REAL ESTATE BENEFICIAL OWNERSHIP REGULATORY ALERT: USDA SEEKS INPUT ON INFORMATION REPORTING FOR FOREIGN OWNERSHIP OF AGRICULTURAL LAND

Date: 27 December 2023

US Real Estate Alert

By: Tim L. Peckinpaugh, Laurie B. Purpuro

On 15 December, 2023 the United States Department of Agriculture (USDA) announced a request for information on proposed revisions to the Agricultural Foreign Investment Disclosure Act (AFIDA) Report. AFIDA and its regulations, initially implemented in late 1978, were created to establish a nationwide system for the collection of information pertaining to foreign ownership of US agricultural land. The regulations require foreign persons or entities who acquire, transfer, or hold a direct or indirect interest in US agricultural land to report such holdings and transactions to the Secretary of Agriculture on an AFIDA report form FSA-153. USDA's Farm Service Agency (FSA) isproposing updates to the form FSA-153 to gather geospatial information, include data on long-term lessees, and include data to assess the impacts of foreign investment on agricultural producers and rural communities.

GEOGRAPHIC CONTEXT FOR THE LOCATION OF THE LAND

The FSA has proposed updates to the information required about the location of the applicable agricultural land. In addition to a legal description that would be used in a deed or mortgage, the FSA is asking foreign owners to include one or more of the following: the longitude and latitude for each parcel; the property tax ID number assigned by the county; and the FSA tract number and the FSA farm number. The FSA would like insight into whether providing this information will cause an undue burden and if there are additional options for providing information about the applicable agricultural land that should be considered.

LONG-TERM LEASEHOLDS

There are several changes proposed on the FSA–153 form to capture data on the types of leases and the value thereof. For example, consistency in reporting of the value of the interest in agricultural land varies widely as some foreign owners provide an estimate of the value of the lease, while others provide the estimated value of the entire parcel being leased. The FSA would like feedback on how an interest in agricultural land should be defined for the purposes of determining the value thereof in the context of leases.

In addition, the proliferation of renewable energy projects located on agricultural land and subject to AFIDA has led to many challenges in filing the FSA-153 form. The FSA has requested insight into whether a separate filing

©2005-2026 K&L Gates LLP. All Rights Reserved.

for leasehold interests would be beneficial and if there are specific changes with respect to reporting that should be made for wind and solar projects based on the scope of the projects and the impact on the land.

IMPACTS ON FARMS AND RURAL COMMUNITIES

Under AFIDA, the FSA is required to provide an annual report to Congress detailing the impact of foreign ownership of agricultural land and, specifically, address the impact to family farms and rural communities. The FSA suggested revisions to the FSA-153 form that would require more detailed information be provided about the foreign owner and the use of land.

Comments are due to the FSA by 16 February 2024. Please contact any of the authors if you have any questions or would like to consider submission of comments. These new rules are likely to change the reporting requirements in significant ways, and now is the time to ensure the FSA is aware of concerns and has input regarding appropriate resolution of those concerns.

KEY CONTACTS



TIM L. PECKINPAUGH
PARTNER

WASHINGTON, DC
+1.202.661.6265
TIM.PECKINPAUGH@KLGATES.COM



LAURIE B. PURPURO
GOVERNMENT AFFAIRS COUNSELOR

WASHINGTON, DC
+1.202.778.9206
LAURIE.PURPURO@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.