FSA–2025–0001

Comments Submitted by Kelley Drye & Warren LLP on behalf of the AFIDA Modernization Coalition

I. INTRODUCTION

The AFIDA Modernization Coalition ("**Coalition**"), a joint effort by American energy companies with foreign investors, hereby submits these comments ("**Comments**") to the *Information Collection Request; Agricultural Foreign Investment Disclosure Act* ("**RFI**").[1] These American companies comply with AFIDA because they've accepted foreign investment, often passive and a minority interest. As described below, control remains with the companies' U.S. leadership and the "interest" in agricultural land is used exclusively to produce renewable energy, with negligible impact to the landowners' continued agricultural use of the land.

The Coalition urges FSA to migrate the paper filing process to electronic before changing the FSA-153 form. As proposed in this RFI, just one FSA-153 report filed using the new form likely would require 8-10 pages (with some filings requiring more) printed in triplicate. We further urge the FSA to take reasonable efforts to protect landowners' and filers' financial and commercially sensitive information when releasing report contents to the public in an electronic format. This is particularly important in land lease transactions where the economic terms of the lease would otherwise remain private. The Coalition is concerned that publishing the lease payment or purchase price values will cause land speculation and thus drive-up the cost of land for the American farmer and rancher. And responsive to this RFI, the proposal to collect USDA farm and tract numbers would present a related harm to landowners and developers by providing information online (particularly following the online form migration) to persons who may use it for unfair business advantage or to stop or impair a development project in its inception.

[1] https://www.federalregister.gov/documents/2025/05/30/2025-09831/information-collection-request-agricultural-foreign-investment-disclosure-act.

II. ITEM BY ITEM RESPONSES TO THE 2025 RFI'S PROPOSED NEW FSA-153 FORM

The Coalition has organized its Comments on the proposed form by Substantive Feedback, Process Feedback and Instructional Feedback, with screengrabs of the corresponding elements of the proposed form. These comments present excerpted portions of the proposed replacement FSA-153 form, with red lines outlining the specific part of the form subject to discussion in this submission.

A. Substantive Feedback

The Coalition's comments in this Section II(A) address concerns that three new data requirements would incur unreasonable costs, publish data threatening national security interests and proprietary business and personal interests, and/or generate data that would undermine the value of USDA reports to Congress.

- Page 2, Item 3(D)

3. LAND LOCATION AND DESCRIPTION

A. County or Equivalent:	B. State:	C. Date of Acquisition, Disposition, or Transfer *(MM/DD/YYYY)*:

D. Land Details *(only columns (4) and (5) are optional; use FSA-153 Cont. for additional rows)*:

(1) Property Identifier	(2) Acres	(3) Value Per Acre *($)*	(4) Project Name *(If applicable)*	(5) Property Name *(Used by Titleholder)*	(6) USDA Farm Number	(7) USDA Tract Number

We understand the FSA's interest in obtaining granular location data. It could give new insights to the agency in relation to other USDA programs and enhance federal enforcement efforts. The problem with requiring USDA Farm Numbers and Tract Numbers is three-fold: this data is difficult for today's most prolific FSA-153 filers to obtain, would make easily downloadable geospatial data available to adversary nations or other threat actors, and publishing it would greatly harm filers and landowners because the information could be used in anticompetitive ways.

Out of 20,000 or more leases, the authors have seen a USDA Tract Number only once. Even if renewable energy developers expanded their land acquisition procedures though staff and vendor process re-engineering and training (with corresponding costs), any farm or tract numbers that land agents collect and pass to the developer and its AFIDA report preparer may well be incorrect and very likely will change in transmission, introducing errors to the process. A filer would have no independent means of verifying or correcting such data, unlike information that is present in a traditional lease or purchase agreement. Some farms or tracts may not be in the FSA system, and landowners of others that are may either not know the numbers or report them incorrectly to the filer. Developers acquire development rights across many projects; data requests that may be practicable for bespoke transactions such as a foreign ag company buying one tract at a time are not reasonable or likely to generate reliable data for developers who file AFIDA reports at scale.

Publicizing geospatial data on critical national infrastructure would make this data available 24/7 to adversary nations building inventories for AI analysis or, potentially, threats to national security. Federal agencies—including the U.S. Cybersecurity & Infrastructure Security Agency and U.S. Department of Homeland Security—identify electricity generation facilities as critical national infrastructure.[2] If the FSA goes forward with this precise land location data requirement, the Coalition urges the agency to withhold all data collected from public disclosure. Likewise, the FSA should omit geospatial data and financial data from public disclosure, including FOIA disclosures, to prevent material harm to filers from other parties' access to proprietary business information for anticompetitive advantage or tortious interference between filers and their farmer/rancher partners.[3]

The commonsense controls on public disclosure urged here would not impair the FSA's statutory missions to conduct much needed economic analyses and reporting. Nor would it impair federal agencies, including those involved in national security, from obtaining access to FSA data, consistent with the policies and procedures for incorporating the USDA within the nation's homeland security operations.

- Page 2, Item 3(D)(3)

3. LAND LOCATION AND DESCRIPTION

A. County or Equivalent:			B. State:	C. Date of Acquisition, Disposition, or Transfer *(MM/DD/YYYY)*:		
D. Land Details *(only columns (4) and (5) are optional; use FSA-153 Cont. for additional rows)*:						
(1) Property Identifier	**(2) Acres**	**(3) Value Per Acre** *($)*	**(4) Project Name** *(If applicable)*	**(5) Property Name** *(Used by Titleholder)*	**(6) USDA Farm Number**	**(7) USDA Tract Number**

We understand the FSA's interest in collecting information on the value per acre. However, there are a couple of issues with collecting this information. First, as a general matter this information should not be published because it would reveal the financial terms of the otherwise private leases between landowners and renewable energy developers. Setting aside the intrusion into the privacy interests of farmers and ranchers, this information could be used by speculators who may try and acquire and demand a premium price for land necessary to a renewable energy project. Specifically, by combining the geolocation data of previously leased property with likely spots where the renewable energy project will connect to the existing energy grid, information on the "value per acre" will effectively set the market price for land that transmission lines must

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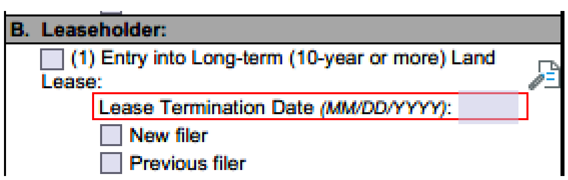
[2] *E.g.*, U.S. Cybersecurity & Infrastructure Security Agency, National Coordinator for Critical Infrastructure Security and Resilience online bulletin at https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/energy-sector; U.S. Dept. of Homeland Security Office of Science and Technology online bulletin at https://www.dhs.gov/archive/science-and-technology/critical-nfrastructure#:~:text=Critical%20infrastructure%20includes%20the%20vast%20network%20of,electricity%20all%20rely%20on%20these%20vital%20systems.

[3] For example, tying a USDA farm/tract number to a given report would indirectly identify the landowner of a tract leased or purchased by a renewable energy developer, putting the landowner's private income data reported by the filer in the public record. That data could also be useful, particularly once the FSA-153 reports are filed online and available immediately, by persons seeking to halt or disrupt a wind or solar energy development before it is complete. Land records are, of course, available in the county land office, but collecting data in disparate offices from paper records imposes a transactional cost that can dissuade bad actors. Making data available for digital download on a nationwide basis would be a boon to bad actors and provide no tangible public benefit.

cross or is otherwise necessary for the renewable energy project. Speculation will inflate the cost of leasing or purchasing land for farmers or ranchers in the vicinity of a project. Therefore, the value per acre should not be published.

Second, the value per acre in the context of renewable energy projects will be misleading. Renewable energy developers must lease more land than they need for a project both because they don't know the precise location of wind turbines or solar panels until much later in project's development and because it is often impractical to lease only a portion of a parcel of land. Moreover, some acres have more value to renewable energy developers than others, yet they lease the entire parcel. For example, a wind turbine, including access roads and area around the base, uses 4/5 or .8 of an acre. The value of that acre is much higher than the surrounding acreage. Therefore, if a renewable energy developer leases a 100-acre parcel and erects five turbines, the value of those four acres (5 x .8 = 4 acres) drives the lease value for the remaining 96 acres. In addition, it is unclear how the acres should be valued in a lease. Often a renewable energy developer will lease land for a low amount, such as $1.00 an acre per year, until it knows if it needs the land, effectively buying an option. The land is certainly worth more than $1.00 an acre but this value is of little use to the FSA and would skew any data analysis. Similarly, the value per acre to a renewable energy developer does not reflect the full value of the land. The landowner will continue to produce on the leased land and the lease price reflects only the value the renewable energy company places on its right to produce energy on a portion of that land. Therefore, the "value per acre" will be of limited use to the FSA and we urge that this information be required only if the land is leased for agricultural production.

- Page 2, Item 1(B)


B. Leaseholder:

☐ (1) Entry into Long-term (10-year or more) Land Lease:

Lease Termination Date *(MM/DD/YYYY)*:

☐ New filer

☐ Previous filer

Renewable energy development leases have no reliable termination date at the time a lease is signed and reported to the FSA in a new acquisition or assignment report. Commonly, they have a stated 20- or 30-year duration, but developers terminate most leases within a handful of years when the underlying wind or solar development project concludes for business reasons (e.g., meteorological, permitting, financing, etc. considerations) or, if a project proceeds to construction, lease extension options may be exercised many years after filing the FSA-153 report. Requiring a lease termination date for a lease held by a producer (as opposed to a renewable energy developer) may be useful, but only in the minority. Even if the replacement FSA-153 report was to provide check boxes for 10-, 20-, or 30-year terms, the FSA and anyone relying on its analysis would have a false sense of confidence in the results because the filer's entry would be speculative at best. Parties to a land agreement for agricultural production, as Congress intended in 1978, are much more likely to have a fixed and knowable termination date on which the FSA may rely. Any data collected from developers here will be inaccurate and present a false sense of reliable data.

- Page 2, Item 1(B)(3)

B. Leaseholder:

☐ (1) Entry into Long-term (10-year or more) Land Lease:

Lease Termination Date *(MM/DD/YYYY)*:

☐ New filer

☐ Previous filer

☐ (2) Long-term (10-year or more) Lease Expiration/Termination

☐ (3) Type of Lease:

☐ Solar

☐ Wind

☐ Other:

The absence of "Agriculture" is incongruous with the stated purpose of AFIDA and the protection of U.S. food security.

- Page 4, Item 7

7. CURRENT AND INTENDED LAND USE		
Land Use Type (as of Filing Date)	**Current Use** *(Acres)*	**Intended Use** *(Acres)*
A. Crop		
B. Forest or Timber		
C. Pasture or Rangeland		
D. Other Agriculture *(e.g. catfish ponds, etc.)* Specify:		
E. Non-Agriculture *(e.g. buildings, parking lots, rezoned for houses, etc.)*		
F. **Total Acres** *(Current use acres should equal total acres reported in Item 3, Land Location and Description)*		

Any data collected here likely will be inaccurate or highly speculative. Renewable energy developers lease more acres than they actually use (if the project goes to construction), with the remainder left for the landowners to use as they see fit. Landowners do not consult with developers regarding how the landowner will continue to use their land after entering a renewable energy development agreement, whether for production, types of production, or other uses so long as such use does not conflict with the developer's use (e.g., access rights, foliage overhang, and the like).

B. Process Feedback

The Coalition's comments in this Section II(B) respond to three aspects of the proposed replacement FSA-153 report that, if adopted, would burden filers unreasonably with additional costs for very little public benefit. Beyond the enhanced cost burden, new data collections will risk data integrity.

- Page 2 Instructions Section

> **One Form vs. Separate Forms for FSA-153 Filings:**
>
> - Complete and file <u>one form</u> for all land that meets the following criteria: 1) with the *same* owner(s) on the title or *same* leaseholders on the lease, 2) located in the *same* county or equivalent, **and** 3) with the *same* acquisition or transfer date. *(NOTE: Land within the same county or equivalent does not need to be contiguous as long as the land is acquired on the same date and has the same owner names on the title.)*
> - Complete and file <u>separate forms</u> for land: 1) with *different* owner(s) on the title or lease, 2) located in *different* counties or equivalent, **or** 3) acquired or transferred on *different* dates.

Requiring a filer to prepare one FSA-153 report per owner will result in a massive increase in forms filed and jeopardize the data collected. We note that "owner(s) on the title or lease" mean very different things. In a renewable energy developer's purchase agreement, the "owner" is the filer, but the instructions above can also be interpreted as the seller. And for leases, the "owner" could be interpreted as the (unchanged) landowner or the "owner" of the lease. The FSA can easily clarify "owner" in this context by revising the instructions.

More importantly, most renewable energy developer's purchase or lease agreements involve multiple parties on the landowner side of the transaction. Examples would include husband and wife names, more than two family members in a group, individual names and farm corporations, trusts, and combinations of the above. To explain the enhanced cost and difficulty presented by this new instruction to file multiple FSA-153 reports per transaction, the filer would need to file three forms if a given agreement has three owners (husband, wife and family trust). How would the filer allocate acreage, use and cost between the three?

Unlike a transaction involving multiple tracts or land that spans multiple counties—where the Legal Description often states the per-county acreage and splitting a given transaction into one FSA-153 per county is practicable—splitting report contents arbitrarily by the number of contract parties will result in junk data. Landowners' respective shares of the land, and how that corresponds to land values or use, are impossible to determine from the four corners of a purchase or lease agreement. Any reliance by FSA on such data would be misplaced and skew its analyses. Even if a filer could miraculously ascertain those split ownership interests by expenditure of effort, time and cost, any accurate disclosure would make public the landowners' private arrangements between themselves. This presents a Catch-22: rely on inaccurate data or penalize landowners by publicizing their private family interests.

- Page 3, Item 4

> **FSA-153** (Proposal 31) Page 3 of 5
>
> **4. PERSON INFORMATION**
>
> Provide this information for the titleholder(s) (or leaseholder(s)) and all foreign persons (individually or jointly) having significant interest or substantial control up to the third tier of ownership. U.S. entities with a significant interest or substantial control held directly or indirectly by one or more foreign persons are themselves considered to be foreign persons for purposes of reporting under AFIDA. Additional tiers of ownership can be provided but are not required. *(**NOTE**: Use FSA-153 Cont. for each added person.)*

This proposed Item 4 would require the filer to disclose much more organizational details than the current form. Now, a filer discloses *its* name, TIN, address, type, nationality, etc. But as proposed, a filer would need to report the same information for *all Tier 2 and 3 entities*. That is a lot of paper. Some fields will be blank, particularly TINs as many Tier 2 or 3 entities are pass-through tax entities without TINs. Most addresses will be the same, as many AFIDA filers use one corporate address for all of its filers and intermediate entities. What is the public interest in collecting and publicizing Tier 2 and 3 company details? A 30-second review of any state's incorporation database (e.g., Delaware) will instantly reveal its entity type, formation date, and registered agent for service of process. For any enforcement proceeding, the current requirement to disclose the name and nationality of all Tier 2-3 owners is sufficient to begin an investigation. Requiring more is uncalled for, would unduly burden filers, and is unnecessary given the plethora of information available from state corporation agencies.

- Page 5, Item 11(C)

FSA-153 (Proposal 31) Page 5 of 5

11. LAND RECIPIENT INFORMATION	
Only complete this section if Item 1A(2) Land Disposition or Item 1B(2) Long-term (10-year or more) Lease Expiration/Termination is checked. (***NOTE:*** *Use FSA-153 Cont. to provide additional Land Recipient Information.*)	
A. Name of Person Receiving Tract(s) or Leasehold:	C. Citizenship of Purchaser or Recipient (*Check one*): ☐ U.S. ☐ Foreign. Specify country: ☐ Unknown
B. Address (*Street, City, State/Province, Country*):	

The vast majority of purchasers' nationalities in a disposition filing will be unknown. And for lease terminations, requiring disclosure of the purchaser or recipient's nationality is irrelevant because there is no purchaser or recipient. The landowner merely reacquires the land rights it had released temporarily under contract to the lessee. The bulk of filings responsive to this requirement will be "Unknown." And of the few that do come in, the error rate will be unknowable and provide little reliable data for FSA analysis. We note, by contrast, that the parties to a bespoke transaction of a purchase or lease for agricultural production are more likely to know this nationality data and more likely to report useful data to the FSA.

C. Instructional Feedback

The Coalition's comments in this Section II(C) merely provide feedback regarding instructions on the form to assist the FSA in understanding how filers may misinterpret them. We are hopeful this feedback will benefit the FSA's administration of the Act.

- Page 4, Item 9

9. USE OF LAND BY TITLEHOLDER (do not answer if long-term leaseholder)		
Titleholder Land Use	**Current Use** *(Acres)*	**Intended Use** *(Acres)*
A. Agricultural Purposes:		
(1) Used by Titleholder		
(2) Rented or Leased Out *(included short- and long-term lease)*		
B. Non-Agricultural Purpose:		
(1) Used by Titleholder		
(2) Rented or Leased Out *(included short- and long-term lease)*		

It would help to clarify which Titleholder (i.e., seller or buyer) is referenced here by adding “New.” In context, we believe the FSA means the buyer filing an FSA-153 report. Clarifying this intent will make the instruction clearer to filers that the buyer’s information is required, not the seller’s.

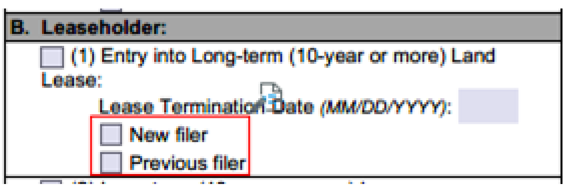
- Page 3, Item 4


5. TIERS OF OWNERSHIP

Provide the business structure, to include all persons listed in Section 4. (*NOTE: Use FSA-153-Cont. for additional rows or tiers.)*

We recommend replacing any “Section” reference with “Item” to be more consistent with other instructions in the form and past use in the current FSA-153 form.

- Page 2, Item 1(B)(1)


B. Leaseholder:

☐ (1) Entry into Long-term (10-year or more) Land Lease:

Lease Termination Date *(MM/DD/YYYY)*:

☐ New filer

☐ Previous filer

It would help to identify whether the FSA requires the designation of a new *filer* (i.e., the legal entity named on the purchase or lease agreement) or a new *organization* (i.e., the legal entity that controls the enterprise). Most renewable energy developers file for many filers they control. In context, the FSA appears to mean organization because the filer names (provided in Item 3(A) of the current FSA-153) are already reported and sortable in the FSA’s AFIDA database. Without clarification, the data collected will be some unknowable mix of filer, the filer’s owner, or some other entity.

III. CONCLUSION

The Coalition is grateful for this opportunity to comment on the FSA's proposed replacement FSA-153 form and is very pleased to see progress towards the long-anticipated migration to an online filing process. We urge the FSA, however, to refrain from releasing a new and expanded reporting form before the online filing option is in place. These comments include our concerns that some aspects of the proposed replacement form will harm filers' and the public interest more than the results may benefit agency operations. We have also shared some suggestions on clarifying report instructions to assist the agency in collecting more reliable data at reduced cost of filer uncertainty. And we are generally supportive of the proposed changes in aspects of the form that we do not discus here, such as moving current report fields within the report or restricting the Tier 2-3 owners' names and nationalities from a graphical to tabular format.

Please do not hesitate to contact the authors on any aspect of these comments or the online migration generally.

Respectfully submitted,

Matthew C. Luzadder	Jeffrey J. Hunter
Dated: July 29, 2025	Dated: July 29, 2025