



DON'T KNOW MUCH ABOUT AFIDA

Have you represented a foreign investor who was purchasing or selling agricultural land, including forestland, anywhere in the United States, its territories, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands? Within 90 days of that transaction, did you make sure the investor had filed an Agricultural Foreign Investment Disclosure Act (AFIDA) report with the local United States Department of Agriculture (USDA) Farm Service Agency (FSA) office? Most attorneys and real estate agents are unaware of this requirement, even though the FSA offices send out annual reminders to local attorneys and real estate agents.

FOREIGN INVESTORS WHO HOLD AGRICULTURAL LAND

Foreign investors who buy, sell, or hold a direct or indirect interest in U.S. agricultural land must report their holdings and transactions to the U.S. Secretary of Agriculture. The reporting requirement, which is part of AFIDA (7 USC 3501 et seq., implemented by regulations at 7 CFR Part 781), became law in 1978. Failure to timely file an accurate report can result in a penalty with fines up to 25 percent of the fair market value of the agricultural land.

WHO MUST REPORT

The following individuals and entities are required to report under AFIDA:

- Individuals who are not U.S. citizens or citizens of the Northern Mariana Islands or the Trust Territories of the Pacific Islands;
- Individuals who are not lawfully admitted to the United States for perma-

nent residence or who are not paroled into the United States under the Immigration and Nationality Act;

- Any organization created under the laws of a foreign government or that has located its principal place of business outside the United States;
- Any U.S. organization in which a significant interest or substantial control is directly or indirectly held by foreign individuals, organizations, or governments; and
- Any foreign government.

SIGNIFICANT INTEREST OR SUBSTANTIAL CONTROL

AFIDA defines "significant interest" or "substantial control" as any of the following:

- A direct or indirect interest of 10 percent or more held by a single foreign individual, organization, or government;
- A direct or indirect collective interest of 10 percent or more held by a group of foreign individuals, organizations, or governments acting in concert; or
- A direct or indirect collective interest of 50 percent or more held by a group of foreign individuals, organizations, or governments not acting in concert.

WHAT TO REPORT

Persons required to report under AFIDA must report each tract of agricultural land owned in the United States, its territories, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands. Leaseholds of 10 years or more must also be reported.

AGRICULTURAL LAND

Under AFIDA, the term "agricultural land" means land used for forestry produc-

tion and land currently used for farming, ranching, or timber production if tracts are more than 10 acres in size in the aggregate. "Land used for forestry production" means land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and will be naturally or artificially regenerated. It does not matter whether the owner ever intends to cut and sell the trees.

Ownership of tracts totaling 10 acres or less in the aggregate that produce annual gross receipts in excess of \$1,000 from the sale of farm, ranch, forestry, or timber products must be reported. Land that is currently idle but last used within the past five years for farming, ranching, or timber production must also be reported.

WHERE TO GET FORMS AND FILE A REPORT

You can obtain an AFIDA report form (FSA-153) from a local FSA office. The FSA-153 is available in both English and Spanish translations. To locate an FSA county office, look in the telephone book white pages, usually under U.S. Government, U.S. Department of Agriculture. The local FSA office can also provide you with brochures (FSA-152-1). The local FSA office is where the report should be filed. Complex filings can be filed directly with the FSA office in Washington, D.C. Contact the local FSA office for details.

You can also access the FSA-153 from the USDA's Service Center e-Forms Web site. Go to www.fsa.usda.gov and click on the eForms link under "FSA eGov." Load "FSA" as the agency, "AFIDA" as the program, and hit Search. The site also provides instructions for filling out the FSA-153.

COMMON ERRORS IN THE REPORT

The report asks for legal addresses of the owner of the land and – if the owner is an organization – the names, addresses, and country of all foreign persons who individually, or in the aggregate, hold significant interest or substantial control in the entity owning the land. Be sure to provide this information for each person or organization, including the country. USDA will not just assume that the address you give is the country of citizenship. Do not give your address as the foreign person's legal address, even if you are the foreign person's representative.

The report asks for a "current value" for the land. **Do not** use the value listed on the property tax statement for this estimate because it is not a realistic current value. Most of your clients would not think of selling their property for the value listed on their property tax state-

ment. Contact local real estate agents who market the type of property your client has to get some idea of what the value might be, or contact local appraisers who routinely determine the value of agricultural land.

The report asks for "current land use by acres." If your client is not sure of the acreages, visit your local FSA office and ask for help in determining the acres. Some of the FSA offices have access to the county tax assessor's maps and can get the information by tax lot if that is how the report is being filed. The FSA office can provide the tract number for a legal description if the land is on its records.

Reports must be filed for changes in land use to agricultural or to non-agricultural. All the information must be kept current (names, addresses, etc.). These are often overlooked.

If your client is late in filing the report, it is better to voluntarily file the report than for FSA to request the report later when it discovers that the property has a foreign interest. If you need more than 90 days to file the report, contact the local FSA office so it can document in the file that you were in contact and requested additional time for the filing of the report.

WHAT HAPPENS TO THE REPORT

The local FSA office will keep a copy of the report and forward the original to the Washington, D.C., office. Any further contact about the report will come directly from Washington, not the local FSA office.

Continue to file reports as your clients purchase, sell, or change land uses, and continue to update their personal information. If you have any questions, please contact your local FSA office.

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