Foreign Ownership of Ag Land: Federal & State Legislative and Litigation Update

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- Created by Congress in 1987
- Stakeholder-driven
- Objective, non-partisan research and information regarding laws and regulations affecting agriculture
- Serves as the nation's leading source for agricultural and food law research and information
  - A unit of the University of Arkansas System Division of Agriculture
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Outline

- Key Resources, w/ QR Codes
  - email anytime: hmpittm@uark.edu
- Foreign Ownership Background/Context
- State Update: Overview & Focus on 2025-2026
- Litigation – Florida, Texas, & Arkansas
- Federal Overview
  - Recent AFIDA Proposed Rule: Change is a-comin'
  - Congressional proposals

Key Resource: The Feed

- Issues every 2 weeks (once only in December)
- Concise updates on foreign ownership and other ag law & policy issues
- Easy links to NALC resources
- For anyone in the ag industry

Key Resource: Foreign Ownership FAQs

Key Resource: 50 State Compilation

Statutes Regulating Ownership of Agricultural Land

State	Relevant Provision(s)	Prohibition	Permission	Reporting	Corporate Farming
Alabama	Ala. Const. § 34 Ala. Code § 35-1-1 Ala. Code § 35-1-1.1	Yes	Yes*	None	None
Alaska	None	None	Not Expressly	None	None
Arizona	Ariz. Const. art. X, § 11 Ariz. Rev. Stat. Ann. § 33-443 Ariz. Rev. Stat. Ann. § 37-240	Yes	Not Expressly	None	Yes, but limited
Arkansas	Ark. Const. art. II, § 20 Ark. Code Ann. § 2-3-111 Ark. Code Ann. § 18-11-101 ;18-11-110 Ark. Code Ann. §§ 18-11-801 to 18-11-805	Yes	Yes*	Yes	Yes, but limited

Key Resource: Ag & Food Law Update

- In right hand column, click on either:

➔Soil for Sale?

➔Foreign ownership

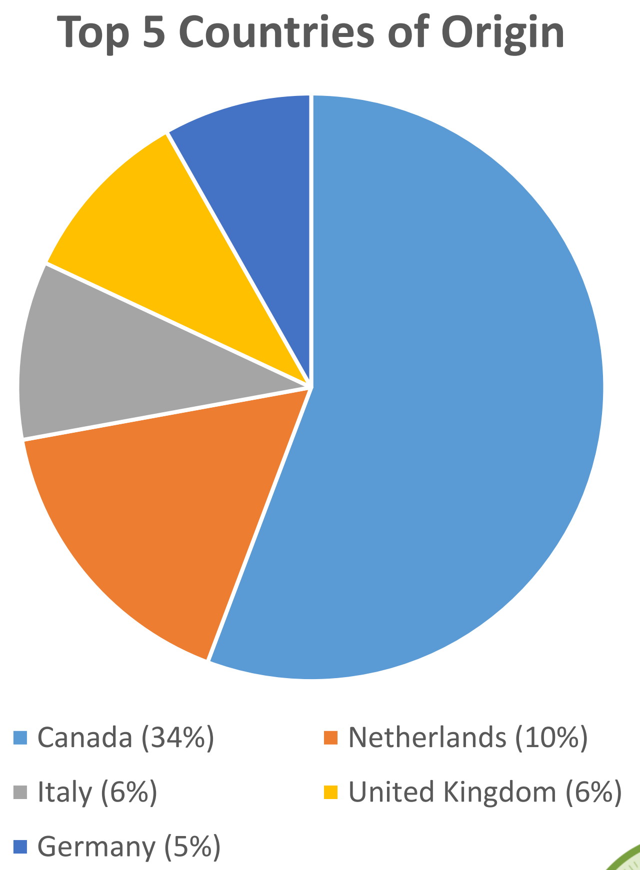
Foreign Ownership: Background/Context

Foreign Ownership: Big Picture Overview

- Agricultural Foreign Investment Disclosure Act (AFIDA) Report – **December 31, 2024**
  - 46 million U.S. agricultural acres, which is 3.6% of all privately held U.S. ag land
    - 96.4% is *not* in some type of foreign ownership
  - Increased by approx. 1.35 million acres previous year (3% increase)
  - Largest increases:
    - New Mexico (235,026 acres)
    - Texas (231,346 acres)
    - Oklahoma (196,868 acres)
  - Largest decreases:
    - North Carolina (-181,066 acres)
    - Arkansas (-64,331 acres)
    - Colorado (-28,242 acres)
    - Utah (-26,544 acres)
  - Chinese landholdings decreased by 29,336 acres

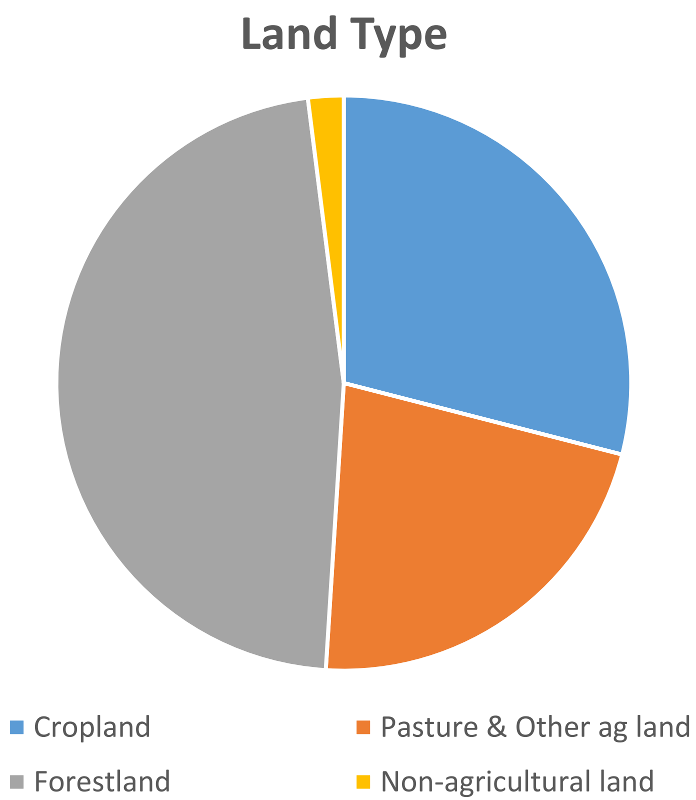
Foreign Ownership: Countries of Origin

- China
  - 247,659 ag acres, slightly less than 1% of all foreign-owned acres
  - According to USDA, 2 Chinese-owned companies account for 143,913 acres (approx. 60%)
    - Brazos Highland Properties, LP(86,994)
    - Murphy Brown LLC (56,919)
    - Murphy Brown of Missouri (43,091)
    - Harvest Texas, LLC (29,705)
    - U.S. Agri-Chemicals Corp. (11,263)
  - States with largest Chinese investment
    - Texas (123,708)
    - North Carolina (44,263)
    - Missouri (42,905)
    - Florida (12,905)
    - Virginia (4,654)



Foreign Owned Land by Land Type

- AFIDA "divides" "agricultural land" into 4 categories:
  - Cropland;
  - Pasture & other ag land;
  - Forestland;
  - Non-agricultural land



States: Highest Acreage & Percentage

Acreage

Texas: 5,886,850 acres

Maine: 3,528,273 acres

Colorado: 2,422,076

Percentage

Maine: 21.3% of its land

Hawaii: 17.1%

Michigan: 8.8%

Florida: 8.6%

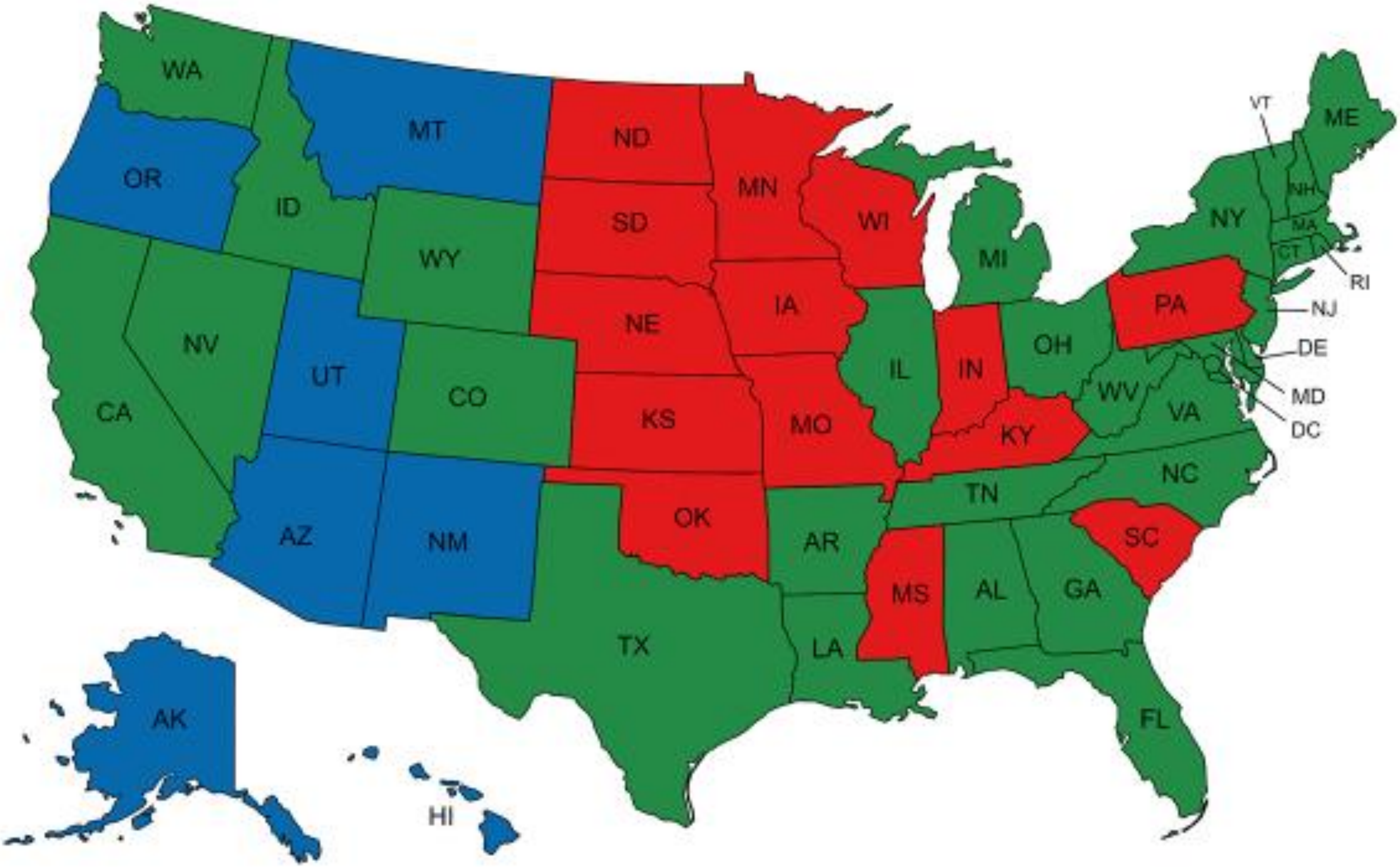
Louisiana: 8.4%

Washington: 8.3%

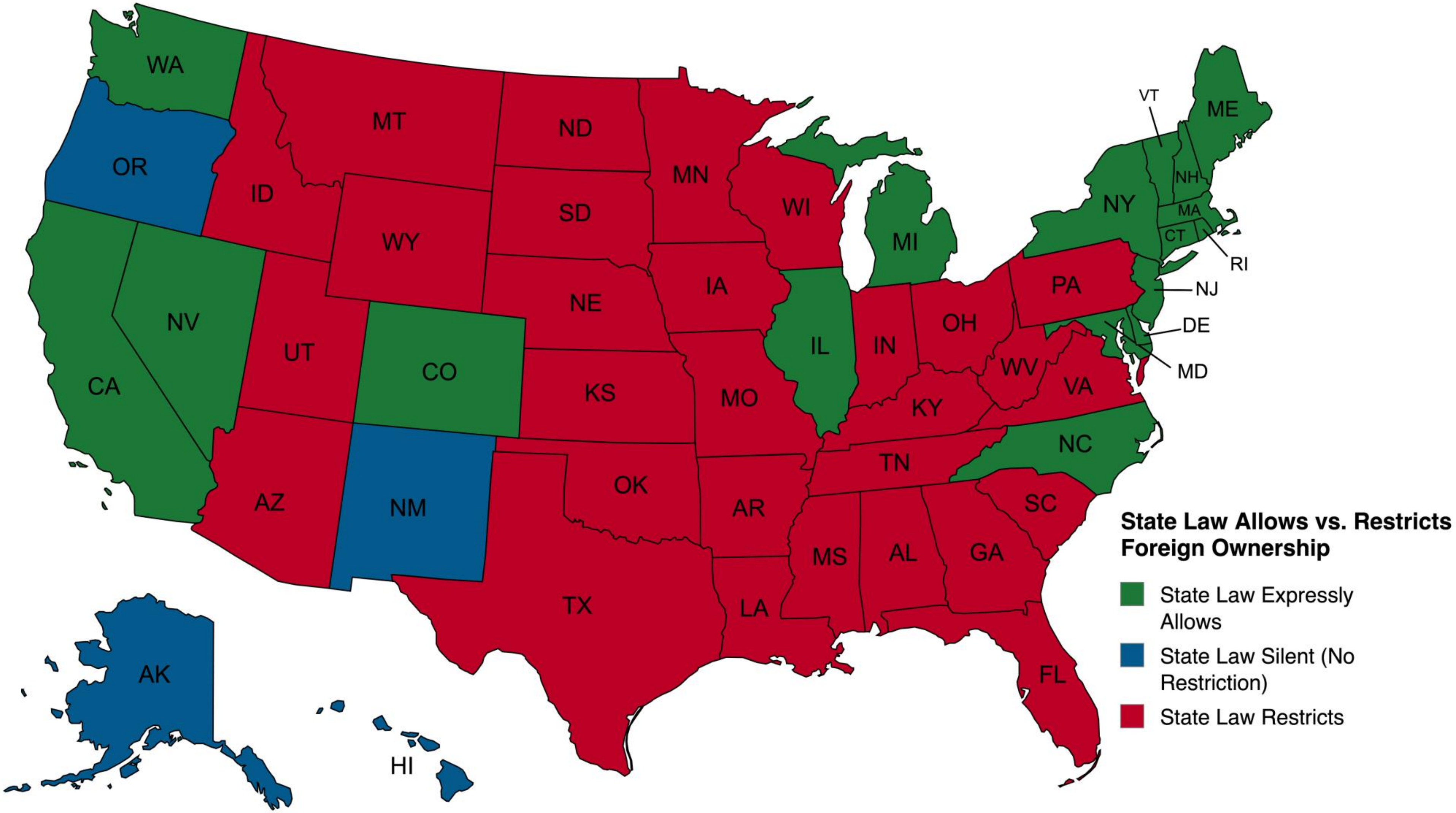
Nevada: 8.1%

State Update: Overview & Focus on 2025-2026

Foreign Ownership Laws: December 31, 2022



July 2026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State Law Allows vs. Restricts Foreign Ownership
State Law Expressly Allows
State Law Silent (No Restriction)
State Law Restricts

How'd We Get Here? – Quick Overview

- Pre-2021

- 2021 – 2022: 12 states proposed laws
  - Indiana and Arkansas enacted
  - Mississippi (amended prior law) and California (vetoed)

- 2023-2024: 25+ states had at least one proposal
  - 15 states enacted new laws, 8 amended prior law

- 2025: 25+ states had at least one proposal
  - 6 states amended prior laws (Arkansas, Georgia, Idaho, Nebraska, Tennessee, and Utah)
  - 4 states enacted new laws (Arizona, Kentucky, Texas, and West Virginia)

- 2026: 25 states had at least one proposal
  - 7 states amended prior law (Indiana, Louisiana, Mississippi, Oklahoma, South Dakota, Tennessee, and Utah)

2025

- Arizona added to its prohibition on ownership of *public* land (SB 1082)
  - Restricts foreign adversary nations from directly or indirectly purchasing, owning, or acquiring an interest in 30% or more of real property in the state
  - Arizona AG has enforcement authority, authority to report to appropriate state/federal law enforcement or to CFIUS
  - Could result in divestiture and selling of property
  - Law seeks to protect title insurers, title agents, real estate licensees, and escrow agents and for violation to not be basis of title insurance claim

- Kentucky (HB 315)
  - Prohibits nonresident aliens, foreign business entities, and certain other persons or entities tied to "ITAR" countries from acquiring any interest (including leaseholds) in both public and private ag land
  - Also prohibits participation in programs administered by the Kentucky Department of Agriculture, KY Agricultural Development Board, and the KY Agricultural Finance Corporation
  - Exceptions for pre-existing holdings, non-ag development projects completed w/in 5 years, & up to 350 acres for ag research/development under a CFIUS national security agreement

2025

- West Virgina (HB 2961)
  - Prohibits any "prohibited foreign-party-controlled business" from acquiring or owning any interest in West Virginia real property (including mineral rights)
  - PFPCB = a business in which 50% or more is owned or operated by a "prohibited foreign party"
    - PFP includes Chinese government and citizens and other nations deemed hostile to U.S. interests by state officials
  - Written to expressly apply retroactively (outlier among states' foreign ownership laws)

2026

- No new law enactments, but, as noted, several amendments
  - 7 states amended prior law (Indiana, Louisiana, Mississippi, Oklahoma, South Dakota, Tennessee, and Utah)

- Themes continued from prior states' enactments, namely:

  - Focus on "foreign adversary"
  - Expanding restrictions to natural resources
  - Targeting land adjacent to or within a specified range of critical infrastructure/military installation

Litigation Update: Florida, Arkansas, & Texas

Florida: *Shen v. Simpson*

- Florida passed SB264 May 8, 2023 (effective July 1, 2023)

- May 22, 2023 – several plaintiffs (including Chinese citizens living in FL and a real estate brokerage firm) sued the State of Florida
  - Equal Protection
  - Due Process
  - Supremacy Clause (preemption)
  - Fair Housing Act

- Ultimately, matter returned to the 11^{th} Circuit where it held in a 2-1 ruling that most plaintiffs lacked standing b/c SB264 restricted investors “domiciled” in China
  - Also signaled that plaintiffs were unlikely to succeed on constitutional and federal preemption claims
  - Plaintiffs thereafter voluntarily dismissed

Arkansas: Jones Eagle, LLC v. Ward

- December 2023, investigation into Jones Eagle, LLC (cryptocurrency mining company) was announced
  - Qimin "Jimmy" Chen born in China and a naturalized American citizen
- Alleged that two Arkansas laws (Act 636 and Act 174) violated U.S. Constitution (Equal Protection, Due Process, Supremacy Clause)
  - Act 636 placed restriction on "prohibited foreign party" investment in ag land, as well as on a "PFP-controlled business" from acquiring any interest in any AR real estate
  - Act 174 prohibited a PFP & a PFPCB from acquiring or holding any interest in a digital asset mining business
- Jones Eagle entered into commercial lease in March 2023, filed lawsuit in November 2024
  - Federal district issued preliminary injunction on preemption grounds, state appealed to 8th Circuit (oral arguments in January 2026) while underlying case continues
- *See also Arkansas Cryptomining Ass'n, et al, vs. York, et al* (4:25-cv-00234-KGB)

Texas: *Wang, et al, vs. Paxton*

- In June 2025, Texas became 28th state adopt a foreign ownership law (SB17)
  - Prohibited individuals and entities from “designated countries” from acquiring any interest (including short-term leaseholds) in any TX real property
  - U.S. citizens or lawful permanent residents not subject to SB17, nor companies that are majority owned/controlled by citizen or lawful resident
  - Enforcement is with Texas AG, w/ penalties ranging from divestiture to civil fines of $250,000 or 50% of the property’s market value (felony charges for “knowing” violations)

- Shortly thereafter, 3 Chinese citizens residing (legal visa holders) in TX brought a lawsuit alleging violations of Equal Protection, Supremacy Clause, and the Fair Housing Act

- Court dismissed action due to lack of standing, 5th Circuit later affirmed
  - SB17 applies to those “domiciled in China”

- *See also*, *Huang et al. v. Paxton* (1:25-cv-01509)

Federal Update: AFIDA Proposed Rule

AFIDA of 1978: Rapid Overview

- First time Congress addressed foreign ownership of privately held agricultural land

- Requires a "foreign person who acquires or transfers any interest . . . in agricultural land" to submit a report no later than 90 days later to the USDA Secretary
  - "foreign person" can be individual, government, or business entity (including a U.S. company)

- Current "AFIDA" is really 4 parts:
  - Statute-- 7 U.S.C. §§ 3501 - 3508
  - Regulations*-- 7 C.F.R. §§ 781.1 – 781.6
  - Agency Handbook
  - FSA-153

- However, significant AFIDA changes are on the horizon

AFIDA Changes: Beginning 2022-2023

- Consolidated Appropriations Act, 2023" – first substantial amendment to AFIDA since 1978
  - Required (once again) USDA to report to Congress on "foreign investments in agricultural land in the United States, including the impact foreign ownership has on family farms, rural communities, and the domestic food supply"
  - Required USDA w/in 3 years to establish electronic filing of AFIDA reports
    - Launched in January 2026
  - Mandated USDA to establish "an internet database that contains disaggregated data from each disclosure submitted"
    - Past and future data
    - 2 categories: foreign individuals and foreign persons that are business entities

AFIDA: Additional Developments to Note

- January 18, 2024 GAO Report ("Foreign Investments in U.S. Agricultural Land: Enhancing Efforts to Collect, Track, and Share Key Information Could Better Identify National Security Risks", GAO-24-106337)
  - 6 Recommendations, one of the two Priority Recommendations focused on providing more timely and accurate AFIDA data to CFIUS member agencies (including Treasury and Dept. of Defense)

- July 9, 2025: National Farm Security Action Plan
  - "to fully integrate agriculture into the broader national security enterprise"
  - AFIDA was key focus

- December 29, 2025: Advanced Notice of Proposed Rulemaking (90 FR 60581)

- April 13, 2026: Final administrative rule issued to transfer authority to administer AFIDA from FSA to USDA Assistant Secretary for Administration

- June 25, 2026: AFIDA Proposed Rule

AFIDA Proposed Rule: Big Picture

- Delegates regulatory authority to Office of Homeland Security
- Removes 7 C.F.R. Part 781 and creates new 7 C.F.R. §§ 5100.1 – 5100.7
- Modifies several definitions, including:
  - “Agricultural land”; “any interest”; “foreign person”; “significant interest or substantial control”
- Creates new definitions
  - “Foreign Adversary”; “Foreign Adversary Controlled Entity”; “Beneficial Owner”; “Shell Corporation”

- New Reporting Requirements (including if not covered under current rule and submitting of geospatial maps)
- New increased penalties structure/scheme
- New penalty review procedure, and appeals process
- Online reporting only

"Agricultural Land"

- **Statutory definition:** "any land located in one or more States and used for agricultural, forestry, or timber production purposes as determined by the Secretary under regulations prescribed by the Secretary"

- **Current regulatory definition:** "any land . . . used for forestry production and land . . . currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding ten acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed $1,000."
  - Includes "Division A" of Standard Industrial Classification (SIC) Manual (1987) Codes, with some exceptions
  - Includes "Land used for forestry production means, land exceeding 10 acres in which 10 percent is stocked by trees of any size . . . ."

“Agricultural Land”: Proposed Rule

- Would replace SIC Codes with North American Industry Classification System (NAICS) Codes (2022), to specifically include, “but is not limited to”:
  - 111: Crop Production
  - 112: Animal Production and Aquaculture
  - 113: Forestry and Logging
  - 115: Support Activities for Agriculture and Forestry
  - 424520: Livestock Merchant Wholesalers
  - 31161: Animal Slaughtering and Processing
  - 493130: Farm Product Warehousing and Storage
  - 493120: Refrigerated Warehousing and Storage
  - 221114: Solar Electric Power Generation
  - 22115: Wind Electric Power Generation
  - 486: Pipeline Transportation
  - 541714: Research and Development in Biotechnology (except Nanobiotechnology)
  - 541715: Research and Development in the Physical, Engineering, and Life Sciences (Except Nanobiotechnology and Biotechnology)

“Agricultural Land”: Proposed Rule

- “Agricultural land” means “any land . . . currently used for, or last used within the past 5 years, for farming, ranching, forestry, or timber production; and land currently in conservation . . . that could be used for farming, ranching, forestry, or timber production despite its conservation designation or under the terms of its conservation designation. Farming, ranching forestry, or timber production includes, but is not limited to, activities specified in the 2022 version” of the applicable NAICS codes. Land meeting this definition is to be considered agricultural land regardless of local government zoning classifications.”
  - Footnote 12: “Conservation land could include land enrolled in USDA conservation programs, including but not limited to the Agricultural Conservation Easement Program or the Conservation Reserve Program, or other non-USDA conservation programs.”

“Foreign Adversary”

- Means “any foreign government or foreign non-government person from, a citizen of, or a controlled entity headquartered in a foreign country of concern as defined by 42 U.S.C. § 19237(2).”
  - “Person” is “any individual, . . . or any other legal entity” (same as current definition)
  - “Foreign country of concern” at § 19237(2) is defined as “The People’s Republic of China, the Democratic People’s Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined by the Secretary of State.”

“Foreign Adversary Controlled Entity”

- “FACE” means “any entity, including any corporation, partnership, trust, or association, that is owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.”
  - In part, was outgrowth of ANPRM comment that noted the need to identify “every single connection to adversaries, including individuals, shell companies, and governmental entity ties.”
  - As with “foreign adversary”, very important to proposed AFIDA reporting and penalty structure

“Any Interest”

- **Statutory Language:** “Any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land . . . .”

- **Current Regulatory Language:** “Any interest means all interest acquired, transferred or held in agricultural lands by a foreign person, except:

(1) Security interests;

(2) Leaseholds of less than 10 years;

(3) Contingent future interests;

(4) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate;

(5) Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production; and

(6) An interest solely in mineral rights.

“Any Interest”: Proposed Rule

- Eliminates surface or subsurface easements and rights of way
  - Overlaps with NAICS Code 486 (Pipeline Transportation)

- Replaces 10-year exception from “any interest” for leases to:
  - In general, “leases totaling less than one year, measured as a single period of time or as the aggregate of multiple leases over a continuous or discontinuous period of time”
  - No exception at all for “foreign adversary” or “foreign adversary controlled entity”
    - Must file a report for any leases of any duration
  - Obviously, impacts year-to-year leases

- Creating more data to better coordinate with CFIUS is a stated purpose of this change

- Proposed rule expressly requests input on whether the exception should be removed for all “foreign persons”

“Shell Corporation” & “Beneficial Owner”

- “Shell corporation” means “Any company, partnership, trust, or legal entity that has no or nominal operations and is used to hold an interest in agricultural land”

- “Beneficial owner” is “any foreign person who, directly or indirectly, through any contract, understanding, relationship, or other arrangement, exercises decisionmaking authority over the agricultural land or the legal entity holding the land, including but not limited to the power to direct the sale, lease, or use of the property. For the purposes of this definition, ‘‘indirectly’’ is inclusive of all intermediary tiers of ownership, including, but not limited to, circular ownership, shell corporations, trusts, and partnerships.”

➡️ Major factor in changes to “substantial control or substantial interest”

“Significant Interest or Substantial Control”

- “SI or SC” is found in definition of “foreign person” in AFIDA dealing with business entities, but not defined in statute

- Current regulatory definition defines “SI or SC” as
  - 10% or more interest held by foreign individual, “person”, or government;
  - 10% or more held by foreign individuals, “persons”, or governments acting in concert even though no single individual, person, or government holds at least a 10% interest
  - 50% or more interest held in aggregate by foreign individuals, persons, or governments, even if the parties may not be acting in concert

- Proposed rule would:
  - Reduce aggregate interest to 10% (though “we find 5 percent interesting”);
  - Include “shell corporations”, trusts, partnerships
  - “Beneficial owners” automatically meet “SI or SC” “simply by virtue of being a beneficial owner regardless of % of interest possessed
  - Any interest held by “foreign adversary” or “foreign adversary controlled entity”

AFIDA Proposed Rule: Other Highlights

- Eliminates current exemption for reporting shareholders (§ 781.3), in part due to changes to "SI or SC" definition

- Requires "foreign person" to disclose tax identification number(s) and foreign passport number(s), and other unique identifiers (if any)

- Attorneys: if attorney represents "foreign person" in submitting, request may be made for power of attorney to substantiate

- Not proposed, but seeking input on additional categories of information such as whether land is within certain distance of a sensitive site, if "foreign person" owns any other U.S. ag land, specific requirements for leaseholders (e.g. type, duration, right to purchase option)

Federal Update: Congressional Proposals

Congressional Proposals

- Dozens of proposals, falling into different categories:

(1) Ownership & Investment Restrictions
  - Some ag land only, others apply to all real estate
  - Some are China-specific, others apply to multiple countries

(2) State Ineligible for Federal Program Funds (e.g., Stop CCP Land Act – H.R. 1184)

(3) Amending AFIDA (Farm, Food, and National Security Act of 2026 – H.R. 7567)

(4) Amending CFIUS (Agriculture Risk Review Act of 2025 – H.R. 1713; appropriations bills)

(5) Restricting Foreign Participation in Farm Programs & Federal Funds (Prohibition of Agricultural Land for Foreign Adversaries- S. 2574)

(6) Miscellaneous

Farm Bill 2.0

- House version and Senate proposed both focus heavily on AFIDA amendments
- Depending on how legislation progresses, will be fleshing out b/t statute and new AFIDA regulations
- House
  - Calls for MOU(s) between USDA and CFIUS for sharing of AFIDA data
  - Updates to the USDA Handbook
  - Civil penalties amendment and public disclosure of enforcement actions
  - Report on Ag Land Purchases by State Sponsors of Terrorism & Certain Other Countries
  - “Chief of Operations” for investigative actions
  - Digitization/Consolidation of foreign ownership data
  - Include Secretary on CFIUS for ag land, ag biotechnology, or ag industry (e.g., transportation, storage, and processing)
  - Prohibition on purchase of ag land by foreign adversaries and state sponsors of terrorism

Farm Bill 2.0

- Senate
  - Prohibition on foreign entity/individual from country that is foreign adversary as per 15 C.F.R. §791.4(a)
  - Increased focus on leases, including statutory 5-year+ trigger for reporting
  - Aligned with House on changes to reporting requirement penalties and public reporting (specifically including list of enforcement actions)
  - Calls for annual compliance audit (of at least 10% of reports)
  - Calls for training of State and county USDA personnel regarding identifying ag land that should be reported but has not been
  - Calls for nationwide outreach program
  - Authorizes establishment of lien on ag land by Secretary
  - Increased/continued coordination between USDA and CFIUS

Comments/Q&A

Reach out anytime to hmpittm@uark.edu