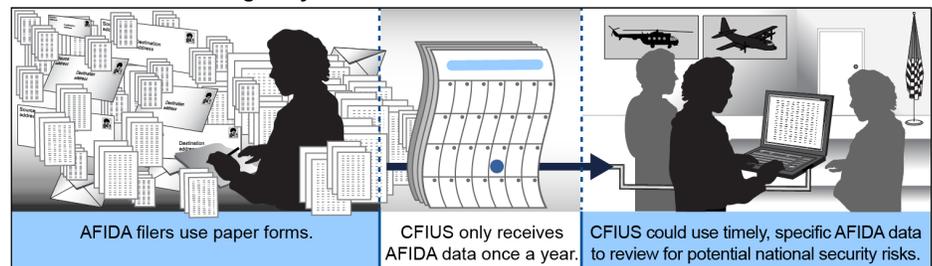
FOREIGN INVESTMENTS IN U.S. AGRICULTURAL LAND

Enhancing Efforts to Collect, Track, and Share Key Information Could Better Identify National Security Risks

What GAO Found

The United States Department of Agriculture (USDA) does not share timely data on foreign investments in agricultural land collected under the Agricultural Foreign Investment Disclosure Act of 1978, as amended (AFIDA). Committee on Foreign Investment in the United States (CFIUS) agencies, including the Department of Defense (DOD) and the Department of the Treasury, identify and review transactions that may pose national security risks, such as the proximity of agricultural land to a sensitive military base. USDA annually publishes selected AFIDA information online that CFIUS agencies may use when considering potential national security risks associated with agricultural land. In addition, USDA officials said they respond promptly when they receive requests for information. However, DOD officials noted they need AFIDA information that is more up-to-date and more specific, and they need to receive this information more than once a year. USDA has requested funding to develop a real-time data system that can be accessed by other U.S. government agencies and the public. Meanwhile, sharing current data could help increase visibility into potential national security risks related to foreign investments in U.S. agricultural land.

AFIDA Data Are Not Regularly Part of CFIUS Reviews



Legend: Agricultural Foreign Investment Disclosure Act of 1978, as amended = AFIDA, the Committee on Foreign Investment in the United States = CFIUS.

Source: U.S. Department of Agriculture regulations and documents and Department of Defense officials; GAO (images). | GAO-24-106337

USDA implements AFIDA across field offices and headquarters, but its processes to collect, track, and report key information are flawed. USDA collects the required data on paper forms with county or federal offices and reviews them for accuracy, according to USDA officials. However, its processes to do so are unclear and challenging to implement. For example, USDA's AFIDA handbook provides limited instructions on how to collect reliable AFIDA information. In addition, although Congress required USDA to create an online submission process and public database for AFIDA data by the end of 2025, USDA does not have plans and timelines to do so, in part because USDA has not received funding. USDA also does not sufficiently verify and conduct quality reviews to track the accuracy and completeness of its collected AFIDA data. GAO's review of AFIDA data current through calendar year 2021 found errors, such as the largest land holding associated with the People's Republic of China being counted twice. USDA has begun efforts to identify AFIDA non-compliance through data mining, according to officials, and has opportunities to expand this practice. But without improving its internal processes, USDA cannot report reliable information to Congress or the public about where and how much U.S. agricultural land is held by foreign persons.

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Abbreviations

AFIDA	Agricultural Foreign Investment Disclosure Act of 1978, as amended
CFIUS	Committee on Foreign Investment in the United States
DOD	Department of Defense
FINSA	Foreign Investment and National Security Act of 2007
FIRRMA	Foreign Investment Risk Review Modernization Act of 2018
FPAC-BC	Farm Production and Conservation Business Center
FSA	Farm Service Agency
Treasury	Department of the Treasury
USDA	U.S. Department of Agriculture

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January 18, 2024

Congressional Requesters

Foreign ownership and investment in U.S. agricultural land—which includes farmland, pastures, and forest land—grew to approximately 40 million acres in 2021, a 40 percent increase since 2016, according to the U.S. Department of Agriculture (USDA).¹ Members of Congress have expressed concern that some foreign investment in U.S. agricultural land, such as land purchased near U.S. military bases or land purchases that could lead to foreign control of U.S. food supply chains, may have national security implications. Specifically, in 2022, members expressed concern about a U.S. subsidiary of a business from the People’s Republic of China purchasing cropland near Grand Forks Air Force Base in North Dakota, given the use of sensitive drone technology at the base.²

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that reviews certain foreign business transactions in the United States, including specific foreign acquisitions of U.S. agricultural land, to determine how transactions may affect national security. CFIUS is chaired by the Department of the Treasury and includes eight other departments and offices as voting members and two agencies as nonvoting, ex-officio members. USDA is not a member, but participates fully as a voting member agency when Treasury determines that a transaction involves agricultural issues, according to officials.³

The information collected through the Agricultural Foreign Investment Disclosure Act of 1978, as amended (AFIDA) is the nation’s most comprehensive source on foreign investments in U.S. agricultural land,

¹USDA implementing regulations of the Agricultural Foreign Investment Disclosure Act of 1978, as amended (AFIDA) define agricultural land as land in the United States used for forestry production or land used for farming, ranching, or timber production within the past five years that is (1) more than ten acres in size in the aggregate, or (2) ten acres or less in the aggregate producing gross annual receipts of more than \$1,000 from the sale of farm, ranch, or timber products in total. 7 C.F.R. § 781.2(b).

²In September 2022, 51 members of Congress sent a letter to the secretaries of the Departments of Defense, the Treasury, and Agriculture expressing concerns about this purchase.

³See 50 U.S.C. § 4565(k)(2). Additional voting members include the Departments of Commerce, Defense, Energy, Homeland Security, Justice, and State; the Office of the U.S. Trade Representative; and the Office of Science and Technology Policy. Various other offices also observe and, as appropriate, participate in CFIUS activities.

according to USDA officials. AFIDA requires foreign persons acquiring or transferring agricultural land to report information about the transaction to USDA.⁴ USDA publishes an annual report of AFIDA data, including the number of acres owned, by state and county, and the country of the foreign investor. Government agencies, media, and academic researchers, among others, use published AFIDA data to track foreign agricultural investment in the United States. In addition, some state laws incorporate AFIDA data into measures to monitor and enforce restrictions on foreign investment in U.S. agricultural land.⁵ However, during a March 2023 congressional hearing, the Secretary of Agriculture explained that USDA is reliant on foreign persons to self-report AFIDA information. The Secretary noted self-reporting is challenging to enforce because deeds are filed in over 3,000 county recorder offices. In September 2023, another USDA official noted that USDA cannot locate AFIDA filings beyond the county level, such as specific localities, and there is currently no system which tracks deeds or leases of agricultural land.

You asked us to review foreign investment in U.S. agricultural land. This report examines the extent to which (1) USDA shares information related to foreign investments in U.S. agricultural land with CFIUS for its national security reviews, and (2) USDA's processes enable it to collect, track and report reliable data on foreign investment in U.S. agricultural land. This

⁴Pub. L. No. 95-460, § 2(a), 92 Stat.1263, 1263 (codified at 7 U.S.C. § 3501(a)).

⁵For example, both Pennsylvania and South Dakota have laws that restrict foreign investment in their states' agricultural land. These laws require their state agricultural departments to review AFIDA filings and to refer filings suspected of noncompliance to their state attorney general for investigation. E.g., 68 Pa. Stat. Ann. § 45, S.D. Codified Laws § 43-2A-7.

report adds to a series of reports that we have published related to CFIUS processes for reviewing foreign investments.⁶

To address these objectives, we reviewed relevant laws, executive orders, and regulations. To examine the extent to which USDA shares information related to foreign investments in U.S. agricultural land with CFIUS for its national security reviews, we reviewed documents from the Department of the Treasury (Treasury), USDA, and DOD to understand (1) CFIUS's process and (2) Treasury's, DOD's, and USDA's individual processes for reviewing potential national security risks related to foreign investments and identifying transactions for potential CFIUS review. We also evaluated information on Treasury's, DOD's, and USDA's efforts to share information in addition to potential challenges these agencies have faced in doing so.

To examine USDA's processes to collect, track and report foreign investments in U.S. agricultural land, we reviewed the Farm Service Agency's (FSA) AFIDA handbook to learn about AFIDA responsibilities and guidance for county, state, and headquarters offices.⁷ FSA works in collaboration with the Farm Production and Conservation Business Center (FPAC-BC), which was created in 2018, to implement AFIDA. In addition, we conducted interviews with a non-generalizable sample of three state offices and three county offices to better understand how FSA state and county offices were fulfilling their AFIDA responsibilities. Further, we conducted interviews with USDA officials responsible for managing AFIDA to get their perspectives on implementing AFIDA and the associated challenges. Moreover, we assessed the reliability of AFIDA data by reviewing reported active holdings by foreign persons

⁶Among others, we published four related reviews of, respectively, (1) CFIUS processes related to selected real estate transactions; (2) DOD's ability, as a member of CFIUS, to address defense issues; (3) CFIUS processes for reviewing covered transactions and workload challenges; and (4) DOD's ability to identify whether foreign encroachment threatens certain defense facilities. See *Committee on Foreign Investment in the United States: Selected Transactions Involving Real Estate May Share Certain National Security Risks, but Dispositions Can Vary Due to Case-Specific Factors*, [GAO-19-417C](#) (Washington, D.C.: June 14, 2019); *Committee on Foreign Investment in the United States: Action Needed to Address Evolving National Security Concerns Facing the Department of Defense*, [GAO-18-494](#) (Washington, D.C.: July 10, 2018); *Committee on Foreign Investment in the United States: Treasury Should Coordinate Assessments of Resources Needed to Address Increased Workload*, [GAO-18-249](#) (Washington, D.C.: Feb. 14, 2018); *Defense Infrastructure: Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges*, [GAO-15-149](#) (Washington, D.C.: Dec. 16, 2014).

⁷USDA, *FSA Handbook: Foreign Investment Disclosure*, 1-AFIDA (Washington, D.C., revised Jan. 27, 2006).

since AFIDA started being implemented to the end of 2021—the latest year of data available from the AFIDA spreadsheet at the time of our review. We also evaluated AFIDA data against reported summary data in USDA’s 2021 AFIDA Annual Report and the presentation of these data in the report. Appendix I provides more information on our scope and methodology.

We conducted this performance audit from October 2022 to January 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

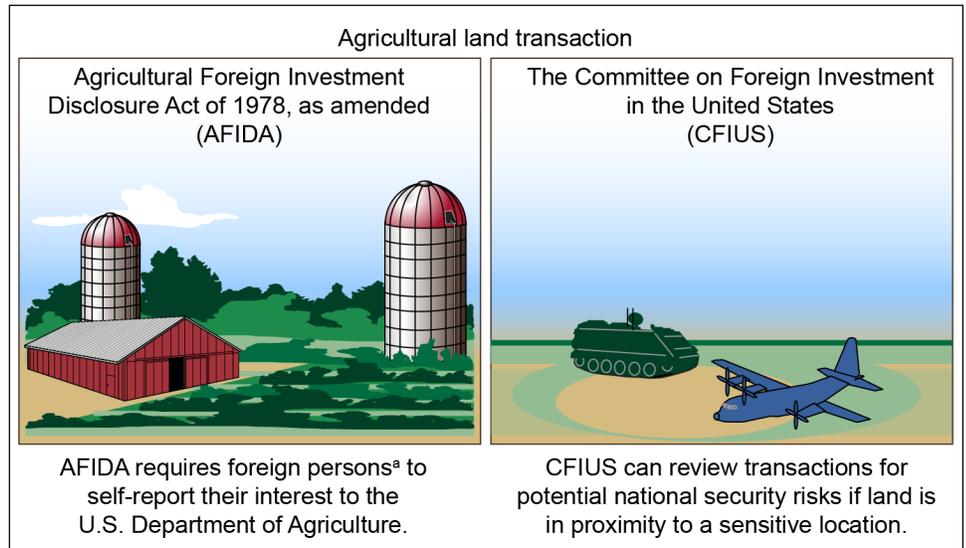
Background

U.S. Government Oversight of Foreign Investment in U.S. Agricultural Land

Foreign persons may be subject to U.S. government oversight from USDA and CFIUS when they acquire an interest in U.S. agricultural land.⁸ See figure 1 for an overview of U.S. government oversight of foreign investment in U.S. agricultural land.

⁸According to AFIDA regulations, a foreign person can be a foreign individual, legal entity, or government. 7 C.F.R. § 781.2(g). In addition, a domestic legal entity in which at least ten percent is held directly or indirectly by a foreign individual, legal entity, or government, is also considered a foreign person. 7 C.F.R. § 781.2(k).

Figure 1: Examples of U.S. Government Oversight of Foreign Investment in U.S. Agricultural Land



Sources: GAO analysis of 7 C.F.R. part 781 and 31 C.F.R. part 802; GAO (images). | GAO-24-106337

^aAccording to AFIDA regulations, a foreign person can be a foreign individual, legal entity, or government. 7 C.F.R. § 781.2(g). A foreign interest of 10 percent or more in U.S. agricultural land requires an AFIDA disclosure. 7 C.F.R. § 781.2(g)(4), (k).

CFIUS

CFIUS Legal Authorities

CFIUS is an interagency committee authorized by law to review and address national security risks arising from certain transactions involving foreign investment in the United States.⁹ CFIUS reviews foreign investment transactions in the United States across industries and sectors, including certain agricultural land transactions, to determine whether they present a risk to national security. Transactions within CFIUS’s authority to review are generally referred to as “covered” transactions. The Foreign Investment and National Security Act of 2007 (FISIA) defined these transactions to include certain mergers, acquisitions, or takeovers by or with any foreign person that could result in foreign control of any person engaged in interstate commerce in the United States. FISIA, as amended and codified, provides several factors to consider when determining whether a covered transaction posed a national security risk, including whether the transaction could result in the

⁹See 50 U.S.C. § 4565.

control of a U.S. business by a foreign government.¹⁰ FINSA also enabled the President or CFIUS to consider other factors as appropriate. These factors could encompass elements of the agriculture industrial base that have implications for food security (for a full list of potential factors, see app. II).¹¹

CFIUS legal authorities have evolved over time.¹² The most recent significant statutory update to CFIUS authority occurred in 2018 with the enactment of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA).¹³ FIRMMA expanded CFIUS's authority to review potential national security risks related to U.S. businesses and real estate transactions.¹⁴ CFIUS may review voluntary filings by businesses, including those in the agricultural industry, and purchases, leases, or

¹⁰See Pub. L. No. 110-49, §§ 2, 4 (as amended and codified, in part, at 50 U.S.C. §§ 4565(a)(7), (b)(1)(B)).

¹¹See Pub. L. No. 110-49, § 4. See also 50 U.S.C. § 4565(f)(11). On September 15, 2022, the President issued an executive order that highlights certain national security factors that CFIUS is required to consider in reviewing investment transactions, including elements of the agriculture industrial base that have implications for food security, but does not otherwise change CFIUS's authorities or jurisdiction. See Exec. Order. No. 14,083, 87 Fed. Reg. 57,369 (Sept. 15, 2022).

¹²CFIUS was established by Executive Order in 1975 to monitor the effect of and to coordinate U.S. policy on foreign investment in the United States. Exec. Order No. 11,858, 40 Fed. Reg. 20,263 (May 7, 1975). In 1988, Congress enacted the Exon-Florio amendment adding section 721 to the Defense Production Act of 1950, which authorized the President or the President's designee to investigate the effect of certain foreign acquisitions of U.S. companies on national security and to suspend or prohibit acquisitions that might threaten to impair national security. Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 5021, 102 Stat. 1425 (Aug. 23, 1988). The President delegated this investigative authority to CFIUS. Exec. Order No. 12,661, 54 Fed. Reg. 779 (Dec. 27, 1988). The Foreign Investment and National Security Act of 2007 further amended section 721 and formally established CFIUS in statute. Pub. L. No. 110-49, § 3, 121 Stat. 246, 252 (July 26, 2007) (codified as amended at 50 U.S.C. § 4565).

¹³John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, §§ 1701-1728, 132 Stat. 1636, 2173-2208 (Aug. 13, 2018) (codified as amended at 50 U.S.C. § 4565).

¹⁴"Covered transactions" are further defined through regulations found at 31 C.F.R. part 800 for investments (including "covered control transactions"), and "covered real estate transactions" are determined through regulations found at 31 C.F.R. part 802. See 31 C.F.R. § 800.101 (describing the scope of parts 800 and 802). 31 C.F.R. part 802 may cover agricultural land if a transaction meets the "covered real estate transaction" criteria. See 31 C.F.R. § 802.212. The law also provides an exception for certain real estate transactions involving real estate in "urbanized areas" or if it constitutes a single "housing unit," as defined by the Census Bureau in each case. See 50 U.S.C. § 4565(a)(4)(C)(i).

concessions of real estate (including agricultural land) in close proximity to military or other sensitive U.S. government facilities.¹⁵

Informed by the committee’s review, the President of the United States has the authority to suspend or prohibit a transaction that threatens to impair the national security of the United States.¹⁶ According to the 2022 CFIUS annual report, five presidential decisions have been issued since 2013, most recently in 2020.¹⁷

CFIUS Member and Non-member Roles and Responsibilities

CFIUS’s responsibilities include: (1) reviewing transactions, most of which are voluntarily submitted by businesses, and taking action as necessary to address any national security risks; (2) monitoring and enforcing compliance with mitigation measures; and (3) identifying transactions of concern that have not been submitted to CFIUS for review, according to officials. The Secretary of the Treasury has certain operational responsibilities as the chair of CFIUS. According to Treasury officials, these responsibilities include coordinating committee operations, helping collect information from parties involved in a transaction (such as a foreign acquirer and U.S. business involved in a transaction), and distributing filed information to all member agencies. Treasury also communicates on the committee’s behalf with the parties, members of Congress, and the general public. According to DOD officials that we interviewed, when transactions of concern involve agricultural land, Treasury, DOD, and USDA are the agencies most actively involved in identifying and reviewing the transactions for CFIUS.

CFIUS Submission Requirements

CFIUS is the main authority that reviews national security risks relating to certain foreign investments, including those in agricultural land, according

¹⁵“Close proximity” is defined as the area that extends outward one mile from the boundary of a relevant U.S. government site. 31 C.F.R. § 802.203. Regulation defines “extended range” as the area that extends 99 miles outward from the outer boundary of close proximity of certain military installations. 31 C.F.R. § 802.217. See 31 C.F.R. pt. 802, app. A (listing relevant military installations and other U.S. government sites).

¹⁶See 50 U.S.C. § 4565(d)(1).

¹⁷U.S. Department of the Treasury, Committee on Foreign Investment in the United States, *Annual Report to Congress: Report Period CY 2022* (2022). Accessible at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-reports-and-tables> (accessed on July 30, 2023). Data do not specify whether these decisions related to agricultural land.

to Treasury and DOD officials.¹⁸ CFIUS reviews formal written notices (“notices”) that have been submitted (or “notified”) to the committee by parties to transactions. Notices to CFIUS should contain information about the nature of the transaction and the parties involved. They include voluntary filings by U.S. businesses, including those in the agricultural industry, and voluntary filings by foreign investors of real estate (including agricultural land) in proximity to military or other sensitive locations.¹⁹

Mandatory filing requirements do not necessarily extend to CFIUS transactions involving agricultural land.²⁰ Only certain transactions related to U.S. businesses involved with critical technology, critical infrastructure, and sensitive personal data require a mandatory CFIUS filing.²¹

According to CFIUS’s 2022 report, apart from certain transactions that are subject to the mandatory filing requirement authorized under FIRRMA, parties voluntarily submit declarations or notices of transactions to CFIUS. However, in general, any CFIUS member agency can initiate a review of any covered transaction for which no notice was filed if it determines that the transaction is within the Committee’s jurisdiction and that it may raise national security risks. CFIUS refers to these as “non-notified transactions.” By contrast, notified transactions include those voluntarily filed in accordance with CFIUS’s formal notice procedures, as well as transactions submitted for review in abbreviated notifications (“declarations”).²² All CFIUS reviews are confidential and protected by statute from public disclosure.²³

CFIUS Process for Reviewing Transactions

CFIUS reviews each transaction individually, focusing on the aspects of the transaction that could pose a potential national security risk. See

¹⁸In addition to CFIUS, DOD’s Military Aviation and Installation Assurance Siting Clearinghouse aims to protect DOD’s mission capabilities from incompatible energy development by collaborating with external stakeholders to prevent, minimize, or mitigate adverse impacts on military training, testing, and readiness. According to DOD officials, this development could involve domestic or foreign entities.

¹⁹See 31 C.F.R. § 800. 211 (defining “covered real estate” to include locations within close proximity to identified military facilities, locations within the extended range of certain military facilities, and any county or other geographic area identified in connection with identified installations).

²⁰See Pub. L. No. 115-232, § 1706.

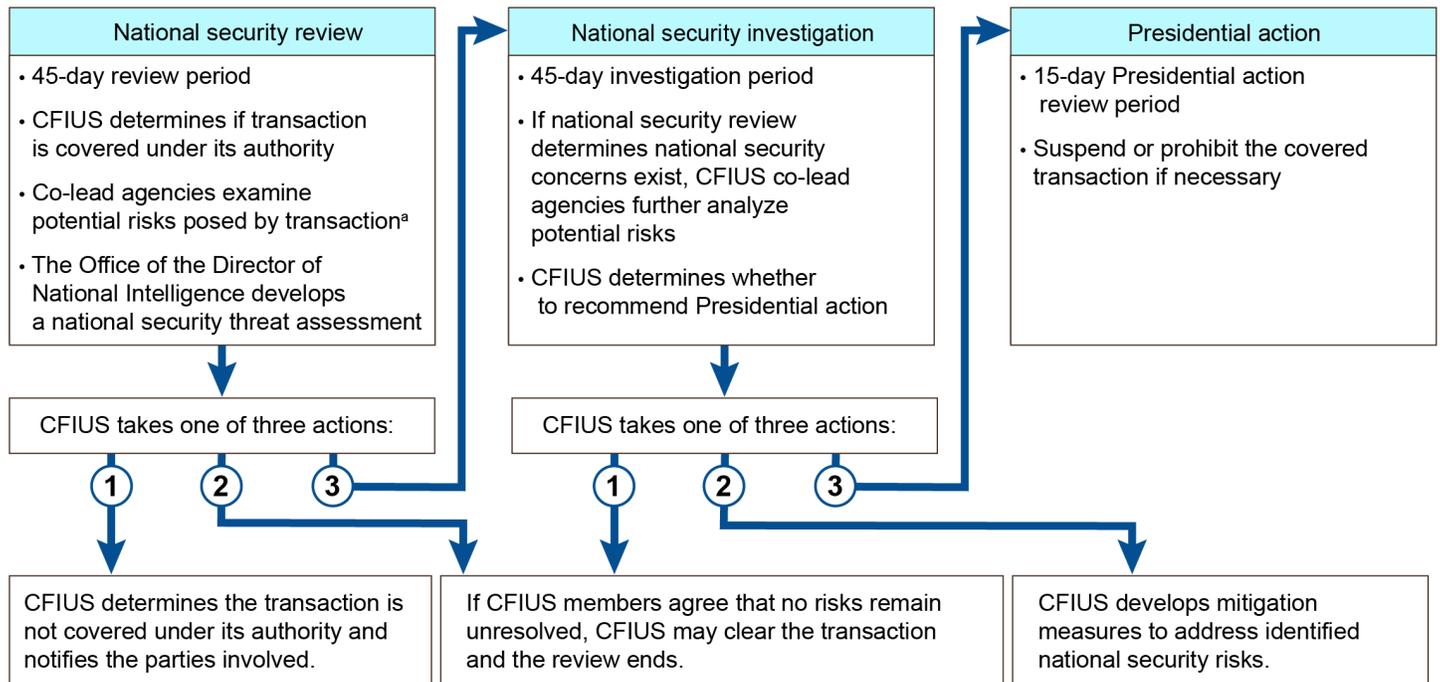
²¹See 31 C.F.R. § 800.401.

²²See 31 C.F.R. §§ 800.403, 800.501, 802.401, and 802.501.

²³50 U.S.C. § 4565(c).

figure 2 for an overview of the steps that comprise the CFIUS process for reviewing notified transactions.

Figure 2: Overview of Process for Reviewing Transactions Notified to the Committee on Foreign Investment in the United States (CFIUS)



Source: GAO analysis of Treasury documents and 50 U.S.C. § 4565; GAO (images). | GAO-24-106337

Note: This process is described in greater detail in 50 U.S.C. §§ 4565(b), (d).

^aFor each transaction reviewed, the committee identifies agencies with relevant expertise to act as co-lead with Treasury to guide the transaction through the CFIUS process. According to Treasury officials, co-lead agencies may include agencies that are not members of the committee, but which can act as members for specific transactions.

Notified transactions. During its initial review—known as a national security review—CFIUS determines whether the transaction is covered by its legal authorities and therefore within its jurisdiction. If the transaction is within its jurisdiction to review, CFIUS assesses whether it poses risks to national security. The committee generally also identifies at least one other agency with relevant expertise to work with Treasury to guide the

transaction through the CFIUS process.²⁴ In addition, the Office of the Director of National Intelligence develops a national security threat assessment.

If CFIUS finds that the covered transaction does not present national security risks or that other provisions of law provide adequate and appropriate authority to address the risks, CFIUS may end its review. However, if the potential risks remain unresolved at the end of the review period or the committee requires additional time, CFIUS may initiate a national security investigation.

If CFIUS identifies an unresolved national security risk, CFIUS may work with the transaction parties as appropriate to mitigate the potential risk. Mitigation may include ensuring that only authorized persons have access to certain information or facilities. It may also involve the parties providing the U.S. government the right to review certain business decisions and to object if the decisions raise national security concerns.

CFIUS clears a transaction if it determines during its review or investigation period that, as appropriate, (1) the transaction does not pose any unresolved national security risks, (2) any national security risks are adequately addressed by other laws, or (3) mitigation measures that CFIUS agreed to or imposed resolve any national security risks. However, if any national security risks remain unresolved after the investigation, CFIUS may refer the transaction to the President for action unless the transaction parties decide to withdraw the filing and abandon the transaction. The President has the authority to suspend or prohibit a transaction, including by requiring that the foreign party divest itself from the U.S. entity.²⁵

According to the CFIUS 2022 annual report, CFIUS conducted national security reviews for 286 notified transactions in 2022. Of those, 285 were

²⁴According to Treasury officials, co-lead agencies may include agencies, such as USDA, that are not standing members of the committee, but which can act as members for specific transactions because of their relevant expertise.

²⁵Congress directed that this authority can be invoked only when, in the President's judgment, no law other than section 721 of the Defense Production Act of 1950, as amended, and the International Emergency Economic Powers Act provides adequate and appropriate authority to protect national security, and when there is credible evidence that the foreign person acquiring an interest might take action that threatens to impair the national security. See 50 U.S.C. § 4565(d)(4). According to CFIUS, a foreign acquirer may agree to divest itself of all or part of a U.S. company in lieu of a referral to the President. Divestment typically occurs through the parties' withdrawing the notice and abandoning the transaction.

filed as investment-related transactions and one was filed as a real estate-related transaction. CFIUS conducted subsequent national security investigations on 162 of the 286 notices and concluded action after adopting mitigation agreements to resolve national security concerns with respect to 41 notices. In 2022 there were no presidential decisions issued and CFIUS rejected one notice.

Non-notified transactions. CFIUS used various methods to identify non-notified transactions in 2022. These included interagency referrals, tips from the public, media reports, commercial databases, and congressional notifications, according to CFIUS's 2022 report. The report stated that CFIUS identified and formally considered 84 non-notified transactions, 11 of which resulted in a request to the parties to file the transaction with CFIUS in 2022.²⁶

If CFIUS believes that a non-notified transaction may be covered and raise national security considerations, CFIUS may request that the parties submit relevant information about the transaction and then, if applicable, file a notice.²⁷ However, should the parties decline to file a notice after CFIUS requests they do so, any CFIUS member agency may file an agency notice to initiate a review of the transaction.²⁸

Agricultural Foreign Investment Disclosure Act of 1978, As Amended (AFIDA)

AFIDA Statute

AFIDA, enacted in 1978, requires foreign persons and legal entities acquiring or transferring an interest in U.S. agricultural land to submit a report to USDA containing information on the transaction, the land, and the parties involved. Under AFIDA as originally enacted, USDA was charged with determining the effects of these transactions, particularly on family farms and rural communities. AFIDA also grants USDA authority to take actions to monitor compliance and to assess financial penalties for non-filers.

²⁶Committee on Foreign Investment in the United States, *Annual Report to Congress: CY 2022*.

²⁷See 31 C.F.R. §§ 800.501, 802.501.

²⁸50 U.S.C. § 4565(b)(1)(D).

Four months prior to the enactment of AFIDA, we reported that there was unanimous agreement from government and the private sector that there was no reliable data on the amount of foreign-owned U.S. farmland.²⁹ At that time, some surveyed states were concerned that foreign investment in farmland might drive up farm prices beyond the reach of residents, result in foreign control over food production and possibly food prices, or adversely affect small family farms. We determined the most feasible and simplest approach for collecting these data was a federal effort to require foreign landowners to self-report their investments. However, we reported that the usefulness of such a system would depend on the completeness of the information collected.

Foreign Persons under AFIDA

According to AFIDA regulations, a foreign person is defined as a foreign individual, legal entity, or government. In addition, a domestic entity in which at least 10 percent is held directly or indirectly by a foreign individual, legal entity, or government is also considered a foreign person. Foreign persons are required to file a disclosure form with USDA if they acquire, transfer, or hold an interest in U.S. agricultural land, including leases that are for at least 10 years.³⁰ Foreign persons are not required to file a report for short-term leases that are for less than 10 years.

AFIDA Forms

Foreign persons that invest in U.S. agricultural land are required to file a paper FSA-153 form (also known as the AFIDA form) disclosing details of the transaction. Specifically, filers are required to provide information about investors and the land, such as its acreage, land use, and value. These forms are required for acquisitions, dispositions, and land use changes.

USDA Roles and Responsibilities

USDA roles and responsibilities related to AFIDA filing are distributed across USDA's county, state, and federal offices. AFIDA forms can be filed with the FSA county office where the agricultural land is located or USDA headquarters for complex filings. At USDA headquarters, the Farm Production and Conservation Business Center (FPAC-BC) is responsible for managing AFIDA, including maintaining the AFIDA spreadsheet and

²⁹GAO, *Foreign Ownership of U.S. Farmland: Much Concern, Little Data*, CED-78-132 (Washington, D.C.: June 12, 1978).

³⁰AFIDA regulations also require filings when foreign held land use changes from agriculture to non-agriculture. Exemptions from AFIDA filings include security interests, contingent future interests, easements for purposes unrelated to agricultural production, and interests solely in mineral rights. 7 C.F.R. § 781.2(c).

overseeing USDA's AFIDA policy, according to USDA officials.³¹ For example, FPAC-BC is responsible for updating the FSA-153 form and AFIDA guidance. FSA state offices oversee the efforts of their county offices and provide technical assistance, as needed. Figure 3 shows the different USDA offices with AFIDA responsibilities.

Figure 3: U.S. Department of Agriculture (USDA) Offices with Agricultural Foreign Investment Disclosure Act of 1978, As Amended (AFIDA) Responsibilities

	<p>USDA headquarters: Six officials in Farm Production and Conservation – Business Center work primarily on AFIDA.</p>	 <p>Receives forms Maintains database</p>
	<p>FSA state offices: State executive directors in every state and territory oversee efforts by county offices, including AFIDA, as needed.</p>	 <p>Conduct oversight</p>
	<p>FSA county offices: County executive directors and county committees in 2,427 counties carry out AFIDA responsibilities, among other tasks.</p>	 <p>Receive forms</p>

Legend: Agricultural Foreign Investment Disclosure Act of 1978, as amended = AFIDA; Farm Service Agency = FSA.
Source: U.S. Department of Agriculture (USDA) documents and officials; GAO (images). | GAO-24-106337

AFIDA Reporting

AFIDA originally directed the Secretary of Agriculture to analyze AFIDA data and issue annual reports until Congress repealed that requirement in 1998.³² However, USDA has continued to issue public annual reports summarizing AFIDA data. Specifically, the summary data includes the number of acres owned—by state, county, type of agricultural land, and country of foreign investor. According to the 2021 report, the most recent report available at the time of our review, the countries with the largest foreign holdings of U.S. agricultural land are Canada (approximately 13 million acres or 31.5 percent), the Netherlands (approximately 5 million acres or 11.9 percent), and Italy (approximately 3 million acres or 6.6

³¹According to USDA officials, the AFIDA Excel spreadsheets posted online are developed from an AFIDA Microsoft Access database.

³²The Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, § 101(f), 112 Stat. 3280, 3281, repealed section 5 of AFIDA, which had required USDA to annually report to the President and Congress its findings and the conclusions of its analysis on the effects of AFIDA transactions, as well as the effectiveness and efficiency of AFIDA reporting requirements, Pub. L. No. 95-460, § 5, 92 Stat. 1263, 1265-1266 (1978).

percent). In addition, forest land accounts for nearly half of all reported foreign holdings, according to the report. Our analysis of AFIDA data found that 54 percent of foreign holdings are for types of interest other than direct ownership, such as long-term leases.

When analyzing AFIDA data for its annual reports, USDA focuses on economic outcomes, such as the effect of foreign investments on local land values. The reports do not include analysis related to national security risks. AFIDA also requires USDA to transmit copies of the filings submitted by foreign persons and legal entities to each state department of agriculture (i.e., state government, not USDA's FSA state offices) that includes transactions that occurred in their state.

CFIUS Review Does Not Regularly Include AFIDA Information Related to Foreign Investments in Agricultural Land

CFIUS and Agency Reviews of Agricultural Land Transactions Focus on Potential National Security Risks

CFIUS

When identifying non-notified transactions for CFIUS's review, CFIUS and its member agencies focus on transactions that may pose potential national security risks, such as the proximity to a sensitive military base, according to Treasury and DOD officials.³³ In some cases, CFIUS may also rely on non-members, such as USDA, for relevant knowledge and expertise. CFIUS reviews each transaction individually, focusing on the aspects of the transaction that could pose a potential national security risk. If, during the national security investigation, CFIUS identifies an

³³See, e.g., 50 U.S.C. § 4565(a)(4)(B)(ii)(II)(bb)(AA). As discussed above, non-notified means that a transaction has not been notified to CFIUS for review.

unresolved national security risk, it may work with the parties involved as appropriate to mitigate the potential risk.

CFIUS may choose to initiate a review of a non-notified transaction that a CFIUS member agency has reason to believe is a covered transaction and may raise national security concerns. CFIUS used various methods to identify these non-notified transactions, including interagency referrals, tips from the public, media reports, commercial databases, and congressional notifications, according to the 2022 CFIUS annual report.³⁴ The report states that non-notified transactions remain among the most complicated that CFIUS considers, and these cases often require mitigation measures to address national security risks.

DOD

The national security risks around foreign investments in agricultural land relate to proximity to certain military installations, according to DOD officials with CFIUS responsibilities. CFIUS may review voluntary filings by parties to transactions of purchases, leases, or concessions of real estate (including agricultural land) in proximity to military or other sensitive U.S. government facilities.³⁵

DOD has a specific team to identify non-notified transactions that may warrant a CFIUS review.³⁶ This team scans proprietary databases and publicly reported transactions and determines whether a selected transaction may be covered under CFIUS authorities and if it may raise national security risks. According to Treasury and DOD officials, if both conditions are met, DOD recommends to the committee that CFIUS request additional information about the transaction and, if warranted, a filing.

In addition, DOD has drafted guidance for foreign investments in agricultural land in proximity to military installations that may pose national security risks, according to DOD officials. The Department of the Air Force has developed the Playbook for Foreign Investment Assessments Proximate to Military Equities, which was tentatively scheduled for release in October 2023, to identify and review national security risks related to foreign investments in agricultural land near Air

³⁴Committee on Foreign Investment in the United States, *Annual Report to Congress: CY 2022*.

³⁵See 50 U.S.C. §§ 4565(a)(4)(C), (b)(1)(C).

³⁶In response to our prior work, DOD revised its CFIUS policy to include additional guidance and responsibilities for identifying non-notified transactions. See [GAO-18-494](#).

Force installations. According to Air Force officials, the playbook is intended to educate military and civilian stakeholders about the CFIUS process and help mitigate any potential national security risks before the CFIUS process begins. It will include guidance for the Department of Air Force, local municipalities, and buyers and sellers of land to consider when reviewing potential risks to Air Force installations from foreign investments in land or businesses near Air Force installations. In addition, it will include questions about who is involved in the sale and acquisition of the land; the type and location of the land; whether the target property location provides a unique or direct line of sight to a military installation; and specific sensitivities, vulnerabilities, and potential consequences for the installation if a foreign adversary were to collect information.

DOD works with stakeholders to help identify sensitive facilities and installations which may be affected by foreign transactions of agricultural land. Agricultural land transactions within 100 miles of certain listed sites are generally considered covered for CFIUS's review. Since March 2023, DOD's Office of the Secretary of Defense has coordinated a working group of military services and other stakeholders. If necessary, this group meets quarterly to discuss additions to the list of sensitive installations and broader updates to the regulations addressing CFIUS coverage for real estate transactions. Effective in September 2023, Treasury, in coordination with DOD, updated the CFIUS list of military installations to include 242 sites (from 234 initial sites).³⁷ As a result of the working group, DOD officials have also discussed ways to update and improve CFIUS's understanding of risks associated with real estate coverage, including agricultural land. DOD officials said they plan to submit a new list of covered military installations to Treasury and the other CFIUS members by the end of 2023. The approval and recognition of these new installations require a regulatory update. Any changes to the list of installations should be issued for public comment.

DOD also has teams to determine national security risks for notified transactions undergoing CFIUS review. If DOD determines a risk exists, DOD officials conduct an analysis of those risks and consider whether mitigation measures are needed. In addition, officials request a national security investigation through the CFIUS chair. If DOD determines a risk does not exist, DOD informs the CFIUS chair of its determination.

³⁷Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States, 88 Fed. Reg. 57,348 (Sept. 22, 2023) (to be codified at 31 C.F.R. pt. 802, app. A).

USDA

USDA is not a member of CFIUS, but participates fully as a voting member agency when Treasury determines that a transaction involves agricultural issues, according to officials. While USDA reviews CFIUS notified transactions, there is no requirement in CFIUS law or policy for USDA to identify CFIUS non-notified transactions independently. However, USDA's Office of Homeland Security—its office responsible for coordinating with CFIUS agencies on national security issues—reviews media and other open source information to identify non-notified cases. These cases include foreign acquisition of agricultural land, according to the official that coordinates CFIUS efforts. In addition, according to officials, USDA reviewed summary information of all CFIUS cases between October 2022 and May 2023 to identify potential national security risks related to agricultural land and other agricultural sectors.³⁸ Based on the office's review of these cases, it identified certain cases for which it requested to be co-lead or otherwise actively involved in the reviews. USDA has been actively involved in reviewing all transactions involving agricultural land, according to Treasury officials.

Treasury

Treasury officials noted that since Treasury does not have any agency-specific involvement related to agricultural land, its approach to identifying these non-notified transactions are generally limited to representing CFIUS's interests. The officials said all member agencies are responsible for protecting national security, and agencies generally identify transactions related to their agency areas of interest and expertise. Acting as a voting member, Treasury reviews transactions for potential national security risks, according to officials. In addition, as chair, Treasury manages the administrative process, helps collect information from parties involved in a transaction, and reviews information submitted by other agencies, according to officials. Accordingly, Treasury relies on DOD and other CFIUS members to collect and relay relevant information, including about non-notified transactions related to foreign investments in agricultural land. In addition, Treasury relies on non-members like USDA for any relevant knowledge, if applicable.

³⁸According to USDA officials, they began receiving this information because the Secretary of Agriculture expressed concern to the Secretary of the Treasury that USDA was not reviewing all cases that may consider agricultural interests. In response, Treasury officials agreed to have a trial period in which USDA reviews all CFIUS cases. USDA officials were not certain whether USDA would continue this trial in fiscal year 2024. Treasury officials confirmed that USDA received CFIUS summaries of all cases during this timeframe and said they value USDA's expertise and view them as an important contributor to the committee.

Although DOD, USDA, and Treasury officials may pursue and submit cases to CFIUS regarding foreign investments in agricultural land, all three agencies track their CFIUS submissions in aggregate, rather than by type of business or real estate acquired. CFIUS and relevant agencies are not required by CFIUS law or policy to specifically track or label transactions related to agricultural land, according to DOD, USDA, and Treasury officials. About 2,600 covered transactions were notified to CFIUS in calendar years 2013 through 2022, according to the CFIUS 2022 annual report.³⁹ Officials could not identify how many of the transactions definitively related to agricultural land. Nevertheless, DOD officials noted that cases involving foreign investments in agricultural land represent a small percentage of total CFIUS transactions.

Although officials identified a subset of cases related to agricultural land and provided us with relevant information on selected CFIUS-reviewed transactions for calendar years 2013 through 2023, they told us that these case files may exclude certain relevant transactions. These case files may also include transactions outside the scope of this review, such as transactions that deal with foreign investments in agricultural supply chains or other foreign investments in agriculture that do not specifically involve the transfer of land, according to officials.

CFIUS annual reports have provided cumulative and trend information on the business sectors and subsectors involved in certain covered transactions, using North American Industry Classification System (NAICS) codes. Some sectors are potentially relevant to agricultural land, including the agriculture, forestry, fishing and hunting sector and the crop production subsector.⁴⁰ However, NAICS codes do not comprehensively encompass real estate transactions—which may include covered agricultural land—and the codes are provided by parties to the transactions.

³⁹Committee on Foreign Investment in the United States, *Annual Report to Congress – Calendar Year 2022*.

⁴⁰In this report, industry sectors and subsectors are defined using 2012 and 2017 NAICS codes of the U.S. target company. Whenever possible, the NAICS code assigned to each U.S. target company is based upon information provided by the parties. If no NAICS code was provided, CFIUS determined the most appropriate NAICS code using publicly available information.

AFIDA Information Is Not Regularly Shared on a Timely Basis with CFIUS

We found that USDA does not regularly share AFIDA data with CFIUS agencies on a timely basis to be useful for CFIUS reviews. USDA releases its annual report online. However, according to DOD officials, they need to receive AFIDA information more than once a year, and they need information that is more up-to-date and more specific to help them identify relevant non-notified transactions and consider potential national security risks.

DOD officials told us that the information AFIDA requires USDA to collect, such as names of foreign owners and when the land was transferred or acquired, could help DOD identify relevant non-notified transactions for CFIUS to review and would enable the committee to conduct timely and thorough reviews of such transactions. DOD officials stated that it is very difficult to identify relevant non-notified transactions for CFIUS because DOD does not have a single database of real estate transactions that may potentially involve DOD interests. As a result, they must search the website of each municipality, rather than look for this information in one place, according to DOD officials. Air Force officials also told us that information from AFIDA disclosures, such as whether a party has filed a disclosure, who filed it, and when it was filed, could improve CFIUS's ability to identify cases and investigate the ownership structure of foreign investments. Treasury officials noted that it would be helpful to have data such as the identity of the foreign owner, their country of origin, and status of their U.S. residency or citizenship, as well as more details about the nature of the transaction.

FPAC-BC, the USDA office responsible for AFIDA data, shares some AFIDA information with other federal agencies and the public. For example, in March 2023, according to USDA officials, FPAC-BC shared a presentation about AFIDA with DOD officials interested in holdings by the People's Republic of China. USDA also provided supplemental data regarding AFIDA holdings in a specific U.S. location and a listing of all company holdings across the United States. According to USDA officials, they respond promptly when they receive requests.

USDA provides selected AFIDA information on an annual basis in a report online, but the information is not specific and is not timely to be useful for CFIUS reviews. Each year, FPAC-BC publishes a *Foreign Holdings of U.S. Agricultural Land* report on its website, based on selected data collected from FSA-153 forms submitted pursuant to the AFIDA reporting requirement. The report includes aggregated information for U.S. states and counties. However, it does not include other information collected by USDA, such as detailed ownership information,

country affiliations of all foreign investors, and locations of individual agricultural land transactions. In addition, USDA officials told us that for calendar year 2023, they have been keeping a real-time log of AFIDA filing activity for investors from the People's Republic of China, Russia, Iran, and North Korea. USDA plans to include this information its 2023 AFIDA Annual Report.⁴¹

Further, in June 2023, FPAC-BC posted AFIDA transaction data for calendar years 2010 through 2021 on its website.⁴² In contrast to the annual *Foreign Holdings of U.S. Agricultural Land* report, these data include transaction-level data. For example, they include some information collected on the FSA-153 forms, such as the primary investor in the transaction (the person or legal entity that holds the deed or lease).⁴³ However, the primary investor may be one of multiple ownership tiers. That is, the primary investor may be owned by one or more other entities, each of which may also be owned by multiple entities. AFIDA data only include the first ownership tier; they do not include ownership information for the second and third ownership tiers beyond the primary investor, which USDA requires foreign persons to submit.

In addition, as of November 2023, the USDA office responsible for AFIDA had not posted AFIDA transaction data for calendar year 2022 online, nor had it shared this information with relevant CFIUS member agencies. While USDA has posted selected AFIDA data online through calendar year 2021, USDA officials told us in September 2023 that they could share these data more regularly through a web-based collaborative platform, such as SharePoint. USDA has requested funding to develop a

⁴¹In a joint explanatory statement outlining committee priorities for the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, Congress directed USDA to submit a report regarding data on foreign-owned agricultural land trends including land owned, or partially owned, by the governments of China, Russia, Iran, or North Korea over the past decade and projections for the next decade based on previous trends, and the potential impacts on the American agricultural sector, food security, and rural economies. H. Comm. Print 47-047, 117th Cong.

⁴²Accessible at <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/agricultural-foreign-investment-disclosure-act-afida/index> (accessed on January 4, 2024). USDA's most recent AFIDA annual report was published in December 2023, as of January 2024.

⁴³Accessible at <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/agricultural-foreign-investment-disclosure-act-afida/index> (accessed on October 11, 2023.)

real-time data system that can be accessed by other U.S. government agencies and the public.

In January 2024, in reviewing a draft of this product, USDA officials stated that when their headquarters office receives AFIDA filings from investors from the People's Republic of China, Russia, Iran, or North Korea, they share the complete files with DOD and the Federal Bureau of Investigation. However, they noted that USDA cannot effectively share data early in the process except through a manual process of scanning and e-mailing AFIDA forms. Officials emphasized the need for sufficient funding for an online filing portal to share timely data with DOD and other agencies.

DOD officials were not aware that USDA had posted the AFIDA transaction data online. DOD officials that identify non-notified cases said they have a good working relationship with USDA, and the two agencies often share referrals of agriculture-related transactions. In addition, they noted that the online data could provide useful information for identifying CFIUS cases related to agricultural land because DOD may not be able to identify these cases otherwise. But other DOD officials that review notified cases involving agricultural land told us that CFIUS could not legally review most of the transactions listed in the online AFIDA data, because CFIUS only has authority to review applicable real estate cases with proximity to sensitive military installations after 2019. More up-to-date information could help CFIUS and DOD more quickly mitigate potential national security risks associated with agricultural land.

Federal internal control standards state that management should communicate quality information (1) internally down and across reporting lines to enable personnel to perform key roles in achieving objectives, addressing risks, and supporting the internal control system, and (2) externally through reporting lines so that external parties can help the entity achieve its objectives and address related risks.⁴⁴

As we have previously reported, if parties to a covered transaction do not voluntarily notify CFIUS, and CFIUS does not independently discover the transaction and initiate a review, potential risks to national security could go undetected.⁴⁵ By sharing timely and more detailed AFIDA data, such

⁴⁴Principles 14 and 15. Standards for Internal Control in the Federal Government, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

⁴⁵[GAO-18-494](#).

as when or whether a party has filed a disclosure or the tiers of ownership beyond the primary investor, USDA could help CFIUS member agencies reduce the likelihood of missing potential risks to national security.

USDA Implements AFIDA Nationally, but Its Processes to Collect, Track, and Report Key Information are Flawed

USDA Implements AFIDA Across Field Offices and Headquarters

USDA's AFIDA data is the most comprehensive source on foreign investment in U.S. agricultural land, according to USDA officials. As required by law, foreign persons must report information for transactions of U.S. agricultural land, including acquisitions, dispositions (e.g., sales), land use changes, or ownership changes.⁴⁶ Under USDA's current system, this information is submitted via paper AFIDA forms. The forms may be submitted to Farm Service Agency (FSA) county offices, or to USDA headquarters for more complex transactions, such as transactions that span multiple counties. There are over two thousand FSA county offices in the United States, according to officials.

The county and state offices then review the AFIDA forms for accuracy and completeness, according to USDA officials. If the forms were submitted to county offices, these offices are directed to review the forms and send them to USDA headquarters within a day of receiving them. Once a year, USDA headquarters officials enter selected information from forms into the AFIDA spreadsheet for its annual reports. This information includes the number of acres owned, by state and county, land value, and the country of the foreign investor. In addition, headquarters sends AFIDA forms to the USDA state office where the land is located.

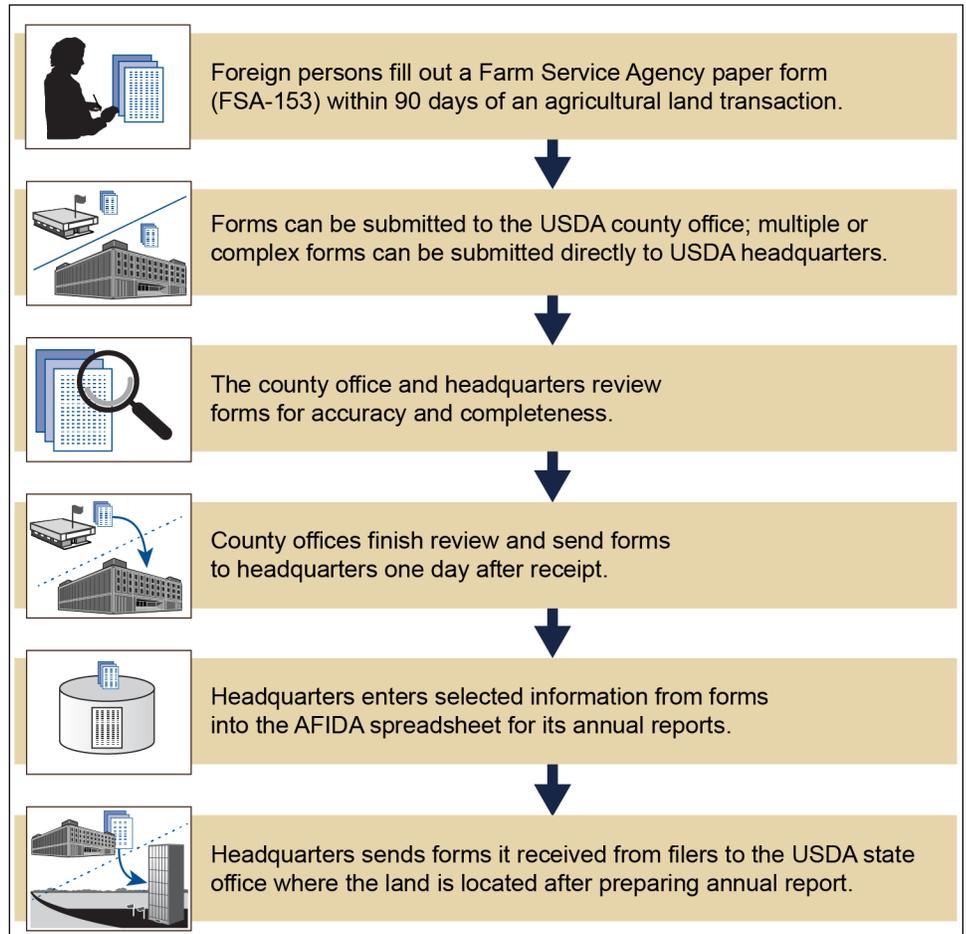
According to officials, FSA county and state offices make efforts to publicize AFIDA requirements. For example, county offices are directed to

⁴⁶AFIDA reporting is subject to certain exceptions, including (1) leaseholds less than ten years; (2) contingent future interests, and (3) easements unrelated to agricultural production. See 7 C.F.R. § 781.2(c).

display AFIDA information where deeds are registered in their counties and periodically send letters to local real estate agencies, real estate attorneys, and mortgage lenders in their counties to remind them of AFIDA requirements, according to FSA guidance.

In line with USDA policy, FSA state offices oversee county offices, and, according to officials, provide technical assistance to county offices as needed, such as answering questions about the AFIDA process. State offices also are directed to conduct annual compliance checks with county offices regarding their AFIDA responsibilities. According to officials, these checks include visits from state district directors to document whether they are implementing various AFIDA responsibilities. Figure 4 summarizes USDA's AFIDA data collection.

Figure 4: U.S. Department of Agriculture (USDA) Data Collection for the Agricultural Foreign Investment Disclosure Act of 1978, As Amended (AFIDA)

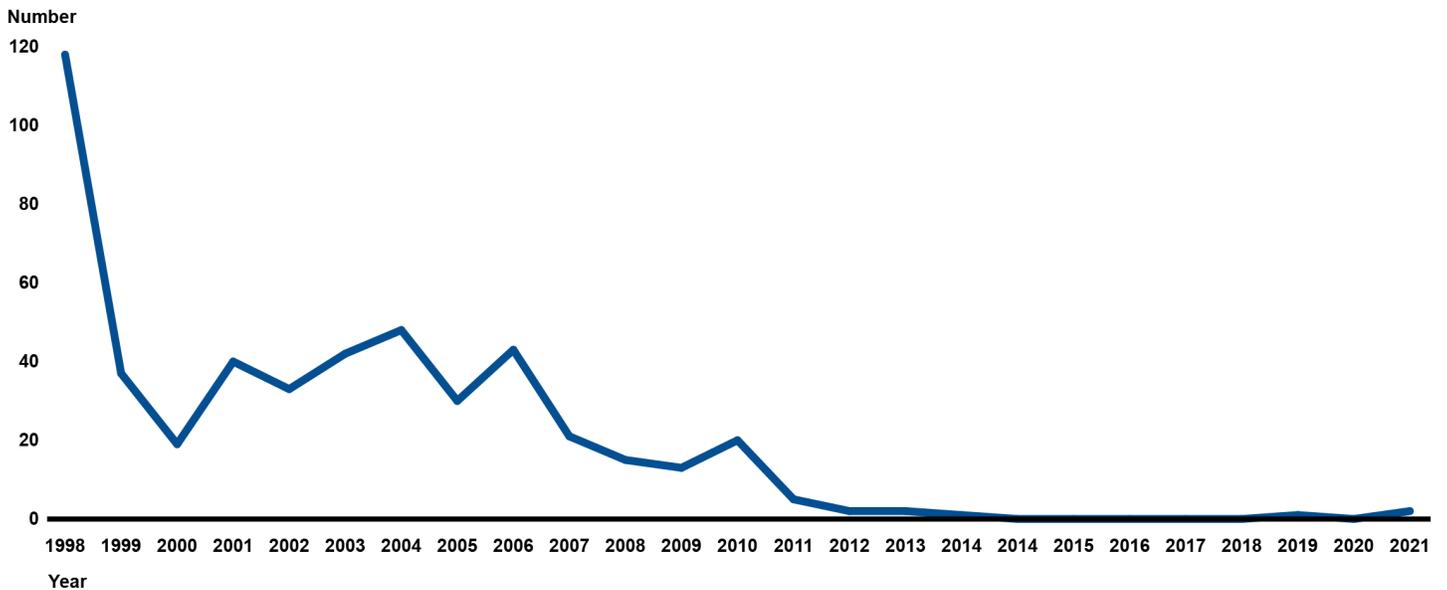


Legend: Agricultural Foreign Investment Disclosure Act of 1978, as amended = AFIDA.
 Source: U.S. Department of Agriculture (USDA) documents and officials; GAO (images). | GAO-24-106337

USDA Assesses Few Penalties for AFIDA Non-Compliance

USDA headquarters may assess penalties for foreign persons that do not comply with AFIDA filing requirements, although fewer penalties have been assessed in recent years due to lack of staff, according to USDA. USDA assessed eight penalties for AFIDA late filing or non-filing between 2012 and 2021, according to the 2021 AFIDA report. Specifically, USDA assessed five of these penalties between 2012 and 2014, one in 2019, and two in 2021. USDA did not assess any penalties between 2015 and 2018 or in 2020. See figure 5 for USDA reporting on penalties assessed since 1998.

Figure 5: U.S. Department of Agriculture Reported Penalties Assessed from 1998-2021 for Non-Compliance with the Agricultural Foreign Investment Disclosure Act of 1978, As Amended (AFIDA)



Source: GAO analysis of U.S. Department of Agriculture data. | GAO-24-106337

Note: According to officials, 1998 is the first year that penalty information was electronically stored. Penalty information from years prior to 1998 were entered into a handwritten log.

The penalty calculation for late AFIDA forms is one-tenth of one percent of the value of the land times the number of weeks that the form is late, up to a statutory maximum of 25 percent of the land’s fair market value. According to USDA, most penalties equal less than one percent of the value of the land, because the main goals of its AFIDA efforts are to maximize compliance and not to discourage potential filers from filing due to fears of large penalties.

USDA’s Processes to Collect AFIDA Data Are Unclear and Challenging to Implement

USDA’s AFIDA processes create challenges to collecting AFIDA data. For example, the AFIDA handbook is the main source of AFIDA guidance for state and county officials, according to officials. However, the handbook provides limited instructions on how FSA state and county offices should collect reliable AFIDA information, and lacks guidance on how to verify information on AFIDA forms. In addition, USDA’s current paper-based submission process hinders its ability to track investments.

FSA's AFIDA Handbook
Provides Limited Instruction on
Collecting Reliable Information

FSA's AFIDA handbook assigns responsibilities to various FSA offices on collecting AFIDA information, but provides limited instructions for how to fulfill these responsibilities. According to FSA officials, the handbook is the main source of AFIDA guidance for state and county officials. In 2007, FSA found deficiencies with its county offices' efforts to collect AFIDA data. Specifically, FSA said it had reviewed AFIDA forms and reported deficiencies both in accuracy of reported information and reviews of agricultural land ownership changes. In the corresponding notice sent to FSA state and county offices that year, FSA reiterated the handbook responsibilities for reviewing forms and land ownership changes.

FPAC-BC officials, now responsible for AFIDA, said they plan to update the AFIDA handbook, form, and regulations. The handbook was last updated in 2006; the regulations were last updated in 1995.⁴⁷ According to officials, as of August 2023, a working group has finished the revised form, which will be posted in the *Federal Register* along with an explanation after receiving internal clearance. Officials told us they are updating the types of AFIDA information the forms collect to better reflect different kinds of foreign investment and uses of agricultural land. For example, officials said they were planning to capture more information about lease agreements by having these filers indicate if they will use the land for wind or solar energy production.⁴⁸ USDA's 2021 annual report attributed recent increases in foreign holdings of pastureland and farmland mostly to long-term leases by foreign-owned wind companies. In addition, our analysis of AFIDA data from AFIDA's implementation through 2021 found that approximately two-thirds of the filings are legal entities with "wind," "solar," or "energy" in their names.

While the handbook lists common errors that may occur when filling out an AFIDA form, it does not address how officials should review forms for misleading, inaccurate, or false information. For example, the handbook says the name on the AFIDA form should be the titleholder's, not the shareholder's, but it does not provide guidance for verifying that information, such as reviewing the deed. In addition, the handbook explains what type of information from additional foreign persons with an

⁴⁷FSA was originally responsible for managing AFIDA and overseeing USDA's AFIDA policy, but FPAC-BC became responsible for AFIDA in 2018 due to an administrative policy decision, according to officials.

⁴⁸In addition, officials noted that they hope to use the new information captured on the forms to better understand the impacts of foreign investment on farmers and rural communities.

interest in the land must be reported, but not how to determine if the submitted information is accurate or missing foreign persons.

Training

The U.S. Department of Agriculture (USDA) provides training to state and county officials on Agricultural Foreign Investment Disclosure Act of 1978, as amended (AFIDA) filing requirements and the handbook only upon request, according to officials. In 2023, headquarters officials said they shared a presentation about AFIDA with Farm Service Agency (FSA) state executive directors and provided training to FSA staff in Hawaii, New Jersey, and Tennessee. According to officials, USDA will prepare a training program for state and county officials after the form and handbook are updated.

Source: USDA. | GAO-24-106337

The handbook directs headquarters and county offices to review submitted AFIDA forms and obtain any needed data to correct missing or erroneous information. However, FSA does not provide specific instructions in the handbook or elsewhere on how to review forms for substantive errors.

Under federal internal control standards, management should design control activities to achieve objectives and respond to risks, such as clearly documenting internal controls in management directives, administrative policies, or operating manuals.⁴⁹ USDA is in the process of updating the AFIDA handbook. However, without specific guidance in the handbook about reviewing the accuracy of forms and identifying missing information, USDA may not be properly equipping its thousands of county officials to identify misleading, inaccurate, or false information associated with AFIDA filers.

USDA's Efforts to Develop an Online AFIDA Data Submission System Face Key Challenges

USDA has been directed to update its paper-based submission process, which currently hinders its ability to track foreign investments in agricultural land. The Consolidated Appropriations Act, 2023 requires USDA to adopt an online submission process and public database by the end of 2025.⁵⁰ USDA has taken some steps to update its process for online submission. However, it has not developed timelines for creating an online submission process, despite having plans to create this process. In addition, USDA has not developed timelines or plans for creating a public database because, according to officials, they have not received sufficient funding to do so.

At USDA headquarters, FPAC-BC is responsible for AFIDA and maintains a standalone AFIDA spreadsheet using Microsoft Access. The

⁴⁹Principle 10, [GAO-14-704G](#). USDA implements the Green Book in USDA Departmental Regulation 1110-002, *Management's Responsibility for Internal Control* (Washington D.C., March 5, 2021): "Under and assistant secretaries, agency and staff office heads will establish and maintain a system of internal control based on GAO's *Green Book* ensuring adequate controls for program and administrative operations, reporting, and compliance are in place."

⁵⁰Pub. L. No. 117-328, div. A, tit. VII, § 773, 136 Stat. 4459, 4509 (2022). As of November 2023, the proposed Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2024, being considered by the House of Representatives, contains the same provision. H.R. 4368, § 747, 118th Cong. (reported in the House (June 27, 2023)).

spreadsheet includes the name of the primary investor associated with the AFIDA filing, the county and state where the land is located, the acreage and value of the land, and the country associated with the largest percentage of the land's foreign investors, among other information. Headquarters officials said they only input information that they need to populate their AFIDA annual reports, which includes summary information about current holdings of agricultural land by the primary foreign investors. They do not input certain information collected with the forms. For example, they do not include legal descriptions because these descriptions may be pages long and difficult to interpret. In addition, they do not include additional foreign persons beyond the primary investor (i.e., other ownership tiers or complex legal entities).

The Consolidated Appropriations Act, 2023 requires USDA to create (1) an AFIDA online submission process to allow foreign persons to file online and (2) a public database that includes information from all prior year disclosures by the end of 2025. FPAC-BC officials are planning to work jointly with FSA to develop the online submission process. Officials said the agency requested \$10 million over a 5-year period to create an online submission process that would allow a public database to be created that would include disclosures submitted after the process is in place. Ultimately, USDA put forward a request for \$1 million for AFIDA, which was included in the agency's final budget for fiscal year 2024. According to officials, USDA is deliberating how to use this funding. For example, officials told us that before developing the online submission process, they must first consider the types of data they want to capture from the updated form and how the data could help USDA gather additional information. USDA officials told us that as of September 2023, they are still in the initial stages of the clearance process, and the form has not yet been approved internally.

USDA officials estimate the agency would need approximately \$25 million to create a public database that includes all historical disclosures. First, officials said the agency would need a tool that could scan and digitize all files from 1978—when AFIDA was first enacted—until the launch of the tool. Staff would then need to determine the relevant information for scanning, account for differences between files over the years, scan the physical files, and ensure the data were being captured appropriately. Officials said they do not currently have plans to fulfill the public database requirement to include all past disclosures but that their plans will be determined based on the amount of funding received.

To meet the Appropriations Act's public database requirement in the interim, in June 2023, headquarters posted selected transaction data from the AFIDA spreadsheet to USDA's website. These transaction data include reported holdings that were active as of the end of each calendar year for 2010 to 2021. These data do not include holdings that were sold prior to 2010 and are inactive. Records of reported sales and land use changes are not included for any year in these data. Moving forward, officials plan to store information collected through the online submission process in a searchable and retrievable format.

However, USDA has not yet determined how it will transition and update AFIDA from a paper-based to an online submission process. Officials said it is difficult to modernize AFIDA information technology without additional funding and that there is no timeline for the creation of the new AFIDA online submission process. In September 2023, USDA officials told Congress they have not done more because the effort was not funded. In response, Members of Congress requested that USDA report their specific funding needs to meet these requirements.

Under federal standards for internal control, an entity should formulate plans to achieve its objectives.⁵¹ Without timelines and plans for the development and completion of its online submission process and public database, USDA's ability to fulfill these requirements will be impaired. In addition, details about USDA's plans to meet the requirements of the Consolidated Appropriations Act, 2023 timelines and plans, or its inability to do so, would help Congress understand if USDA is on track to meet the requirements or if additional legislative action is needed.

USDA's AFIDA Tracking Processes Lack Data Verification and Key Information, Resulting in Errors and Omissions

USDA does not sufficiently verify and conduct quality reviews to track the accuracy and completeness of its collected AFIDA data in the AFIDA spreadsheet and AFIDA forms. USDA has begun efforts to identify AFIDA non-filers, but USDA does not know the overall extent of AFIDA non-filing, according to officials. The flaws in these processes hinder USDA's ability to accurately track and represent where and how much agricultural land is foreign-held.

USDA's AFIDA Spreadsheet Contains Errors and Lacks Quality Reviews

Prior to publishing its AFIDA annual report, headquarters officials said they perform data checks. Specifically, officials said they check for certain errors, such as duplicate, missing, or invalid data entries. However, we identified data entry errors in the AFIDA spreadsheet and issues with

⁵¹Principle 2, [GAO-14-704G](#).

form completeness in a review of a selected non-generalizable sample of 19 AFIDA forms, including:

- AFIDA forms were not correctly or completely filled out. For example, some of the AFIDA forms we reviewed did not identify any foreign persons, and the AFIDA spreadsheet does not identify the affiliated country of the foreign person for 918 of 43,000 holdings. According to officials, USDA reaches out to filers with no foreign persons listed but sometimes does not get a response. Officials said they may need to assess penalties for some of these filers. In addition, some owners' records had different foreign countries associated with them across records.
- Duplicate entries of land holdings. For example, the largest land holding associated with the People's Republic of China, at over 27,000 acres, is duplicated in both the AFIDA spreadsheet and the most recent FSA annual report. The duplicate occurred when the ownership changed and the old record was not removed.
- Missing or invalid values, such as the number "13" used for the month of the acquisition and a negative number used for an acreage amount.

We shared examples of these errors with USDA officials, who confirmed the errors and, as of July 2023, said they were making efforts to correct them. For example, officials said they are following up with AFIDA filers if the agricultural land has a current value that is missing, zero, or less than \$100 in the AFIDA spreadsheet, or for transactions in which the amount filers paid to acquire the land is less than the current value.

According to officials, most of the errors we identified occurred during data entry. AFIDA data entry errors often occur because headquarters staff manually enters information from AFIDA forms into a spreadsheet without sufficient internal controls to prevent or identify these errors. USDA officials said they cannot prevent multiple users from accessing the AFIDA spreadsheet at the same time, so they coordinate access internally to prevent duplicate entries. According to officials, one official created the current spreadsheet in 2016 without specifically obligated funding, and it is an improvement over the previous system.

Officials said they are aware of obsolete records in the AFIDA spreadsheet because foreign persons may not have self-reported when they ceased to have an interest in the land, as required. In addition, according to officials, as of September 2023, new additional data checks have been added, such as ensuring the range of the month of acquisition

Data Mining Has Identified
Some Non-Filers, and
Additional Efforts Could
Produce More Results

is between “1” and “12.” However, according to officials, the current spreadsheet does not have other internal controls to prevent improper values from being entered. A key principle of federal internal control is to design activities for the information system.⁵² Agencies should have controls in their information systems to ensure validity, completeness, and accuracy of data entered. In addition, federal internal controls state management should ensure it has manual control activities, such as that officials reviewing paper AFIDA forms collect all required information from filers.⁵³ Without improving its verification and monitoring of collected AFIDA data, such as reviewing and validating information throughout the AFIDA data collection process, USDA cannot verify it is accurately capturing information, nor can it ensure the effectiveness of its data controls.

USDA has made some efforts to identify non-filers, but expanding these efforts could identify even more suspected non-filers. During our review we discussed with USDA officials performing a data matching exercise between FSA program data and AFIDA data to identify foreign persons that should have filed an AFIDA disclosure. As a result, USDA began a data mining pilot using FSA program data to identify potential AFIDA non-filers that own land in Washington State, and who have previously submitted information to FSA. The pilot identified 135 foreign landowners that, according to officials, are likely non-filers and need to complete an AFIDA filing. Prior to the pilot, USDA data accounted for 1,243 foreign holdings of agricultural land in Washington State. Headquarters officials said they sent the 135 newly identified landowners letters about AFIDA requirements. According to headquarters officials, as of September 2023, they have expanded the data mining effort nationally. Officials said they plan to conduct this data-mining effort periodically.

⁵²Principle 11, [GAO-14-704G](#).

⁵³Principle 10, [GAO-14-704G](#).

Farm Numbers

Certain Farm Service Agency (FSA) data sources, such as farm ownership records and program data, use FSA farm numbers and not legal descriptions to identify land. Officials said that requiring Agricultural Foreign Investment Disclosure Act of 1978, as amended (AFIDA) filers to obtain a unique identifier, such as an FSA farm number, would help the U.S. Department of Agriculture (USDA) connect AFIDA data with its other data and more easily identify the location of the land. In addition, an FSA official said requiring farm numbers could also incorporate annual reporting and verification requirements into AFIDA that FSA uses for farm programs. USDA does not have the authority to require AFIDA filers to obtain farm numbers from USDA, according to officials.

Source: USDA. | GAO-24-106337

According to USDA officials, conducting the data mining project helped identify potential non-filers they would not have otherwise identified. However, these efforts only identify individuals already present in its databases for farm programs.⁵⁴ The analysis will not identify foreign persons that have not done business with FSA and do not have a customer record, according to officials. Therefore, the complete universe of foreign investors in U.S. agricultural land will remain unknown. For example, since USDA captures and stores select AFIDA data in a standalone spreadsheet, officials cannot automatically connect the AFIDA spreadsheet with FSA data, according to officials. Therefore, after headquarters identified foreign persons in the pilot, they directed county officials to investigate whether the foreign persons in their county needed to file.

According to officials, AFIDA data does not provide simple locations of agricultural land. AFIDA data includes legal descriptions rather than geographic coordinates, which can make it difficult to locate the land in question. These legal descriptions may be pages long and difficult to interpret, and are not entered into the AFIDA spreadsheet, complicating efforts to identify non-filers and the locations of their property. According to USDA officials, local FSA staff are aware of the location of the agricultural land using legal descriptions, but they acknowledge that it would be difficult for those who are not local to have that geospatial context.

According to USDA guidelines to implement the Information Quality Act, USDA should validate its data against other information where practicable.⁵⁵ Without periodic validation of AFIDA data, such as every 5

⁵⁴The AFIDA statute grants USDA authority to “take such actions as the Secretary considers necessary to monitor compliance...and to determine whether the information contained in any report...accurately and fully reveals the ownership interest of all foreign persons.” Pub. L. No. 95-460, § 4, 92 Stat. 1263, 1265 (codified at 7 U.S.C. § 3503).

⁵⁵The Information Quality Act, also known as the Data Quality Act, directed the Office of Management and Budget (OMB) to issue guidelines that provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information disseminated to the public. Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, app. C, tit. V, § 515, 114 Stat. 2763, 2763A-153, 2763A-154 (2000). OMB, published the required guidelines in 2002. OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, Final Guidelines, 67 Fed. Reg. 8452 (Feb. 22, 2002). In 2019, OMB published a memorandum to reinforce, clarify, and interpret agency responsibilities with regard to responsibilities under the Information Quality Act. OMB, *Improving Implementation of the Information Quality Act*, OMB M-19-15 (Apr. 24, 2019). USDA’s guidelines implement OMB guidelines in accordance with the Information Quality Act.

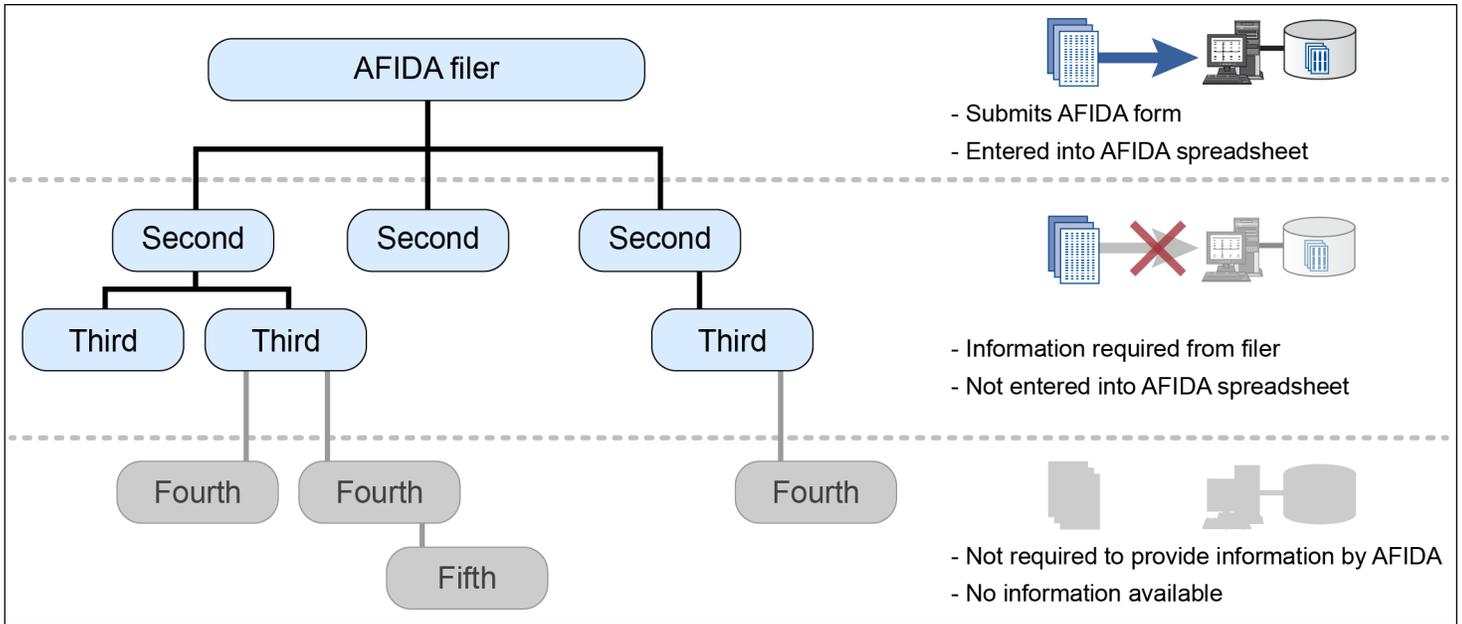
years, USDA will be unable to identify certain non-filers and its AFIDA data will be less complete. This could include comparing AFIDA data to FSA program data.

USDA's AFIDA Reporting Processes Omit Key Information About Ownership Tiers

As discussed above, USDA reporting does not incorporate the country of additional foreign persons beyond the primary investor, which may skew the reporting of holdings by country. Pursuant to the AFIDA statute and regulations, USDA requires filers to provide the names, addresses, and countries of origin for up to three ownership tiers, if applicable.⁵⁶ However, the AFIDA spreadsheet includes only the name of the filer or the entity the filer represents. This name may be the primary investor in the transaction (the person or legal entity that holds the deed or lease). However, because primary investors may be only one of several ownership tiers, the name listed in AFIDA data may not be the ultimate beneficiary of the investment. In addition, as noted above, the primary investor is a "foreign person" if a foreign individual or legal entity has at least 10 percent interest in the investment, even if the primary investor is based in the United States. Figure 6 illustrates reporting requirements for entities with multiple ownership tiers.

⁵⁶According to officials, AFIDA filings have become increasingly complex, as filings by large corporations now exceed filings by individuals. As a result, the ultimate beneficiaries may exist beyond the third ownership tier and may not be captured in AFIDA disclosures, unless the filer voluntarily provides that information.

Figure 6: Agricultural Foreign Investment Disclosure Act of 1978, As Amended (AFIDA) Data Collection for Entities with Multiple Ownership Tiers



Legend: Agricultural Foreign Investment Disclosure Act of 1978, as amended = AFIDA.
 Source: AFIDA and U.S. Department of Agriculture regulations, documents, and officials; GAO (images). | GAO-24-106337

In the AFIDA spreadsheet and annual reports, USDA assigns a country to land holdings based on the foreign country associated with the highest percentage of foreign interest in the land. The spreadsheet and annual reports do not include secondary countries associated with foreign persons who hold smaller stakes. For example, a holding in which the primary investor is from the Cayman Islands with 51 percent stake and a second-tier owner from Russia with 49 percent stake would be recorded in the AFIDA spreadsheet as a foreign investment by Cayman Islands and not reflect the Russian interest. According to headquarters officials, ownership information from additional foreign persons with interest in the land is not recorded because it is not currently used in USDA’s AFIDA annual reports. However, without incorporating ownership information from additional foreign persons, reporting will not provide users with a comprehensive accounting of submitted information on foreign investments in agricultural land.

Conclusions

Foreign ownership and investment in U.S. agricultural land—which includes farmland, pastures, and forest land—has grown since 2016, according to the U.S. Department of Agriculture (USDA). Recent national

security risks related to foreign investments in U.S. agricultural land have highlighted the importance of CFIUS's reviews. CFIUS is the main authority to address the national security ramifications of foreign investment in the United States, according to Treasury and DOD officials. However, we found that CFIUS does not currently have regular and timely access to detailed AFIDA information, the nation's most comprehensive data on foreign investments in U.S. agricultural land, according to USDA officials.

Additional targeted information on foreign investments in U.S. agricultural land could improve DOD's ability to identify potential investments of concern earlier in the process. As we have previously reported, if parties to a covered transaction do not voluntarily notify CFIUS, and CFIUS does not independently discover the transaction and initiate a review, potential risks to national security may go undetected. Access to timely AFIDA data, such as whether a party has filed a disclosure, when it was filed, and ownership information for the second and third ownership tiers could reduce that risk.

In addition, USDA's current processes to verify and monitor data have deficiencies. These processes could be improved to ensure more foreign investors report their holdings and make the data more reliable and useful. Although AFIDA data are the primary means by which the United States tracks and monitors foreign investment in its agricultural land, according to USDA officials, USDA collects AFIDA data on paper forms, which currently hinders its ability to track these investments. In addition, USDA has taken some steps to update its process for online submission but does not have timelines for its completion. USDA has also made little progress in creating a public database, which could help the agency address some of these issues. Congress has passed and the President enacted a requirement for USDA to adopt an online submission process and public database by 2025.⁵⁷

USDA does not regularly review and validate its data to improve its accuracy and completeness, and it could derive more results with additional efforts to determine how many foreign persons fail to file (non-filers). In addition, USDA does not report on key information related to the

⁵⁷Pub. L. No. 117-328, div. A, tit. VII, § 773, 136 Stat. 4459, 4509 (2022). As of November 2023, the proposed Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2024, being considered by the House of Representatives, contains the same provision. H.R. 4368, § 747, 118th Cong. (reported in the House (June 27, 2023)).

ultimate beneficiary of foreign-held agricultural land, even when that information is collected. Despite the limitations of AFIDA data, sharing these data could assist CFIUS in its efforts to identify foreign investments in agricultural land that may pose national security risks. But without accurate data and transparent reporting, USDA cannot provide reliable information to CFIUS, Congress, or the public about where and how much U.S. agricultural land is held by foreign persons.

Recommendations for Executive Action

We are making a total of six recommendations to USDA:

The Secretary of Agriculture should ensure that the Chief Operating Officer of FPAC-BC, in coordination with relevant CFIUS member agencies, establish a process to provide detailed and timely AFIDA transaction data relevant to foreign investments in agricultural land to CFIUS member agencies, including DOD and Treasury. Such information could include whether a party has filed a disclosure, who filed it, and when it was filed. **(Recommendation 1)**

The Secretary of Agriculture should direct the Administrator of FSA, as FPAC-BC updates the AFIDA handbook, to clarify and provide specific instructions to headquarters and county employees for completing AFIDA responsibilities, including reviewing the accuracy of forms and identifying missing information. **(Recommendation 2)**

The Secretary of Agriculture should direct the Chief Operating Officer of FPAC-BC and the Administrator of FSA to jointly complete an analysis to determine the extent to which the agency can satisfy the requirements of the Consolidated Appropriations Act, 2023 to create an AFIDA online submission system and public database within its expected budget. If the analysis shows that the agency would be unable to meet the requirements of the Consolidated Appropriations Act, 2023, USDA should report the results to Congress and recommend appropriate legislative changes. **(Recommendation 3)**

The Secretary of Agriculture should direct the Chief Operating Officer of FPAC-BC to improve its verification and monitoring of collected AFIDA data, such as reviewing and validating information throughout the AFIDA data collection process. **(Recommendation 4)**

The Secretary of Agriculture should direct the Chief Operating Officer of FPAC-BC, in coordination with the Administrator of FSA, to continue data mining activities that compare AFIDA data to FSA program data to identify suspected non-filers. **(Recommendation 5)**

The Secretary of Agriculture should direct the Chief Operating Officer of FPAC-BC to ensure its AFIDA reporting is complete, such as incorporating country information from additional foreign persons beyond the primary investor when available. **(Recommendation 6)**

Agencies' Comments and Our Evaluation

We provided a draft of this report to DOD, Treasury, and USDA for review and comment. USDA provided written comments that are reprinted in appendix III, and summarized below. In its written comments, USDA agreed with the first five recommendations and partially agreed with the sixth recommendation. Treasury and DOD communicated by email that they agree to support USDA in implementing our first recommendation that USDA should establish a process to provide detailed and timely AFIDA data to CFIUS member agencies, including Treasury and DOD. USDA and Treasury provided technical comments, which we incorporated as appropriate.

In response to our recommendations, USDA outlined actions it plans to take. USDA said that as of January 2024, AFIDA staff in FPAC-BC are updating the existing AFIDA handbook. In addition, a December 15, 2023 *Federal Register* announcement requested public input on proposed revisions to the FSA-153.

USDA said it has concerns with implementing our sixth recommendation without additional financial resources to create and maintain an online filing portal. We acknowledge this concern but stand by our recommendation, as USDA has options to implement it without incurring significant additional costs. While including country information from historical filings would be resource-intensive, USDA has already planned to put some of these measures in place and could use that process to ensure it includes all available country information from future filings. USDA stated that for the 2024 report, containing data through December 31, 2023, it will provide data on secondary and higher interests associated with the People's Republic of China, Russia, Iran, and North Korea. We acknowledge that these data would be useful. However, USDA does not plan to include country information beyond the first ownership tier for other countries. This information is key to a comprehensive picture of foreign investments in agricultural land. Further, USDA could include the country information in its reporting using other methods than the time-consuming manual process that USDA proposed in its comments. For example, USDA could adjust its process to ensure it includes a table showing landholdings by country, including the countries of additional foreign persons. That would allow USDA to provide better information when acreage totals exceed total foreign interest, because

additional foreign persons with an interest in the same landholding may be associated with more than one country.

We are sending copies of this report to the appropriate congressional committees and the Secretaries of Defense, the Treasury, Agriculture, and other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact Kimberly Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov or Steve D. Morris at (202) 512-3841 or morriss@gao.gov. GAO staff who made key contributions to this report are listed in appendix IV.



Kimberly M. Gianopoulos
Director, International Affairs and Trade



Steve D. Morris
Director, Natural Resources and Environment

List of Requesters

The Honorable Glenn “GT” Thompson
Chairman, Committee on Agriculture
House of Representatives

The Honorable Mike Rogers
Chairman, Committee on Armed Services
House of Representatives

The Honorable Jodey C. Arrington
Chairman, Committee on the Budget
House of Representatives

The Honorable Virginia Foxx
Chairwoman, Committee on Education and the Workforce
House of Representatives

The Honorable Cathy McMorris Rodgers
Chair, Committee on Energy and Commerce
House of Representatives

The Honorable Michael Guest
Chairman, Committee on Ethics
House of Representatives

The Honorable Michael McCaul
Chairman, Committee on Foreign Affairs
House of Representatives

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
House of Representatives

The Honorable Bruce Westerman
Chairman, Committee on Natural Resources
House of Representatives

The Honorable James Comer
Chairman, Committee on Oversight and Accountability
House of Representatives

The Honorable Frank Lucas
Chairman, Committee on Science, Space, and Technology
House of Representatives

The Honorable Roger Williams
Chairman, Committee on Small Business
House of Representatives

The Honorable Mike Bost
Chairman, Committee on Veterans' Affairs
House of Representatives

The Honorable Jason Smith
Chairman, Committee on Ways and Means
House of Representatives

The Honorable Mike Braun
United States Senate

The Honorable Ted Budd
United States Senate

The Honorable Robert B. Aderholt
House of Representatives

The Honorable Rick W. Allen
House of Representatives

The Honorable Brian Babin, D.D.S.
House of Representatives

The Honorable Don Bacon
House of Representatives

The Honorable James R. Baird
House of Representatives

The Honorable Troy Balderson
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The Honorable Andy Barr
House of Representatives

The Honorable Cliff Bentz
House of Representatives

The Honorable Jack Bergman
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The Honorable Stephanie Bice
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The Honorable Andy Biggs
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The Honorable Ken Buck
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The Honorable Tim Burchett
House of Representatives

The Honorable Ken Calvert
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The Honorable Kat Cammack
House of Representatives

The Honorable Mike Carey
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The Honorable Jerry L. Carl
House of Representatives

The Honorable Earl L. "Buddy" Carter
House of Representatives

The Honorable Ben Cline
House of Representatives

The Honorable Michael Cloud
House of Representatives

The Honorable Andrew S. Clyde
House of Representatives

The Honorable Eric A. "Rick" Crawford
House of Representatives

The Honorable Scott DesJarlais
House of Representatives

The Honorable Mario Diaz-Balart
House of Representatives

The Honorable Byron Donalds
House of Representatives

The Honorable Jeff Duncan
House of Representatives

The Honorable Neal P. Dunn, M.D.
House of Representatives

The Honorable Jake Ellzey
House of Representatives

The Honorable Tom Emmer
House of Representatives

The Honorable Pat Fallon
House of Representatives

The Honorable Randy Feenstra
House of Representatives

The Honorable Brad Finstad
House of Representatives

The Honorable Michelle Fischbach
House of Representatives

The Honorable Brian Fitzpatrick
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The Honorable Chuck Fleischmann
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The Honorable Mike Flood
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The Honorable Scott Franklin
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The Honorable Russ Fulcher
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The Honorable Mike Garcia
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The Honorable Carlos A. Gimenez
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The Honorable Jenniffer González Colón
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The Honorable Marjorie Taylor Greene
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The Honorable Glenn Grothman
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The Honorable Diana Harshbarger
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The Honorable Kevin Hern
House of Representatives

The Honorable Clay Higgins
House of Representatives

The Honorable French Hill
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The Honorable Ashley Hinson
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The Honorable Richard Hudson
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The Honorable Ronny L. Jackson
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The Honorable Bill Johnson
House of Representatives

The Honorable Dusty Johnson
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The Honorable Mike Kelly
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The Honorable Trent Kelly
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The Honorable David Kustoff
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The Honorable Darin LaHood
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The Honorable Doug LaMalfa
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The Honorable Jake LaTurner
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The Honorable Julia Letlow
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The Honorable Nancy Mace
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The Honorable Nicole Malliotakis
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The Honorable Brian Mast
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The Honorable John R. Moolenaar
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The Honorable Alex Mooney
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The Honorable Barry Moore
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The Honorable Gregory F. Murphy, M.D.
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The Honorable Dan Newhouse
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The Honorable Ralph Norman
House of Representatives

The Honorable Burgess Owens
House of Representatives

The Honorable Greg Pence
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The Honorable Scott Perry
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The Honorable August Pfluger
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The Honorable María Elvira Salazar
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The Honorable Austin Scott
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The Honorable Pete Sessions
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The Honorable Chris Smith
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The Honorable Lloyd Smucker
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The Honorable Victoria Spartz
House of Representatives

The Honorable Pete Stauber
House of Representatives

The Honorable Elise M. Stefanik
House of Representatives

The Honorable David G. Valadao
House of Representatives

The Honorable Jefferson Van Drew
House of Representatives

The Honorable Beth Van Duyne
House of Representatives

The Honorable Tim Walberg
House of Representatives

The Honorable Michael Waltz
House of Representatives

The Honorable Robert J. Wittman
House of Representatives

The Honorable Steve Womack
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report examines the extent to which (1) the U.S. Department of Agriculture (USDA) shares information related to foreign investments in U.S. agricultural land with the Committee on Foreign Investment in the United States (CFIUS) for its national security reviews and (2) USDA's processes enable it to collect, track, and report foreign investments in U.S. agricultural land.

The Department of the Treasury (Treasury), the Department of Defense (DOD), and USDA deemed some of the information in our report to be too sensitive for public disclosure. As a result, this report omits sensitive information about CFIUS's processes for tracking transactions and numbers of transactions CFIUS agencies reviewed related to foreign investments in U.S. agricultural land.

To examine the extent to which USDA shares information related to foreign investment in U.S. agricultural land with CFIUS for its national security reviews, we reviewed the Foreign Investment and National Security Act of 2007 (FINSA),¹ and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA),² CFIUS regulations implementing FINSA and FIRRMA,³ and relevant executive orders. We also reviewed the 2021 and 2022 CFIUS annual reports. In addition, we reviewed interagency communications and agency documents, such as internal guidance, to understand (1) CFIUS's process and (2) Treasury's, DOD's, and USDA's individual processes for reviewing potential national security risks related to foreign investments and identifying transactions for potential CFIUS review.

We also interviewed officials from Treasury's Office of Investment Security, USDA's Office of Homeland Security, and DOD's Office of the Under Secretary of Defense for Acquisition and Sustainment about these agencies' CFIUS efforts. We interviewed USDA officials from the Farm Service Agency (FSA) and the Farm Production and Conservation Business Center (FPAC-BC) about USDA's processes to track and report

¹Pub. L. No.110-49 § 2, 121 Stat. 246 (July 26, 2007) (codified as amended at 50 U.S.C. § 4565).

²John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, §§ 1701-1728, 132 Stat. 1636, 2173–2208 (Aug. 13, 2018) (codified as amended at 50 U.S.C. § 4565).

³See 31 C.F.R. pts. 800 and 802.

foreign investments in U.S. agricultural land pursuant to the Agricultural Foreign Investment Disclosure Act of 1978, as amended (AFIDA).⁴

In addition, we evaluated information from interviews and documents to evaluate efforts amongst these agencies to share information in addition to potential challenges these agencies have faced in doing so. We determined that the internal control principle related to quality information was significant to this objective.⁵ We evaluated information from interviews and documents to determine whether the three agencies communicated the necessary quality information through reporting lines so that external parties can help the entity achieve its objectives and address related risks to achieve the entities' objectives. In addition, we evaluated information from interviews and documents to determine whether USDA FPAC-BC communicated the necessary quality information internally down and across reporting lines to enable personnel to perform key roles in achieving objectives, addressing risks, and supporting the internal control system.

To examine USDA's processes to track and report foreign investments in U.S. agricultural land, we reviewed AFIDA,⁶ USDA's implementing regulations,⁷ and AFIDA requirements found in the Consolidated Appropriations Act, 2023.⁸ We also reviewed the Farm Service Agency's (FSA) AFIDA handbook to learn about AFIDA responsibilities and guidance for county, state, and headquarters offices.⁹ We interviewed USDA headquarters officials from the FSA and FPAC-BC about AFIDA processes, limitations, and their efforts to create an online submission process and public database. We also selected and interviewed FSA officials from a non-generalizable sample of three state offices and three county offices to better understand how FSA state and county offices were fulfilling their AFIDA responsibilities. We selected the FSA Grand Forks County and Val Verde County offices due to media coverage on potential CFIOUS reviews of agricultural land transactions occurring in

⁴Pub. L. No. 95-460, 92 Stat. 1263 (codified as amended at 7 U.S.C. §§ 3501-3508).

⁵*Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 10, 2014).

⁶Pub. L. No. 95-460, 92 Stat. 1263 (codified as amended at 7 U.S.C. §§ 3501-3508).

⁷7 C.F.R. pt. 781.

⁸Pub. L. No. 117-328, div. A, tit. VII, § 773, 136 Stat. 4459, 4509 (2022).

⁹USDA, FSA Handbook: Foreign Investment Disclosure, 1-AFIDA (Washington D.C., revised Jan. 27, 2006).

those counties. We selected the FSA Antelope County office, because this county includes the highest number of foreign holdings of agricultural land, by number of land parcels, according to USDA's AFIDA holdings data. We selected the three FSA state offices that oversee those counties—North Dakota, Texas, and Nebraska, respectively.

We evaluated USDA's AFIDA processes using as criteria Standards for Internal Control in the Federal Government and USDA guidelines to implement the Information Quality Act.¹⁰

We assessed the reliability of AFIDA data by reviewing active holdings by foreign persons as of the end of 2021—the latest year of data available from the AFIDA spreadsheet at the time of our review. These data were spreadsheets generated from USDA's Microsoft Access AFIDA database. According to officials, these data were used to populate USDA's 2021 AFIDA annual report and represent current foreign investments of U.S. agricultural land, including investments that were made prior to 2021. As such, these data do not include investments that were divested. We also reviewed agency documents and interviewed FPAC-BC headquarters officials about entry and maintenance of the AFIDA spreadsheet, including controls in the spreadsheet and checks done prior to using the AFIDA spreadsheet to populate USDA's AFIDA annual reports. We electronically tested for missing data, outliers, and obvious errors. We also evaluated AFIDA data against reported summary data in USDA's 2021 AFIDA Annual Report and the presentation of these data in the report. Based on errors we identified and recent transactions covered by the media, we selected and requested a non-generalizable sample of 20 AFIDA forms, which are source documents used to populate AFIDA data, to review for errors and completeness. According to USDA officials, the data for two of the AFIDA forms were included in one form; therefore, we reviewed 19 AFIDA forms. We also reviewed the data submitted on these

¹⁰The Information Quality Act, also known as the Data Quality Act, directed the Office of Management and Budget (OMB) to issue guidelines that provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information disseminated to the public. Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, app. C, tit. V, § 515, 114 Stat. 2763, 2763A-153, 2763A-154 (2000). OMB, published the required guidelines in 2002. OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, Final Guidelines, 67 Fed. Reg. 8452 (Feb. 22, 2002). In 2019, OMB published a memorandum to reinforce, clarify, and interpret agency responsibilities with regard to responsibilities under the Information Quality Act. OMB, *Improving Implementation of the Information Quality Act*, OMB M-19-15 (Apr. 24, 2019). USDA's guidelines implement OMB guidelines in accordance with the Information Quality Act.

forms that USDA does not enter into the AFIDA spreadsheet, such as additional ownership tiers and legal descriptions. We shared inconsistencies we identified with USDA, and USDA confirmed the presence of errors. We determined that the data were not sufficiently reliable to show the amount of foreign investment in U.S. agricultural land and we only include data in this report for contextual purposes or to show examples of data errors. We make recommendations to address the reliability of AFIDA data.

The performance audit upon which this report is based was conducted from October 2022 to January 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Factors to Consider When Determining Whether Submitted Transactions Pose a National Security Risk

Table 1: List of Illustrative Factors CFIUS and the President May Consider in Determining Whether a Transaction Notified to the Committee Poses a National Security Risk

-
- The potential effects of the transaction on the domestic production needed for projected national defense requirements.
 - The potential effects of the transaction on the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services.
 - The potential effects of the transaction on a foreign person's control of domestic industries and commercial activity as it affects the capability and capacity of the United States to meet the requirements of national security.
 - The potential effects of the transaction on U.S. international technological leadership in areas affecting U.S. national security.
 - The potential national security-related effects on U.S. critical technologies.
 - The potential effects on the long-term projection of U.S. requirements for sources of energy and other critical resources and material.
 - The potential national security-related effects of the transaction on U.S. critical infrastructure, including critical physical infrastructure such as major energy assets.
 - The potential effects of the transaction on the sales of military goods, equipment, or technology to countries that present concerns related to terrorism; missile proliferation; chemical, biological, or nuclear weapons proliferation; or regional military threats.
 - The potential that the transaction presents for transshipment or diversion of technologies with military applications, including the relevant country's export control system.
 - Whether the transaction could result in the control of a U.S. business by a foreign government or by an entity controlled by or acting on behalf of a foreign government.
 - The relevant foreign country's record of adherence to nonproliferation control regimes and record of cooperating with U.S. counterterrorism efforts.
 - Other factors that the President or the committee may determine to be appropriate, generally or in connection with a specific review or investigation.
-

Source: 50 U.S.C. § 4565(f). See also *Department of the Treasury: Office of Investment Security; Guidance Concerning the National Security Review Conducted by the Committee on Foreign Investment in the United States*, 73 Fed. Reg. 74,567 (Dec. 8, 2008) (detailing the illustrative list of factors in section 721(f) of the Defense Production Act of 1950, as amended and codified at 50 U.S.C. § 4565(f)). | GAO-24-106337

Appendix III: Comments from the Department of Agriculture



Office of the Secretary
Washington, D.C. 20250

January 4, 2024

STEVE D. MORRIS
Director
Natural Resources and Environment
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Morris:

The U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) appreciates the opportunity to respond to the U.S. Government Accountability Office (GAO) draft report GAO-24-106337, “Foreign Investments in U.S. Agricultural Land: Enhancing Efforts to Collect, Track, and Share Key Information Could Help Better Identify National Security Risks,” received December 4, 2023. The report examines USDA processes associated with the Agricultural Foreign Investment Disclosure Act (AFIDA) and linkages with the Committee on Foreign Investment in the United States (CFIUS).

The items below address the six GAO recommendations. USDA has provided comments on specific items in the GAO report in separate correspondence to GAO.

RESPONSES TO GAO RECOMMENDATIONS:

Recommendation 1—*The Secretary of Agriculture should ensure that the Administrator of FPAC-BC, in coordination with relevant CFIUS member agencies, establish a process to provide detailed and timely AFIDA transaction data relevant to foreign investments in agricultural land to CFIUS member agencies including DOD and Treasury. Such information could include whether a party has filed a disclosure, who filed it, and when it was filed.*

Response 1—USDA agrees with this recommendation. The Department has procedures in place for ensuring that AFIDA transactions are flagged for CFIUS review and that our CFIUS partners are aware of agricultural interests. When an FSA-153 filing from a Chinese, Russian, North Korean, or Iranian investor is received by AFIDA staff at USDA headquarters, the entire FSA-153 filing is sent to counterparts in the Department of Defense and the FBI. The filing is also shared with USDA’s Office of Homeland Security. Without an appropriation of funding sufficient for development and maintenance of an online filing portal, it will be difficult to provide more real-time filings except through the manual process (scanning and e-mailing) described earlier in this paragraph. If funding becomes available for a filing portal, the Farm Production and Conservation-Business Center (FPAC-BC) will work to ensure that our inter-agency partners have access to more real-time data, either directly through the portal or through weekly or monthly FSA-153 filing summaries.

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Recommendation 2—*The Secretary of Agriculture should direct the Administrator of FSA, as FPAC-BC updates the AFIDA handbook, to clarify and provide specific instructions to headquarters and county employees for completing AFIDA responsibilities, including reviewing the accuracy of forms and identifying missing information.*

Response 2—USDA agrees with this recommendation. AFIDA staff in FPAC-BC are currently working on updating the existing 1-AFIDA handbook. In addition, a *Federal Register* announcement posted on Friday, December 15, 2023, requests public input on proposed revisions to the FSA-153 (AFIDA reporting) form, plus feedback on specific issues associated with both the existing and proposed form. After responses are received from the public and a revised, updated FSA-153 form is cleared through the Executive Branch process, USDA will make necessary revisions to the 1-AFIDA handbook and provide complete instructions to AFIDA filers and headquarters/county employees who work on AFIDA.

Recommendation 3—*The Secretary of Agriculture should direct the Administrators of FPAC-BC and FSA to jointly complete an analysis to determine the extent to which the agency can satisfy the requirements of the Consolidated Appropriations Act, 2023 to create an AFIDA online submission system and public database within its expected budget. If the analysis shows that the agency would be unable to meet the requirements of the Consolidated Appropriations Act, 2023, USDA should report the results to Congress and recommend appropriate legislative changes.*

Response 3—USDA agrees with this recommendation and has communicated to Congress the urgent need for funding on multiple occasions over the past year. In addition, and in the absence of funding, USDA has communicated to the Senate and House Agriculture committees and the Senate and House Agricultural Appropriations committees, as well as GAO, our efforts to modernize AFIDA in line with the Consolidated Appropriations Act, 2023. In June 2023, Excel spreadsheets for each year from 2010 to 2021 containing the detailed data underlying the annual reports to Congress were posted on the FSA website; this effort was what could be done given the absence of funding in the Consolidated Appropriations Act, 2023. In addition, we developed a proposed, revised FSA-153 (AFIDA filing) form, which was posted in the *Federal Register* on Friday, December 15, 2023. This announcement requests public comment to ensure that we are capturing the most appropriate data and is a first step in online portal development. Should funding be provided for an online filing portal to be created and maintained, USDA needs to ensure that we are capturing the best possible data—including more information on leaseholds and the impacts of foreign investment on U.S. farms and rural communities. The *Federal Register* document asks for input on these items, as well as other information. Beyond revising and updating the FSA-153 form, we have communicated to Congress that we cannot make progress on IT development until funding is provided for IT system creation and additional IT staffing.

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Recommendation 4—*The Secretary of Agriculture should direct the Administrator of FPAC-BC to improve its verification and monitoring of collected AFIDA data, such as reviewing and validating information throughout the AFIDA data collection process.*

Response 4—USDA agrees with this recommendation. In late September 2023, AFIDA staff met with Performance, Accountability, and Risk (PAR) staff, also in the FPAC-BC, to discuss the review and validation of AFIDA data. Going forward, PAR staff will focus on three “buckets” of potential AFIDA data errors: 1) data entry errors from the hard copy FSA-153 forms to the existing Access database; 2) errors made by filers that are not caught by AFIDA staff; and 3) stale data in the AFIDA database that do not match current property tax records. In addition to spot checks, PAR will recommend internal control actions that may be undertaken to add additional rigor to AFIDA processes. PAR staff plan to begin this work in earnest in early 2024.

Recommendation 5—*The Secretary of Agriculture should direct the Administrator of FPAC-BC, in coordination with the Administrator of FSA, to continue pursuing data monitoring activities that compare AFIDA data to FSA program data to identify suspected non-filers.*

Response 5—USDA agrees with this recommendation. In the fall of 2023, the FPAC-BC matched FSA farm program data identifying those flagged as non-U.S. citizens and non-permanent residents with those who are AFIDA filers. For landowners who appear to need to file, but for which we have no FSA-153 form on file, local FSA offices took steps to reconcile individual situations (for example, those who became permanent residents or who were deceased). For those situations where local FSA staff could provide no insights, FPAC-BC headquarters staff sent a letter informing the recipient of AFIDA filing requirements. We have heard back from very few people (or companies) that were contacted. Most letter recipients have very small acreage (10-20 acres). It is possible that many letter recipients discerned that they could face a large penalty (up to 25 percent of the fair market value of the land) and decided to not respond, thinking that the U.S. government is not going to pursue them for such small acreage. It is also possible that low-resourced producers may not be able to fully respond to the letter. Given the low response rate, and that few new foreign persons are likely to emerge from this process on a year-to-year basis, we intend to engage in this process periodically (but not annually).

Recommendation 6—*The Secretary of Agriculture should direct the Administrator of FPAC-BC to ensure its AFIDA reporting is clear and complete, such as incorporating country information from additional foreign persons beyond the primary investor when available.*

Response 6—USDA has concerns with this recommendation without additional financial resources and personnel to create and maintain an online filing portal. For the 2024 report, containing data through December 31, 2023, we will provide data on secondary and higher interests associated with Chinese, Russian, Iranian, and North Korean interests. This would apply only to new filings received in 2023 as developing these data back to 1978 would

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require manually reviewing all historical paper FSA-153 filings and manually entering all Chinese, Russian, Iranian, and North Korean data for any tier reported by investors from those countries. A manual check of this scope is infeasible without additional financial resources and personnel. However, doing so for the four high-priority countries is manageable for new filings starting in 2023 and going forward. Note that, to develop detailed acreage data with secondary (and higher) interests in mind, USDA would have to weight the acreage data by country for each filing (or else the final report would over-report acreage). With a manual process, this would be very time consuming and likely prone to error. To accurately capture secondary and higher interests for ALL countries, we would need an online filing portal with the burden placed on the filer to accurately develop this information.

Sincerely,



GLORIA MONTAÑO GREENE
*Deputy Under Secretary
Farm Production and Conservation*

Appendix IV: GAO Contact and Staff Acknowledgments

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In addition to the contact named above, Christina Werth (Assistant Director), Thomas Cook (Assistant Director), Jaime Allentuck (Analyst in Charge), Brian Hackney (Senior Analyst), Cory Ryncarz (Analyst), Larissa Barrett, John Bornmann, Kevin Bray, Neil Doherty, Bahareh Etemadian, Grace Lui, Terry Richardson, and Miranda Riemer made key contributions to this report. Other contributors to this report include Ming Chen, Steven Flint, Jeff Isaacs, Heather Miller, Ben Moser, and Meghan Perez.

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